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CODE OF LAWS

OF

South Carolina,

1902.

IN TWO VOLUMES.

VOLUME II.

Code of Civil Procedure

AND

Criminal Code.

COLUMBIA, S. C.
THE STATE COMPANY, STATE PRINTERS.
1902.

Entered According to Act of Congress, in the Year 1902, by
William H. Townsend, as Code Commissioner of the State
of South Carolina, for the Use of Said State, in
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Code of Civil Procedure.

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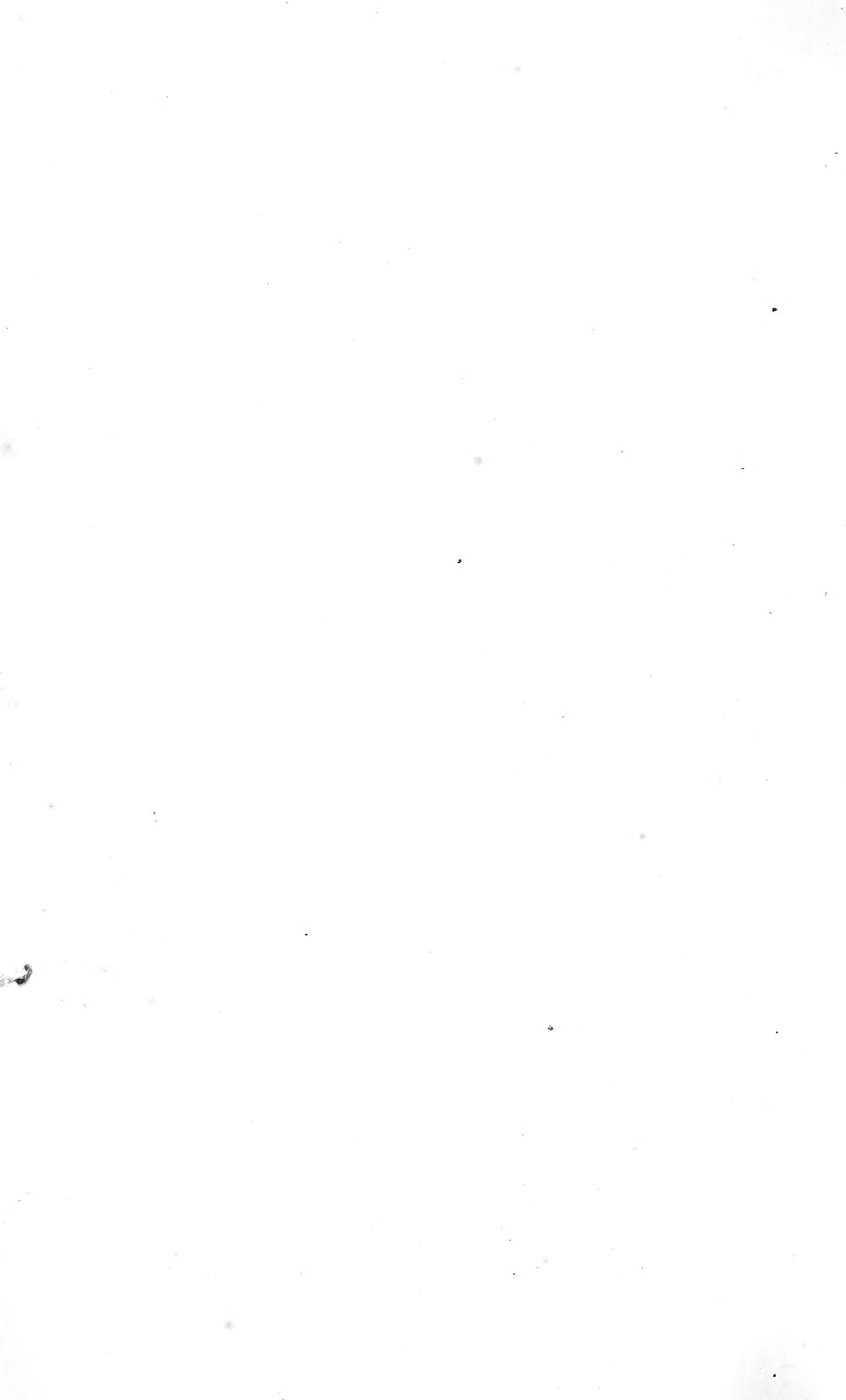

The Code of Civil Procedure.

TITLE I.

The Code of Procedure.

A. D. 1902.

SEC.
1. Division of remedies.
2. Definition of an action.
3. Definition of a special proceeding.
4. Division of actions into civil and criminal.

SEC.
5. Definition of a criminal action.
6. Definition of a civil action.
7. Civil and criminal remedies not merged in each other.
8. Division of the Code of Procedure.

"The Code of Procedure has made no material changes in the primary rights of parties, or in the different causes of action, nor undertaken to give any new redress; but has only changed the mode by which redress is reached and applied."—Anderson v. Lynch, 37 S. C., 577; 16 S. E., 774; Chapman v. Lipscomb, 18 S. C., 222; Sullivan v. Sullivan, 20 S. C., 509. The only changes in the mode of redress, are such as relate to the pleading and its incidents.—Price v. Brown, 4 S. C., 144. It has not interfered with the essential and inherent distinctions between the different causes of actions.—McConnell v. Kennedy, 29 S. C., 187; 7 S. E., 76. Nor the distinctions between law and equity. "What was equitable before still remains equitable, and what was legal is still legal, and the mode of trial of each is still preserved."—McMahan v. Dawkins, 22 S. C., 320; Knox v. Campbell, 52 S. C., 461; 30 S. E., 485. "It allows only one form of action, and special pleas are not admitted."—Smith v. Chamberlain, 38 S. C., 542; 17 S. E., 371. The General Statutes of 1882 and the amended Code then adopted must be regarded as one Act and construed together.—Fooshe v. Merriwether, 20 S. C., 337; City Council v. Weller, 34 S. C., 357; 13 S. E., 628.

Division of remedies.

1870, XIV., 423, § 1.

Section 1. Remedies in the Courts of justice are divided into: 1. Actions. 2. Special proceedings.

Definition of an action.

Ib., § 2.

Sec. 2. An action is an ordinary proceeding in a Court of justice, by which a party prosecutes another party for the enforcement or protection of a right, the redress or prevention of a wrong, or the punishment of a public offence.

This definition has been substantially adopted in all the Codes.—Henderson v. Hyatt, 8 S. C., 112. The distinction between the action, the method of applying the remedy for a wrong, and the cause of action, or wrong itself, and the remedy, or object of the action, is clearly defined in Bliss on Code Pleadings, 3d Ed., § 2. Nothing constitutes a cause of action under the Code which did not constitute a cause of action at law or suit in equity, prior to the adoption of the Code.—Southern Porcelain Co. v. Thew, 5 S. C., 5; Parker v. Jacobs, 14 S. C., 112; and a complaint fails to state a cause of action under the Code only when, upon the facts alleged the plaintiff is entitled to no relief, either at law or in equity.—Mordecai v. Seignious, 53 S. C., 95; 30 S. E., 721; Lathan v. Harby, 50 S. C., 428; 27 S. E., 862. Attachment being a form of process incident to an action, is embraced in the term "action;" is not a special proceeding.—Campbell v. Home Ins. Co., 1 S. C., 158; Allen v. Partlow, 3 S. C., 417. Appeal from Probate Court to Circuit Court upon the merits is an action, not a special proceeding.—Henderson v. Hyatt, 8 S. C., 112.

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Definition of a special proceeding.

Ib., § 3.

Sec. 3. Every other remedy is a special proceeding.

Rule against Sheriff for official misconduct is a special proceeding.—Emory v. Davis, 4 S. C., 23. Attachment of crop under lien is a special proceeding.—Johnstone v. Manigault, 13 S. C., 406; Sease v. Dobson, 33 S. C., 235; 11 S. E., 728; 36 S. C., 554; 15 S. E., 703.

Division of actions into civil and criminal.

Ib., § 4.

Sec. 4. Actions are of two kinds: 1. Civil. 2. Criminal.

Definition of a criminal action.

Ib., § 5.

Sec. 5. A criminal action is prosecuted by the State, as a party, against a person charged with a public offence, for the punishment thereof.

Criminal prosecutions are actions.—State v. Reynolds, 48 S. C., 384; 26 S. E., 679.

Definition of a civil action.

Ib., § 6.

Sec. 6. Every other is a civil action.

Civil and criminal remedies not merged in each other.

Ib., § 7.

Sec. 7. Where the violation of a right admits of both a civil and criminal remedy, the right to prosecute the one is not merged in the other.

Division of the Code of Procedure.

Ib., § 8.

Sec. 8. This Code of Procedure is divided into two Parts: the first relates to Courts of Justice and their jurisdiction; the second relates to civil actions in the Courts of this State.

Prior to the Act of 1884, XVIII., 737, the provisions of the Code as to proceedings on appeal did not apply to criminal cases.—State v. Pitts, 12 S. C., 180. The second part of the Code applies only to the Court of Common Pleas except where express reference is made to inferior Courts.—Doty v. Duval, 19 S. C., 43. The provisions of Sec. 400 expressly apply also to criminal actions.—State v. Reynolds, 48 S. C., 384; 26 S. E., 679.

PART I.

OF THE COURTS OF JUSTICE AND THEIR JURISDICTION.

TITLE I.

OF COURTS OF JUSTICE.

CHAPTER I.

Their Designation.

A. D. 1902.

SEC.
9. The several Courts of this State.
SEC.
10. Their jurisdiction generally.

The several Courts of this State.

1870, XIV., § 9; Con. Art. V., § 1.

Section 9. The following are the Courts of justice in this State:

1. The Court for Trial of Impeachments.
2. The Supreme Court.
3. The Circuit Courts, to wit: (1.) A Court of Common Pleas; and (2.) A Court of General Sessions.
4. Probate Courts.
5. County Courts.
6. Courts of Magistrates.
7. The City Court of Charleston.
8. Court for the Arbitration of Mercantile Disputes in the city of Charleston.
9. Mayors' and Municipal Courts.

Their jurisdiction generally.

1870, XIV., § 10.

Sec. 10. These Courts shall exercise the jurisdiction now vested in them respectively, except as otherwise prescribed by this Code of Procedure or the laws of the State.

A. D. 1902.

TITLE II.

SUPREME COURT.

SEC.
11. Its jurisdiction.
12. Power of Court.
13. Terms. Preference of causes.

SEC.
14. Judgment; rehearing. Opinions.
15. Sheriffs to provide rooms, &c.
16. Courts, where held. Adjournment.

Jurisdiction of the Supreme Court.

1896, XXII., § 1.

Section 11. (A) The Supreme Court shall have power to issue writs or orders of injunction, mandamus, quo warranto, prohibition, certiorari, habeas corpus and other remedial and original writs: each of the Justices of the Supreme Court shall have the same power at chambers to administer oaths, issue writs of habeas corpus, mandamus, quo warranto, certiorari, prohibition and interlocutory writs or orders of injunction as when in open Court: *Provided,* An appeal shall be allowed from his decision to the Supreme Court.

Where issues of fact arise.

Ib.

(B) Whenever in the course of any such action or proceeding in the Supreme Court, arising in the exercise of the original jurisdiction conferred upon the Court by the Constitution and laws of the State, an issue of fact shall arise upon the pleadings, or when an issue of fact shall arise upon a traverse to return in mandamus, prohibition, certiorari, or whenever the determination of any question of fact shall be necessary to the exercise of the jurisdiction conferred upon the Supreme Court, the said Court shall have power to frame an issue therein and certify the same to the Circuit Court for the County wherein the cause shall have originated, or in case of original jurisdiction to the Circuit Court of the County in which the cause of Action shall have arisen. The Supreme Court shall also have the same powers as are now possessed by the Circuit Court of the State for the appointment of Referees to take testimony and report thereon, under such instructions as may be prescribed by said Court, in any cases arising in the Supreme Court wherein issues of fact shall arise.

Appellant jurisdiction in chancery.

Ib.

(C) The Supreme Court shall have appellate jurisdiction only in cases of chancery, and in such appeals they shall review the findings of fact as well as the law, except in chancery cases when the facts are settled by a jury and the verdict not set aside.

In law cases.

Ib.

(D) The Supreme Court shall have appellate jurisdiction for correction of errors of law in law cases, and shall review upon appeal:

A. D. 1902.

1. Any intermediate judgment, order or decree in a law case involving the merits in actions commenced in the Court of Common Pleas and General Sessions, brought there by original process, or removed there from any inferior Court or jurisdiction, and final judgments in such actions: *Provided,* If no appeal be taken until final judgment is entered, the Court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed from.

An order to involve the merits must finally determine some substantial right in the case.—Henderson v. Hyatt, 8 S. C., 112; Blakely v. Frazier, 11 S. C., 122.

The terms "Involving the merits" and "necessarily affecting the judgment" are equivalent.—Blakely v. Frazier, 11 S. C., 122.

What orders involve the merits and are so reviewable before judgment:—

An order setting aside verdict for plaintiff without notice to him.—Williams v. Charleston, 7 S. C., 71.

An order refusing to change place of trial to County where defendant resides.—Blakely v. Frazier, 11 S. C., 122.

An order refusing an oral demurrer.—Elliott v. Pullitzer, 24 S. C., 86; McCown v. McSween, 29 S. C., 131; 7 S. E., 140.

An order refusing to allow amendment, upon legal grounds.—Sibley v. Young, 26 S. C., 415; 2 S. E., 314.

An appeal from an order of reference on jurisdictional grounds.—Simms v. Phillips, 46 S. C., 149; 24 S. E., 99.

An order of reference that deprives party of mode of trial which the law allows him.—Ferguson v. Harrison, 34 S. C., 169; 13 S. E., 332; McLaurin v. Hodges, 43 S. C., 187; 20 S. E., 991; Alston v. Limehouse, 61 S. C., 1; 39 S. E., 192

Orders that are based upon error in law and will prejudice trial.—Bank v. Stelling, 32 S. C., 102; 10 S. E., 766; Sease v. Dobson, 34 S. C., 345; 13 S. E., 530; Capell v. Moses, 36 S. C., 559; 15 S. E., 711.

An appeal from an intermediate order, leaving unaffected a former order, is conclusive of appeal from former order.—Pringle v. Sizer, 7 S. C., 131.

What orders do not involve the merits and are not so reviewable before judgment:

Orders refusing motions to make pleadings more definite and certain.—Fladger v. Beckman, 42 S. C., 547; 20 S. E., 790; Hawkins v. Wood, 60 S. C., 521; 38 S. E., 9.

An order requiring security for costs or nonsuit, and an order discharging Clerk on rule for refusing to enter judgment, and reinstating the case.—McMillan v. McCall, 2 S. C., 390.

Orders on motions to dissolve attachment.—Allen v. Patton, 3 S. C., 418; Clausen v. Easterling, 19 S. C., 519.

An order of Circuit Court allowing appeal, which had been denied by Probate Court, as it merely affects form of procedure.—Henderson v. Hyatt, 8 S. C., 112.

An order refusing nonsuit.—Agnew v. Adams, 24 S. C., 86.

Orders as to recommitting case to referee being discretionary.—Westfield v. Westfield, 13 S. C., 482; Watkins v. Lang, 17 S. C., 13; Symmes v. Symmes, 18 S. C., 601; Lowndes v. Miller, 25 S. C., 119; Smith v. Thomason, 26 S. C., 607; 12 S. E., 96; Hubbard v. Camperdown, 26 S. C., 581; 2 S. E., 576.

An interlocutory order of injunction, "without prejudice."—Garlington v. Copeland, 25 S. C., 41.

Orders on motions for continuance.—State v. Dodson, 16 S. C., 459; Crawford v. Schmidt, 16 S. C., 634; Symmes v. Symmes, 18 S. C., 601; Garvin v. Garvin, 21 S. C., 92; Douthit v. Westfield, 22 S. C., 588; Sawyer v. Senn, 27 S. C., 251; 3 S. E., 298; State v. Atkinson, 33 S. C., 100; 11 S. E., 693. State v. Wise, 33 S. C., 582; 12 S. E., 556; Latimer v. Latimer, 42 S. C., 205; 20 S. C., 159.

An order referring it to Master to take testimony as to claims in case.—Palmetto Co. v. Risley, 25 S. C., 309; Jones v. Trumbo, 29 S. C., 26; 6 S. E., 887.

An order refusing a reference to take testimony in a chancery case.—Farmers'

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Ins. Co. v. Berry, 31 S. E., 53; 53 S. C., 129.

An order refusing to refer issue to a jury in a chancery case.—Hammond v. Foreman, 43 S. C., 264; 21 S. E., 3.

An order transferring case from one calendar to another to try issues involved.—Knox v. Camphell, 52 S. C., 461; 30 S. E., 485.

An order granting a new trial *nisi*.—Stuckey v. Ry. Co., 57 S. C., 395; 35 S. E., 550.

An order refusing motion to submit issues of fact to a jury in equity case.—Dupont v. DuBos, 33 S. C., 389; 11 S. E., 1073.

What orders reviewable on appeal from final judgment:—

An order sustaining a demurrer to complaint, with leave to amend on payment of costs.—Cureton v. Hutchison, 3 S. C., 606.

Order overruling demurrers.—Mobley v. Cureton, 6 S. C., 55.

All material rulings and charges of Circuit Judge excepted to.—Brice v. Hamilton, 12 S. C., 35.

An order denying the right to open and reply.—Bennett v. Sandifer, 15 S. C., 418.

An order requiring referee's report to be printed for Circuit Court.—Scott v. Alexander, 27 S. C., 15; 2 S. E., 706.

The Supreme Court is not restricted to such review of only such orders as have been appealed from within ten days and the cases for appeal thereon made up within thirty days; but it may review any orders affecting the final judgment, whether appealed from or not.—Hyatt v. McBurney, 17 S. C., 150; Lee v. Fowler, 19 S. C., 607; Thatcher v. Massey, 20 S. C., 547; Bomar v. R. R. Co., 30 S. C., 50; 9 S. E., 512; Sullivan v. Latimer, 32 S. C., 281; 10 S. E., 1071; McCrady v. Jones, 36 S. C., 136; 15 S. E., 430; Wallace v. R. R. Co., 36 S. C., 599; 15 S. E., 452; Morgan v. Smith, 57 S. C., 49; 37 S. E., 44. And such review includes all rulings and charges material to the judgment, though no motion for new trial was made to Circuit Court.—Brice v. Hamilton, 12 S. C., 32.

And upon appeal from a final judgment, rendered after appeal from an intermediate order by one party, the other party may review such order.—Hyatt v. McBurney, 17 S. C., 143.

Is a decree which allows judgment for foreclosure "as soon as the amount is ascertained" such reviewable intermediate order?—Wallace v. Carter, 32 S. C., 314; 11 S. E., 97.

The better practice is to await appeal from final order and then review intermediate orders.—Capell v. Moses, 36 S. C., 559; 15 S. E., 711.

What orders not so reviewable:

An order of inferior Court not final nor involving the merits.—McWilliam v. McCall, 2 S. C., 393; Donaldson v. Bank, 4 S. C., 114.

Final judgments:

The decision disposing of all the issues and directing judgment for amount, with interest, to be calculated by the Clerk, is a final judgment.—Adickes v. Allison, 21 S. C., 245. In action at law, decision of Judge is not the final judgment.—*Ib.*

The decision of two Trial Justices upon *habeas corpus* proceedings before them is not appealable to Supreme Court but to Circuit Court.—State v. Duncan, 22 S. C., 88.

This subdivision may not allow Supreme Court to hear appeal from City Court of Charleston.—City Council v. Weller, 34 S. C., 357; 13 S. E., 628.

1901, XXIII., 623.

2. An order affecting a substantial right made in an action, when such order in effect determines the action and prevents a judgment from which an appeal might be taken, or discontinues the action, and when such order grants or refuses a new trial; or when such order strikes out an answer or any part thereof, or any pleading in any action; upon any appeal from an order granting a new trial on a case made, or on exceptions taken, if the Supreme Court shall determine that no error was committed in granting the new trial, it shall render judgment

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absolute upon the right of the appellant; and after the proceedings are remitted to the Court from which the appeal was taken, an assessment of damages, or other proceedings to render the judgment effectual, may be then and there had in cases where such subsequent proceedings are requisite.

What orders are appealable under this subdivision:

An order refusing leave to defendant to file his answer and giving judgment by default against him.—Ayer v. Chassereau, 18 S. C., 597.

Orders refusing nonsuit and, after verdict, a new trial.—Moore v. Smith, 24 S. C., 319.

Douhted whether an order concerning security for costs is, unless it terminate action by nonsuit.—Johnson v. Cobh, 29 S. C., 372; 7 S. E., 601.

An order granting or refusing new trial, where some question of law influenced the decision.—Byrd v. Small, 2 S. C., 388; Durant v. Philpot, 16 S. C., 116; Boyd v. Munro, 32 S. C., 249; 10 S. E., 963.

Orders as to amendments made upon clearly erroneous legal grounds.—Bowden v. Winsmith, 11 S. C., 411; Mason v. Johnson, 13 S. C., 23; Moore v. Johnson, 14 S. C., 436; Sibley v. Young, 26 S. C., 415; 2 S. E., 314; Lilly v. R. R., 32 S. C., 142; 10 S. E., 932; Waring v. Miller, 36 S. C., 310; 15 S. E., 132.

"An order granting a new trial on a case made on exceptions taken" construed to embrace an order granting a new trial on the minutes.—Caston v. Brock, 14 S. C., 104.

Order granting new trial in Circuit Court on appeal from verdict of jury in condemnation proceedings.—Atlantic Coast Line R. R. Co. v. S. B. R. R. Co., 57 S. C., 317; 35 S. E., 555.

Order of nonsuit taken by plaintiff appellant.—Am. Pub. Co. v. Gibbes, 37 S. E., 753; 59 S. C., 215.

What orders are not:

An order, though it affect substantial right, unless it prevent judgment.—Allen v. Partlow, 3 S. C., 417; Garlington v. Copeland, 25 S. C., 41.

An order sustaining demurrer to complaint, with leave to amend on payment of costs.—Cureton v. Hutchinson, 3 S. C., 606.

Order allowing amendment to pleading, where the amendment is acted on by appellant.—Baker v. Hornik, 51 S. C., 313; 28 S. E., 941; Clement v. Dean, 51 S. C., 317; 28 S. E., 942; Ruberg v. Brown, 50 S. C., 873; 27 S. E., 397.

Orders on motion to open default judgment.—Buttz v. Campbell, 15 S. C., 614; Truett v. Rains, 17 S. C., 453.

A judgment by default.—Washington v. Hesse, 56 S. C., 28; 33 S. E., 787.

An order granting or refusing new trial for error of fact.—Floyd v. Abney, 1 S. C., 114; Elmore v. Scurry, 1 S. C., 139; Abrahams v. Kelly, 2 S. C., 235; Byrd v. Small, 2 S. C., 388; Massey v. Adams, 3 S. C., 265; Winsmith v. Walker, 5 S. C., 473; Gibbes v. Elliott, 8 S. C., 50; Brickman v. R. R., 8 S. C., 173; Clark v. Harper, 8 S. C., 256; Bardin v. Drafts, 10 S. C., 493; Lanier v. Griffin, 11 S. C., 584; Steele v. R. R., 11 S. C., 589; Warren v. Lagrone, 12 S. C., 46; Bank v. Gary, 14 S. C., 572; State v. Clark, 15 S. C., 407; Donaldson v. Ward, 20 S. C., 585; Blakely v. Frazier, 20 S. C., 144; Altee v. S. C. Co., 21 S. C., 559; Epstin v. Brown, 21 S. C., 599; Walker v. R. R., 25 S. C., 141; State v. Nance, 25 S. C., 168; Wolfe v. R. R., 25 S. C., 379; Agnew v. Adams, 26 S. C., 101; 1 S. E., 414; Glover v. Burbridge, 27 S. C., 305; 3 S. E., 471; Dial v. Agnew, 28 S. C., 454; 6 S. E., 295; Riggs v. Wilson, 30 S. C., 172; McCord v. Blackwell, 31 S. C., 126; Brown v. Thompson, 31 S. C., 436; 10 S. E., 95; Cantwell v. Fowler, 32 S. C., 589; 10 S. E., 934; Johnston v. Holmes, 32 S. C., 434; 11 S. E., 208; State v. White, 34 S. C., 59; 12 S. E., 661; Durant v. Durant, 36 S. C., 49; Frick v. Wilson, 36 S. C., 65; 15 S. E., 331; Pelzer v. Sun, 36 S. C., 213; 15 S. E., 562; State v. Haines, 36 S. C., 505; 15 S. E., 555; Webber v. Ahrens, 36 S. C., 585; 15 S. E., 732.

Order granting or refusing continuance.—State v. Atkinson, 33 S. C., 100; 11 S. E., 693; State v. Wyse, 33 S. C., 582; 12 S. E., 556.

Generally as to this Section:

The Supreme Court has appellate jurisdiction in cases of chancery alone; it

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can correct errors of law only in cases at law, and cannot review the facts.—Cons., Art. 4, Sec. 4; Sullivan v. Thomas, 3 S. C., 531; Whaley v. Bank, 5 S. C., 201; Gibbes v. Elliott, 8 S. C., 50; State v. Cardozo, 11 S. C., 222; Joplin v. Carrier, 11 S. C., 329; Brice v. Hamilton, 12 S. C., 34; Maxwell v. Thompson, 15 S. C., 612; Kappan v. Ryan, 16 S. C., 358; Cowan v. Neel, 17 S. C., 589; Crawford v. Crawford, 17 S. C., 523; Bowen v. R. R., 17 S. C., 579; Chapman v. Lipscomb, 18 S. C., 231; Ross v. Lindler, 18 S. C., 605; Caulfield v. Charleston, 19 S. C., 601; *Ex Parte* Reed, 19 S. C., 604; Blakely v. Frazier, 20 S. C., 148; Donaldson v. Ward, 20 S. C., 585; Gaffney v. Peeler, 21 S. C., 66; Adickes v. Bratton, 21 S. C., 257; Copeland v. Young, 21 S. C., 287; Whitesides v. Barber, 22 S. C., 50; Davis v. Schmidt, 22 S. C., 133; McMahan v. Dawkins, 22 S. C., 322; State v. Columbia, 17 S. C., 83; Nichols v. R. R., 23 S. C., 604; Calvert v. Nickles, 26 S. C., 304; 2 S. E., 116; Hornsby v. R. R., 26 S. C., 187; 1 S. E., 594; State v. Prater, 26 S. C., 199; 2 S. E., 108; Duren v. Kee, 26 S. C., 219; 2 S. E., 4; Moultrie v. Dixon, 26 S. C., 296; 2 S. E., 576; Calvert v. Nickles, 26 S. C., 304; 2 S. E., 116; Hubbard v. Camperdown Mills, 26 S. C., 581; 2 S. E., 576; Glover v. Burbridge, 27 S. C., 305; 3 S. E., 471; State v. Glover, 27 S. C., 602; 4 S. E., 564; Dial v. Agnew, 28 S. C., 454; 6 S. E., 295; Johnston v. Holmes, 32 S. C., 434; Miller v. R. R., 33 S. C., 359; 11 S. E., 1093; Dobson v. Cothran, 34 S. C., 518; 13 S. E., 679; Draffin v. R. R., 34 S. C., 464; 13 S. E., 427; State v. Robinson, 35 S. C., 340; 14 S. E., 766; Redfearn v. Douglass, 35 S. C., 569; 15 S. E., 244; Thomson v. Dillinger, 35 S. C., 608; 14 S. E., 776; Durant v. Durant, 36 S. C., 49; 14 S. E., 391.

Appeals allowed under subdivisions 1 and 2 are those arising in the course of actions, and are intended to affect the final judgment. Subdivision 3 provides appeals in matters of an independent nature or collateral to an action arising upon a special proceeding, or in matters arising upon a summary proceeding in an action after judgment, and such proceedings are not intended to disturb or to affect the judgment, but to give it efficiency. The summary applications under subdivision 3 are proceedings based upon the judgment and assuming its correctness, and if the object is to affect a judgment by setting it aside, reversing or modifying it, the appeal must be authorized by subdivision 1 or 2.—Cureton v. Hutchinson, 3 S. C., 606; Gibbes v. Elliott, 8 S. C., 62.

3. A final order affecting a substantial right made in any special proceeding, or upon a summary application in any action after judgment, and upon such appeal to review any intermediate order involving the merits and necessarily affecting the order appealed from.

An order setting aside assignment of homestead, made upon a summary application after judgment, affects a substantial right, and is appealable.—Weatherby v. Jackson, 3 S. C., 228.

Such final order on rule against Sheriff is appealable.—Emory v. Davis, 4 S. C., 23. So is judgment in special proceeding under Agricultural Lien Act.—Johnstone v. Manigault, 13 S. C., 403. And order refusing appeal costs in special proceeding.—Sease v. Dobson, 36 S. C., 554; 15 S. E., 703. But an order dissolving attachment is not.—Allen v. Partlow, 3 S. C., 417.

An order refusing a writ of *mandamus* is.—*Ex Parte* Mackey, 15 S. C., 328.

Order refusing to vacate order of arrest, under final process, is such final order and appealable; not reviewable under, as an intermediate order, on appeal from decree refusing to allow prisoner benefit of Insolvent Debtors Act.—Hurst v. Samuels, 29 S. C., 476; 7 S. E., 822.

Order in *quo warranto* containing a preliminary injunction does not involve the merits and is not appealable.—The State v. Westmoreland, 29 S. C., 1; 6 S. E., 847.

Order in *certiorari* permanently staying proceedings below is such final order.—Coleman v. Keels, 30 S. C., 614; 9 S. E., 270.

4. An interlocutory order or decree in the Court of Common Pleas, granting or continuing or modifying or refusing an injunction, or else granting or continuing or modifying or re-

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fusing the appointment of a Receiver hereafter granted in any action: *Provided,* That the notice of appeal must be given within ten days from written notice of the filing of such interlocutory order or decree; and such appeal shall take precedence in the Supreme Court; and the proceedings in other respects in the Court below shall not be stayed during the pendency of such appeal unless otherwise ordered by the Court below.

This Act of 1901 does not apply to orders made before its ratification.—Alstone v. Limehouse, 61 S. C., 1; 39 S. E., 192. Prior to this Act, an order dissolving a temporary injunction to restrain a sale under mortgage was held appealable.—Strom v. American Mortgage Company, 42 S. C., 97; 20 S. E., 16. So also an order refusing to restrain a sale.—Salinas v. Aultman, 49 S. C., 325; 27 S. E., 385. So, generally, where the injunction is essential to the preservation or assertion of a legal right.—Seabrook v. Mostowitz, 51 S. C., 433; 29 S. E., 202. But an order granting an interlocutory order of injunction is not appealable.—S. B. R. R. Co. v. Am. Tel., &c., Co., 58 S. C., 21; 35 S. E., 797.

Powers of in cases of appeal

1896, XXII. 1.

Sec. 12. The Supreme Court may reverse, affirm or modify the judgment, decree or order appealed from in whole or in part, and as to any or all of the parties, and the judgment shall be remitted to the Court below to be enforced according to law. When a judgment or decree is reversed or affirmed by the Supreme Court, every point made and distinctly stated in the cause and fairly arising upon the record of the case shall be considered and decided, and the reason thereof shall be concisely and briefly stated in writing and preserved in the record of the case.

Decisions, when filed.

The Justices of the Supreme Court shall file their decisions in sixty days from the last day of the Court at which the cases were heard.

Therefore, it has no power to grant leave to defendant to answer over.—Johnson v. Dawkins, 20 S. C., 533. It cannot originally determine the right to counsel fees.—Otis v. Brown, 20 S. C., 586. It can make no original decision upon a point not ruled below.—Railroad Com. v. Railroad Co., 22 S. C., 231; Dulaney v. Elford, 22 S. C., 313.

In case at law it cannot modify the judgment below; can only reverse or affirm.—Hosford v. Wynn, 22 S. C., 313.

Filing of petition for rehearing does not stay remittitur; there must be an order of one of the Justices.—*Ex Parte* Dunovant, 16 S. C., 300. Stay of remittitur refused.—State v. Jacobs, 28 S. C., 609; 6 S. E., 577. Stay of remittitur rescinded.—*Ex Parte* Smith, 35 S. C., 606; 15 S. E., 800. Motion to recall remittitur refused.—State v. Merriman, 35 S. C., 607; 14 S. E., 394.

A remittitur which states that judgment below is affirmed is sufficient transcript of the judgment above.—*Ex Parte Dial,* 14 S. C., 586.

Supreme Court loses jurisdiction when remittitur is issued, and not when filed below.—*Ex Parte* Dunovant, 16 S. C., 300; Brooks v. Brooks, 16 S. C., 621. And cannot entertain a motion for rehearing after it is issued.—Sullivan v. Speights, 14 S. C., 360; *Ex Parte* Dial, 14 S. C., 585.

The judgment when remitted cannot be altered or modified by the Circuit Court, but must be enforced.—Pringle v. Sizer, 3 S. C., 337; *Ex Parte* Dunovant, 16 S. C., 300; *Ex Parte* Knox, 17 S. C., 217.

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If judgment be affirmed, it needs no further action by the Circuit Court.—Adger v. Pringle, 13 S. C., 36. And action of Circuit Court is not affected by pending motion to recall remittitur.—*Ib.*

A remittitur which orders a new trial in effect sets aside the verdict and judgment appealed from.—State v. Stephens, 13 S. C., 287.

Time of meetings.

1870, XV., 314.

Sec. 13. The Supreme Court shall hold annually at the seat of government two sessions, the one commencing on the fourth Tuesday in November, and the other the third Tuesday in April, and each of said terms shall be continued for so long a period as the public interests may require. Additional terms may be appointed and held at such times and places as the Court may direct, when the public interest may require it. When any two of the Justices request the Chief Justice to call an extra term he shall do so. The Court may by general rules require and provide what cases shall have preference on the Calendar.

On a second and each subsequent appeal to the Supreme Court, or when an appeal has once been dismissed for defect or irregularity, the cause shall be placed upon the Calendar as of the time of filing the first appeal, and may be noticed and put on the calendar for any succeeding term; and whenever, in any action or proceeding in which the State, or any State officer, or any Board of State officers, is or are sole plaintiff or defendant, an appeal has been, or shall be, brought up from any judgment or order for or against him or them, in any Court, such appeal shall have preference in the Supreme Court, and may be moved by either party out of the order on the calendar.

Ex Parte Eason, 35 S. C., 602; 15 S. E., 800.

Supreme Court to order what time will be allotted to the hearing of causes from each Circuit.

1897, XXII., 488.

The Supreme Court shall on or before the last day of any stated term make and file an order designating the order in which the causes from the several circuits shall be called at the stated terms of the Court next ensuing, which order shall designate the time to be alloted to the hearing of the causes from each circuit.

May call extra term, &c.

1896, XXII., 1.

If the cases from the several circuits cannot be heard in the period allotted as prescribed in the following Section, the Court shall continue the same to be heard after the regular call of the Circuits, or may call an extra term for the hearing of the same or continue them until the next stated term thereafter.

How many must agree to constitute a judgment.

Ib.

Sec. 14. In all cases decided by the Supreme Court the concurrence of three of the Justices shall be necessary for a reversal of the judgment below; but if the four Justices equally divide in opinion the judgment below shall be affirmed, subject

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to the provisions hereinafter prescribed. Whenever upon the hearing of any cause or question before the Supreme Court, in the exercise of its original or appellate jurisdiction, it shall appear to the Justices thereof, or any two of them, that there is involved a question of Constitutional law, or of conflict between the Constitution and laws of this State and of the United States, or between the duties and obligations of her citizens under the same, upon the determination of which the entire Court is not agreed; or whenever the Justices of the said Court, or any two of them, desire it on any cause or question so before said Court, the Chief Justice, or in his absence the presiding Associate Justice, shall call to the assistance of the Supreme Court all the Judges of the Circuit Court: *Provided,* That when the matter to be submitted is involved in an appeal from the Circuit Court the Circuit Judge who tried the case shall not sit. A majority of the Justices of the Supreme Court and Circuit Judges shall constitute a quorum. The decision of the Court so constituted, or a majority of the Justices and Judges sitting, shall be final and conclusive. In such case the Chief Justice, or in his absence the presiding Associate Justice, shall preside. Whenever the Justices of the Supreme Court and the Judges of the Circuit Court meet together for the purposes aforesaid, if the number thereof qualified to sit constitute an even number, then one of the Circuit Judges must retire, and the Circuit Judges present shall determine by lot which of their number shall retire. Whenever the Circuit Judges are called to sit with the Justices of the Supreme Court for the determination of any cause or causes, the actual traveling and other expenses of each Judge so attending shall be paid by the Governor out of his civil contingent fund upon an itemized statement made out and certified to by each Judge.

When all the Circuit Judges are required to sit with the Supreme Judges.

Sec. 15. If, at any term of the Supreme Court, proper and convenient room, both for the consultation of the Judges and the holding of the Court, with furniture, attendants, fuel, lights and stationery, suitable and sufficient for the transaction of its business, be not provided for in the place where by law the Court may be held, the Court may order the Sheriff of the County to make such provision, and the expenses incurred by him in carrying the order into effect shall be paid from the State Treasury.

Sheriffs to provide rooms, &c.

1870, XIV., 495.

Sec. 16. The Supreme Court may be held in other buildings than those designated by law as places for holding Courts, and

Courts, where held. Adjournment.

Ib., § 16.

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at a different place, in the same city or town, from that at which it is appointed to be held. Any one or more of the Judges may adjourn the Court with the like effect as if all were present.

TITLE III.

CIRCUIT COURTS.

SEC.
17. Division of the State into Circuits.
18. Time of holding Courts in First Circuit.
19. Time of holding Courts in Second Circuit.
20. Time of holding Courts in Third Circuit.
21. Time of holding Courts in Fourth Circuit.
22. Time of holding Courts in Fifth Circuit.
23. Time of holding Courts in Sixth Circuit.
24. Time of holding Courts in Seventh Circuit.
25. Time of holding Courts in Eighth Circuit.

SEC.
26. After General Sessions Court, Judge may open Court of Common Pleas.
27. Judges' power to adjourn Courts of Common Pleas.
27*a*. Power to open Common Pleas before completion of criminal business.
28. Special sessions of Circuit Courts.
29. Petit jurors in Common Pleas and General Sessions.
30. Adjournment of Circuit Court.
31. Qualification of Judges.
32. Circuit Courts made Courts of record.
33. Clerk and Deputy Clerk of Circuit Courts.

Division of the State into Circuits.

1870, XIV., §17; 1868, XIV., 5, 72; 1869, XIV., 198; 1872, XV., 146; XVI, 376; *Ib.*, 296; 1871, XIV., 659, §2; 1882, XVII., 682; 1889, XX., 518; 1871, XIV., 696, § 6; 1897, XXII., 583, § 10, and 597, § 5; 1897, XXII., 592, § 7; 1897, XXII., 609, § 11; Con., 1895, page 96 and 1896, XXII., 250, § 6; 1899, XXIII., 31, § 5; 1898, XXII., 879; 1899, XXIII., 179, § 4.

Section 17. The State is divided into eight Circuits, as follows:

1. The Counties of Charleston, Berkeley, Dorchester and Orangeburg shall constitute the First Circuit.

2. The Counties of Aiken, Bamberg, Barnwell, Beaufort, Colleton and Hampton shall constitute the Second Circuit.

3. The Counties of Sumter, Clarendon, Williamsburg, Georgetown and Florence shall constitute the Third Circuit.

4. The Counties of Chesterfield, Marlboro, Darlington, Marion and Horry shall constitute the Fourth Circuit.

5. The Counties of Kershaw, Richland, Edgefield, Lexington and Saluda shall constitute the Fifth Circuit.

6. The Counties of Cherokee, Chester, Lancaster, York and Fairfield shall constitute the Sixth Circuit.

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7. The Counties of Greenwood, Newberry, Laurens, Spartanburg, and Union, shall constitute the Seventh Circuit.

8. The Counties of Abbeville, Anderson, Oconee, Pickens, and Greenville shall constitute the Eighth Circuit.

Sec. 18. The Courts of the First Circuit shall be held as follows:

Courts in the First Circuit. In Charleston County.

1887, XIX., 987; 1894, XXI., 717; 1898, XXII, 683; 1899, XXIII., 31 and 258; 1900, XXIII., 309.

1. The Court of General Sessions at Charleston, for the County of Charleston, on the fourth Monday in February, the third Monday in June and the first Monday in November; and the Court of Common Pleas at the same place on the second Monday in March, the first Monday in July and the second Monday in November. The jurors for the March term of the Court of Common Pleas shall not be summoned to attend said Court until the Monday after the day fixed herein for the holding of said Court; but in case the business of the Court of General Sessions be completed before the said last mentioned day, but after the day herein fixed for the holding of said March term of the Court of Common Pleas, then the Circuit Judge may peremptorily call and hear equity cases and motions to refer issues of fact in such cases to a jury and give judgment by default, and transact all other business except trials by jury. With a view to facilitate the hearing of equity cases no jurors shall be summoned for the July term of the Court of Common Pleas, but the Court may retain the juries serving in the Court of General Sessions as juries in the Court of Common Pleas, for the purpose of rendering verdicts by default in cases requiring the intervention of a jury on the call of the default docket, and said Court shall also hear any pending motions to refer the issues of fact in equity cases to a jury as though the trial of said issues could be heard at said term.

In Berkeley County.

1886, XIX., 473; 1898, XXII., 684.

2. The Court of General Sessions for the County of Berkeley shall be held at Monck's Corner on the first Tuesdays in February and June and the second Tuesday in October; and the Court of Common Pleas at the same place on the Wednesdays succeeding the first Tuesdays in February and June and the Wednesday succeeding the second Tuesday in October.

In Orangeburg County.

Ib.

3. The Court of General Sessions for the County of Orangeburg shall be held at Orangeburg on the second Monday in January and the first Monday in May and the third Monday in September; and the Court of Common Pleas at the same place

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on the Wednesdays succeeding the second Monday in January, the first Monday in May and the third Monday in September.

In Dorchester County.

1897, XXII., 597, § 5; 1898, XXII., 684.

1901, XXIII., 624.

4. The Court of General Sessions for the County of Dorchester shall be held at St. George's on the second Monday in February, and the third Monday in October; and the Court of Common Pleas at the same place, on the Wednesdays succeeding the second Monday in February, and the third Monday in October.

Sec. 19. The Circuit Courts of the Second Circuit shall be held as follows:

Fall terms of Court for Beaufort.

1884, XVIII., 686; 1896, XXII., 20; 1901, XXIII., 624.

1. Fall terms:

The Court of General Sessions at Beaufort, for the County of Beaufort, on the first Monday of September, and the Court of Common Pleas at the same place on the Wednesday following said Monday.

Colleton.

Ib., 1900, XXIII., 310.

The Court of General Sessions at Walterboro, for the County of Colleton, on the third Monday in November, and the Court of Common Pleas at the same place on the Wednesday following said Monday.

Hampton.

1896, XXII., 20.

The Court of General Sessions at Hampton on the first Monday in October, and the Court of Common Pleas at the same place on the Wednesday following the said Monday.

Aiken.

1897, XXII., 444.

The Court of General Sessions at Aiken, for the County of Aiken, on the third Monday in October, and the Court of Common Pleas at the same place on Wednesday following the said Monday.

Barnwell.

Ib.

The Court of General Sessions at Barnwell, for the County of Barnwell, on the first Monday in November, and the Court of Common Pleas at the same place on the Wednesday following said Monday.

2. The Winter term.

Winter terms of Court for Beaufort.

1901, XXIII., 624.

The Court of General Sessions at Beaufort, for the County of Beaufort, on the first Monday in January, and the Court of Common Pleas at the same place on the Wednesday following the said Monday.

Colleton.

Ib., 1900, XXIII., 310.

The Court of General Sessions at Walterboro, for the County of Colleton, on the fourth Monday of March, and the Court of Common Pleas at the same place on the Wednesday following said Monday.

Hampton.

1896, XXII., 20.

The Court of General Sessions at Hampton, for the County of Hampton, on the first Monday in February, and the Court

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of Common Pleas at the same place on the Wednesday following said Monday.

Aiken.

Ib., 1897, XXII., 444.

The Court of General Sessions at Aiken, for the County of Aiken, on the third Monday of February, and the Court of Common Pleas at the same place on the Wednesday following said Monday.

If there be three weeks for the Winter term of the Court at Aiken, three separate sets of petit jurors, one for each week, shall be drawn according to law.

Barnwell.

Ib.

The Court of General Sessions at Barnwell, for the County of Barnwell, on the second Monday in March, and the Court of Common Pleas at the same place on the Wednesday following said Monday.

The Summer term:

Summer terms of Court.

Beaufort.

1901, XXIII., 624.

The Court of General Sessions at Beaufort, for the County of Beaufort, on the fourth Monday in May.

Colleton.

1900, XXII., 310.

The Court of General Sessions at Walterboro, for the County of Colleton, on the first Monday of August.

Hampton.

1896, XXII., 20.

The Court of General Sessions at Hampton, for the County of Hampton, on the second Monday in June.

The Court of General Sessions at Aiken, for the County of Aiken, on the third Monday in June.

Barnwell.

Ib., 1897, XXII., 444.

The Court of General Sessions at Barnwell, for the County of Barnwell, on the second Monday in July.

The Court of Common Pleas for Barnwell County shall hold a Summer term beginning on the third Tuesday of July, at which term may be tried civil causes properly triable by a jury as at other times of said Court, as well as other causes not requiring a jury, and the separate set of petit jurors shall be drawn for said Court of Common Pleas.

4. Courts in Bamberg County:

For Bamberg.

1897, XXII., 585, § 10.

The Court of General Sessions for Bamberg County shall be at Bamberg, in said County, on the second Monday of April and the fourth Monday of July and the first Monday of December in each year; and the Court of Common Pleas at same place on Wednesdays following the Mondays on which the Court of General Sessions opens for said County.

Courts in Third Circuit.

1884, XVIII., 886; 1896, XXII., 22; 1899, XXII., 32; 1900, XXIII., 311; 1901, XXIII., 625.

Sec. 20. The Circuit Courts of the Third Judicial Circuit of this State shall be held as follows:

1. The Court of General Sessions at Florence, for the County of Florence, on the Monday before the last Monday in February, the first Monday after the fourth Monday in May, and

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the second Monday in October; and the Court of Common Pleas, at the same place, on the Wednesday following the Monday before the last Monday in February, the first Monday after the fourth Monday in May, and the second Monday in October.

In Georgetown County.

2. The Court of General Sessions at Georgetown, for the County of Georgetown, on the second Monday in March, the third Monday in May and the seventh Monday after the fourth Monday in October; and the Court of Common Pleas at the same place, on the Wednesdays first succeeding the Mondays herein fixed for the holding of the Court of General Sessions at said place.

In Williamsburg County.

3. The Court of General Sessions at Kingstree, for the County of Williamsburg, on the third Monday in March, the fourth Monday in May, and the fifth Monday after the fourth Monday in October; and the Court of Common Pleas at the same place, on the Wednesdays first succeeding the Mondays herein fixed for holding the Court of General Sessions at said place, except the May term thereof.

In Clarendon County.

4. The Court of General Sessions at Manning, for the County of Clarendon, on the fourth Monday in March, the second Monday after the fourth Monday in May, and the third Monday after the fourth Monday in October; and the Court of Common Pleas at the same place, on the Wednesdays first succeeding the Mondays herein fixed for holding the Court of General Sessions at said place, except the summer term thereof.

In Sumter County.

5. The Court of General Sessions at Sumter, for the County of Sumter, on the first Monday after the fourth Monday in March, the third Monday after the fourth Monday in May and the first Monday after the fourth Monday in October; and the Court of Common Pleas, at the same place, on the Thursdays first succeeding the Mondays herein fixed for holding the Court of General Sessions at said place, except the June term thereof: *Provided,* That no peremptory call of Calendar No. 1 shall be made in said County of Sumter before the second Monday after the fourth Monday in March, and the second Monday after the fourth Monday in October.

Powers of Judges at summer term.

Nothing contained in this Section shall be construed to prevent the presiding Judge from hearing and determining in any of the Counties of the Third Circuit at the summer term of the Court all cases which do not require the intervention of a jury.

Sec. 21. The Circuit Courts of the Fourth Circuit in the

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year A. D. 1897, and in every alternate year thereafter, to wit: In A. D. 1899, in A. D. 1901, and so on shall be held as follows:

Courts in 4th Circuit in 1897 and every alternate year.

1883, XVIII, 305; 1887, XIX., 999, 1897, XXII., 404, 1901, XXIII, 627.

1. The Court of General Sessions for the County of Horry at Conway, on the first Monday of March, and the first Monday of October; and the Court of Common Pleas at the same place on the Wednesdays next following the first Monday of March and the first Monday of October.

Horry.

2. The Court of General Sessions for the County of Marion, at Marion on the second Monday of March, the second Monday of June, and the second Monday of October; and the Court of Common Pleas at the same place on the Wednesdays following the second Monday in March and the second Monday in October.

Marion.

3. The Court of General Sessions for the County of Darlington, at Darlington on the fourth Monday of March, the third Monday of June, and the fourth Monday of October; and the Court of Common Pleas at the same place on the Wednesdays following the fourth Monday of March and the fourth Monday of October.

Darlington.

4. The Court of General Sessions for the County of Chesterfield at Chesterfield on the Tuesdays next following the third Monday after the fourth Monday of March, and the fifth Monday after the fourth Monday of October; and the Court of Common Pleas at the same place on the Wednesdays next following the third Monday after the fourth Monday of March and the fifth Monday after the fourth Monday of October.

Chesterfield.

5. The Court of General Sessions for the County of Marlboro, at Bennettsville on the fifth Monday after the fourth Monday of March, the fourth Monday in June and the third Monday after the fourth Monday of October; and the Court of Common Pleas on the Wednesdays next following the fifth Monday after the fourth Monday of March, and the third Monday after the fourth Monday of October. And the Circuit Courts of the Fourth Circuit in the year A. D. 1898, in the year 1900, in the year 1902, and so on in each alternate year from 1898, shall be held as follows:

Marlboro.

1. The Court of General Sessions for the County of Horry, at Conway, on the first Monday of March, and the first Monday of October; and the Court of Common Pleas at the same place on the Wednesdays next following the first Monday of March, and the first Monday of October.

Horry.

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Darlington.

2. The Court of General Sessions for the County of Darlington, at Darlington, on the second Monday of March, the second Monday of June, and on the fourth Monday after the fourth Monday of October; and the Court of Common Pleas at the same place on the Wednesdays next following the second Monday of March, and the fourth Monday after the fourth Monday of October.

Chesterfield.

3. The Court of General Sessions for the County of Chesterfield at Chesterfield on the Tuesday next following the first Monday after the fourth Monday in March, and the second Monday of October; and the Court of Common Pleas at the same place on the Wednesdays next following the first Monday after the fourth Monday of March and the second Monday of October.

Marlboro.

4. The Court of General Sessions for the County of Marlboro, at Bennettsville on the third Monday after the fourth Monday of March, the third Monday of June and the fourth Monday of October, and the Court of Common Pleas at the same place on the Wednesdays next following the third Monday after the fourth Monday of March and the fourth Monday of October.

Marion.

5. The Court of General Sessions for the County of Marion, at Marion on the fifth Monday after the fourth Monday of March, the fourth Monday in June, and the second Monday after the fourth Monday of October; and the Court of Common Pleas at the same place on the Wednesdays next following the fifth Monday after the fourth Monday of March, and the second Monday after the fourth Monday of October. That all recognizances, pleadings, notices and papers whether dated heretofore or hereafter, shall be made returnable and applicable to the terms of the Court as fixed by this Section, and the Clerk of Court for each County in this Fourth Circuit shall give notice through one County paper at least thirty days before each session of Court, stating the day of the month on which the next Court will open for the County.

Notice to be given by Clerk

The business of the Court of General Sessions shall have precedence in the respective Counties of this Circuit, and this Section shall not be construed as to terminate the Court of General Sessions before the business thereof is disposed of; nor shall it be so construed as to prevent the opening of the Court of Common Pleas for the purpose of hearing causes by consent of parties before the times herein fixed for the opening

of the Court of Common Pleas. And the presiding Judge of any of the said Courts is hereby authorized to open the Court of Common Pleas, and to try by consent of parties at any time between the days on which said Circuit Courts open and close, any civil action, in the same manner and with the same effect as if said action should be tried at a regular term of the Court of Common Pleas.

Opening of the Common Pleas.

Sec. 22. The Circuit Courts of the Fifth Judicial Circuit shall be held as follows:

1. The Court of General Sessions at Camden, for the County of Kershaw, on the first Mondays in February, June and September, and the Court of Common Pleas at the same place on the Thursdays following the first Mondays in February and September.

Courts in Kershaw County.

1877, XVI., 299; 1896, XXII, 24, 1899, XXIII., 33.

2. The Court of General Sessions at Lexington, for the County of Lexington, on the third Monday in February, the second Monday in June and the third Monday in September, and the Court of Common Pleas at the same place on the fourth Mondays in February and September.

Lexington.

3. The Court of General Sessions at Edgefield, for the County of Edgefield, on the second Monday of March, first Monday of August, and the third Monday of November; and the Court of Common Pleas, at the same place, on the third Monday in March, and the fourth Monday in November.

Courts in Edgefield County.

Ib., and 1897, XXII., 433.

XXII, 685, 1899

4. The Court of General Sessions at Columbia, for the County of Richland, on the first Monday of April, the fourth Monday of June and the third Monday of October, and the Court of Common Pleas at the same place on the second Monday in April and first Monday after the fourth Monday in June and the fourth Monday in October.

5. The Courts of General Sessions at Saluda Court House, for the County of Saluda, on the first Monday of May, the third Monday of August, and the first Monday of December; and the Court of Common Pleas at the same place, on the Wednesday following the first Mondays in May and December.

Courts in Saluda County.

Ib.

6. A panel of thirty-six jurors shall be drawn to serve for one week for the Courts of General Sessions and Common Pleas in Lexington County for the terms commencing on the third Mondays in February and September in each year, and a like panel for said Courts to serve for the remainder of each

Special provisions as to Lexington.

1896, XXII., 24.

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of such term commencing on the fourth Mondays in February and September of each year.

Calendars when called.

Ib.

7. The presiding Judge shall call calendars two (2) and three (3) peremptorily at the close of the Sessions Court in Lexington County in February and September in each year if the Sessions Court is adjourned before the time herein fixed for holding the Courts of Common Pleas for said terms.

Courts of the Sixth Circuit.

1885, XIX., 223; 1899, XXII., 34; 1900, XXIII., 312.

Sec. 23. The Circuit Courts of the Sixth Circuit shall be held as follows:

In Fairfield County.

1. The Court of General Sessions at Winnsboro, for the County of Fairfield, on the third Monday of February, the second Monday in June and the third Monday in September; and the Court of Common Pleas, at the same place, on the Wednesdays following the third Monday of February and the third Monday of September: *Provided,* That no cause on Calendar 1 shall be forced to trial without agreement of attorneys until the Mondays following the third Monday in February and the third Monday in September.

In Cherokee County.

2. The Court of General Sessions, at Gaffney City, for the County of Cherokee, on the first Monday of March, the third Monday of June, and the first Monday after the fourth Monday in September; and the Court of Common Pleas on the Wednesdays following the first Monday of March and the first Monday after the fourth Monday in September: *Provided,* That no cause on Calendar 1 shall be forced to trial without agreement of attorneys until the Monday following the first Monday of March and the first Monday after the fourth Monday in September.

In Lancaster County.

3. The Court of General Sessions at Lancaster, for the County of Lancaster, on the third Monday of March, the Fourth Monday of June, and the third Monday in October; and the Court of Common Pleas at the same place on the Wednesdays following the third Monday in March and the Wednesdays following the third Monday in October: *Provided,* That no jury cases shall be tried before the fourth Monday in March and the fourth Monday in October, except by consent.

In Chester County.

4. The Court of General Sessions, at Chester, for the County of Chester, on the first Monday after the fourth Monday in March, the first Monday in July, and the first Monday after the fourth Monday in October; and the Court of Common Pleas at the same place on the Wednesdays following the first Mon-

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day after the fourth Monday in March, and the first Monday after the fourth Monday in October: *Provided,* That Calendar 1 shall not be called peremptorily before the Monday following the first Monday after the fourth Mondays in March and October.

In York Co.

5. The Court of General Sessions, at Yorkville, for the County of York, on the third Monday after the fourth Monday in March, the third Monday after the fourth Monday of June, and the third Monday after the fourth Monday in October; and the Court of Common Pleas, at the same place, on the Wednesdays following the third Monday after the fourth Monday in March, and the third Monday after the fourth Monday in October: *Provided,* That Calendar 1 shall not be called peremptorily until the Mondays following the third Monday after the fourth Monday of March, and the third Monday after the fourth Monday of October.

Powers and duties of Judges at said Courts.

6. Whenever in this Section provision is made for Courts of General Sessions only, the Judge presiding shall, at the conclusion of any such Court of General Sessions, open the Court of Common Pleas without juries, and give judgments by default on Calendar 3, hear and determine equity cases, and transact all other business of a regular term of Court of Common Pleas, except trials by jury.

Courts in the Seventh Circuit.

Sec. 24. The Circuit Courts of the Seventh Judicial Circuit shall be held as follows:

1889, XX., 359; 1896, XXII, 25; 1898, XXII, 685; 1899, XXIII; 35.

In Union County.

1. The Court of General Sessions at Union, for the County of Union, on the third Monday in January, the third Monday in June and the third Monday in September; and the Court of Common Pleas at the same place on the Wednesdays following the third Mondays in January, June and September.

In Laurens County.

2. The Court of General Sessions at Laurens, for the County of Laurens, on the first Monday in February, the third Monday in July and the second Monday in October; and the Court of Common Pleas at the same place on the Wednesdays following the first Monday in February and the second Monday in October.

In Newberry County.

3. The Court of General Sessions at Newberry, for the County of Newberry, on the third Monday in February, the fourth Monday in July and the fourth Monday in October; and the Court of Common Pleas at the same place on the fourth Monday in February and the Monday following the fourth Monday in October: *Provided, however,* That provis-

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ions of Section 27 of the Code of Civil Procedure shall not apply to the Courts of Newberry County.

Courts in Greenwood County.

4. The Court of General Sessions at Greenwood, for the County of Greenwood, on the fourth Monday in March, the first Monday in August, and the second Monday in November; and the Court of Common Pleas at the same place on the Wednesdays following the fourth Monday in March, the first Monday in August and the second Monday in November.

In Spartanburg County.

5. The Court of General Sessions at Spartanburg, for the County of Spartanburg, on the first Monday in January, the first Monday in March, the first Monday in May, the first Monday in July, the first Monday in October, and the fourth Monday in November; and the Court of Common Pleas at the same place on the second Monday in March, the second Monday in May, the second Monday in July, and the first Monday after the fourth Monday in November: *Provided,* That should the business of the Court of General Sessions for said County at any term be completed, or suspended, before the expiration of the term, the presiding Judge shall open the Court of Common Pleas for said County for the trial of all causes and the transaction of all business pending therein, except the trial of jury causes, which may be tried at such time only by consent of the parties or their attorneys.

Provision for appointing Judge to hold court if the Judge assigned is unable to preside.

6. Should the Circuit Judge assigned to hold said Courts be for any reason unable to hold said Courts, the Chief Justice of the Supreme Court shall assign another Circuit Judge, disengaged, to hold said Courts; and if there be no Circuit Judge disengaged, the Governor shall, on the certificate of the fact and the recommendation of the Chief Justice, appoint and commission a special Judge, some person learned in the law, to hold said Courts. The special Judge so appointed shall be paid as provided by law for other special Judges.

Jurors, how drawn.

7. The Jury Commissioners of each of said Counties shall draw jurors for the several terms of said Courts as now provided by law, except in the County of Spartanburg, where they shall draw thirty-six jurors to serve at each term of the Court of General Sessions, and a like number for each term of the Court of Common Pleas; and separate writs of venire shall be issued for the jurors drawn for each of said terms: *Provided,* That the Sheriffs of the Counties of Greenwood and Spartanburg shall be entitled to no more than fifteen dollars for the service of each venire. Said Sheriffs may serve the venire

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on jurors drawn for any term of said Courts by mail, if, at least two weeks before the opening of said term, they shall deposit a summons, in the usual form, in the postoffice, sealed in an envelope, and addressed to each of them, at the post-office nearest his residence, with the postage thereon prepaid. Proof of compliance with the foregoing requirements shall be held to be *prima facie* evidence of service.

Notice to be given by Clerks

The Clerk of Court for Spartanburg and Greenwood Counties shall each forthwith give notice, by advertisement, of the March terms of said Courts to be held by said Counties.

1889, XX., 360; 1891, XX., 1113; 1896, XXII., 26; 1899, XXIII., 37; 1900, XXIII, 314; 1901, XXIII., 629.

Sec. 25. The Circuit Courts of the Eighth Circuit shall be held as follows:

Courts in Abbeville Co.

1. The Court of General Sessions at Abbeville, for the County of Abbeville, on the third Monday in February, the third Monday in June, and the first Monday after the fourth Monday in September; the Court of Common Pleas for the said County at the same place, on the Wednesdays following the third Monday in February, the third Monday in June, and the first Monday after the fourth Monday in September.

Courts in Anderson County.

2. The Court of General Sessions at Anderson, for the County of Anderson, on the second Monday in February, the second Monday in June, and the fourth Monday in September; and the Court of Common Pleas at the same place on the first Monday in March, the first Monday after the fourth Monday in June, and the third Monday after the fourth Monday in September: *Provided,* That in the said County of Anderson the jurors summoned for the General Sessions Court shall serve at the succeeding term of the Court of Common Pleas without mileage for said term: *Provided,* That the Court of Common Pleas may be opened at any term of the General Sessions for the purpose of taking judgments on Calendar 3, and for the trial of such other equity causes as may be ripe for hearing.

In Oconee County.

3. The Court of General Sessions at Walhalla, for the County of Oconee, on the second Monday in March, the second Monday after the fourth Monday in June, and the sixth Monday after the fourth Monday in September; and the Court of Common Pleas for said County at the same place, on the Wednesdays next following the second Monday in March, the second Monday after the fourth Monday in June, and the sixth Monday after the fourth Monday in September.

4. The Court of General Sessions at Pickens, for the

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In Pickens County.

County of Pickens, on the third Monday in March, the third Monday after the fourth Monday in June and the fourth Monday after the fourth Monday in September; and the Court of Common Pleas for said County at the same place on the Wednesdays next following the third Monday in March, the third Monday after the fourth Monday in June, and the fourth Monday after the fourth Monday in September.

Greenville. 1901, XXIII., 629.

5. The Court of General Sessions at Greenville, on the fourth Monday in January, the last Monday in May and the second Monday in September: *Provided,* That the Court of Common Pleas may be opened at any term of the General Sessions for the purpose of taking judgments on Calendar 3, and for the trial of such equity causes as may be agreed upon by the parties thereto or by their attorneys; and the Court of Common Pleas for the said County at the same place on the fourth Monday in March, the fourth Monday after the fourth Monday in June, and the eighth Monday after the fourth Monday in September.

Civil cases at Summer terms. *Ib.*

6. No civil business requiring a jury shall be heard at the Summer Term of the Court of Common Pleas for any County in said Circuit, except in the Counties of Greenville and Anderson.

After General Sessions Court, Judge may open Court of Common Pleas. 1878, XVI., 703; 1883, XVIII., 586.

Sec. 26. Whenever in this Title provision is made for Courts of General Sessions only, the Judge presiding shall, at the conclusion of any such Court of General Sessions, open the Court of Common Pleas without juries, and give judgments by default on Calendar 3, hear and determine equity causes, and transact all other business of a regular term of a Court of Common Pleas, except trials by jury.

Applies wherever provision is made by the statute for opening the general sessions only.—Burwell & Dunn Co. v. Chapman, —— S. C., ——; 38 S. E., 224. Though the Common Pleas so opened is not a regular term within the meaning of Sec. 311.—McLaurin v. Kelly, 40 S. C., 486; 19 S. E., 143.

Judge's power to adjourn Court of Common Pleas. 1870, XIV., § 27; 1889, XX, 359.

Sec. 27. Should the business before the Court of General Sessions at any term not be completed on the arrival of the day fixed by law for the holding of the Court of Common Pleas for said County, the Judge presiding may, in his discretion, adjourn said Court of Common Pleas until the business of the Court of General Sessions shall have been concluded. But the provisions of this Section shall not apply to the Courts held in the County of Newberry.

It is necessary to such adjournment that the Court of Common Pleas should be first opened on the day fixed for its holding.—McKellar v. Parker, 29 S. C., 237; 7 S. E., 295. But where the officers and machinery are present in court house on the fixed day, that Court is then opened by operation of law, without

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any formality.—Hardin v. Trimmier, 30 S. C., 391; 9 S. E., 342; Miller v. George, 30 S. C., 526; 9 S. E., 659.

Power to open Common Pleas before completion of criminal business.

1883, XVIII., 346.

Sec. 27a. Should the business before the Court of General Sessions at any Term in any Circuit in this State be completed or suspended before or after the day fixed by law for the opening of the Court of Common Pleas for any County in the State, the presiding Judge may, in his discretion, before the completion of the criminal business, open the Court of Common Pleas for the trial of all causes or the dispatch of all business that may be pending in said Court in which the parties interested are ready to be heard.

Special Sessions of Circuit Courts.

1873, XIV., § 28; 1878, XVI., 395; §3; 1884, XVIII., 770.

Sec. 28. Special sessions of the Courts of Common Pleas or General Sessions may be held whenever so ordered, either by the Chief Justice or by the Circuit Judge at the time holding the Circuit Court of the County for which the extra term may be ordered, of which extra term such notice shall be given as the Chief Justice or the Circuit Judge so ordering the same may direct. If such extra term of either or both the Courts aforesaid be ordered by the Chief Justice, he may order any one of the Circuit Judges to hold the same; but if such extra term be ordered by a Circuit Judge, as hereinbefore provided, then such extra term shall be held only by the Circuit Judge so ordering the same. No cause shall be tried at any extra term of the Court of Common Pleas for any Circuit unless the said cause shall have been previously docketed upon some one of the calendars of the last preceding regular term of said Court.

The Clerk of such Court shall, at least fifteen days before the commencement of such special session, cause the time and place for holding the same to be notified, for at least two weeks successively, in one or more of the newspapers published nearest the place where the session is to be holden. All processes, writs, and recognizances of every kind, whether respecting juries, witnesses, bail, or otherwise, which relate to the cases to be tried at the said special session, shall be considered as belonging to such session, in the same manner as if they had been issued or taken in reference thereto. All business depending for trial at any special session shall at the close thereof be considered as of course removed to the next stated term of Court. Said special session shall be held in pursuance of an order which shall be transmitted to the Clerk of the Court, and by him entered on the records of the Court.

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As to other provisions for special terms, see Code of 1902, Vol. 1, Sec. ——. An order of reference cannot be granted at a special term in any case not docketed at the preceding regular term.—Simms v. Phillips, 4 S. C., 149; 24 S. E., 97. But if no objection be raised, any cause may be heard.—Rivers v. Priester, 58 S. C., 194; 36 S. E., 543.

Petit jurors in Common Pleas and General Sessions.

1870, XIV., § 29.

Sec. 29. Petit jurors summoned to attend the Court of General Sessions in any County, except the County of Charleston, shall also attend and serve as jurors for the Court of Common Pleas next ensuing in and for said County, except as otherwise provided in Section 2927 of the Code of 1902.

Sec. 30. The Judge of the Circuit Court shall have power to direct any Circuit Court in his Circuit to be adjourned over to a future day designated in a written order to the Clerk of said Court, whenever there is a dangerous and general disease at the place where said Court is usually holden.

Such adjournment having been ordered, no inquiry can be made as to whether conditions existed.—Adickes v. Allison, 21 S. C., 256. But when the term of Court fixed by law has expired, the Judge has no power to continue its existence and convene it at another time.—*Ex Parte* Lilly, 7 S. C., 373. But Judge may order adjournment of Court from day to day till a fixed day before the next succeeding Court, and try a cause on that day.—DeLeon v. Barrett, 22 S. C., 412.

Adjournment of Circuit Courts.

Ib., § 30.

Before whom Circuit Judge may qualify.

Ib., § 31; XVIII., 502; 1898, XXII., 688.

Sec. 31. The Circuit Judges of this State, upon their election, shall qualify by taking the oaths required by the Constitution of this State before a Justice of the Supreme Court, a Circuit Judge, a Clerk of the Supreme Court, or a Clerk of the Court of Common Pleas, or a Probate Judge of the County, and shall forthwith enter upon their duties; and said oaths must be filed in the office of the Secretary of State.

Circuit Courts made Courts of record.

1870, XIV., § 32.

Sec. 32. The Circuit Courts herein established shall be Courts of record, and the books of record thereof shall, at all times, be subject to the inspection of any person interested therein.

Clerk and Deputy Clerk of Circuit Courts.

Ib., § 33.

Sec. 33. The Clerk elected in each County pursuant to Section 27 of Article V. of the Constitution shall be Clerk of the Courts of General Sessions and Common Pleas, and may appoint a deputy, who may perform the duties of Clerk, for whose acts such Clerk shall be responsible, and a record of whose appointment shall be made in the Clerk's office, and such appointment may be revoked at the pleasure of the Clerk; and in case no Clerk exists, the Judge shall have authority to appoint a person who shall perform the duties of Clerk, and said Deputy Clerk, or the one appointed by the Judge, shall be required to give the usual bond before entering on the duties of the office.

Generally as to this Title:

Proceedings of a Circuit Court, held by the Judge of another Circuit, at a time unauthorized by law, are void.—*Ex Parte* DeHay, 3 S. C., 564.

Where, after the regular session of a Circuit Court has commenced, an Act transfers the County to another Circuit and fixes another day for holding the Court, it has jurisdiction to continue its session and to try cases.—Shelton v. Mabin, 4 S. C., 541.

Circuit Judges are confined, in the performance of their judicial duties, to the Circuits to which they are respectively elected, except when authorized by statute to go beyond that limit.—Const., Art. IV., Secs. 13-14; *Ex Parte* Parker, 6 S. C., 472; State v. Parker, 7 S. C., 235.

TITLE IV.

PROBATE COURT.

SEC.
34. Sessions.
35. Court of record. Clerk.
36. Duties of Clerk.
37. Jurisdiction of Judges.
38. In relation to guardians
39. Administration, and probate of wills.
40. Settlement of estate in the County where will proved; sale of real estate.
41. When to grant discharge to administrators, &c.
42. All proceedings relative to estates under guardianship, had in the Court of Probate.
43. Judges not to act when interested. When Judges of adjoining County to act.
44. Power to administer oaths.
45. Probate Court may issue warrants and processes.
46. In cases of contumacy, may commit to jail.
47. When depositions may be taken and used.
48. Exclusive jurisdiction after once acquired.
49. Jurisdiction not to be collaterally impeached.
50. When minor may choose guardian; guardian interested; where appointed.
51. Authorized to permit sale and settle accounts of guardian.
52. Judges may appoint times and places for holding Courts.

SEC.
53. Open at all times for certain business.
54. Adjournment of Court. When by Clerk.
55. Appellate jurisdiction of Circuit Court.
56. Jurisdiction of Supreme Court in probate matters.
57. Appeal to the Circuit Court to be taken within fifteen days.
58. Certified copies of record to be filed in Circuit Court.
59. Proceedings stayed by appeal.
60. How Circuit Court may proceed to the trial.
61. Appellant neglecting to enter appeal, judgment affirmed with costs.
62. Final decision to be certified to Probate Court.
63. Probate Judge not to have voice in determining appeal. When may practice law.
64. Proceedings may be commenced by petition.
65. Supreme Court to make rules. County Commissioners to provide furniture, &c., for office.
66. May punish for contempt.
67. Enrolment of decrees.
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69. Empowered to issue executions.
70. Judge may commit lunatics, &c., to State Hospital for Insane.

Sessions.

1868, XIV., 76; 1869, XIV., 241; 1870, XIV. § 35.

Section 34. A Court of Probate is hereby established in each of the several Counties in this State, which shall hold a session

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on the first Monday in each month, at or near the Court House, and continue thereafter so long as the business may require.

Court of record. Clerk.

Ib., § 36; 1877, XVI., 233

Sec. 35. The Court of Probate shall be a Court of record, and have a seal; may appoint a Clerk, and may remove him at pleasure; and on failure of the Court to appoint such Clerk, the Judge of the Court shall perform all the duties of Clerk: *Provided*, That no person holding the office of Clerk of the Probate Court under and by virtue of the appointment of the Probate Judge of any County of this State, shall practice in such Court as an attorney or counsellor at law.

Being a Court of record, it is not an inferior Court within the limits of its jurisdiction, which is large.—Thomas v. Poole, 19 S. C., 323; Turner v. Malone, 24 S. C., 398; State v. Burnside, 33 S. C., 276; 11 S. E., 787. Facts appearing on its record cannot be attacked collaterally.—Tederall v. Bouknight, 25 S. C., 275.

Duties of Clerk

1870, XIV., § 37.

Sec. 36. The Clerk of the Court of Probate shall keep a true and fair record of each order, sentence, and decree of the Court, and of all other things proper to be recorded; and, on the legal fees being paid, shall give true and attested copies of the files and proceedings of the Court. All copies so attested shall be legal evidence in the Courts of this State.

Jurisdiction of Judges.

Ib., § 38.

Sec. 37. Every Judge of Probate, in his County, shall have jurisdiction in all matters testamentary and of administration, in business appertaining to minors, and the allotment of dower, in cases of idiocy and lunacy, and of persons *non compotes mentis*.

As to matters testamentary:

What is the extent of such jurisdiction, conferred by the Constitution, has not been determined.—Thomas v. Poole, 19 S. C., 323.

It does not include action by *cestui que trust* against his trustee for accounting, unless it involves matters testamentary.—Poole v. Brown, 12 S. C., 556.

Nor action of one legatee against another to recover money paid to her in excess of her share as found by decree of Probate Court.—Miller v. Stark, 29 S. C., 325.

In probate of wills the jurisdiction extends only to its execution, and not to its construction.—Prater v. Whittle, 16 S. C., 40.

Letters testamentary cannot be granted to one as executor not nominated by the will.—Blakely v. Frazier, 20 S. C., 144.

Probate Court may settle an estate upon petition of the executors as being a matter testamentary.—*In Re* Covin Est., 20 S. C., 476.

What are not cases of "matters testamentary or of administration."—Caldwell v. Little, 15 S. C., 236.

As to matters of administration:

Such jurisdiction does not embrace a case against administrator in his personal character for wrong done in course of administration.—Roberts v. Johns, 10 S. C., 109.

As to business of minors:

What the extent of this jurisdiction has not been determined.—Thomas v. Poole, 19 S. C., 323.

It is questionable whether it embraces proceedings by a ward having attained majority to compel his guardian to account.—Waller v. Cresswell, 4 S. C., 355.

Probate Court may appoint guardians *ad litem* for minors in causes in the Court of Common Pleas.—Trapier v. Waldo, 16 S. C., 289.

As to dower:

The jurisdiction is concurrent with the jurisdiction of the Court of Common Pleas.—Witte v. Clark, 17 S. C., 323.

Such jurisdiction is not ousted because questions of fact are involved.—Stewart v. Blease, 4 S. C., 37. Nor limited to cases where there is no dispute as to the right of dower or the title to the land.—Tibbett v. Langley Man. Co., 12 S. C., 465.

As to idiocy, lunacy and *non compotes mentis.*

The jurisdiction is not exclusive, but is concurrent with that of Court of Common Pleas.—Walker v. Russel, 10 S. C., 82. But the Probate Court cannot grant leave to traverse an inquisition in lunacy; that can only be done in the Court of Common Pleas.—*Ib.*

In relation to guardians.

Ib., § 39; Con., Art. V., § 19.

Sec. 38. The Judge of Probate shall have jurisdiction in relation to the appointment and removal of guardians of minors, insane and idiotic persons, and persons *non compotes mentis,* and in relation to the duties imposed by law on such guardians, and the management and disposition of the estates of their wards. He shall exercise original jurisdiction in relation to trustees appointed by will.

Question whether such jurisdiction as to duties of guardians reaches the case where the ward is of age.—Waller v. Cresswell, 4 S. C., 355.

He has no jurisdiction to appoint another trustee in place of deceased testamentary trustee.—Thomas v. Poole, 19 S. C., 323.

Administration and probate of wills.

1870, XIV., § 40.

Sec. 39. The probate of the will and the granting of administration of the estate of any person deceased shall belong to the Judge of Probate for the County in which such person was last an inhabitant; but if such person was not an inhabitant of this State, the same shall belong to the Judge of Probate in any County in which the greater part of his or her estate may be.

Settlement of estate in the County where will proved; sale of real estate.

1870, XIV., § 41; 1873, XV, 496.

Sec. 40. All proceedings in relation to the settlement of the estate of any person deceased shall be had in the Probate Court of the County in which his will was proved or administration of estate was granted. And whenever it shall appear to the satisfaction of any Judge of Probate that the personal estate of any person deceased is insufficient for the payment of his debts, and all persons interested in such estate being first summoned before him, and showing no cause to the contrary, such Judge of Probate shall have power to order the sale of the real estate of such person deceased, or of so much thereof as may be necessary for the payment of the debts of such deceased person, upon such terms and in such manner as he may think best; may grant orders of injunction to stay actions or proceedings against the executors or administrators of such deceased person, and such other orders as may be necessary to secure the marshalling and administering the assets of such deceased person, such proceedings to be by summons and complaint, the practice wherein shall conform as nearly as may

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be to the form and practice in the Courts of Common Pleas of this State.

The Constitution confers the jurisdiction to make such sale of real estate.—McNamee v. Waterbury, 4 S. C., 156. It is concurrent with the jurisdiction of the Court of Common Pleas in such cases.—Jordon v. Moses, 10 S. C., 431. Either in an action by a creditor for that purpose.—Finley v. Robertson, 17 S. C., 435; Scruggs v. Foot, 19 S. C., 274. But not until the will has been probated or letters of administration granted.—Whitesides v. Barber, 24 S. C., 373. Or in such action by the personal representative.—McNamee v. Waterbury, 4 S. C., 156; Shaw v. Barksdale, 25 S. C., 204. The Probate Judge must determine the necessity of such sale.—Hodge v. Fabian, 31 S. C., 212; 9 S. E., 820. His decree directing the sale of more land than necessary for the purpose cannot be questioned in the Court of Common Pleas.—*Ib.* Nor can he be controlled by *mandamus* from that Court in making such sales or executing titles.—State v. Burnside, 33 S. C., 276; 11 S. E., 787. He can determine the validity of an alleged deed under which one of defendants claim title from intestate.—Gregory v. Rhoden, 24 S. C., 90. He can only sell the interest of the deceased in the land, not the rights of the parties to the action therein as heirs of another party.—McLaurin v. Rion, 24 S. C., 411. Cannot sell as land of deceased land surrendered to distributees of deceased by his mortgagor.—Harrison v. Lightsey, 32 S. C., 293; 10 S. E., 1010.

When to grant discharge to administrators, &c.

1869, XIV., 263, § 1; 1894, XXI., 719.

Sec. 41. It shall not be lawful for any Judge of Probate in this State to grant a final discharge to any executor, administrator, trustee, guardian, or committee, unless such executor, administrator, trustee, guardian, or committee, shall have finally accounted for the estate in his hands, and have given notice in a newspaper of the County (if there be no newspaper published in the County, then in some newspaper having the greatest circulation therein,) for the space of at least one month, that on a day certain application will be made to the said Judge or Probate for a final discharge. No such discharge shall affect any distributee, legatee, *cestui que trust,* ward, or lunatic, who has not been made a party to such application, either by personal service of the notice, or by publication in the mode provided for absent defendants.

The provisions of this Section and of Sections 48, 49 and 73 were only intended to prescribe the limits of the jurisdiction of the Probate Courts as between themselves, and not to limit that of the Court of Common Pleas.—Jordan v. Moses, 10 S. C., 431.

All proceedings relative to estates under guardianship had in the Court of Probate.

Sec. 42. All proceedings in relation to the property or estate of any person under guardianship shall be had in the Court of Probate of the County in which the guardian was appointed.

1870, XIV., § 42.

Judges not to act when interested. When Judges of adjoining County to act.

Ib., § 43.

Sec. 43. No Judge of Probate shall act as such in the settlement of any estate wherein he is interested as heir or legatee, executor or administrator, or as guardian or trustee of any person; in every such case the Judge of Probate of any adjoining County shall have jurisdiction, and it shall be his duty, upon application, to attend at some term of the Court of Pro-

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bate in which such case may be pending, which shall not interfere with the duties in his own County, and hear and determine such case.

Power to administer oaths.

1870, XIV., § 44.

Sec. 44. The Judge or Clerk of the Probate Court shall have power to administer all oaths necessary in the transaction of business before the Probate Court, and all oaths required by law to be administered to persons executing trusts under the appointment of said Court.

Probate Court may issue warrants and processes.

Ib., § 45.

Sec. 45. Probate Courts may issue all warrants and processes, in conformity to the rules of law, which may be necessary to compel the attendance of witnesses, or to carry into effect any order, sentence, or decree, of such Courts, or the powers granted them by law.

In cases of contumacy, may commit to jail.

Ib., § 46.

Sec. 46. If any person shall refuse or neglect to perform any lawful order, sentence, or decree of a Probate Court, such Court may issue a warrant, directed to any Sheriff or Constable in the State, requiring him to apprehend and imprison such person in the common jail of the County, and if there be no jail of the County, then in the jail of the adjoining County, until he shall perform such order, sentence, or decree, or be delivered by due course of law.

When depositions may be taken and used.

Ib., § 47.

Sec. 47. When a witness whose testimony is necessary to be used before any Probate Court shall reside out of this State, or out of the County where said Court is holden, or more than thirty miles from the County seat, or, by reason of age or bodily infirmity, shall be unable to attend in person, the Court may issue a commission to one or more competent persons to take the testimony of such witness; and depositions taken according to the provisions of the law for taking depositions to be used on the trial of civil causes may be used on the trial of any question before the Probate Court where such testimony may be proper.

Exclusive jurisdiction after once acjuired.

Ib., § 48.

Sec. 48. When any Probate Court shall have first taken cognizance of the settlement of the estate of a deceased person, such Court shall have jurisdiction of the disposition and settlement of all the personal estate of such deceased person to the exclusion of all other Probate Courts.

Jordon v. Moses, 10 S. C., 431.

Jurisdiction not to be collaterally impeached.

Ib., § 49.

Sec. 49. The jurisdiction assumed by any Probate Court in any case, so far at it depends on the place of residence or the location of the estate, shall not be contested in any suit or proceeding whatever, except in an appeal from the Probate

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Court in the original case, or when the want of jurisdiction appears on the record.

Jordon v. Moses, 10 S. C., 431; *In re* Mayor's estate, —— S. C., ——; 38 S. E., 634.

When minor may choose guardian; guardian interested; where appointed.

Ib., § 50.

Sec. 50. When, by law, a guardian is required to be appointed of a minor, who is interested as heir or legatee, or representative of such heir or legatee, in any estate which is in a course of settlement, such guardian shall be appointed by the Probate Court before which such estate is in course of settlement; but afterwards, if the minor shall reside in another County, and is of the age of fourteen years, he may choose and have a guardian appointed in the County where he shall reside; and in that case the powers of the former guardian shall cease, and to such proceedings he shall be made a party. In all other cases, guardians shall be appointed by the Probate Court of the County where the persons for whom the guardian shall be appointed shall reside.

Authorized to permit sale and settle accounts of guardian.

1870, XIV., § 51.

Sec. 51. The Probate Court by which a guardian shall be appointed shall have jurisdiction of the estate of the ward, and shall be alone authorized to permit the sale of such estate, and settle such guardian's accounts.

Judges may appoint times and places for holding Courts.

Ib., § 52; 1873, XV., 496.

Sec. 52. Except as provided in the thirty-fourth Section, the Probate Court in each County shall appoint such times and places for holding Courts, or for hearing any special matter, as shall be judged most convenient for all persons interested, and shall give notice of such times and places to the parties interested.

Open at all times for certain business.

1870, XIV., § 53.

Sec. 53. The Probate Court shall be deemed open at all times for the transaction of ordinary business which may be necessary, when previous notice is not required to be given to the persons interested.

Adjournment of Court. When by clerk.

Ib., § 54.

Sec. 54. A Probate Court may be adjourned as occasion may require; and when the Judge is absent at the time for holding a Court, the Clerk may adjourn it.

Appellate jurisdiction of Circuit Court.

Ib., § 55.

Sec. 55. The Circuit Court shall have appellate jurisdiction of all matters originally within the jurisdiction of the Probate Court.

The hearing by the Circuit Court is strictly on appeal, limiting the presiding Judge to a review of, and judgment on, the evidence taken below, except as to questions of fact to be decided by jury under Section 60.—Stewart v. Blease, 4 S. C., 44; Stark v. Hopson, 22 S. C., 42; *Ex Parte* White, 33 S. C., 442; 12 S. E., 5. Findings of fact by Probate Court ought not to be disturbed unless clearly erroneous.—Gunning v. Erwin, 13 S. C., 37. But Circuit Judge may remand the cause or any particular issue therein to the Probate Court, with instructions to take further testimony and report the same.—Twitty v. Houser, 7 S. C., 153.

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Jurisdiction of Supreme Court in probate matters.

Ib., § 56.

Sec. 56. The Supreme Court shall have jurisdiction of all questions of law arising in the course of the proceedings of the Circuit Court, in probate matters, in the same manner as provided by law in other cases.

Supreme Court, on appeals in such matters, may refer an issue of fact to a jury.—Shaw v. Cunningham, 9 S. C., 271. It will not disturb concurrent findings of fact by Probate Judge and Circuit Judge.—Black v. White, 13 S. C., 37. An order of Circuit Court, without hearing appeal, remanding the case to Probate Judge for further hearing, with leave to take further testimony, is appealable.—*Ex Parte* White, 33 S. C., 442 (Sec. 11); 12 S. E., 5.

Appeal to the Circuit Court to be taken within fifteen days.

Ib., § 57; 1839, XI., 60, § 13.

Sec. 57. Any person interested in any final order, sentence, or decree of any Probate Court, and considering himself injured thereby, may appeal therefrom to the Circuit Court in the same County, at the stated session next after such appeal. The grounds of appeal shall be filed in the office of the Probate Court, and a copy thereof served on the adverse party, within fifteen days after notice of the decision appealed from.

The only parties who can appeal are parties to the cause.—Witte v. Clarke, 17 S. C., 313. A decree refusing appeal because it was not taken in time is appealable.—Henderson v. Wyatt, 8 S. C., 112.

On appeal to Circuit Court from order disallowing claim, appellant is not entitled, of right, to trial by jury.—Hughes v. Kirkpatrick, 37 S. C., 169; 15 S. E., 912. Filing transcript of record to perfect appeal.—Davenport v. Davenport, 61 S. C., 389; 39 S. E., 548. Appeal by warrantor from order making him a party, prior to judgment, premature.—Robertson v. Curlee, 59 S. C., 454; 38 S. E., 116. Person adjudged *non compos mentis* may appeal.—*Ex parte* Gregory, *in re* State *ex rel.* Buffington, 58 S. C., 114; 36 S. E., 433.

Certified copies of record to be filed in Circuit Court.

1870, XIV., § 60.

Sec. 58. The person appealing shall procure and file in the Circuit Court to which such appeal is taken a certified copy of the record of the proceedings appealed from, and of the grounds of the appeal filed in the Probate Court, together with the proper evidence that notice has been given to the adverse party according to law.

Proceedings stayed by appeal.

Ib., § 61.

Sec. 59. When an appeal, according to law, is taken from any sentence or decree of the Probate Court, all proceedings in pursuance of the order, sentence, or decree appealed from, shall cease until the judgment of the Circuit or Supreme Court is had; but if the appellant, in writing, waives his appeal before the entry of such judgment, proceedings may be had in the Probate Court as if no appeal had been taken.

How Circuit Court may proceed to the trial.

1870, XIV., § 62.

Sec. 60. When such certified copy shall have been filed in the Circuit Court, such Court shall proceed to the trial and determination of the question, according to the rules of law; and if there shall be any question of fact or title to land to be decided, issue may be joined thereon under the direction of the Court, and a trial thereof had by jury.

"According to the rules of law" construed to mean "according to the rules regulating the hearing of appeals."—*Ex parte* White, 33 S. C., 442; 12 S. E., 5.

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What constitutes the return to the Circuit Court.—Davenport v. Davenport, 61 S. C., 389; 39 S. E., 548.

All issues of fact involved in such appeal must be determined *de novo* by the Circuit Judge, except such issues as are triable by jury under Section 274, and except such issues as may be referred to jury under Rule 28 of Circuit Court; and it is fatal error to so refer such issues without notice to appellant.—Stewart v. Blease, 4 S. C., 37; Luchen v. Wichman, 5 S. C., 411; Prater v. Whipple, 16 S. C., 40; Rollins v. Whipper, 17 S. C., 32; *Ex parte* White, 33 S. C., 442; 12 S. E., 5; *Ex parte* Apeler, 35 S. C., 417; 14 S. E., 931.

On appeal from order disallowing claim against estate appellant is not entitled as of right to trial by jury.—Hughes v. Kirkpatrick, 37 S. C., 161; 15 S. E., 912.

Appellant neglecting to enter appeal judgment affirmed with costs.

Ib., § 64.

Sec. 61. If the person appealing from the proceedings of the Probate Court, as provided in this Title, shall neglect to enter his appeal, the Circuit Court to which such appeal shall be taken, on motion, and producing attested copies of such appeal by the adverse party, shall affirm the proceedings appealed from, and may allow costs against the appellant.

Final decision to be certified to Probate Court.

Ib., § 65.

Sec. 62. The final decision and judgment in cases appealed, as hereinbefore provided, shall be certified to the Probate Court by the Circuit Court or Supreme Court, as the case may be, and the same proceedings shall be had in the Probate Court as though such decision had been made in such Probate Court.

Probate Judge not to have voice in determining appeal. When may practice law.

Ib., § 66.

Sec. 63. No Judge of any Probate Court shall be admitted to have any voice in judging or determining any appeal from his decision, or be permitted to act as attorney or counsel thereon, or receive fees as counsel in any matter pending in the Probate Court of which he is Judge: *Provided*, It shall be lawful for Judges of Probate to practice law in other Courts in such cases as are not cognizable in the Courts of Probate.

Proceedings may be commenced by petition.

Ib., § 67.

Sec. 64. Proceedings in the Court of Probate may be commenced by petition to the Judge of Probate for the County to which the jurisdiction of the subject matter belongs, or by complaint, briefly setting forth the facts or grounds of the application. A summons shall be issued to the defendants in such proceedings, wherein the manner of service, time for answering, and other proceedings relating to the trial (except trial by jury), shall conform as nearly as may be to the practice in the Courts of Common Pleas as provided in this Code of Procedure.

Supreme Court to make rules. County Comissioners to provide furniture, &c., for office.

Ib., § 68.

Sec. 65. The Supreme Court may, from time to time, make rules regulating the practice and conducting the business in the Courts of Probate, in all cases not expressly provided for by law; and the County Commissioners of each County shall provide all books necessary for keeping the records of

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such Court; also a seal and necessary office furniture: *Provided,* Said furniture shall not exceed in cost the sum of one hundred dollars.

May punish for contempt.

Ib., § 69.

Sec. 66. The Judge may keep order in Court, and punish any contempt of his authority in like manner as such contempt might be punished in the Circuit or Supreme Court.

Enrolment of decrees.

1878, XVI., 710.

Sec. 67. Any party in whose favor an order or decree for the payment of money may be made by a Court of Probate, may cause such order of decree to be enrolled at any time within one year after making the same, and for that purpose shall prepare and deliver to the Judge of Probate a brief or abstract, setting forth the title of the proceedings wherein such order or decree was made, the parties thereto, and the date when the same was made; also the date of the said order and the names of the parties bound thereby, together with such other particulars as may be necessary to identify the said order with the proceedings, and to exhibit the grounds for making the same and the operation and effect thereof; and the Judge of Probate shall annex thereto the said order or decree, or an exact copy thereof, certified by him, together with the time when the same was made and entered; and shall endorse on the record the day of the month and year when the brief or abstract was lodged in his office, and shall deposit the same in a case in his office with the records pertaining to the cause. And no order or decree of any Court of Probate for the payment of money shall, as to third persons, without express notice, have any effect as a lien on the real estate of the person intended to be bound thereby but from the day when the said brief or abstract shall have been delivered to or lodged with the said Judge of Probate as aforesaid, and a transcript of the docket thereof in the index of money decrees hereinafter prescribed has been filed in the office of the Clerk of the Court of Common Pleas for the same County and duly entered by said Clerk on the calendar of judgments kept in his office. Nor shall such order or decree rank as a judgment against the estate of any person deceased unless such abstract was duly filed and indexed, and a transcript of the entry in the index filed with the Clerk of the Circuit Court for the same County and duly docketed by the said Clerk on the calendar of judgments of the Court of Common Pleas before the death of such deceased person; except that the lien of decrees and orders for the payment of money made prior to December

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twentieth, 1878, shall not be affected; and after the transcript of the docket in the index of money decrees has been duly entered upon the calendar of judgments kept in office of the Clerk of the Court of Common Pleas, such order or decree shall have like force and effect as judgments of the Courts of Common Pleas: *Provided,* That such enrolment of any order or decree for the payment of money shall not deprive any party thereto of the right to appeal therefrom; but when notice of such appeal shall be duly given, execution upon the said order or decree, issued as herein provided, shall be lodged to bind only, and shall not be enforced until such appeal shall have been dismissed; and if such order or decree shall be reversed, set aside, or modified on appeal, the enrolment thereof shall be amended or wholly vacated accordingly.

Probate Judge cannot arrest and imprison an administrator for failure to comply with the terms of a money decree.—Gilliam v. McJunkin, 2 S. C., 442.

To keep index of decrees enrolled.

1878, XVI., 711.

Sec. 68. Every Judge of Probate shall provide and keep in his office an index of money decrees, in which every enrolled order or decree for the payment of money shall be entered, with the names of every party or estate bound thereby, alphabetically arranged, together with the names of the parties plaintiff, and (besides the title of the package in which the order or decree is contained and the number in the package) shall exhibit the amount ordered to be paid, the costs (if any), date of enrolment, date of execution, and date of satisfaction, where satisfaction has been entered. Said book shall be of convenient size, of durable paper, and well bound, and the expense of providing the same shall be defrayed by the County Commissioners of the respective Counties.

Empowered to issue executions.

1870, XIV., § 71; 1872, XV., 23; 1878, XVI., 458.

Sec. 69. Judges of the Probate Court are authorized and empowered to issue executions against property, when such process is necessary to carry into effect any order, sentence, or decree of such Court, or for costs accruing therein. And they may issue executions against property in their respective Counties, to enforce decrees from the Probate Courts of other Counties, upon a transcript of such decree, and certificate of enrolment of the same, being filed in the office of the Probate Court from which such execution is to issue, and also in the office of the Clerk of the Court of Common Pleas of the County in which it is to issue.—But no execution shall be issued by any Judge of Probate to enforce the collection of money under any order or decree of a Court of Probate until

Ib., 711.

an abstract or brief has been prepared and filed according to the direction of Section 67, and the proper minute thereof has been entered in the index of money decrees, and the proper transcript of such minute has been filed in the office of the Circuit Court for the same County, and entered upon the calendar of judgments of the Court of Common Pleas kept in his office. And when any such execution has been duly returned satisfied to the office of the Judge of Probate from whence it issued, it shall be the duty of the Judge of such Court of Probate to have such satisfaction recorded upon the proper transcript in the office of the Clerk of the Circuit Court, and entered upon the docket thereof on the calendar of judgments of the Court of Common Pleas kept in said Clerk's office. When no form for a warrant or process is prescribed by statute or rules of Court, the Probate Judge shall frame one in conformity to the rules of law and the usual course of proceedings in this State. Any Sheriff or Constable in the State shall execute the orders or process of said Court, in the same manner as the orders or process of the Circuit or Supreme Courts.

Judge may commit lunatics, etc., to State Hospital for Insane.

1870, XIV., § 72.

Sec. 70. The Judge of the Probate Court may commit to the State Hospital for the Insane any idiot, lunatic, or person *non compos mentis,* who, after due examination, may be found to be so furiously mad as to render it manifestly dangerous to the peace and safety of the community that such person should be at large; and also in all such other cases provided by law. In all cases the Judge shall certify in what place such person resided at the time of the commitment, and such certificate shall be conclusive evidence of such residence.

TITLE V.

OF THE COURTS OF MAGISTRATES.

Sec.
71. Jurisdiction.
72. Qualification of bail.
73. Justification of bail.
74. Allowance of bail.
75. Property, how taken when concealed in building or enclosure.
76. Property, how kept.
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Jurisdiction.

1870, XIV., § 74; Const., Art. 5, §§ 20 and 21.

Sec. 71. Magistrates shall have civil jurisdiction in the following actions:

1. In actions arising on contracts for the recovery of money only, if the sum claimed does not exceed one hundred dollars.

It is no objection to the jurisdiction of a Magistrate that the plaintiff reduced his demand to bring it within the jurisdiction of the Magistrate; but where, in so reducing his claim, the plaintiff leaves out an item which he could have included in his cause of action, he cannot afterwards sue thereon.—Catawba Mills v. Hood, 42 S. C., 203; 20 S. E., 91. A Magistrate is deprived of jurisdiction by a counter claim for an amount exceeding $100.—Haygood v. Boney, 43 S. C., 63; 20 S. E., 803.

2. An action for damages for injury to rights pertaining to the person, or the personal or real property, if the damages claimed do not exceed one hundred dollars, and in cases of bastardy.

This gives concurrent jurisdiction with the Court of Common Pleas in such action for damages.—State v. Fillebrown, 2 S. C., 404; Rhodes v. Railroad, 6 S. C., 385. Such jurisdiction does not embrace actions for damages claimed above one hundred dollars.—Stegall v. Bolt, 11 S. C., 522. Nor for damages indefinite in amount, given by statute.—State v. Weeks, 14 S. C., 400. Action by landlord against Constable for proceeds of crop in his hands applicable to rent, is such an action for damages for injury to rights pertaining to personal property.—Sullivan v. Ellison, 20 S. C., 481.

3. An action for a penalty, fine, or forfeiture, where the amount claimed or forfeited does not exceed one hundred dollars.

A forfeiture of twenty dollars, under a statute, which provides for its recovery in a Court of record, cannot be recovered hereunder.—State v. Weeks, 14 S. C., 400.

4. An action commenced by attachment of property, as now provided by Statute, if the debt or damages claimed do not exceed one hundred dollars.

Includes cases where defendant is a non-resident.—Burckhalter v. Jones, 59 S. C., 89; 36 S. E., 496.

5. An action upon bond conditioned for the payment of money, not exceeding one hundred dollars, though the penalty exceed that sum, the judgment to be given for the sum actually due. Where the payments are to be made by instalments, an action may be brought for each instalment as it becomes due.

Trial Justice has jurisdiction of action on bond to recover the amount thereby secured and due, which is less than one hundred dollars, though the penalty exceed that amount.—Cavender v. Ward, 28 S. C., 470; 6 S. E., 302.

6. An action upon a surety bond taken by them, where the penalty or amount claimed does not exceed one hundred dollars.

7. An action upon a judgment rendered in a Court of a Magistrate or an inferior Court, where such action is not prohibited by Section 91.

8. To take and enter judgment on the confession of a defendant, where the amount confessed shall not exceed one hundred dollars, in the manner prescribed by law.

9. An action for damages, fraud in the sale, purchase, or exchange of personal property, if the damages claimed do not exceed one hundred dollars.

10. In all matters between landlord and tenant, and the possession of land as provided in Chapter LXIV., Code of 1902.

11. An action to recover the possession of personal property claimed, the value of which, as stated in the affidavit of the plaintiff, his agent, or attorney, shall not exceed the sum of one hundred dollars.

The plaintiff in such action, at the time of issuing the summons, but not afterwards, may claim the immediate delivery of such property as hereinafter provided.

Before any process shall be issued in an action to recover the possession of personal property, the plaintiff, his agent or attorney, shall make proof by affidavit, showing:

(1.) That the plaintiff is the owner, or entitled to immediate possession, of the property claimed, particularly describing the same.

(2.) That such property is wrongfully withheld or detained by the defendant.

(3.) The cause of such detention or withholding thereof, according to the best knowledge, information, and belief of the person making the affidavit.

(4.) That said personal property has not been taken for any tax, fine, or assessment, pursuant to statute, or seized by virtue of an execution or attachment against the property of said plaintiff; or, if so seized, that it is exempt from such seizure by statute.

(5.) The actual value of said personal property.

Variance between affidavit and pleadings amended.—Ehrhardt v. Breeland, 57 S. C., 142; 35 S. E., 537.

Affidavit must state that value of the property does not exceed one hundred dollars.—Williams v. Irby, 10 S. C., 371.

But whether such statement is necessary in Circuit Court, on appeal, not decided.—*Ib.*.

It is not necessary to allege in summons that plaintiff is entitled to the possession of the property; it is sufficient to allege that the defendant is in unlawful possession of property belonging to the plaintiff.—Dillard v. Samuels, 25 S. C., 318.

This provision allowing such action for recovery of property less in value than one hundred dollars is not in conflict with Constitution, which limits jurisdiction in actions *ex delicto,* where damages do not exceed one hundred dollars.—Dillard v. Samuels, 25 S. C., 318.

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12. On receipt of such affidavit, and an undertaking, in writing, executed by one or more sufficient sureties, to be approved by the Magistrate before whom such action is commenced, to the effect that they are bound in double the value of such property as stated in said affidavit, for the prosecution of the said action, and for the return of said property to the defendant, if return thereof be adjudged, and for the payment to him of such sum as may, for any cause, be recovered against said plaintiff, the Magistrate shall endorse upon said affidavit a direction to any Constable of the County in which said Magistrate shall reside, requiring said Constable to take the property described therein from the defendant, and keep the same, to be disposed of according to law; and the said Magistrate shall at the same time issue a summons, with a copy of the undertaking, directed to the defendant, and requiring him to appear before said Magistrate at a time and place to be therein specified, and not more than twenty days from the date thereof, to answer the complaint of said plaintiff; and the said summons shall contain a notice to the defendant that, in case he shall fail to appear at the time and place therein mentioned, the plaintiff will have judgment for the possession of the property described in said affidavit, with the costs and disbursements of said action.

1879, XVII., 28.

Endorsement of approval on undertaking.—Cromer v. Watson, 59 S. C., 495; 38 S. E., 126.

Such undertaking not necessary unless the plaintiff claims the immediate delivery of the property.—Dillard v. Samuels, 25 S. C., 318.

The summons is fatally defective if it name a day for trial more than twenty days after its date.—Simmons v. Cochran, 29 S. C., 31; 6 S. E., 859.

This case distinguished in State v. Smith, 38 S. C., 272; 16 S. E., 998; reaffirmed in Kelley v. Kennemore, 47 S. C., 258; 25 S. E., 134.

Immaterial whether the summons is addressed to the defendant or officer.—Bell v. Pruitt, 51 S. C., 347; 29 S. E., 6.

13. The Constable to whom said affidavit, endorsement and summons shall be delivered, shall forthwith take the property described in said affidavit, if he can find the same, and shall keep the same in his custody. He shall, thereupon, without delay, serve upon said defendant a copy of such affidavit, notice and summons, by delivering the same to him personally, if he can be found in said County; if not found, to the agent of the defendant in whose possession said property shall be found; if neither can be found, by leaving such copies at the last or usual place of abode of the defendant, with some person of suitable age and discretion. And he shall forthwith make a return of his proceedings thereon, and the manner of

serving the same, to the Magistrate who issued the said summons.

14. The defendant may at any time after such service, and at least two days before the return day of said summons, serve upon plaintiff, or upon the Constable who made such service, a notice in writing that he excepts to the sureties in said bond or undertaking; and if he fail to do so, all objection thereto shall be waived. If such notice be served, the sureties shall justify, or the plaintiff give new sureties, on the return day of said summons, who shall then appear and justify, or said Magistrate shall order said property delivered to defendant, and shall also render judgment for defendant's costs and disbursements.

Waiver of any irregularity or defect in undertaking by not excepting.—Cromer v. Watson, 59 S. C., 495; 38 S. E., 126.

15. At any time before the return day of said summons, the said defendant may, if he has not excepted to plaintiff's sureties, require the return of said property to him upon giving to the plaintiff, and filing same with the Magistrate, a written undertaking, with one or more sureties, who shall justify before said Magistrate on the return day of said summons, to the effect that they are bound in double the value of said property, as stated in plaintiff's affidavit, for the delivery thereof to said plaintiff, if such delivery be adjudged, and for the payment to him of such sum as may for any cause be recovered against said defendant; and if such return be not required before the return day of said summons, the property shall be delivered to said plaintiff.

Qualification of bail.

1870, XIV., § 75.

Sec. 72. The qualification of bail must be as follows:

1. Each of them must be a resident, and householder or freeholder within the State.

2. They must each be worth the amount specified in the order of arrest, exclusive of property exempt from execution; but the Judge or a Magistrate, on justification, may allow more than two bail to justify severally in amounts less than that expressed in the order, if the whole justification be equivalent to that of two sufficient bail.

Justification of bail.

1870, XIV., § 76.

Sec. 73. For the purpose of justification, each of the bail shall attend before the Judge or a Magistrate at the time and place mentioned in the notice, and may be examined on oath, on the part of the plaintiff, touching his sufficiency, in such manner as the Judge or Magistrate, in his discretion, may

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think proper. The examination shall be reduced to writing, and subscribed by the bail, if required by the plaintiff.

Allowance of bail. — *Ib.*, § 77.

Sec. 74. If the Judge or Magistrate find the bail sufficient, he shall annex the examination to the undertaking, endorse his allowance thereon, and cause them to be filed with the Clerk; and the Sheriff shall, thereupon, be exonerated from liability.

Property, how taken when concealed in building or enclosure. — *Ib.*, § 78.

Sec. 75. If the property, or any part thereof, be concealed in a building or enclosure, the Constable shall publicly demand its delivery. If it be not delivered, he shall cause the building or enclosure to be broken open, and take the property into his possession; and, if necessary, he may call to his aid the power of his County.

Property, how kept. — *Ib.*, § 79.

Sec. 76. When a Constable shall have taken property, as in this Chapter provided, he shall keep it in a secure place, and deliver it to the party entitled thereto, upon receiving his lawful fee for taking, and his necessary expenses for keeping the same.

Claim of property by third person. — *Ib.*, § 80.

Sec. 77. If the property taken be claimed by any other person than the defendant or his agent, and such person shall make affidavit of his title thereto, and right to the possession thereof, stating the grounds of such right and title, and serve the same upon the Constable, the Constable shall not be bound to keep the property or deliver it to the plaintiff, unless the plaintiff, on demand of him or his agent, shall indemnify the Constable against such claim, by an undertaking, executed by two sufficient sureties, accompanied by their affidavits, that they are each worth double the value of the property as specified in the affidavit of the plaintiff, and are freeholders and householders of the County. And no claim to such property, by any other person than the defendant or his agent, shall be valid against the Constable, unless made as aforesaid; and notwithstanding such claim, when so made, he may retain the property a reasonable time to demand such indemnity.

The actions so commenced shall be tried in all respects as other actions are tried in Magistrates' Courts.

The judgment for the plaintiff may be for the possession, or for the recovery of the possession, or the value thereof, in case a delivery cannot be had, and of damages for the detention. If the property have been delivered to the plaintiff, and the defendant claim a return thereof, judgment for the defendant may be for a return of the property, or the value there-

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of, in case a return cannot be had, and damages for taking and withholding the same. An execution shall be issued thereon and if the judgment be for the delivery of the possession of personal property, it shall require the officer to deliver the possession of the same, particularly describing it, to the party entitled thereto, and may, at the same time, require the officer to satisfy any costs or damages recovered by the same judgment out of the personal property of the party against whom it was rendered, to be specified therein, if a delivery thereof cannot be had. The execution shall be returnable within sixty days after its receipt by the officer to the Magistrate who issued the same.

In all actions for the recovery of the possession of personal property, as herein provided, if the property shall not have been delivered to plaintiff, or the defendant by answer shall claim a return thereof, the Magistrate or jury shall assess the value thereof, and the injury sustained by the prevailing party by reason of the taking or detention thereof, and the Magistrate shall render judgment accordingly, with costs and disbursements.

If it shall appear by the return of a Constable that he has taken the property described in the plaintiff's affidavit, and that defendant cannot be found, and has no last place of abode in said County, or that no agent of defendant could be found, on whom service could be made, the Magistrate may proceed with the cause in the same manner as though there had been a personal service.

For the endorsement on said affidavit the Magistrate shall receive an additional fee of twenty-five cents, which shall be included in the costs of the suit.

Such judgment may be given for value of the property, though the demand is only for its recovery and damages for its detention.—Joplin v. Carrier, 11 S. C., 327. It cannot be given in case where party is entitled to general damages.—*Ib.* But where there are proper allegations, plaintiff may, on appeal, in Circuit Court, elect to treat the action as one for damages.—Williams v. Irby, 16 S. C., 371. Where verdict is not in proper form, the Trial Justice cannot change it; new trial is the remedy.—DuBose v. Armstrong, 29 S. C., 290; 6 S. E., 934.

No jurisdiction in certain cases.

Sec. 78. But no Magistrate shall have cognizance of a civil action—

1870, XIV., § 81; 1873, XV., 496.

1. In which the State is a party, excepting for penalties not exceeding one hundred dollars;

2. Nor where the title to real property shall come in question;

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Does not include proceedings to eject tenant.—State v. Fickling, 10 S. C., 30; State v. Marshall, 24 S. C., 507.

3. Nor of a civil action for an assault, battery, false imprisonment, libel, slander, malicious prosecution, criminal conversation, or seduction, where the damages claimed exceed one hundred dollars.

Answer of title. 1870, XIV., § 82.

Sec. 79. In every action brought in a Court of Magistrate where the title to real property shall come in question, the defendant may, either with or without other matter of defence, set forth in his answer any matter showing that such title will come in question. Such answer shall be in writing, signed by the defendant or his attorney, and delivered to the Magistrate. The Magistrate shall thereupon countersign the same and deliver it to the plaintiff.

See note to Sec. 78.

Undertaking. 1870, XIV., § 83.

Sec. 80. At the time of answering, the defendant shall deliver to the Magistrate a written undertaking, executed by at least one sufficient surety, and approved by the Magistrate, to the effect that if the plaintiff shall, within twenty days thereafter, deposit with the Magistrate a summons and complaint in an action in the Circuit Court for the same cause, the defendant will, within twenty days after such deposit, give an admission in writing of the service thereof.

Where the defendant was arrested in the action before the Magistrate the undertaking shall further provide that he will, at all times, render himself amenable to the process of the Court during the pending of the action, and to such as may be issued to enforce the judgment therein. In case of failure to comply with the undertaking, the surety shall be liable not exceeding one hundred dollars.

Suit discontinued. *Ib.*, § 84.

Sec. 81. Upon the delivery of the undertaking to the Magistrate the action before him shall be discontinued, and each party shall pay his own costs. The costs so paid by either party shall be allowed to him if he recover costs in the action to be brought for the same cause in the Circuit Court. If no such action be brought within thirty days after the delivery of the undertaking the defendant's costs before the Magistrate may be recovered of the plaintiff.

If undertaking not given. *Ib.*, § 85.

Sec. 82. If the undertaking be not delivered to the Magistrate he shall have jurisdiction of the cause, and shall proceed therein; and the defendant shall be precluded, in his defence, from drawing the title in question.

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Sec. 83. If, however, it appear on the trial, from the plaintiff's own showing, that the title to real property is in question, and such title shall be disputed by the defendant, the Magistrate shall dismiss the action and render judgment against the plaintiff for the costs.

The same.
Ib., § 86.

Sec. 84. When a suit before a Magistrate shall be discontinued by the delivery of an answer and undertaking, as provided in Sections 79, 80 and 81, the plaintiff may prosecute an action for the same cause in the Circuit Court, and shall complain for the same cause of action only on which he relied before the Magistrate, and the answer of the defendant shall set up the same defence only which he made before the Magistrate.

New action.
Ib., § 87.

Sec. 85. If the judgment in the Circuit Court be for the plaintiff, he shall recover costs; if it be for the defendant, he shall recover costs, except that upon a verdict he shall pay costs to the plaintiff, unless the Judge certify that the title to real property came in question on the trial.

Costs.
Ib., § 88.

Sec. 86. If, in an action before a Magistrate, the plaintiff have several causes of action, to one of which the defence of title to real property shall be interposed, and, as to such cause, the defendant shall deliver an answer and undertaking, as provided in Sections 79 and 80, the Magistrate shall discontinue the proceedings as to that cause, and the plaintiff may commence another action therefor in the Circuit Court. As to the other causes of action, the Magistrate may continue his proceedings.

Answer of title as to one cause of action.
Ib., § 89.

Sec. 87. A Magistrate, on the demand of a party in whose favor he shall have rendered a judgment, shall give a transcript thereof, which may be filed and docketed in the office of the Circuit Court of the County where the judgment was rendered. The time of the receipt of the transcript by the Clerk shall be noted thereon and entered in the Abstract of Judgments, and from that time the judgment shall be a judgment of the Circuit Court, but no sale shall be made under any execution issued upon such judgment in the Circuit Court until the time for appealing from the judgment in the Magistrate's Court has expired, nor pending such appeal. If the judgment is set aside in the Magistrate's Court, it shall have the effect of setting aside the judgment filed and docketed in the Circuit Court. The filing and docketing such transcript in the Circuit Court shall not affect the right of the

Docketing judgments.
1870, XIV., § 90; 1887, XIX, 831.
Filing of transcript.
Its operation.
No sale until time for appeal expires.
Setting aside the judgment.
Right to grant new trial.

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Magistrate to grant a new trial. A certified transcript of such judgment may be filed and docketed in the Clerk's office of any other County, and with like effect, in every respect, as in the County where the judgment was rendered.

Transcript to other Counties.

There is no limit of time within which the transcript must be filed.—Rhoad v. Patrick, 37 S. C., 517; 16 S. E., 536.

Such transcript of a valid judgment only of the Trial Justice can be so filed; if judgment is null, the transcript is null.—Barron v. Dent, 17 S. C., 75. And the transcript must show everything necessary to give jurisdiction to the Trial Justice, to make the judgment valid.—Benson v. Carrier, 28 S. C., 119; 5 S. E., 272.

Such transcript is properly signed by an authorized clerk of the Trial Justice.—Brown v. Buttz, 15 S. C., 490. Trial Justice has no power to vacate judgment after the transcript has been filed in the Circuit Court.—*Ib.;* Lawrence v. Isear, 27 S. E., 244; 3 S. E., 222. When transcript filed the judgment becomes the judgment of the Court of Common Pleas.—Rhoad v. Patrick, 37 S. C., 517; 16 S. E., 536.

And execution is to be issued thereon by the Clerk of the Circuit Court.—Amick v. Amick, 59 S. C., 70; 37 S. E., 39.

Rules.

1870, XIV., 423; *Ib.*, § 91.

Sec. 88. The following rules shall be observed in the Courts of Magistrates:

1. The pleadings in the Courts are: 1. The complaint by the plaintiff. 2. The answer by the defendant.

2. The pleadings may be oral or in writing: if oral, the substance of them shall be entered by the Magistrate in his docket; if in writing, they shall be filed by him, and a reference to them shall be made in the docket.

The defendant may plead orally to written complaint.—Williams v. Irby, 15 S. C., 458.

3. The complaint shall state, in a plain and direct manner, the facts constituting the cause of action.

4. The answer may contain a denial of the complaint, or any part thereof, and also a notice, in a plain and direct manner, of any facts constituting a defence or counter-claim.

Notice of counter must be given.—Williams v. Irby, 15 S. C., 458. Counter-claim cannot be interposed in action to recover a specific chattel.—*Ib.*

In action to recover balance due farm laborer for services, a counter-claim may be based on the allegation that he killed a horse while working it.—Haygood v. Boney, 43 S. C., 63; 20 S. E., 803.

5. Pleadings are not required to be in any particular form, but must be such as to enable a person of common understanding to know what is intended.

Dilliard v. Samuels, 25 S. E., 318; Riggs v. Wilson, 30 S. C., 172; 8 S. E., 848.

6. Either party may demur to a pleading of his adversary, or to any part thereof, when it is not sufficiently explicit to enable him to understand it, or it contains no cause of action or defence, although it be taken as true.

7. If the Court deem the objection well founded, it shall order the pleading to be amended; and, if the party refuse to amend, the defective pleading shall be disregarded.

Leave to amend; strictness in order not required.—Medicine Co. v. Hare, 56 S. C., 462; 35 S. E., 130.

8. In any action on contract where a defendant does not appear and answer, the plaintiff may file proof of the service of the summons and complaint, or of the summons, on one or more of the defendants, and that no answer or demurrer has been served upon him. When the action is for the recovery of money only, judgment may be given for the plaintiff by default, if the demand be liquidated, and if unliquidated, and the plaintiff itemize his account and append thereto an affidavit that it is true and correct and no part of the sum sued for has been paid by discount or otherwise, and a copy be served with the summons on the defendant, and the defendant shall neither answer or demur, the plaintiff shall have judgment for the sum sued for, as in the case of liquidated demands. In all other cases where the defendant fails to appear and answer, the plaintiff cannot recover without proving his case.

Proof of no service and of no answer.

1887, XIX., 833.

Liquidated demands.

Unliquidated demands.

Proof of claim.

The last clause applies to cases by default.—Barron v. Dent, 17 S. C., 75.

And the fact of endorsements upon the summons that there was a hearing and examination of witnesses is not sufficient to show that defendant appeared and defended.—*Ib.*

Nor can such showing be made by parol testimony.—*Ib.*

9. In an action or defence founded upon an account, or an instrument for the payment of money only, it shall be sufficient for a party to deliver the account or instrument to the Court, and to state that there is due to him thereon, from the adverse party, a specified sum, which he claims to recover or set off.

1870, XIV., 423, § 91.

Does not nullify last clause of preceding subdivision; does not apply to default cases.—Barron v. Dent, 17 S. C., 75.

10. A variance between the proof on the trial and the allegations in a pleading shall be disregarded, as immaterial, unless the Court shall be satisfied that the adverse party has been misled to his prejudice thereby.

11. The pleadings may be amended at any time before the trial, or during the trial, or upon appeal, when, by such amendment, substantial justice will be promoted. If the amendment be made after the joining of the issue, and it be made to appear to the satisfaction of the Court, by oath, that an adjournment is necessary to the adverse party, in consequence of such amendment, an adjournment shall be granted. The Court may also, in its discretion, require as a condition of an amendment, the payment of costs to the adverse party.

Amendment allowed during trial.—Harby v. Wells, 52 S. C., 156; 29 S. E., 563. See also Medicine Co. v. Hare, 56 S. C., 462; 35 S. E., 130.

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Issuance of Magistrates' executions.

Sales thereunder.

1887, XIX., 832.

12. Execution may be issued on a judgment heretofore or hereafter rendered in Magistrates' Courts at any time after the rendering of such judgment, and within three years after the rendition thereof, and shall be returnable sixty days from date of the same, but no sale thereunder shall be made until after the time for appealing has expired, nor pending such appeal: *Provided,* That in cases for the claim and delivery of personal property where bond for the property claimed has been properly given by either party, the status of such property shall not be changed until after the expiration of the time for appealing has expired, or until such appeal has terminated.

When execution may issue; after transcript is filed in Circuit Court.—Rhoad v. Patrick, 37 S. C., 519; 16 S. E., 536; Amick v. Amick, 59 S. C., 70; 37 S. E., 39.

In issuing execution Trial Justice acts judicially and is not liable in damages therefor unless it was done willfully and corruptly.—McCall v. Cohen, 16 S. C., 445; Abrams v. Carlisle, 18 S. C., 242.

Can Trial Justice issue execution within the five days allowed for motion for new trial?—Abrams v. Carlisle, 18 S. C., 242.

13. If the judgment be docketed with the Clerk of the Circuit Court, the execution shall be issued by him to the Sheriff of the County, and have the same effect, and be executed in the same manner, as other executions and judgments of the Circuit Court.

Lawrence v. Isear, 27 S. C., 244; 3 S. E., 222; Amick v. Amick, 59 S. C., 70; 37 S. E., 39; Bragg v. Thompson, 19 S. C., 572; Rhoad v. Patrick, 37 S. C., 519; 16 S. E., 536.

14. The Court may, at the joining of the issue, require either party, at the request of the other, at that or some other specified time, to exhibit his account, or state the nature thereof as far as may be in his power, and, in case of his default, preclude him from giving evidence of such parts thereof as shall not have been so exhibited or stated.

15. The provisions of this Code of Procedure, respecting forms of actions, parties to actions, the rules of evidence, the times of commencing actions, and the service of process upon corporations, shall apply to these Courts.

The defendant may, on the return of process, and before answering, make an offer in writing to allow judgment to be taken against him for an amount, to be stated in such offer, with costs. The plaintiff shall thereupon, and before any other proceeding shall be had in the action, determine whether he will accept or reject such offer. If he accept the offer, and give notice thereof in writing, the Magistrate shall file the offer and the acceptance thereof, and render judgment accordingly. If notice of acceptance be not given, and if the plaintiff fail to

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obtain judgment for a greater amount, exclusive of costs, than has been specified in the offer, he shall not recover costs, but shall pay to the defendant his costs accruing subsequent to the offer.

It is error in Trial Justice to refuse to allow defendant's counsel to cross-examine generally plaintiff's witness.—Dillard v. Samuels, 25 S. C., 318.

Plaintiff is liable for *all* costs of the case, subsequent to defendant's offer, if he refuses to accept it, and recover less.—Williford v. Gadsden, 27 S. C., 87; 2 S. E., 858.

Provision as to forms of actions.—Kelly v. Kennemore, 47 S. C., 260; 25 S. E., 134.

Time for serving complaint.

1891, XX., 1113.

16. When twenty-five or more dollars is demanded, the complaint shall be served on the defendant not less than twenty days; and where less than that sum is demanded, not less than five days before the day therein fixed for trial: *Provided,* That if the plaintiff shall make out that he is apprehensive of losing his debt by such delay, and the Magistrate considers that there is good reason therefor (the grounds of such apprehension being set out in an affidavit and served with a copy of the complaint), he may make such process returnable in such time as the justice of the case may require.

When and how shortened.

Summons requiring appearance on twentieth day void.—Adkins v. Moore, 43 S. C., 173; 20 S. E., 985; Paul v. So. Ry. Co., 50 S. C., 23; 27 S. E., 526. But summons to appear on twenty-first day was held sufficient in Wideman v. Pruitt, 52 S. C., 86; 29 S. E., 405.

Defendant may waive the twenty days' notice; and if he goes to trial on less notice, without objection, he is bound by the judgment.—Benson v. Carrier, 28 S. C., 119; 5 S. E., 272. As to the proviso, applied.—Cavender v. Ward, 28 S. C., 470; 6 S. E., 302. The summons under this proviso may be made returnable on the same day it is served.—Cothran v. Knight, 47 S. C., 243; 25 S. E., 142.

Defect in summons is waived by appearance and pleading to the merits.—Williams v. Garvin, 51 S. C., 399; 29 S. E., 1; Rosamond v. Earle, 46 S. C., 9; 24 S. E., 44; Bird v. Sullivan, 58 S. C., 52; 36 S. E., 494.

It may be waiver by appearing without objecting to jurisdiction of the Court.—Grant v. Clinton Mills, 56 S. C., 557; 35 S. E., 193.

1876, XVI., 60.

17. Any Magistrate Court of this State shall have power to grant a new trial in any case tried in the said Courts for reasons for which new trials have usually been granted in the Courts of law of this State: *Provided, however,* The case tried shall only be heard and tried anew by the Magistrate before whom the case was first tried.

A motion for a new trial is not required as a condition precedent to an appeal.—Minnick v. Fort, 13 S. C., 215.

He cannot so relieve against his own judgments on grounds of mistake, inadvertence, surprise or neglect; that can only be done by appeal.—*Ib.* So as to judgments by default, that may be satisfactorily excused.—Lawrence v. Isear, 27 S. C., 244; 3 S. E., 322. New trial will not be granted where irrelevant testimony is received against objection, which could not have affected the verdict.—Riggs v. Wilson, 30 S. C., 172; 8 S. E., 848. Appeal lies to the Circuit Court from an order granting a new trial.—Redfearn v. Douglass, 35 S. C., 569; 15 S. E., 244.

Ib.

18. No motion for a new trial shall be heard unless made

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within five days from the rendering of the judgment: *Provided,* That the right of appeal from the judgment shall exist for five days after the refusal of a motion for a new trial.

Notice of motion must be given within five days.—Doty v. Duval, 19 S. C., 143. But need not be in writing.—Mitchell v. Bates, 57 S. C., 44; 35 S. E., 420. The hearing (Whetstone v. Livingston, 54 S. C., 539; 32 S. E., 561) and decision may be later.—Speer v. Meschine, 46 S. C., 505; 24 S. E., 331. And the motion may be made on a legal holiday.—Mitchell v. Bates, *supra.*

How made in Magistrates' Courts.

1887, XIX., 787; 1896, XXII., 13.

19. Magistrates shall have the power to change the venue in all cases, civil and criminal, pending before them: *Provided,* That in Counties where they have separate and exclusive territorial jurisdiction the change of venue shall be to another Magistrate's district in the same County. Whenever either party in a civil case, or the prosecutor or accused in a criminal case, which is to be tried before a Magistrate shall file with the Magistrate issuing the paper an affidavit to the effect that he does not believe he can obtain a fair trial before the Magistrate, the papers shall be turned over to the nearest Magistrate not disqualified from hearing said cause in the County, who shall proceed to try the case as if he had issued the papers: *Provided,* Such affidavit shall set forth the grounds of such belief, and in civil cases two days' notice of the application for change of venue shall be given to the adverse party. One such transfer only shall be allowed each party in any case.

The party must make the affidavit himself.—Cromer v. Watson, 59 S. C., 488; 37 S. E., 128.

PART II.

OF CIVIL ACTIONS.

TITLE I. *Of their Forms.*
TITLE II. *Of the Time of Commencing Them.*
TITLE III. *Of the Parties.*
TITLE IV. *Of the Place of Trial.*
TITLE V. *Of the Manner of Commencing Them.*
TITLE VI. *Of the Pleadings.*
TITLE VII. *Of the Provisional Remedies.*
TITLE VIII. *Of the Trial and Judgment.*
TITLE IX. *Of the Execution of the Judgment.*
TITLE X. *Of the Costs.*
TITLE XI. *Of Appeals.*
TITLE XII. *Of the Miscellaneous Proceedings.*
TITLE XIII. *Actions in Particular Cases.*
TITLE XIV. *Provisions Relating to Existing Suits.*
TITLE XV. *General Provisions.*

This Part, as to appeals, does not apply in criminal cases; they are governed by the old practice before the Code.—State v. Pitts, 12 S. C., 180. It applies only to Courts of Common Pleas, except when express reference is made to inferior Courts.—Doty v. Duvall, 19 S. C., 143. Nor does it apply to proceedings by prohibition or *mandamus.*—S. C. Society v. Gerney, 3 S. C., 53. See note to Sec. 8.

TITLE I.

FORM OF CIVIL ACTIONS.

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SEC.
89. One form of action established.
90. Parties, how designated.
91. Actions on judgments.
92. Feigned issues not allowed.

Section 89. There shall be in this State but one form of action for the enforcement or protection of private rights and the redress of private wrongs, which shall be denominated a civil action.

One form of action established.

1870, XIV., § 92.

No action lies unless a cause of action exists which would formerly have maintained an action at law or a bill in equity.—Southern Man. Co. v. Tew, 5 S. C., 5.

Whether legal or equitable, such rights must alike be enforced or protected by the same form of action.—Parker v. Jacobs, 14 S. C., 112; Chapman v. Lipscomb, 18 S. C., 222; Scaife v. Thompson, 15 S. C., 337. No change is made

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between legal and equitable causes of action.—Chapman v. Lipscomb, 18 S. C., 222; Sullivan v. Sullivan, 20 S. C., 509. But while causes of action are distinct from remedies, they are enforcible by the one form of remedy.—Emory v. Hazard Powder Co., 22 S. C., 476.

See note as to changes made by Code, Sec. 1.

Parties, how designated.

Ib., § 93.

Sec. 90. In such action the party complaining shall be known as the plaintiff, and the adverse party as the defendant.

Actions on judgments.

Ib., § 94.

Sec. 91. No action shall be brought upon a judgment rendered in any Court in this State, except a Court of Magistrate, between the same parties, without leave of the Court, for good cause shown, on notice to the adverse party; and no action on a judgment rendered by a Magistrate shall be brought in the same County within five years after its rendition, except in case of his death, resignation, incapacity to act, or removal from the County, or that the process was not personally served on the defendant, or on all the defendants, or in case of the death of some of the parties, or where the docket or record of such judgment is or shall have been lost or destroyed.

Does not apply to action by creditor of decedent to subject lands in possession of devisees to judgment.—Brock v. Kirkpatrick, 60 S. C., 322; 37 S. E., 779.

Feigned issues not allowed.

1870, XIV., § 95.

Sec. 92. Feigned issues shall not be allowed, and, instead thereof, or when a question of fact, not put in issue by the pleadings, is to be tried by a jury, an order for the trial may be made stating distinctly and plainly the question of fact to be tried; and such order shall be the only authority necessary for a trial.

TITLE II.

TIME OF COMMENCING CIVIL ACTIONS.

Chapter 1. Actions Generally.
Chapter 2. For the Recovery of Real Property.
Chapter 3. Other than for the Recovery of Real Property.
Chapter 4. General Provisions.

CHAPTER I.

Actions Generally.

Sec.
93. Limitation not to apply where action commenced, or right of action accrued.
94. Time for commencing actions, &c.

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Section 93. The provisions of this Title shall not extend to actions already commenced, or to cases where the right of action has already accrued; but the statutes then in force shall be applicable to such cases, according to the subject of the action and without regard to the form.

Limitation not to apply where action commenced, or right of action accrued.

Ib., § 96.

Shand v. Gage, 9 S. C., 188; Hayes v. Clinkscales, 9 S. C., 450; Bratton v. Guy, 12 S. C., 42; Bolt v. Dawkins, 16 S. C., 210; Nichols v. Briggs, 18 S. C., 473; State v. Pinckney, 22 S. C., 484; Colvin v. Phillips, 25 S. C., 228; Rehkopf v. Kuhland, 30 S. C., 234; 9 S. E., 99; Lyles v. Roach, 30 S. C., 291; 9 S. E., 334; Heyward v. Farmers Mining Co., 42 S. C., 138; 19 S. E., 963.

There are only three exceptions to the operation of the limitations in this Title: 1. Where the action was already commenced. 2. Where the right of action had already accrued. 3. Where a different limitation is prescribed by statute.—Stoddard v. Owings, 42 S. C., 88; 20 S. E., 25. Right of action defined.—*Ib.*

Applies to bond and mortgage executed prior to adoption of Code, but maturing afterwards.

Sec. 94. Civil actions can only be commenced within the periods prescribed in this Title, after the cause of action shall have accrued, except where, in special cases, a different limitation is prescribed by Statute, and in the cases mentioned in Section 93. But the objection that the action was not commenced within the time limited can only be taken by answer.

Time for commencing actions, &c.

Ib., § 97.

The statute cannot avail unless so pleaded.—Coney v. Timmons, 16 S. C., 378; Cureton v. Westfield, 22 S. C., 583; Moore v. Smith, 29 S. C., 254; 7 S. E., 485; Foggette v. Gaffney, 33 S. C., 303; 12 S. E., 260.

Defendant failing to so object by answer is barred from making that defense on trial.—Jones v. Massey, 9 S. C., 376.

But such defense does not preclude other defenses, even though inconsistent.—Cohrs v. Fraser, 5 S. C., 355.

Statement of reasons which actuated defendant to plead such limitation properly stricken out of answer as irrelevant.—Nichols v. Briggs, 18 S. C., 473.

When it need not be formally pleaded by defendants.—Jackson v. Plyer, 38 S. C., 500; 17 S. E., 257; Sutton v. Clark, 59 S. C., 440; 38 S. E., 154; Bank v. Gadsden, 56 S. C., 313; 33 S. E., 575.

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CHAPTER II.

For the Recovery of Real Property.

SEC.
95. When the State will not sue.
96. When action cannot be brought by grantee from the State.
97. When action by the State or their grantees to be brought within ten years.
98. Seizin within ten years, when necessary. Plaintiff limited to two actions.
99. Seizin within ten years, when necessary in action or defence founded on title, &c.
100. Action after entry or right of entry.
101. Possession, when presumed. Occupation when deemed under legal title.
102. Occupation under written instrument, &c.
103. Adverse possession under written instrument, &c.
104. Premises actually occupied, held adversely.
105. Adverse possession under claim of title not written.
106. Relation of landlord and tenant, as affecting adverse possession.
107. Descent cast—effect of.
108. Persons under disability.
109. After forty years, no action whatever allowed.

When the State will not sue.

1870, XIV., § 98.

1873, XV., 496.

Section 95. The State will not sue any person for or in respect to any real property, or the issues or profits thereof, by reason of the right or title of the State to the same, unless—

1. Such right or title shall have accrued within twenty years before any action or other proceeding for the same shall be commenced; or unless

Ib.

2. The State, or those from whom it claims, shall have received the rents and profits of such real property, or of some part thereof, within the space of twenty years.

Does not operate retrospectively.—State v. Pinckney, 22 S. C., 484; Heyward v. Farmers Mining Co., 42 S. C., 138; 19 S. E., 963. Until this Section was passed in 1870, the doctrine of *nullum tempus* prevailed in this State.—State v. P. G. Co., 22 S. C., 50. As to its effect, it remains to be construed.—State v. Pinckney, 22 S. C., 484.

When action cannot be brought by grantee from the State.

1870, XIV., § 99.

Sec. 96. No action shall be brought for or in respect to real property by any person claiming by virtue of letters patent or grants from the State, unless the same might have been commenced by the State as herein specified, in case such patent or grant had not been issued or made.

When action by the State or their grantees to be brought within ten years.

Ib., § 100; 1873, XV., 496.

Sec. 97. When letters patent or grants of real property shall have been issued or made by the State, and the same shall be declared void by the determination of a competent Court, rendered upon an allegation of a fraudulent suggestion, or concealment, or forfeiture, or mistake, or ignorance of a material fact, or wrongful detaining, or defective title, in such case an action for the recovery of the premises so conveyed may be brought either by the State, or by any subsequent patentee or

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grantee of the premises, his heirs or assigns, within ten years after such determination was made, but not after that period.

Seizin within ten years, when necessary. Plaintiff limited to two actions.

1870, XIV., § 101; 1873, XV., 496.

Sec. 98. 1. No action for the recovery of real property, or for the recovery of the possession thereof, shall be maintained, unless it appear that the plaintiff, his ancestor, predecessor, or grantor, was seized or possessed of the premises in question within ten years before the commencement of such action.

Adverse possession for ten years confers good title which may be asserted affirmatively.—Duren v. Kee, 50 S. C., 457; 27 S. E., 875; Harrelson v. Sarvis, 39 S. C., 14; 17 S. E., 368; Busby v. R. R. Co., 45 S. C., 317; 23 S. E., 50; Cave v. Anderson, 50 S. C., 293; 27 S. E., 693.

1879, XVII., 76.

2. The plaintiff in all actions for recovery of real property or the recovery of the possession thereof, is hereby limited to two actions for the same, and no more: *Provided*, That the costs of the first action be first paid, and the second action be brought within two years from the rendition of the verdict or judgment in the first action, or from the granting of a non-suit or discontinuance therein.

See Geiger v. Kaigler, 15 S. C., 271.

If action is not renewed or recommenced within two years after discontinuance or verdict in first action, the title is determined to be in the defendant.—Dyson v. Leek, 5 Strob., 141; Binda v. Benbow, 11 Rich., 24. The two actions are allowed subsequent to Act.—Duren v. Kee, 41 S. C., 171; 19 S. E., 492. As to payment of costs of first action.—Columbia W. P. Co. v. Columbia L. and I. Co., 42 S. C., 488; 20 S. E., 378. Dismissal of second action for failure to pay costs of first action, precludes plaintiff from bringing another.—*Ib.;* 47 S. C., 117; 25 S. E., 48. This subdivision does not apply to actions for partition.—Elmore v. Davis, 49 S. C., 1; 26 S. E., 898. Nor to action for damages and injunction against trespasses.—Tompkins v. R. R. Co., 30 S. C., 479; 9 S. E., 521.

Seizin within ten years, when necessary in action or defence founded on title, &c.

1870, XIV., §102; 1873, XV. 496.

Sec. 99. No cause of action, or defence to an action, founded upon a title to real property, or to rents or services out of the same, shall be effectual, unless it appear that the person prosecuting the action or making the defence, or under whose title the action is prosecuted or the defence is made, or the ancestor, predecessor, or grantor of such person, was seized or possessed of the premises in question within ten years before the committing of the act in respect to which such action is prosecuted or defence made.

Action after entry, or right of entry.

1870, XIV., § 103; 1873, XV., 496.

Sec. 100. No entry upon real estate shall be deemed sufficient or valid as a claim, unless an action be commenced thereupon within one year after the making of such entry, and within ten years from the time when the right to make such entry descended or accrued.

Sec. 101. In every action for the recovery of real property, or the possession thereof, the person establishing a legal title to the premises shall be presumed to have been possessed

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thereof within the time required by law; and the occupation of such premises by any other person shall be deemed to have been under and in subordination to the legal title, unless it appear that such premises have been held and possessed adversely to such legal title for ten years before the commencement of such action.

Possession, when presumed. Occupation when deemed under legal title.

1870, XIV., § 104; 1873, XV., 496.

Adverse possession cannot give title as against a town.—Crocker v. Collins, 37 S. C., 328; 15 S. E., 951.

Such adverse possession gives no right until the expiration of the ten years.—Ellen v. Ellen, 16 S. C., 132.

There can be no adverse possession by purchaser under contract to purchase the land against vendor until he has paid the purchase money.—Blackwell v. Ryon, 21 S. C., 112. Nor by purchaser from mortgagor, with notice of the mortgage, against the mortgagee.—Norton v. Lewis, 3 S. C., 25; Clark v. Smith, 13 S. S., 585; Lynch v. Hancock, 14 S. C., 66. But there can be by purchaser against a judgment.—Goldsmith v. Jacobs, 14 S. C., 624. There can be no adverse possession against any of the co-tenants, unless it is against all.—Scaife v. Thompson, 15 S. C., 337. Before there can be adverse possession as to co-tenants there must be proof of ouster.—Stone v. Fitts, 38 S. C., 394; 17 S. E., 136; Mole v. Folk, 45 S. C., 265; 22 S. E., 882. An attempt by one co-tenant to convey all the land amounts to ouster.—Garrett v. Weinberg, 48 S. C., 29; 26 S. E., 3.

But successive purchasers cannot tack possession so as to give such title.—Pegues v. Warley, 14 S. C., 180; Ellen v. Ellen, 16 S. C., 132; Garrett v. Weinberg, 48 S. C., 29; 26 S. E., 3.

There can be no adverse possession where no trespass is committed against owner.—Massey v. Duren, 3 S. C., 34; Mosely v. Hankinson, 25 S. C., 519; Sutton v. Clark, 59 S. C., 440; 38 S. E., 154.

Hence, where a woman married before the Constitution of 1868 did not have the right to the possession of her land acquired before that time, until the death of her husband, the statute did not commence to run against her until her husband's death.—Garrett v. Weinberg, 48 S. C., 29; 26 S. E., 3. See also Boykin v. Ancrum, 28 S. C., 486; 6 S. E., 305; Rawls v. Johns, 54 S. C., 394; 32 S. E., 451; Bell v. Talbird, Rich. Eq., 361; Joyce v. Gunnels, 2 Rich. Eq., 259; Bannister v. Bull, 16 S. C., 220; Covar v. Cantelou, 25 S. C., 35; Moseley v. Hankinson, 25 S. C., 519.

Adverse possession under Act 1871 to ripen into title must run twenty years, and is not limited to ten years' duration, as fixed in this Section by amendment of 1873.—Rehkopf v. Kuhland, 30 S. C., 234; 9 S. E., 99; Lyles v. Roach, 30 S. C., 291; 9 S. E., 334. But adverse possession, begun in 1883, is controlled by this Section, then in force.—Johnson v. Cobb, 29 S. C., 372; 7 S. E., 601.

Occupation under written instrument, &c.

1870, XIV., § 105; 1873, XV., 496.

Sec. 102. Whenever it shall appear that the occupant, or those under whom he claims, entered into the possession of premises under claim of title, exclusive of any other right, founding such claim upon a written instrument, as being a conveyance of the premises in question, or upon the decree or judgment of a competent Court, and that there has been a continued occupation and possession of the premises included in such instrument, decree, or judgment, or of some part of such premises under such claim for ten years, the premises so included shall be deemed to have been held adversely; except that where the premises so included consist of a tract divided into lots, the possession of one lot shall not be deemed a possession of any other lot of the same tract.

Occupancy of one of two adjoining parcels of land included within lines of plat held as color of title does not confer title by adverse possession of the other parcel.—Massey v. Duren, 3 S. C., 34.

Sufficiency of written instrument.—Garrett v. Weinberg, 48 S. C., 29; 26 S. E., 3.

Adverse possession under written instrument, &c.

1870, XIV., § 106.

Sec. 103. For the purpose of constituting an adverse possession, by any person claiming a title founded upon a written instrument or a judgment or decree, land shall be deemed to have been possessed and occupied in the following cases:

1. Where it has been usually cultivated or improved.

2. Where it has been protected by a substantial enclosure.

3. Where, although not enclosed, it has been used for the supply of fuel or of fencing timber, for the purposes of husbandry, or the ordinary use of the occupant.

4. Where a known farm or a single lot has been partly improved, the portion of such farm or lot that may have been left not cleared or not enclosed, according to the usual course and custom of the adjoining country, shall be deemed to have been occupied for the same length of time as the part improved and cultivated.

Premises actually occupied held adversely.

1870, XIV., § 107.

Sec. 104. Where it shall appear that there has been an actual continued occupation of premises, under a claim of title, exclusive of any other right, but not founded upon a written instrument or a judgment or decree, the premises so actually occupied, and no other, shall be deemed to have been held adversely.

Adverse possession under claim of title not written.

Ib., § 108.

Sec. 105. For the purpose of constituting an adverse possession by a person claiming title not founded upon a written instrument or a judgment or decree, land shall be deemed to have been possessed in the following cases only:

1. Where it has been protected by a substantial enclosure.

2. Where it has been usually cultivated or improved.

Relation of landlord and tenant, as affecting adverse possession.

Ib., § 109; 1873, XV., 496.

Sec. 106. Whenever the relation of landlord and tenant shall have existed between any persons, the possession of the tenant shall be deemed the possession of the landlord until the expiration of ten years from the termination of the tenancy; or, where there has been no written lease, until the expiration of ten years from the time of refusal to pay rent, notwithstanding that such tenant may have acquired another title, or may have claimed to hold adversely to his landlord. But such presumptions shall not be made after the periods herein limited.

Descent cast, effect of.

1870, XIV., § 110.

Sec. 107. The right of a person to the possession of any real property shall not be impaired or affected by a descent

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being cast in consequence of the death of a person in possession of such property.

This changes common law doctrine as to transmission of possession from ancestor to heir, which presumed that the possession was rightful.—Geiger v. Kaigler, 15 S. C., 262; Duren v. Kee, 26 S. C., 219; 2 S. E., 4. When the heir is in of his ancestor's possession and there is no new entry, the possession of the heir is that of the ancestor.—Duren v. Kee, 26 S. C., 219. And their possession may be tacked.—Burnett v. Crawford, 50 S. C., 161; 27 S. E., 645; Turpin v. Suddath, 53 S. C., 311; 31 S. E., 245. But where the possession of the ancestor has been interrupted or put an end to, the entry of the heir is a new trespass, and the possessions do not unite to make title in heir.—Congdon v. Morgan, 14 S. C., 587; Johnson v. Cobb, 29 S. C., 372; 7 S. E., 601.

Persons under disability.

Ib., § 111.

Sec. 108. If a person entitled to commence any action for the recovery of real property, or to make an entry or defence founded on the title to real property, or to rents or services out of the same, be, at the time such title shall first descend or accrue, either—

1. Within the age of twenty-one years; or,
2. Insane; or,
3. Imprisoned on a criminal or civil charge, or in execution upon conviction of a criminal offence for a term less than for life—

1873, XV., 496.

The time during which such disability shall continue, shall not be deemed any portion of the time in this Chapter limited for the commencement of such action or the making of such entry or defence; but such action may be commenced, or entry or defence made, after the period of ten years, and within ten years after the disability shall cease, or after the death of the person entitled who shall die under such disability; but such action shall not be commenced, or entry or defence made, after that period.

The disability must exist when the cause of action first accrues.—Satcher v. Grice, 31 S. E., 3; 53 S. C., 126; Maccan v. Crowley, 59 S. C., 342; 37 S. E., 934. Effect of minority of one cotenant.—Garrett v. Weinberg, 48 S. C., 28; 26 S. E., 18.

The statute does not run during the continuance of the disability.—Rice v. Bamberg, 59 S. C., 507; 38 S. E., 209.

After forty years, no action whatever allowed.

Sec. 109. No action shall be commenced in any case for the recovery of real property, or for any interest therein, against a person in possession under claim of title by virtue of a written instrument, unless the person claiming, his ancestor or grantor, was actually in the possession of the same or a part thereof, within forty years from the commencement of such action. And the possession of a defendant, sole or connected, pursuant to the provisions of this Section, shall be deemed valid against the world after the lapse of said period.

Does this apply to cases of adverse possession begun before its adoption?—Sutton v. Clark, 38 S. E., 154; 59 S. C., 440.

CHAPTER III.

Time of Commencing Action Other Than for the Recovery of Real Property.

SEC.
110. Limitation prescribed.
111. Twenty years.
112. Six years.
113. Three years.
114. Two years.
SEC.
115. One year.
116. Actions upon current account.
117. Actions for penalties.
118. Actions for other relief.
119. Actions by the State.

Limitation prescribed. 1870, XIV., § 112.

Section 110. The periods prescribed in Section 94 for the commencement of actions other than for the recovery of real property shall be as follows:

Twenty years. *Ib.*, § 113.

Sec. 111. Within twenty years:

1. An action upon a judgment or decree of any Court of the United States, or any State or Territory within the United States.

Action on judgment distinguished from proceeding under Sec. 310.—Roland v. Shockley, 43 S. C., 246; 21 S. E., 21. Applies to actions on decrees for equality of partition.—McKibben v. Salinas, 41 S. C., 105; 19 S. E., 302; Simms v. Kearse, 42 S. C., 43; 20 S. E., 19.

1880, XVII., 415.

2. An action upon a bond, or other contract in writing, secured by a mortgage of real property; an action upon a sealed instrument other than a sealed note and personal bond for the payment of money only, whereof the period of limitation shall be the same as prescribed in the following Section.

Subdivision 2 does not apply to action for breach of warranty in deeds made before 1870.—Bratton v. Guy, 12 S. C., 42. Nor to seal note which matured before that time.—Nichols v. Briggs, 18 S. C., 473. But mortgage given to secure it might be foreclosed at any time within twenty years.—*Ib.* Nor to bond executed before that time.—Neely v. Yorkville, 10 S. C., 141; State v. Lake, 30 S. C., 43; 8 S. E., 322. But it does apply to official bond executed since that time.—Strain v. Babb, 30 S. C., 342; 9 S. E., 271.

Applies to actions to foreclose mortgages maturing after enactment of statute.—Jennings v. Peay, 51 S. C., 327; 28 S. E., 949. Execution purchaser of mortgagor may plead the statute, although the mortgagor is out of the State.—Arthur v. Screven, 39 S. C., 84; 17 S. E., 641.

Six years. 1870, XIV., § 114.

Sec. 112. Within six years:

1. An action upon a contract, obligation, or liability, express or implied, excepting those provided for in Section 111.

Applies to actions on warranty in deed.—Bratton v. Guy, 12 S. C., 42.

In actions against heirs or devisees to subject real estate in their possession to payment of debts of ancestor or devisor, nine months must be added to the six years.—Cleveland v. Mills, 9 S. C., 430.

Applies to note executed prior to but maturing after the enactment of the statute.—Stoddard v. Owings, 42 S. C., 88; 20 S. E., 25; Jennings v. Peay, 51 S. C., 327; 28 S. E., 949. When cause of accrues to endorser on note.—McCrady v. Jones, 44 S. C., 406; 22 S. E., 412.

2. An Action upon a liability created by Statute, other than a penalty or forfeiture.

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Action on decree for equality of partition is not.—Arthur v. Screven, 39 S. C., 84; 17 S. E., 641.

3. An action for trespass upon or damage to real property.

4. An action for taking, detaining, or injuring any goods or chattels, including actions for the specific recovery of personal property.

Applies to action to recover houses on land sold to plaintiff by party in possession.—Dominick v. Farr, 22 S. C., 585. To action to recover amount of mistake in compromise settlement of note.—McMakin v. Gowan, 18 S. C., 502.

5. An action for criminal conversation, or for any other injury to the person or rights of another, not arising on contract, and not hereinafter enumerated.

Where goods held for safekeeping are destroyed, this limitation begins to run from date of loss or of owner's notice thereof, and not from time of demand.—Cohrs v. Fraser, 5 S. C., 356.

6. Any action for relief on the ground of fraud, in cases which, heretofore, were solely cognizable by the Court of Chancery, the cause of action in such case not to be deemed to have accrued until the discovery by the aggrieved party of the facts constituting the fraud.

Subdivision 6 applied.—Means v. Feaster, 4 S. C., 257; Beattie v. Pool, 13 S. C., 379; Kibler v. McIlwain, 16 S. C., 550; Suber v. Chandler, 18 S. C., 526; Richardson v. Mounce, 19 S. C., 477; McSween v. McCown, 23 S. C., 342; City Council v. Bank, 23 S. C 410; Amicker v. New, 33 S. C., 28; 11 S. E., 386; Harrell v. Key, 37 S. C., 375; 16 S. E., 42; Jackson v. Plyer, 38 S. C., 500; 17 S. E., 257; Brown v. Brown, 44 S. C., 378; 22 S. E., 412; Lenhardt v. French, 57 S. C., 493; 37 S. E., 761; Toole v. Johnson, 61 S. C., 34; 39 S. E., 254

1891, XX., 1042.

7. Actions may be brought in any of the Courts of this State properly having jurisdiction thereof on any policies of insurance, either fire or life, whereby any person or property, resident or situate in this State, may be or may have been insured, or for or on account of any loss arising thereunder, within six years from the date of such loss, or from the accrual of the cause of action under said policy, any clause or condition in the said policies or limitations therein contained to the contrary notwithstanding.

Does not apply to contracts entered into prior to its enactment.—Sample v. Ins. Co., 46 S. C., 498; 24 S. E., 334.

Three years.

1870, XIV., § 115.

Sec. 113. Within three years:

1. 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 Section shall not apply to an action for an escape.

2. An action upon a Statute, for a penalty or forfeiture, where the action is given to the party aggrieved, or to such

party and the State, except where the Statute imposing it prescribes a different limitation.

Two years.

Ib., § 116.

Sec. 114. Within two years:

1. An action for libel, slander, assault, battery, or false imprisonment.

2. An action upon a Statute, for a forfeiture or penalty to the State.

An agreed forfeit of a certain amount to State for breach of contract is stipulated damages and not a technical penalty; and action therefor is not hereby barred in two years.—Lipscomb v. Seegers, 19 S. C., 425.

One year.

Ib., § 117.

Sec. 115. Within one year:

1. An action against a Sheriff or other officer for the escape of a prisoner arrested or imprisoned on civil process.

Actions upon current account.

Ib., § 118.

Sec. 116. In an action brought to recover a balance due upon a mutual, open, and current account, where there have been reciprocal demands between the parties, the cause of action shall be deemed to have accrued from the time of the last item proved in the account on either side.

A sealed note on one side and open account on the other do not constitute such open mutual account.—Chapman v. Chapman, 31 S. C., 405; 10 S. E., 106.

Actions for penalties.

Ib., § 119.

Sec. 117. An action upon a Statute, for a penalty or forfeiture given, in whole or in part, to any person who will prosecute for the same, must be commenced within one year after the commission of the offence; and, if the action be not commenced within the year by a private party, it may be commenced within two years thereafter, in behalf of the State, by the Attorney General, or the Solicitor of the Circuit where the offence was committed, unless a different limitation be prescribed in the Statute under which the action is brought.

Actions for other relief.

Ib., § 120.

Sec. 118. An action for relief not hereinbefore provided for, must be commenced within ten years after the cause of action shall have accrued.

McMakin v. Gowan, 18 S. C., 502; Bank v. Gadsden, 56 S. C., 313; 33 S. E., 575.

Actions by the State.

Ib., § 121.

Sec. 119. The limitations prescribed by this Chapter shall apply to actions brought in the name of the State, or for its benefit, in the same manner as to actions by private parties.

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CHAPTER IV.

General Provisions as to the Time of Commencing Actions.

SEC.
120. When action deemed commenced.
121. Exception—defendant out of State.
122. Exception as to persons under disabilities.
123. Death of person entitled before limitation expires.
124. Suits by aliens.
125. Where judgment reversed.
126. Stay of action by injunction, &c.
127. Disability must exist when right accrued.
128. Two or more disabilities.
129. This Title, when not to apply.
130. The like.
131. New promise must be in writing.
131*a*. Effect of partner's act after dissolution of firm.
131*b*. Practice in suits saved from bar of statute.

When action deemed commenced.

1870, XIV., § 122.

Section 120. An action is commenced as to each defendant when the summons is served on him, or on a co-defendant, who is a joint contractor, or otherwise united in interest with him. An attempt to commence an action is deemed equivalent to the commencement thereof, within the meaning of this Title, when the summons is delivered with the intent that it shall be actually served, to the Sheriff or other officer of the County in which the defendant or one of them usually or last resided; or, if a corporation be defendant, to the Sheriff or other officer of the County in which such corporation was established by law, or where its general business was transacted, or where it kept an office for the transaction of business.

Cureton v. Dargan, 12 S. C., 122; State v. Cohen, 13 S. C., 198; Montague v. Stelts, 37 S. C., 212; 15 S. E., 968; Morgan v. Morgan, 45 S. C., 323; 23 S. E., 64; Norris v. Ins. Co., 55 S. C., 450; 33 S. E, 566.

Exception—defendant out of State.

Ib., § 123.

Sec. 121. If, when the cause of action shall accrue against any person, he shall be out of the State, such action may be commenced within the terms herein respectively limited after the return of such person into this State; and, if, after such cause of action shall have accrued, such person shall depart from and reside out of this State, or remain continuously absent therefrom for the space of one year or more, the time of his absence shall not be deemed or taken as any part of the time limited for the commencement of such action.

Subsequent purchaser of mortgaged premises may plead statute. Where the mortgagor is out of the State.—Arthur v. Screven, 39 S. C., 85; 17 S. E., 741, § 121, applies to one who was a party to a suit, and absent from the State over one year prior to a proceeding to revive the decree therein.—Morgan v. Morgan, 45 S. C., 323; 23 S. E., 64. It embraces persons who come into the State without a previous residence here.—Burrows v. French, 14 S. C., 165. Where the statute has once commenced to run against a resident of this State his voluntary removal therefrom will not arrest its currency.—Maccaw v. Crawley, 59 S. C., 342; 37 S. E., 934.

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Exception as to persons under disabilities.

Ib., § 124.

Sec. 122. If a person entitled to bring an action mentioned in the last Chapter except for a penalty or forfeiture, or against a Sheriff or other officer for an escape, be, at the time the cause of action accrued, either—

1. Within the age of twenty-one years; or,
2. Insane; or,
3. Imprisoned on a criminal or civil charge, or in execution under the sentence of a criminal Court for a less term than his natural life—

The time of such disability is not a part of the time limited for the commencement of the action; except that the period within which the action must be brought cannot be extended more than five years by any such disability, except infancy; nor can it be so extended, in any case, longer than one year after the disability ceases.

An infant has as much time within which to bring his action as persons not under disability, and under this Section he has one additional year after his majority, but no longer, to do so, if the time limited expire before or within that additional year.—Fricks v. Lewis, 26 S. C., 237; 1 S. E., 884; Anderson v. Simms, 29 S. C., 247; 7 S. E., 289.

Death of person entitled before limitation expires.

1870, XIV., § 125.

Sec. 123. If a person entitled to bring an action die before the expiration of the time limited for the commencement thereof, and the cause of action survive, an action may be commenced by his representatives, after the expiration of that time and within one year from his death. If a person against whom an action may be brought die before the expiration of the time limited for the commencement thereof, and the cause of action survive, an action may be commenced against his executors or administrators after the expiration of that time, and within one year after the issuing of letters testamentary or of administration.

Only applies to cases where the Statute commenced to run in lifetime of decedent, and statutory period expired before administration.—Strain v. Babb, 30 S. C., 342; 9 S. E., 271. It must be shown that the action was commenced within one year after letters testamentary or of administration were granted, or the plea of Statute of Limitations will not avail.—Foggette v. Gaffney, 33 S. C., 303; 12 S. E., 260. Where statutory period has not expired before administration, the executor or administrator, under the law protecting administrator or executor from suit for nine months, that time must be added to the statutory period.—Cleveland v. Mills, 9 S. C., 435; Hayes v. Clinkscales, 9 S. C., 450; Moore v. Smith, 29 S. C., 254; 7 S. E., 485.

Where action is in form *ex delicto,* and defendant die, it cannot be revived against his personal representatives.—Huff v. Watkins, 20 S. C., 477; except as to actions for injury to real property under Sec. 2859, Civil Code; Allen v. Union Oil Co., 59 S. C., 571; 38 S. E., 274.

Suits by aliens.

Ib., § 126.

Sec. 124. When a person shall be an alien subject, or citizen of a country at war with the United States, the time of the

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continuance of the war shall not be part of the period limited for the commencement of the action.

Where judgment reversed. *Ib.*, § 127.

Sec. 125. If an action shall be commenced within the time prescribed therefor, and a judgment therein be reversed on appeal, the plaintiff, or, if he die and the cause of action survive, his heirs or representatives may commence a new action within one year after the reversal.

Stay of action by injunction, &c. *Ib.*, § 128.

Sec. 126. When the commencement of an action shall be stayed by injunction or statutory prohibition, the time of the continuance of the injunction or prohibition shall not be part of the time limited for the commencement of the action.

Disability must exist when right accrued. *Ib.*, § 129.

Sec. 127. No person shall avail himself of a disability, unless it existed when his right of action accrued.

Maccaw v. Crawley, 59 S. C., 342; 37 S. E., 934; Shubrick v. Adams, 20 S. C., 52; Fewell v. Collins, 3 Brev., 286; Adamson v. Smith, 2 Mills Const. Reports, 269; Faysoux v. Prather, 1 N. & McC., 296.

Two or more disabilities. *Ib.*, § 30.

Sec. 128. When two or more disabilities shall co-exist at the time the right of action accrues, the limitation shall not attach until they all be removed.

This title, when not to apply. *Ib.*, § 131.

Sec. 129. This Title shall not affect actions to enforce the payment of bills, notes, or other evidences of debt, issued by moneyed corporations, or issued or put in circulation as money.

The like. *Ib.*, § 132.

Sec. 130. This Title shall not affect actions against directors or stockholders of a moneyed corporation, or banking associations, to recover a penalty or forfeiture imposed, or to enforce a liability created by law; but such actions must be brought within six years after the discovery by the aggrieved party of the facts upon which the penalty or forfeiture attached, or the liability was created, unless otherwise provided in the law under which such corporation is organized.

Applied in Parker v. Savings Bank, 53 S. C., 583; 31 S. E., 673.

New promise must be in writing. *Ib.*, § 133.

Sec. 131. No acknowledgement or promise shall be sufficient evidence of a new or continuing contract, whereby to take the case out of the operation of this Title, unless the same be contained in some writing signed by the party to be charged thereby; but payment of any part of principal or interest is equivalent to a promise in writing.

This Section has reference only to the *evidence* necessary to establish an acknowledgement or new promise, but does not change the pre-existing law as to what acknowledgements will continue a debt not barred or what new promises will create a new contract. Ester v. Wood, 21 S. C., 600; Hill v. Hill, 51 S. C., 141; 28 S. E., 309; Park v. Brooks, 38 S. C., 306; 17 S. E., 24.

Parol promise not to plead the statute cannot operate as a waiver or as an agreement, or by way of estoppel to subvert this Section.—Hill v. Perrin, 21 S. C., 356.

A verbal promise to pay a debt after discharge in bankruptcy is not affected by this Section, but is valid.—Lanier v. Tolleson, 20 S. C., 57.

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Administrator putting due bill made by him upon his inventory is not such new promise.—Black v. White, 13 S. C., 37.

Endorsement of payment by payor on sealed note sufficient to toll statute.—Cook v. Jennings, 40 S. C., 204; 18 S. E., 640. A partial payment sufficient to toll statute.—Park v. Brooks, 38 S. C., 300; 17 S. E., 24. But is not equivalent to a promise under the Statute of Frauds.—Millwee v. Jay, 47 S. C., 430; 25 S. E., 299.

Partners only liable for their own acts after dissolution of partnership.

1900, XXIII., 349.

Sec. 131a. No acknowledgement, payment or part payment or renewal of any debt or obligation of a firm, made after notice of the dissolution of the copartnership, shall have any force or effect to bind any member of the firm, or continue his liability to pay said copartnership debt, other than the person by whom such acknowledgement, payment or part payment or renewal shall be made, or in any wise affect their right to plead the Statute of Limitation or the presumption of payment from lapse of time.

Payments by one of the joint contractors do not bind the others and deprive them of the protection herein provided.—Smith v. Townsend, 9 Rich., 44; Smith v. Caldwell, 15 Rich., 374; Shubrick v. Adams, 20 S. C., 49; Walter v. Kraft, 23 S. C., 578.

How suits shall be brought on causes which are saved from bar of statute by part payment, &c.

1900, XXIII., 345.

Sec. 131b. All actions upon causes of action which would be barred by the Statute of Limitations but for part payment or a written acknowledgement, shall be brought on the original cause of action, and the part payment or written acknowledgement shall be evidence, to prevent the bar of the Statute of Limitations.

Prior to this Act, if payments had been made by debtor, the action, after expiration of six years, must have been on new promise implied from payment, and not on note.—Fleming v. Fleming, 33 S. C., 505; 12 S. E., 257.

Does not apply to judgment obtained before adoption of Code, under Sec. 93.—Colvin v. Phillips, 25 S. C., 228.

TITLE III.

PARTIES TO CIVIL ACTIONS.

SEC.
132. Party in interest to sue. Action by grantee of land held adversely.
133. Assignment of thing in action.
134. Actions by executor, trustee, &c.
135. Actions by and against married women.
136. Infants, action by and against.
137. Guardian, how appointed.
138. Who may be plaintiffs.
139. Who may be defendants.
140. One or more may sue or defend for all.
141. One action against the different parties to bills and notes.
142. Action, when not to abate.
143. Court to decide controversy, &c. Inter-pleading.

Party in interest to sue. Action by grantee of land held adversely.

1870, XIV., § 134.

Section 132. Every action must be prosecuted in the name of the real party in interest, except as otherwise provided in Section 134; but this Section shall not be deemed to authorize the

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assignment of a thing in action not arising out of contract. But an action may be maintained by a grantee of land in the name of the grantor, or his or her heirs or legal representatives, when the grant or grants are void by reason of the actual possession of a person claiming under a title adverse to that of the grantor at the time of the delivery of the grant, and the plaintiff shall be allowed to prove the facts to bring the case within this provision.

This Section does no more than express a long established principle, that all parties at interest should be made parties.—Cathcart v. Sugenheimer, 18 S. C., 123.

Only the real party in interest can sue.—Sullivan v. Hellams, 6 S. C., 184.

A County, as real party in interest, may sue on official bond of County Treasurer.—Greenville Co. v. Runion, 9 S. C., 1.

Distributees may sue in their own names upon the bond of administrator of their intestate.—Kaminer v. Hope, 9 S. C., 253, or they may join as co-plaintiffs with the Probate Judge.—McCorkle v. Williams, 20 S. E., 744; 43 S. C., 60.

Action may be brought in name of State alone on official bond of Clerk.—State v. Moses, 18 S. C., 366.

A mortgage given to City Council of Charleston to secure certain bonds issued by them to mortgagor is properly sued in name of City Council.—City Council v. Caulfield, 19 S. C., 201.

Probate Judge, as successor of the Ordinary, cannot, as real party in interest, sue on administration bond given to his predecessor.—Johnson v. Dawkins, 20 S. C., 528.

This prevents prosecution of an action by plaintiff after the extinguishment of his interest.—Matthews v. Cantey, 26 S. E., 894; 48 S. C., 588.

Action at law to recover property of lunatic or damages for its detention must be brought in name of lunatic by his committee.—Cathcart v. Sugenheimer, 18 S. C., 123.

A s signment of thing in action.

Ib., § 135.

Sec. 133. In the case of an assignment of a thing in action, the action by the assignee shall be without prejudice to any set-off or other defence existing at the time of, or before notice of, the assignment; but this Section shall not apply to a negotiable promissory note or bill of exchange, transferred in good faith, and upon good consideration, before due.

In action by assignee of sealed note against maker, defendant may set up debt due him by assignor before notice of assignment as equitable defense, though pleaded by counter-claim, without demand for judgment thereon.—Sullivan v. Blythe, 14 S. C., 621.

So assignee of share of distributee, who is surety on administration bond, takes subject to his liability on such bond.—Bobo v. Vaiden, 20 S. C., 271. And assignee of bond and mortgage takes subject to credits that should go on them.—Moffett v. Hardin, 22 S. C., 9.

The assignee of mortgage takes subject to equities.—Patterson v. Rabb, 38 S. C., 148; 17 S. E., 462. So assignee of insurance policy.—Westbury v. Simmons, 57 S. C., 467; 35 S. E., 765. The burden of proof to show cause of counter-claim or defense accrued since the assignment is on the plaintiff assignee.—Bank v. Gadsden, 56 S. C., 313; 33 S. E., 75.

This Section does not apply where party moves to set off judgment against him by a judgment he holds against the other party, when the judgment against him has been assigned by the other party for value.—Simmons v. Reid, 31 S. C., 389; 9 S. E., 1058.

This Section does not affect rights.—Hodgman v. Western R. Co., 7 How. Pr., 492.

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Actions by executor, trustee, &c.

Ib., § 136.

Sec. 134. An executor or administrator, a trustee of an express trust, or a person expressly authorized by Statute, may sue, without joining with him the person for whose benefit the action is prosecuted. A trustee of an express trust, within the meaning of this Section, shall be construed to include a person with whom, or in whose name, a contract is made for the benefit of another.

Commissioner in Equity could sue in his own name on bond given to him for benefit of others, although it had been turned over to the Clerk, his successor.—Billings v. Williamson, 6 S. C., 119.

Administrator may sue in his own name on note payable to him as such, though it had been transferred, and suit is for benefit of assignee.—Carroll v. Still, 13 S. C., 430, and any time before final discharge.—Hill v. Hill, 51 S. C., 134; 28 S. E., 309.

Clerk of Court is proper party to sue on bond given to former Commissioner in Equity in his County.—Daniels v. Moses, 12 S. C., 130; Clark v. Smith, 13 S. C., 585.

Succeeding committee may bring action against executors of deceased committee for an account, without joining the lunatic as a party.—Ashley v. Holman, 15 S. C., 97.

Where equitable relief as to estate of lunatics is sought, it seems that the committee may sue alone.—Cathcart v. Sugenheimer, 18 S. C., 123. But he cannot sue in action at law.—Griffin v. Griffin, 20 S. C., 486.

Superintendent of Penitentiary may sue in his own name for amounts due State by hirer of convicts for their escape.—Lipscomb v. Seegers, 19 S. C., 425.

Probate Judge, as successor of Ordinary, may sue in his own name upon administration bond given to his predecessor.—Johnson v. Dawkins, 20 S. C., 528. See also McCorkle v. Williams, 20 S. E., 744; 43 S. C., 66. Guardian may sue without joining ward.—54 S. C., 223; 32 S. E., 313. Stranger to trust may sue trustee without joining beneficiaries.—Price v. Krasnoff, 60 S. C., 172; 38 S. E., 416.

Actions by and against married women.

Ib., § 137.

Sec. 135. When a married woman is a party, her husband must be joined with her, except that—

1. When the action concerns her separate property, she may sue or be sued alone: *Provided,* That neither her husband nor his property shall be liable for any recovery against her in any such suit; but judgment may be enforced by execution against her sole and separate estate in the same manner as if she were sole.

2. When the action is between herself and her husband, she may sue or be sued alone; and in no case need she prosecute or defend by a guardian or next friend.

Where wife is sued upon contract other than for necessary support, the husband is a formal and not a substantial party.—Ross v. Linder, 12 S. C., 592.

Where an action againt a married woman does not concern her separate property, her husband is a necessary party; where it does, he is only a proper party.—Lowry v. Jackson, 27 S. C., 318; 3 S. E., 473.

But where the action does concern her separate property and the husband has a vested right in it, then he is a necessary party.—Bannister v. Bull, 16 S. C., 220.

Infants, actions by and against.

Ib., § 138; 1879, XVII., 32; 1898, XXII, 688.

Sec. 136. When an infant is a party, he must appear by guardian, who may be appointed by the Court in which the action is prosecuted, or by a Judge thereof, or a Judge of Pro-

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bate, Clerk of Court, or by a Master in those Counties where the office of Master now or may hereafter exist.

Probate Judge may appoint guardian *ad litem* for infants parties to actions in the Court of Common Pleas.—Trapier v. Waldo, 16 S. C., 276; Lyles v. Haskell, 35 S. C., 391.

Guardian, how appointed.

1870, XIV., § 139.

Sec. 137. The guardian shall be appointed as follows:

1. When the infant is plaintiff, upon the application of the infant, if he be of the age of fourteen years; or, if under that age, upon the application of his general or testamentary guardian, if he has any, or of a relative or friend of the infant; if made by a relative or friend of an infant, notice thereof must first be given to such guardian, if he has one; if he has none, then to the person with whom such infant resides.

Ib.

2. When the infant is defendant, upon the application of the infant, if he be of the age of fourteen years, and apply within twenty days after the service of the summons. If he be under the age of fourteen, or neglect so to apply, then upon the application of any other party to the action, or of a relative or friend of the infant, after notice of such application being first given to the general or testamentary guardian of such infant, if he has one within this State; if he has none, then to the infant himself, if over fourteen years of age, and within the State; or, if under that age, and within the State, to the person with whom such infant resides. And in an action for the partition of real property, or for the foreclosure of a mortgage or other instrument, when an infant defendant resides out of the State, or is temporarily absent therefrom, the plaintiff may apply to the Court in which the action is pending, or to a Judge, Clerk, or Master thereof, and will be entitled to an order designating some suitable person to be the guardian of the infant defendant, for the purposes of the action, unless the infant defendant, or some one in his behalf, within a number of days after the service of a copy of the order, which number of days shall be in the said order specified, shall procure to be appointed a guardian for the said infant; and the Court or officer appointing shall give special directions in the order for the manner of the service thereof, which may be upon the infant.

And in case an infant defendant, having an interest in the event of the action, shall reside in any State with which there shall not be a regular communication by mail, on such fact satisfactorily appearing to the Court, the Court may appoint a guardian *ad litem* for such absent infant party, for the purpose of protecting the right of such infant in said action, and on

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such guardian *ad litem*, process, pleadings, and notices in the action may be served in the like manner as upon a party residing in this State.

What is sufficient notice of application for appointment of guardian *ad litem*.—Lyles v. Haskell, 35 S. C., 391; 14 S. E., 829.

No jurisdiction of the persons of infants can be obtained except by exact compliance with the requirements of this Section.—Finley v. Robertson, 17 S. C., 435; Riker v. Vaughn, 23 S. C., 187; Tederall v. Bouknight, 25 S. C., 275.

Jurisdiction of a minor under fourteen is obtained by service on her of summons and complaint, and acceptance by her father, who is her general guardian, of service of the summons and complaint, and notice of appointment of guardian *ad litem*, although she resides with another, and appointment of guardian *ad litem* upon petition of her father.—Barrett v. Moise, 61 S. C., 569; 39 S. E., 755. Irregularity in service and appointment of guardian *ad litem* for infant may be cured by subsequent proceedings.—Easterby v. McIntosh, 51 S. C., 397; 29 S. E., 87.

Who may be plaintiffs.

1870, XIV., § 140.

Sec. 138. All persons having an interest in the subject of the action, and in obtaining the relief demanded, may be joined as plaintiffs, except as otherwise provided in this Title.

The joinder here is permissive.—Bliss Code Pleading, 61; Roberts v. Johns, 10 S. C., 101; Hellams v. Switzer, 24 S. C., 39; Stallings v. Barrett, 26 S. C., 474; 2 S. E., 483; McCorkle v. Williams, 43 S. C., 66; 20 S. E., 744.

Who may be defendants.

1870, XIV., § 141.

Sec. 139. Any person may be made a defendant who has or claims an interest in the controversy adverse to the plaintiff, or who is a necessary party to a complete determination or settlement of the questions involved therein; and in an action to recover the possession of real estate, the landlord and tenant thereof may be joined as defendants; and any person claiming title or a right of possession to real estate may be made parties plaintiff or defendant, as the case may require, to any such actions.

A joint action upon a joint and several bond, by two obligors, may be brought against the survivor of them and the executor of the deceased one.—Trimmier v. Thompson, 10 S. C., 164; Susong v. Vaiden, *Ib.*, 247; Weisenfield v. Byrd, 17 S. C., 106.

In action for tort, one cause of action against two defendants cannot be joined with a cause of action against one of them.—Hines v. Jarrett, 26 S. C., 480; 2 S. E., 393.

In actions for foreclosure, a party in possession, claiming title to land, was properly made a party defendant.—Sale v. Meggett, 25 S. C., 72.

Personal representatives and grantees of a decedent are proper parties to action to marshall his assets and set aside conveyances as fraudulent.—Sheppard v. Green, 48 S. C., 165; 26 S. E., 224.

One or more may sue or defend for all.

Ib., § 142.

Sec. 140. Of the parties to the action, those who are united in interest must be joined as plaintiffs or defendants; but if the consent of any one who should have been joined as plaintiff cannot be obtained, he may be made a defendant, the reason thereof being stated in the complaint; and when the question is one of a common or general interest of many persons, or when the parties are very numerous and it may be impracticable to bring them all before the Court, one or more may sue or defend for the benefit of the whole.

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Action by a few members on behalf of an unincorporated association.—Stemmerman v. Lilienthal, 54 S. C., 440; 33 S. E., 535.

This provision applies to legal as well as equitable actions; but does not abolish entirely the common law requirements in legal actions for torts.—Hellams v. Switzer, 24 S. C., 39; Hines v. Jarrett, 26 S. C., 430; 2 S. E., 393.

Two tenants in common can join in action to recover possession of their shares in land from a stranger without making other co-tenants parties.—Bannister v. Bull, 16 S. C., 220.

An action by single creditor against receiver and stockholders of an insolvent bank for his debt is defective for want of parties; it should be brought by plaintiff on behalf of himself and other creditors.—Terry v. Calnan, 4 S. C., 514. And it should be against all the stockholders, and not one alone.—Terry v. Martin, 10 S. C., 263.

One who asserts distinct claim, peculiar to himself, cannot join other creditors or claimants with him.—Warren v. Raymond, 17 S. C., 163.

Where plaintiffs sue for benefit of whole class the judgment is binding and conclusive upon all parties of the class who stand out.—State v. C. & L. R. R. Co., 13 S. C., 290.

It is only where one or more may sue or defend for the benefit of the whole class that counsel fee can be allowed out of the common fund.—Wilson v. Kelly, 30 S. C., 483; 9 S. E., 523.

One action against the different parties to bills and notes.

Ib., § 143.

Sec. 141. Persons severally liable upon the same obligation or instrument, including the parties to bills of exchange and promissory notes, may all, or any of them, be included in the same action, at the option of the plaintiff.

Trimmier v. Thompson, 10 S. C., 164; Susong v. Vaiden, *Ib.*, 247; Weissenfield v. Byrd, 17 S. C., 106.

Action, when not to abate.

Ib., § 144.

Sec. 142. No action shall abate by the death, marriage, or other disability of a party, or by the transfer of any interest therein, if the cause of action survive or continue. In case of death, marriage, or other disability or party, the Court, on motion, at any time within one year thereafter, or afterwards, on a supplemental complaint, may allow the action to be continued by or against his representative or successor in interest. In case of any other transfer of interest, the action shall be continued in the name of the original party, or the Court may allow the person to whom the transfer is made to be substituted in the action.

After a verdict shall be rendered in any action for a wrong, such action shall not abate by the death of any party, but the case shall proceed thereafter in the same manner as in cases where the cause of action now survives by law.

At any time after the death, marriage or other disability of the party plaintiff, the Court in which action is pending, upon notice to such person as it may direct, and upon application of any person aggrieved, may, in its discretion, order that the action be deemed abated, unless the same be continued by the proper parties, within a time to be fixed by the Court, not less than six months nor exceeding one year from the granting of the order.

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Does not authorize continuance of action in name of the pledgee of notes, as securities, after the extinguishment of his interest.—Matthews v. Cantey, 48 S. C., 588; 26 S. E., 894.

Proceedings by rule to show cause why the action should not be continued against the new parties in interest; practice thereon.—Dunham v. Carson, 42 S. C., 388; 20 S. E., 197; DeLoach v. Sarratt, 55 S. C., 254; 33 S. E., 2; Pickett v. Fidelity and Casualty Co., 60 S. C., 477; 38 S. E., 160; Shull v. Bradford, 59 S. C., 573; 37 S. E., 30; Shull v. Caughman, 54 S. C., 203; 32 S. E., 301; Quick v. Campbell, 44 S. C., 386; 22 S. E., 479.

Action for rents and profits continued against executrix of person in possession of land.—Rabb v. Patterson, 42 S. C., 528; 20 S. E., 540.

An agreement to arbitrate, which does not name nor provide number and appointment of the arbitrators, does not discontinue action after death of plaintiff, revived by administratrix.—Lynch v. Goodwin, 6 S. C., 144.

This Section does not determine what actions so survive, but the common law rule still governs; and an action *ex delicto* does not survive.—Huff v. Watkins, 20 S. C., 477.

No leave is necessary to file such supplemental complaint.—Parnell v. Maner, 16 S. C., 348; Arthur v. Allen, 22 S. C., 432. And this right to so revive is not limited in point of time.—Best v. Sanders, 22 S. C., 589.

Where action is so continued by order, with notice to appear and answer, it is not requisite that there be a summons also.—Lyles v. Haskell, 35 S. C., 391; 14 S. E., 829. But where continued by supplemental complaint, summons is necessary.—Arthur v. Allen, 22 S. C., 432.

Court to decide controversy, &c. Interpleading.

Ib., § 145.

Sec. 143. The Court may determine any controversy between the parties before it, when it can be done without prejudice to the rights of others, or by saving their rights; but when a complete determination of the controversy cannot be had without the presence of other parties, the Court must cause them to be brought in. And when, in an action for the recovery of real or personal property, a person not a party to the action, but having an interest in the subject thereof, makes application to the Court to be made a party, it may order him to be brought in by the proper amendment.

A defendant against whom an action is pending upon a contract, or for specific, real, or personal property, may, at any time before answer, upon affidavit that a person not a party to the action, and without collusion by him, makes against him a demand for the same debt or property, upon due notice to such person and the adverse party, apply to the Court for an order to substitute such person in his place, and discharge him from liability to either party, on his depositing in Court the amount of the debt, or delivering the property, or its value, to such person as the Court may direct; and the Court may, in its discretion make the order.

Where plaintiff thinks a third person is a necessary party to the complete determination of the action, he should take proper steps to have him made defendant.—Eakin v. Knox, 6 S. C., 14.

In action by single creditor against receiver of insolvent corporation and number of individual stockholders, all creditors are necessary parties and should be brought in.—Terry v. Calnan, 4 S. C., 508.

As to substituting defendant.—Patterson v. Pagan, 18 S. C., 584.

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Where land is sold under execution after actions commenced to foreclose mortgages on it and notices of *lis pendens* filed, the purchaser at such sale may intervene by petition as a proper party, charging the mortgages to be fraudulent.—Ex Parte Mobley, 19 S. C., 337.

The provision for interpleader applies only where the claimant is not a party to the action.—Brock v. So. Ry. Co., 44 S. C., 444; 22 S. E., 602.

TITLE IV.

OF THE PLACE OF TRIAL OF CIVIL ACTIONS.

SEC.
144. Actions to be tried where subject-matter situated.
145. Actions to be tried where cause of action arose.

SEC.
146. Actions to be tried where the defendants reside.
147. Changing place of trial.

The regulations of this Title are intended solely for the benefit of the parties to the action, and parties outside have no rights in the matter.—Trapier v. Waldo, 16 S. C., 276.

Actions to be tried where subject-matter situated.

1870, XIV., § 146; 1887, XIX, 835; 1894, XXI., 793.

Section 144. Actions for the following causes must be tried in the County in which the subject of the action, or some part thereof, is situated, subject to the power of the Court to change the place of trial, in the cases as hereinafter provided:

1. For the recovery of real property, or of an estate or interest therein, or for the determination in any form of such right or interest, and for injuries to real property.

2. For the partition of real property.

3. For the foreclosure of a mortgage of real property.

4. For the recovery of personal property distrained for any cause: *Provided,* That nothing in this Section contained shall be so construed as to prevent the hearing of any of the said actions by consent of the parties or their attorneys, and of the guardian *ad litem* of any infant party to said action, in a County other than that in which said action may have been brought and may be pending, or other than that in which the property is situated.

The words "must be tried" are imperative and cannot be disregarded. Judgment in any other County is a nullity.—Trapier v. Waldo, 16 S. C., 276; Steele v. Exum, 22 S. C., 276; Bacot v. Lowndes, 24 S. C., 392; Ware v. Henderson, 25 S. C., 385.

This Section does not embrace an action by creditors of estate for account and marshaling of assets in County where executor resides.—Jordon v. Moses, 10 S. C., 431.

In such action in one County, a part of the lands lying in that County and a tract in another County, the title to that tract may be tried in County where action is brought.—Barret v. Watts, 13 S. C., 441. But where the land devised has been transferred by devisees, and such action seeks first to set aside the deeds, it comes within this Section and must be tried in County where land is situate.—Bacot v. Lowndes, 24 S. C., 392. Where action is against one defendant residing in County of F and another defendant residing in another County, and to fore-

close their mortgage on their respective lands situate in both Counties, the Court in County F has jurisdiction.—Wagener v. Swygert, 30 S. C., 296; 9 S. E., 107.

Action against trustee for an accounting for value of real estate bought with trust funds in her own name, is not embraced in actions under subdivision 1.—Bell v. Flood, 28 S. C., 313; 5 S. E., 510.

Circuit Judge has power at chambers to hear an action for partition, while in the County in which land is situate.—Woodward v. Elliott, 27 S. C., 368; 3 S. E., 477.

Sec. 2736 of the Civil Code prior to amendment of 1899 construed in connection with this.—Woodward v. Elliott, 27 S. C., 368; 3 S. E., 477; Kaminsky v. Trantham, 45 S. C., 8; 22 S. E., 746.

This Section governs in action *quare clausum fregit*.—Henderson v. Bennett, 58 S. C., 30; 36 S. E., 2.

Actions to be tried where cause of action arose.

1870, XIV., 423, § 147.

Sec. 145. Actions for the following causes must be tried in the County where the cause, or some part thereof, arose, subject to the like power of the Court to change the place of trial:

1. For the recovery of a penalty or forfeiture imposed by Statute, except that, when it is imposed for an offence committed on a lake, river, or other stream of water, situated in two or more Counties, the action may be brought in any County bordering on such lake, river, or stream, and opposite to the place where the offence was committed.

2. Against a public officer, or person specially appointed to execute his duties, for an act done by him in virtue of his office, or against a person who, by his command or in his aid shall do anything touching the duties of such officer.

The words "must be tried" are imperative.—Judgment in any other County is a nullity.—Trapier v. Waldo, 16 S. C., 276; Steele v. Exum, 22 S. C., 276; Bacot v. Lowndes, 24 S. C., 392; Ware v. Henderson, 25 S. C., 385.

Applies to proceedings in mandamus.—State *ex parte* LaMotte v. Smith, 50 S. C., 558; 27 S. E., 933.

Actions to be tried in the County where defendant resides.

1870, XIV., § 148; 1875, XV., 913; 1898, XXII., 687.

Sec. 146. In all other cases the action shall be tried in the County in which the defendant resides at the time of the commencement of the action; and if there be more than one defendant, then the action may be tried in any County in which one or more of the defendants to such action resides at the time of the commencement of the action; or if none of the parties shall reside in the State, the same may be tried in any County which the plaintiff shall designate in his complaint, subject, however, to the power of the Court to change the place of trial in the cases as provided by law: *Provided,* That any administrator or administratrix, heretofore or hereafter appointed by any Probate Court of this State, may be sued in the County where such administration has or shall be granted; any executor or executrix may likewise be sued in the County where the testator's will is proved or admitted to probate; and any guardian may likewise be sued in the County in which the letters of guardianship may be issued.

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The language as to trial of action in County where defendant resides is imperative, and places the exclusive jurisdiction there.—Blakely v. Frazier, 11 S. C., 122; Trapier v. Waldo, 16 S. C., 276; Steele v. Exum, 22 S. C., 276; Bacot v. Lowndes, 24 S. C., 392; Ware v. Henderson, 25 S. C., 385; Bell v. Fludd, 28 S. C., 313; 5 S. E., 810. If judgment be rendered in another County, the objection to jurisdiction may be first raised in Supreme Court.—Ware v. Henderson, 25 S. C., 385; Bell v. Fludd, 28 S. C., 313; 5 S. E., 810.

The action against more than one defendant may be tried in County where one resides.—Wagener v. Swygert, 30 S. C., 296; 9 S. E., 107.

Where none of parties to action reside in State, the County designated in complaint is proper County for trial.—Steele v. Exum, 22 S. C., 276.

Applies to confessions of judgment.—*Ex Parte* Ware Furniture Co., 49 S. C., 20; 27 S. E., 9.

Actions against railroads must be tried in a County through which their road runs.—Tobin v. R. R. Co., 47 S. C., 387; 25 S. E., 283.

Changing place of trial.

1870, XIV., § 149; 1879, XVII., 14.

Sec. 147. The Court may change the place of trial in the following cases:

1. When the County designated for that purpose in the complaint is not the proper County.

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

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

When the place of trial is changed, all other proceedings shall be had in the County to which the place of trial is changed, unless otherwise provided by the consent of the parties, in writing, duly filed, or order of the Court; and the papers shall be filed or transferred accordingly.

This Section controls the preceding Section of this Title, so far as applicable.—Steele v. Exum, 22 S. C., 276. And under it the Court has jurisdiction to order place of trial to be changed to proper County.—*Ib.;* Bell v. Fludd, 28 S. C., 313; Geiser Co. v. Sanders, 26 S. C., 70. And it is its imperative duty to do so.—Blakely v. Frazier, 11 S. C., 122. But Court in wrong County has no jurisdiction to try case on merits, even when no demand is made for change to proper County.—Ware v. Henderson, 25 S. C., 385.

The order of Circuit Judge refusing to change place of trial on grounds stated in subdivision 3 is final and conclusive.—Gower v. Thomson, 6 S. C., 313.

Subdivision 3 constitutional.—Utsey v. R. R. Co., 38 S. C., 399; 17 S. E., 141.

This Section must be construed in connection with Section 2735 of the Civil Code and the ten days' notice of motion there required given.—Willoughby v. N. E. R. R. Co., 46 S. C., 317; 24 S. E., 308. The power to grant change is discretionary.—McFail v. Barnwell Co., 54 S. C., 368; 32 S. E., 417; McCown v. N. E. R. R. Co., 55 S. C., 384; 33 S. E., 506, and other cases cited under note to Civil Code, Sec. 2735.

TITLE V.

MANNER OF COMMENCING CIVIL ACTIONS.

SEC.
148. Actions, how commenced.
149. Summons, requisites of.
150. Notice to be inserted in summons.
151. Complaint need not be served with summons.
152. Defendant unreasonably defending.
153. Notice of *lis pendens*.
154. Summons, by whom served, fees for service.

SEC.
155. Summons, how served.
156. Publication of summons.
157. Proceedings when part only of defendants served—partners.
158. When service by publication complete.
159. Proof of service.
160. When jurisdiction of action acquired.

Section 148. Civil actions in the Courts of record of this State shall be commenced by service of a summons.

Actions, how commenced.

Ib., § 150.

Actual service necessary to show knowledge or notice of action.—Norris v. Ins. Co., 55 S. C., 450; 33 S. E., 566; cited in Tillinghast v. Boston Lumber Co., 39 S. C., 492; 18 S. E., 120.

Member of Congress not exempt from service of summons in civil action.—Worth v. Norton, 56 S. C., 56; 33 S. E., 792.

Sec. 149. The summons shall be subscribed by the plaintiff or his attorney, and directed to the defendant, and shall require him to answer the complaint, and serve a copy of his answer on the person whose name is subscribed to the summons, at a place within the State, to be therein specified, in which there is a postoffice, within twenty days after the service of the summons, exclusive of the day of service.

Summons, requisites of.

1870, XIV., § 151.

Form of summons.—Bell v. Pruitt, 51 S. C., 344; 29 S. E., 5.

The date is not one of the requisites of a summons.—Smith v. Walker, 6 S. C., 169.

In action against a corporation, judgment by default will not be set aside because the summons, properly entitled, was served upon the President and General Agent, and notified "judgment will be taken against you" upon failure to answer.—Clark v. Porcelain Co., 8 S. C., 45.

Sufficiency of summons cannot be considered on appeal in the absence of exceptions thereto.—Beattie v. Latimer, 42 S. C., 313; 20 S. E., 53.

Sec. 150. The plaintiff shall also insert in the summons a notice, in substance: That if the defendant shall fail to answer the complaint within twenty days after the service of the summons, the plaintiff will apply to the Court for the relief demanded in the complaint.

Notice to be inserted in summons.

Ib., § 152.

Sec. 151. A copy of the complaint need not be served with the summons. In such case, the summons must state where the complaint is or will be filed; and if the defendant, within twenty days thereafter, causes notice of appearance to be given, and, in person or by attorney, demands, in writing, a copy of

Complaint need not be served with summons.

Ib., § 153.

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the complaint, specifying the place within the State where it may be served, a copy thereof must, within twenty days thereafter, be served accordingly; and, after such service, the defendant has twenty days to answer; but only one copy need be served on the same attorney.

Defendant unreasonably defending.

Ib., § 154.

Sec. 152. In the case of a defendant against whom no personal claim is made, the plaintiff may deliver to such defendant, with the summons, a notice subscribed by the plaintiff or his attorney, setting forth the general object of the action, a brief description of the property affected by it, if it affects specific real or personal property, and that no personal claim is made against such defendant, in which case no copy of the complaint need be served on such defendant, unless, within the time for answering, he shall, in writing, demand the same. If a defendant, on whom such notice is served, unreasonably defend the action, he shall pay costs to the plaintiff.

Defendant answering after such notice must be regarded as a volunteer.—Wylie v. Lyle, 7 S. C., 206.

Notice of *lis pendens.*

Ib., § 155.

Sec. 153. In an action affecting the title to real property, the plaintiff, at the time of filing the complaint, or at any time afterwards, or whenever a warrant of attachment, under Chapter 4 of Title 7, Part 2, of this Code of Procedure, shall be issued, or at any time afterwards, the plaintiff, or a defendant, when he sets up an affirmative cause of action in his answer, and demands substantive relief, at the time of filing his answer, or at any time afterwards, if the same be intended to affect real estate, may file with the Clerk of each County in which the property is situated, a notice of the pendency of the action, containing the names of the parties, the object of the action, and the description of the property in that County affected thereby; and if the action be for the foreclosure of a mortgage, such notice must be filed twenty days before judgment, and must contain the date of the mortgage, the parties thereto, and the time and place of recording the same. From the time of filing only, shall the pendency of the action be constructive notice to a purchaser or encumbrancer of the property affected thereby; and every person whose conveyance or encumbrance is subsequently executed or subsequently recorded shall be deemed a subsequent purchaser or encumbrancer, and shall be bound by all proceedings taken after the filing of such notice to the same extent as if he were made a party to the action. For the purposes of this Section, an action shall be

deemed to be pending from the time of filing such notice: *Provided, however,* That such notice shall be of no avail, unless it shall be followed by the first publication of the summons, or an order therefor, or by the personal service thereof on a defendant within sixty days after such filing. And the Court in which the said action was commenced may, in its discretion, at any time after the action shall be settled, discontinued, or abated, as is provided in Section 142, on application of any person aggrieved, and on good cause shown, and on such notice as shall be directed or approved by the Court, order the notice authorized by this Section to be cancelled of record by the Clerk of any County in whose office the same may have been filed or recorded; and such cancellation shall be made by an endorsement to that effect on the margin of the record, which shall refer to the order, and for which the Clerk shall be entitled to a fee of twenty-five cents.

Sale of land under execution levied, before *lis pendens* was filed in action to foreclose mortgage on it, gave good title to purchaser; and he had right as a proper party, by petition in the action, to contest the mortgage.—*Ex Parte* Mobley, 19 S. C., 337.

Filing *lis pendens* has no effect except in the cases here specifically provided for.—Armstrong v. Carwile, 56 S. C., 544; 35 S. E., 196.

Summons, by whom served; fees for service.

1870, XIV., § 156; 1874, XV., 640.

Sec. 154. The summons may be served by the Sheriff of the County where the defendant may be found, or by any other person not a party to the action. The service shall be made, and the summons returned, with proof of the service, to the person whose name is subscribed thereto, with all reasonable diligence. The person subscribing the summons may, at his option, by an endorsement on the summons, fix a time for the service thereof, and the service shall then be made accordingly: *Provided,* That no costs shall be taxed to any person for the service of any summons, complaint, answer, demurrer, subpœna, or other legal process issuing out of the Courts of Common Pleas and Courts of Probate, not made by the Sheriff of the County where such process is served, or his legally constituted deputies.

Smith v. Walker, 6 S. C., 169; Cureton v. Dargan, 12 S. C., 122. Gives jurisdiction of non resident served within the State, though he has no property here.—Ford v. Calhoun, 53 S. C., 106; 30 S. E., 831.

Summons, how served.

1870, XIV., § 157.

Sec. 155. The summons shall be served by delivering a copy thereof as follows:

1. If the suit be against a corporation, to the President or other head of the corporation, Secretary, Cashier, Treasurer, a Director or agent thereof. Service upon any person occu-

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Ib., 1883, XVIII., 437; 1887, XIX., 835; 1899, XXIII., 42.

pying an office or room in any railway station, and attending to and transacting therein any business of any railroad, shall be deemed service upon the corporation under the charter of which such railroad is authorized by law; and such person shall be deemed the agent of said corporation notwithstanding he may claim to be the agent of any other person or corporation claiming to operate said railroad by virtue of any lease, contract or agreement.

Foreign corporation may appear solely to test service upon a party "as resident agent thereof" and have service set aside.—Hester v. Rasin Fert. Co., 33 S. C., 609; 12 S. E., 563. It may waive service and submit itself to jurisdiction of Court by appearing generally and answering on the merits.—Chafee v. Postal Tel. Co., 35 S. C., 372; 14 S. E., 764. Service may be made on traveling salesman of foreign corporation temporarily in the State as its agent.—Abbeville, &c., Co. v. Western Electrical Supply Co., 61 S. C., 361; 39 S. E., 559. Prior to amendment service could only be made on a resident agent, and might be made on such agent without attachment.—Pollock v. B. & L. Ass'n., 48 S. C., 65; 25 S. E., 977. In order that jurisdiction be acquired the corporation must have either property or agent in the State.—Tillinghast v. Lumber Co., 37 S. C., 491; 17 S. E., 31; 38 S. C., 819; 18 S. E., 120. But service cannot be made on an officer who is the plaintiff, or attorney in fact for the plaintiff, in the action. The appointment of a foreign receiver for the corporation cannot affect the service or the agent of the corporation here.—Pollock v. B. & L. Ass'n., *supra.*

Such service can be made in respect to a foreign corporation only when it has property within the State, or the cause of action arose therein, or where such service shall be made in this State personally upon the President, Cashier, Treasurer, Attorney or Secretary, or any agent thereof.

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

These requirements are positive, and the jurisdiction of an infant can only be obtained by pursuing this mode of service prescribed.—Finley v. Robertson, 17 S. C., 435; Genobles v. West, 23 S. C., 154; Riker v. Vaughan, 23 S. C., 187; Whitesides v. Barber, 24 S. C., 373; Tederall v. Bouknight, 25 S. C., 275; Faust v. Faust, 31 S. C., 576; 10 S. E., 262. Service, without appointment of guardian *ad litem,* held sufficient to give jurisdiction of infant.—Robertson v. Blair, 56 S. C., 96; 34 S. E., 11. Sufficiency of recitals in record as to service on infant.—Allen v. Allen, 48 S. C., 566; 26 S. E., 786. Where parent is a party, and thus has knowledge of the action, service need not be made on him as well as his child under fourteen, in order to give jurisdiction over the latter.—Kennedy v. Williams, 59 S. C., 378; 38 S. E., 8. As to service on infants, see also Barrett v. Moise, 61 S. C., 569; 39 S. E., 755. Guardian as plaintiff in action having adverse interests to those of his ward cannot accept service for the latter as a defendant.—Morgan v. Morgan, 45 S. C., 323; 23 S. E., 64.

3. If against a person judicially declared to be of unsound mind, or incapable of conducting his own affairs in consequence of habitual drunkenness, and for whom a committee

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or guardian has been appointed, to such committee or guardian, and to the defendant personally.

4. In all other cases to the defendant personally, or to any person of discretion residing at the residence or employed at the place of business of said defendant.

1873, XV., 497; 1882, XVIII., 256; 1892, XXI., 104.

This subdivision 4 applies only to service within this State.—Armstrong v. Brant, 44 S. C., 177; 21 S. E., 634.

Publication of summons.

1870, XIV., § 158; 1876, XVI, 190; 1901, XXIII., 635.

Sec. 156. Where the person on whom the service of the summons is to be made cannot, after due diligence, be found within the State, and that fact appears by affidavit to the satisfaction of the Court, or a Judge thereof, the Clerk of the Court of Common Pleas, Master, or the Probate Judge of the County where the trial is to be had, and it in like manner appears that a cause of action exists against the defendant in respect to whom the service is to be made, or that he is a proper party to an action relating to real property in this State, such Court, Judge, Clerk, Master, or Judge of Probate, may grant an order that the service be made by publication of the summons in either of the following cases: 1. Where the defendant is a foreign corporation, has property within the State, or the cause of action arose therein. 2. Where the defendant, being a resident of this State, has departed therefrom, with intent to defraud his creditors, or to avoid the service of a summons, or keep himself concealed therein with like intent. 3. Where he is not resident of this State, but has property therein, and the Court has jurisdiction of the subject of the action. 4. Where the subject of the action is real or personal property in this State and the defendant has or claims a lien or interest actual or contingent therein or the relief demanded consists wholly or partly in excluding the defendant from any interest or lien therein. The order shall direct the publication to be made in one newspaper, to be designated by the officer before whom the application is made, as most likely to give notice to the person to be served, and for such length of time as may be deemed reasonable, not less than once a week for six weeks. In case of publication the Court, Judge, Clerk, Master or Judge of Probate shall also direct a copy of the summons to be forthwith deposited in the postoffice, directed to the person to be served at his place of residence, unless it appears that such residence is neither known to the party making the application nor can with reasonable diligence be ascertained by him: When publication is ordered, personal service of the summons out of the

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State is equivalent to publication and deposit in the postoffice. And such personal service so made and likewise in Magistrates Courts shall be complete and final on the day of the date of the personal service of the summons as fully as if such personal service had been made under the provisions of Section 155 of the Code of Civil Procedure. In case of minors in like cases a similar order shall be made and like proceedings be had as in case of adults.

In case of persons imprisoned in the Penitentiary, or in the jail of any County in this State, and in case of lunatics confined in the State Hospital for the Insane, or in any other place of confinement, personal service of the summons and complaint or other process affecting the rights of such persons shall be made by the Sheriff of the County in which such persons shall be imprisoned or confined, with the like proof of service as required in case of minors; and thereupon the Judge of the Court or Magistrate before whom the action is to be tried shall appoint some attorney or other competent person to act as guardian *ad litem* for any person so imprisoned or confined, who shall receive out of the property of such persons a reasonable compensation for services rendered in their behalf; and the case shall proceed as in other cases of persons not under disabilities: *Provided,* That in cases of persons imprisoned or confined as herein stated outside of this State, service by publication shall be deemed sufficient. The defendant against whom publication is ordered, or his representatives, on application and sufficient cause shown at any time before judgment must be allowed to defend the action; and the defendant against whom publication is ordered, or his representatives, may, in like manner, upon good cause shown be allowed to defend after judgment, or at any time within one year after notice thereof, and within seven years after its rendition, on such terms as may be just; and if the defence be successful, and the judgment, or any part thereof, has been collected or otherwise enforced, such restitution may thereupon be compelled as the Court directs; but the title to property sold under such judgment to a purchaser in good faith shall not be thereby affected. And in all cases where publication is made, the complaint must be first filed, and the summons, as published, must state the time and place of such filing.

In actions affecting the title to real property or for the partitions of real estate or for the foreclosure of mortgage on real

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estate if any party or parties having any interest or lien upon such mortgaged premises are unknown to the plaintiff and the residence of such party or parties cannot with reasonable diligence be ascertained by him and such fact shall be made to appear by affidavit to the Court or Judge, Clerk of the Court, Master or Judge of Probate, when the trial is to be had, such Court, Judge, Clerk, Master or Judge of Probate, shall grant an order that the summons be served on such unknown party or parties by publishing the same for six weeks once a week in a newspaper printed in the County where the premises are situated which publication shall be equivalent to a personal service on such unknown party or parties.

Magistrates may grant order of publication of summons against absent parties in their courts

1898, XXII., 698.

The Magistrates of this State are hereby invested, in actions brought in their courts, within their jurisdiction, to grant orders of publication against absent defendants, in the same manner and to the same extent as authorized in this Section to be done by the Circuit Court or a Judge thereof, or the Clerk of Common Pleas, the Master or the Probate Judge; and the service of any summons so made upon any absent defendant or defendants shall have the same binding force and effect as such service would have in the Court of Common Pleas.

Prior to amendment inserting the last sub-division Magistrates had no authority to grant order of publication.—Ferguson v. Gilbert, 17 S. C., 26; Note, p. 29.

In the absence of fraud or collusion, if the affidavit satisfies the officer granting order of publication, his order is final.—Yates v. Gridley, 16 S. C., 496; Bank v. Stelling, 31 S. C., 360; 9 S. E., 1028.

The question of good faith cannot be made on mere motion to vacate judgment; can only be made under formal proceeding.—Yates v. Gridley, 16 S. C., 496.

Where an agreement between member and foreign life insurance association provided that death claims should be made and paid at home office, the claims of beneficiaries thereunder was not a cause of action that arose in this State, and the foreign corporation having no property here it could not be made a party to action here on such claim.—Rodgers v. Mutual Association, 17 S. C., 406. Cause of action arises at place of performance, presumably the place of making.—Tillinghast v. Boston Lumber Co., 39 S. C., 491; 18 S. E., 120. But when the subject matter was within the jurisdiction of the Court, and the contract made as to it while the defendants were residents of this State, they can be made parties, as non-residents, by publication.—Shumate v. Harbin, 35 S. C., 521; 15 S. E., 270. So, where all parties in interest are non-residents, they can be so made parties in action to set aside assignment as to real property situate here.—Bank v. Stelling, 31 S. C., 360; 10 S. E., 1028.

An order for service by publication is absolutely required, even where there is personal service or its equivalent out of the State.—Riker v. Vaughan, 23 S. C., 187. But when publication has been ordered, personal service out of the State is equivalent to publication and deposit in postoffice.—Darby v. Shannon, 19 S. C., 526. Only defendant can take advantage of alleged insufficiency in service of summons.—*Ib.* But service by leaving copies at the place of residence is not equivalent to personal service.—Armstrong v. Brant, 44 S. C., 177; 21 S. E., 634. The affidavit may refer to the complaint, and the statement of the venue is unnecessary.—Clemson College v. Pickens, 42 S. C., 511; 20 S. E., 401. The order of publication may be neither sealed or dated.—*Ib.* Where the defendant is furn-

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ished with a copy of the complaint, it is unnecessary in publishing the summons to state where the complaint is filed.—*Ib.* Jurisdiction to render a personal judgment, as to declare a marriage void, cannot be acquired by publication of summons.—Pepper v. Shearer, 26 S. E., 797; 48 S. C., 492. A successful defence after judgment, held not to affect the title of purchaser.—Hunter v. Ruff, 47 S. C., 525; 25 S. E., 65. Appearance cures defect in service.—Townes v. City Council, 46 S. C., 15; 23 S. E., 984; *Ex Parte* Keeler, 45 S. C., 537; 23 S. E., 865; Martin v. Bowie, 37 S. C., 102; 15 S. E., 740.

Proceedings when part only of defendants served — partners.

1870, XIV., § 159.

Sec. 157. Where the action is against two or more defendants, and the summons is served on one or more of them, but not on all of them, the plaintiff may proceed as follows:

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

This does not apply where all the parties were served.—Dulany v. Elford, 22 S. C., 304. Applies to partnership contracts, where only one of the partners has been served with the summons.—Whitfield v. Hovey, 30 S. C., 117; 8 S. E., 840; Pope Mfg. Co. v. Welch, 55 S. C., 528; 33 S. E., 789. This does not authorize a general judgment against the one not served.—Roberts v. Pawley, 50 S. C., 491; 27 S. E., 913.

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

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

Discontinuance as to certain stockholders.—Sadler v. Nicholson, 49 S. C., 7; 26 S. E., 893.

4. If the name of one or more partners shall, for any cause, have been omitted in any action in which judgment shall have passed against the defendants named in the summons, and such omission shall not have been pleaded in such action, the plaintiff, in case of judgment therein shall remain unsatisfied, may, by action, recover of such partner separately, upon proving his joint liability, notwithstanding he may not have been named in the original action; but the plaintiff shall have satisfaction of only one judgment rendered for the same cause of action.

When service by publication complete.

Ib., § 160; 1901, XXIII., 635.

Sec. 158. In the cases mentioned in Section 156, the service of the summons shall be deemed complete at the expiration of the time prescribed by the order for publication, except in the

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case of personal service, in which case such service shall be complete and final on the day on which it is made, as provided in said Section 156.

Proof of service.

Ib., § 161; 1884, XVIII., 745; 1891, XX., 1041.

Sec. 159. Proof of the service of the summons, and of the complaint or notice, if any, accompanying the same must be as follows:

1. If served by the Sheriff, his certificate thereof; or,

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

3. In case of publication, the affidavit of the printer, or his foreman, or principal clerk, showing the same, and an affidavit of a deposit of a copy of the summons in the postoffice, as required by law, if the same shall have been deposited.

When the service is made out of the State after order for publication, the proof of such service may be made, if within the United States, by affidavit before any person in this State authorized to take an affidavit, or before a Commissioner of deeds for this State, or a Notary Public who shall use his official seal or before a Clerk of a Court of record who shall certify the same by his official seal; or if made without the limits of the United States, before a Consul or Vice-Consul or Consular Agent of the United States, who shall use in his certificate his official seal.

4. The written admission of the defendant.

In case of service otherwise than by publication, the certificate, affidavit, or admission must state the time and place of the service.

Sufficiency of certificate: Sheriff's deputy may act in serving papers.—Prince v. Dickson, 39 S. C., 481; 18 S. E., 33.

Sheriff's return of service may be rebutted by entry in his book and testimony of his deputy and party to be served.—Genobles v. West, 23 S. C., 154. But under his return of service on defendant "at her residence," it will be presumed that such service was in the County of the venue.—Lyles v. Haskell, 35 S. C., 391; 14 S. E., 829.

Service upon proper party by misnomer is binding.—Waldrop v. Leonard, 22 S. C., 118; Genobles v. West, 23 S. C., 154.

Proof of service by one other than Sheriff must be by affidavit.—State v. Cohen, 13 S. C., 198. It is not required that such certificate of Clerk of Court as to authority of Notary Public should be appended to the affidavit at the time it is taken, but it may be furnished to the Court afterwards.—Bank v. Stelling, 31 S. C., 360; 9 S. E., 1028.

Written admission of the defendant is service.—Benson v. Carrier, 28 S. C., 119; 5 S. E., 278.

Acceptance of service by an attorney having no authority so to do does not constitute a legal service.—Reed v. Reed, 19 S. C., 548.

Nor can infant bind himself by acceptance of service.—Finley v. Robertson, 17 S. C., 435; Riker v. Vaughan, 23 S. C., 187; Genobles v. West, 23 S. C., 154; Whitesides v. Barber, 24 S. C., 373. Yet such acceptance, even of an irregular summons, by an adult without objection to proceedings thereunder estop him from denying jurisdiction.—Finley v. Robertson, 17 S. C., 435. Affidavit sufficient made before vice consul prior to the amendments of 1884.—Marine Co. v. Parsons, 49 S. C., 136; 26 S. E., 966.

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Proof of service on foreign corporation.—Tillinghast v. Boston Lumber Co., 39 S. C., 491; 18 S. E., 120.

Jurisdiction of a living person once acquired by service of the summons attaches always, although he may be beyond the court's jurisdiction.—Peoples' B. & L. Ass'n. v. Mayfield, 42 S. C., 424; 20 S. E., 290.

When jurisdiction of action acquired.

1870, XIV., § 162.

Sec. 160. From the time of the service of the summons in a civil action, or the allowance of a provisional remedy, the Court is deemed to have acquired jurisdiction, and to have control of all the subsequent proceedings. A voluntary appearance of a defendant is equivalent to personal service of the summons upon him.

Even where no summons has been served, but attachment has been issued, the Court has jurisdiction for certain purposes.—Darby v. Shannon, 19 S. C., 526. Action must be regularly commenced by attachment to have effect.—Tillinghast v. Boston Lumber Co., 39 S. C., 484; 18 S. E., 120. Voluntary appearance is equivalent to personal service.—State v. Cohen, 13 S. C., 198; State v. Mitchell, 21 S. C., 598; State v. Marshall, 24 S. C., 507; Benson v. Carrier, 28 S. C., 119; Shumate v. Harbin, 35 S. C., 521; 15 S. E., 270; Cone v. Cone, 61 S. C., 512; 39 S. E., 748; Martin v. Bowie, 37 S. C.,, 114; 15 S. E., 741; Townes v. City Council, 46 S. C., 15; 23 S. E., 984; *Ex Parte* Keeler, 45 S. C., 537.

The voluntary appearance of an infant is binding upon judgment where the face of the proceedings fails to show his infancy.—State v. Lewis, 21 S. C., 598. But if defendant appear only to object to jurisdiction because he has not been served, the Court is without jurisdiction.—State v. Marshall, 24 S. C., 507.

To be equivalent to personal service it must be made before judgment.—State v. Cohen, 13 S. C., 198. It may be shown by the pleadings or entry in Magistrate's book; it must be shown by the proceedings, and cannot in absence of such showing be proved by parol testimony.—Barron v. Dent, 17 S. C., 75.

TITLE VI.

OF THE PLEADINGS IN CIVIL ACTIONS.

CHAPTER I. *The Complaint.*
CHAPTER II. *The Demurrer.*
CHAPTER III. *The Answer.*
CHAPTER IV. *The Reply.*
CHAPTER V. *General Rules of Pleading.*
CHAPTER VI. *Mistakes and Amendments.*

CHAPTER I.

The Complaint.

SEC.
161. Forms of pleading.
162. Complaint.
163. Complaint; what to contain.

Forms of pleading.

Ib., § 163.

Section 161. There shall be no other forms of pleading in civil actions in Courts of record in this State, and no other rules by which the sufficiency of the pleadings is to be determined, than those prescribed by this Code of Procedure.

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It was intended by this Section to change materially the nature and effect of pleading; but not to abolish the substantial characteristics of the several pleadings that are retained either in name or by their equivalents under other names.—Mobley v. Cureton, 6 S. C., 49; cited in Warren v. Lagrone, 12 S. C., 45; see also note as to object of Code before Sec. 1.

Complaint.

Ib., § 164.

Sec. 162. The first pleading on the part of the plaintiff is the complaint.

Complaint; what to contain.

Ib., § 165.

Sec. 163. The complaint shall contain:

1. The title of the cause, specifying the name of the Court in which the action is brought, the name of the County in which the plaintiff desires the trial to be had, and the names of the parties to the action—plaintiff and defendant.

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

3. A demand of the relief to which the plaintiff supposes himself entitled.

The names of the individuals constituting the copartnership suing must appear in the title.—Smith v. Walker, 6 S. C., 169.

Subdivision 2: A cause of action exists where the legal rights of one party have been invaded by another.—Chalmers v. Glenn, 18 S. C., 469; Nance v. R. R., 35 S. C., 309. If the facts alleged do not show the existence and invasion of such rights, the complaint is defective, and will be held bad on demurrer.—Southern Porcelain Co. v. Thew, 5 S. C., 5; Chalmers v. Glenn, 18 S. C., 469; Nance v. R. R. Co., 35 S. C., 309; 14 S. E., 629.

But it is enough if the allegations show distinctly the cause of action.—Hammond v. R. R. Co., 6 S. C., 130. The Court refers the facts to their appropriate form of action.—Mason v. Carter, 8 S. C., 103; Dowie & Moise v. Joyner, 25 S. C., 123; Warren v. Lagrone, 12 S. C., 45. Complaint sufficient if it states any cause of action, either legal or equitable.—Mordecai v. Seignious, 53 S. C., 95; 30 S. E., 721; Latham v. Harby, 50 S. C., 428; 27 S. E., 862. Plaintiff may obtain any relief appropriate to the pleadings without regard to the form of prayer for relief.—Sheppard v. Green, 48 S. C., 165; 26 S. E., 224. Failure to file complaint not fatal on motion to set aside judgment.—Clemson College v. Pickens, 42 S. C., 511; 20 S. E., 401.

The complaint is so defective if it merely allege conclusions of law and not facts.—Tutt v. R. R. Co., 28 S. E., 388; 5 S. E., 831; Wallace v. R. R. Co., 34 S. C., 62; 12 S. E., 815; Nance v. R. R. Co., 35 S. C., 307; 14 S. E., 629.

In action for specific performance of contract for sale of land, it is not necessary to allege that contract was in writing.—Hubbell v. Courtney, 5 S. C., 87.

In action against a commission merchant for account, it is unnecessary to allege a demand for account, after stating a refusal to do so.—Mason v. Carter, 8 S. C., 103. Where paper sued on as a promissory note is not such, but the allegations show a cause of action, the complaint is sufficient.—Dowie v. Joyner, 25 S. C., 123.

Want of probable cause should be alleged in a complaint in action for malicious arrest or it will be demurrable.—Hogg v. Pinckney, 16 S. C., 387.

Subdivision 3: Complaint is not demurrable as defective in not stating facts sufficient to constitute a cause of action because it contains no prayer for relief.—Balle v. Mosely, 13 S. C., 439.

Defective statement cured by attached exhibit.—Cave v. Gill, 59 S. C., 256; 37 S. E., 817. Particular complaints considered. On written instrument for payment of money.—Watson v. Barr, 37 S. C., 466; 16 S. E., 189. On bond.—State v. Seabrook, 42 S. C., 74; 20 S. E., 58. On note.—Bolt v. Gray, 54 S. C., 95; 32 S. E., 148. Damages from tort.—Pickens v. R. R. Co., 54 S. C., 498; 32 S. E., 567. Nuisance.—Baltzegar v. R. R., 54 S. C., 242; 32 S. C., 358. Conversion.—Michalson v. All, 43 S. C., 459; 21 S. E., 323. Recovery of real property.—Huggins v. Watson, 38 S. C., 506; 17 S. E., 363. On note of officer against the State.—Carolina Nat'l Bank v. State, 60 S. C., 465; 38 S. E., 629.

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CHAPTER II.

The Demurrer.

SEC.
164. Defendant to demur or answer.
165. When the defendant may demur.
166. Demurrer, what to specify.
167. How to proceed, if complaint be amended.
168. Objection not appearing on complaint.
169. Objection, when waived.

Defendant to demur or answer.

1870, XIV., § 166.

Section 164. The only pleading on the part of the defendant is either a demurrer or an answer. It must be served within twenty days after the service of the copy of the complaint.

When the defendant may demur.

Ib., § 167.

Sec. 165. The defendant may demur to the complaint when it shall appear upon the face thereof, either,—

1. That the Court has no jurisdiction of the person of the defendant, or the subject of the action; or,

2. That the plaintiff has not legal capacity to sue; or,

This ground of objection is waived unless taken by demurrer.—Daniels v. Moses, 12 S. C., 130. Under this subdivision, Smith v. Smith, 27 S. E., 549; 50 S. C.; 54; Dawkins v. Mathis, 47 S. C., 66; 24 S. E., 991; Mickle v. Construction Co., 41 S. C., 394; 19 S. E., 725; Willis v. Tozer, 44 S. C., 1; 21 S. E., 617.

Where complaint alleges corporate existence in plaintiff and nothing appears on its face to show his want of corporate authority, it is not demurrable on this ground.—Cheraw R. R. v. White, 14 S. C., 51. A demurrer under this subdivision can only be interposed where the incapacity to sue appears in the complaint.—Cone Export &c., Co. v. Poole, 41 S. C., 70; 19 S. E., 203. Where sealed note payable to an administrator has been transferred to another, it may be sued on in name of administrator for use of the other.—Carroll v. Still, 13 S. C., 430.

This question of capacity to sue cannot be put in issue by general denial; it must be made by demurrer.—Commercial Co. v. Turner, 8 S. C., 110; Palmetto v. Risley, 25 S. C., 309; Steamship Co. v. Rodgers, 21 S. C., 27.

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

Subdivision 3 does not apply to actions pending in another State.—Hill v. Hill, 51 S. C., 134; 28 S. E., 309; nor does it apply where one suit is by only one plaintiff for the recovery of personal property, and the other with additional plaintiffs includes claim for punitive damages.—Walters v. Laurens Cotton Mill, 53 S. C., 155; 31 S. E., 1.

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

This ground cannot apply in case *misjoinder* of parties.—Lowry v. Jackson, 27 S. C., 318; 3 S. E., 473.

This objection must be made by demurrer, and is waived upon failure to demur.—Featherston v. Norris, 7 S. C., 472; Evans v. McLucas, 12 S. C., 56; Daniels v. Moses, 12 S. C., 13; Ross v. Linder, 12 S. C., 592; Shull v. Caughman, 54 S. C., 203; 32 S. C., 301; Allen v. Cooley, 53 S. C., 77; 30 S. E., 721.

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

Joint demurrer bad as to all, must fail though good as to one who joins.—Lowry v. Jackson, 27 S. C., 318; 3 S. E., 473. Guy v. McDaniel, 51 S. C., 436; 29 S. E., 196.

Complaint not demurrable for multifariousness where it alleges breach of trust, because it makes a party in possession of the assets under the breach, with notice, a defendant.—Ragsdale v. Holmes, 1 S. C., 91; Melton v. Withers, 2 S. C., 561.

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Objection to complaint on this ground can only be taken by demurrer.—Field v. Hurst, 9 S. C., 277. It may be taken by any defendant.—Suber v. Allen, 13 S. C., 317.

Where there is improper joinder of causes of action, and a demurrer to the complaint therefor, the plaintiff may cure the defect by voluntary amendment of the complaint.—Sullivan v. Sullivan, 24 S. C., 474.

Demurrer on this ground will not lie where several plaintiffs, severally owning adjoining tracts of land, join in action for damages *in solido* for injuries thereto by defendant's dam.—Hellams v. Switzer 24 S. C., 39. But demurrer will lie in such case, where the injuries are separate and distinct.—*Ib.*

There is not misjoinder of causes of actions where adult ward and three minor wards sue their guardian for accounting.—Stallings v. Barrett, 26 S. C., 474; 2 S. E., 483. This objection does not apply where creditor sues heir in possession of intestate's land and alleges sufficient to show cause of action against administrator, and does not seek judgment against him.—Lowry v. Jackson, 27 S. C., 318; 3 S. E., 473.

Proper joinder of several causes of action.—Long v. Hunter, 58 S. C., 152; 36 S. E., 581. Where the defendant fails to raise the question of misjoinder by demurrer, he cannot afterwards do so by motion to require plaintiff to elect on which he will rely. Where the several causes of action are blended in one statement such motion may be made.—Ross v. Jones, 47 S. C., 211; 25 S. E., 59.

6. That the complaint does not state facts sufficient to constitute a cause of action.

Until it does appear that some fact is omitted which is necessary to constitute the cause of action, no demurrer can be sustained.—Balle v. Mosely, 13 S. C., 439.

The defect must be substantial, and such as cannot be cured except by allegations of answer.—Childers v. Verner, 12 S. C., 1.

Where administrator of a distributee of an intestate brings action against the administrator of the intestate and joins with him as plaintiff a distributee of such distributee, the complaint is demurrable as to such plaintiff distributee on this ground.—Robert v. Johns, 10 S. C., 101.

Complaint alleged subscription by defendant to stock of plaintiff of fifty acres of land, and a refusal to convey, and demanded payment in money for the land, without alleging promise to pay money or previous demand, and was held not demurrable on this ground.—Cheraw and Chester R. R. Co. v. Garland, 14 S. C., 63. In action to recover money won at game of faro, if the complaint does not allege that the money was won at one time and sitting, it is demurrable on this ground.—Trumbo v. Finley, 18 S. C., 305.

Omission of allegation relating to capacity to sue is no ground for demurrer under this subdivision.—Cone Export, &c., Co. v. Poole, 41 S. C., 70; 19 S. E., 203; and other cases cited under subdivision 2.

Allegation as to possession within ten years not necessary in action for partition.— —— S. C.; Griffith v. Cromley, 36 S. E., 741.

Demurrer, what to specify.

Ib., § 168.

Sec. 166. The demurrer shall distinctly specify the grounds of objection to the complaint. Unless it do so, it may be disregarded. It may be taken to the whole complaint, or to any of the alleged causes of action stated therein.

The demurrer must be to the entire cause of action, and not to a part of a cause of action or defence.—Buist v. Salvo, 44 S. C., 143; 21 S. E., 615; Lawson v. Gee, 57 S. C., 506; 35 S. E., 759. A joint demurrer to a complaint stating a cause of action against any of the defendants is bad.—Stahn v. Catawba Mills, 31 S. E., 498; 53 S. C., 519. A demurrer must distinctly specify the grounds of objection.—Carroll v. Still, 13 S. C., 430.

How to proceed, if complaint be amended.

Ib., § 169.

Sec. 167. If the complaint be amended, a copy thereof must be served on the defendant, who must answer it within twenty days, or the plaintiff, upon filing with the Clerk due proof of

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the service and of the defendant's omission, may proceed to obtain judgment, as provided by Section 267.

It is within the discretion of a Circuit Judge to require an answer to an amended complaint in less than twenty days. This Section applies only where no time is fixed in the order.—Lockwood v. Charleston Bridge Co., 60 S. C., 492; 38 S. E., 112.

Objection not appearing on complaint.

Ib., § 170.

Sec. 168. When any of the matters enumerated in Section 165 do not appear upon the face of the complaint, the objection may be taken by answer.

If the defects do not appear on the fact of the complaint, the objection should be made by answer.—Patterson v. Pagan, 18 S. C., 584.

Objection, when waived.

Ib., § 171.

Sec. 169. If no such objection be taken, either by demurrer or answer, the defendant shall be deemed to have waived the same, excepting only the objection to the jurisdiction of the Court, and the objection that the complaint does not state facts sufficient to constitute a cause of action.

The clear intention of this and foregoing Sections of this Chapter is that defendant shall give, by his demurrer or answer, specific notice that he intends to rely on one or more of these specific defenses, if he wishes to make them available. A general denial of all the facts alleged in the complaint is not a compliance with these requirements.—The object of them is to relieve the plaintiff from the necessity of preparing to meet such objections, on trial, unless so notified of them.—Steamship Co. v. Rodgers, 21 S. C., 27; Palmetto Co. v. Risley, 25 S. C., 309.

Objection for defect of parties comes too late after failure to make it by demurrer or answer.—Featherston v. Norris, 7 S. C., 472; Evans v. McLucas, 12 S. C., 56; Daniels v. Moses, 12 S. C., 137; Ross v. Linder, 12 S. C., 592.

All other defects, except want of jurisdiction and of sufficient statements of facts, are cured by failure to object by demurrer and answer.—Bowden v. Winsmith, 11 S. C., 409; Daniels v. Moses, 12 S. C., 130; Jackins v. Dickinson, 39 S. C., 439; 17 S. E., 996; Ross v. Jones, 47 S. C., 211; 25 S. E., 59; Dawkins v. Matthis, 47 S. C., 64; 24 S. E., 990; Smith v. Smith, 52 S. C., 205; 25 S. E. 549.

Objection that complaint does not state facts sufficient to constitute a cause of action may be made orally at any stage of the proceedings.—Southern Porcelain Co. v. Thew, 5 S. C., 10; Bowden v. Winsmith, 11 S. C., 409; Childers v. Verner, 12 S. C., 1; Balle v. Mosely, 13 S. C., 439; Kennerty v. Etiwan Co., 17 S. C., 411; Davis v. McDuffie, 18 S. C., 495; Hellams v. Switzer, 24 S. C., 39; Hull v. Young, 29 S. C., 64; 6 S. E., 938. Even after trial of the issues on circuit.—Garrett v. Weinberg, 50 S. C., 310; 27 S. E., 770. But not for the first time on appeal in the Supreme Court.—Green v. Green, 50 S. C., 514; 27 S. E., 952. Where a demurrer for want of facts sufficient to constitute a cause of action is once overruled, such ruling is binding when motion is rendered on a subsequent trial.—Long v. Hunter, 58 S. C., 152; 36 S. E., 579.

So oral demurrer to answer setting up counter-claims may be made on the ground of want of cause of action, though not objected by formal demurrer or answer.—State v. Corbin, 16 S. C., 533.

CHAPTER III.

The Answer.

Sec.
170. Answer, what to contain.
171. Counter-claim. Several defences.
172. Demurrer and answer, when allowed.
173. Sham and irrelevant defences to be stricken out.

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Section 170. The answer of the defendant must contain:

Answer, what to contain.

1870, XIV., § 172.

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

2. A statement of any new matter constituting a defence or counter-claim, in ordinary and concise language, without repetition.

A denial in an answer following the exact words of the allegations is bad as a negative pregnant.—Curnow v. Ins. Co., 46 S. C., 79; 24 S. E., 74; Bliss Code Pleading, Sec. 332. A denial that plaintiff has "knowledge or information sufficient to form a belief, etc.," is sufficient.—Gilreath v. Furman, 57 S. C., 289; 35 S. E., 516. The admission of the allegations of a paragraph in complaint by the answer, is an admission only of the facts alleged, and not of the conclusions of law.—Green v. Latimer, 47 S. C., 176; 25 S. E., 136. A denial of title in claim and delivery does not dispense with the necessity to prove a demand and refusal.—Ludden & Bates v. Southern Music House, 47 S. C., 335; 25 S. E., 150. Denial of delivery of deed.—Johnson v. Johnson, 44 S. C., 364; 22 S. E., 419.

Allegations of the complaint not denied are admitted.—Addison v. Duncan, 35 S. C., 165; 14 S. E., 305. Answer admitting the simple delivery of note, as alleged in complaint, and then asserting that the delivery was conditional, the delivery is not admitted.—Lipscomb v. Lipscomb, 32 S. C., 243; 10 S. E., 929.

Where complaint alleges and answer admits note sued on to be a promissory note, it was error to grant nonsuit upon proof that note was under seal.—Moore v. Christian, 31 S. C., 337; 9 S. E., 981.

The Code has enlarged the defendant's opportunity for making various defenses to the action by his answer.—Cohrs v. Fraser, 5 S. C., 351. Inconsistent defences may be set up in the answer.—Millan v. So. Ry. Co., 54 S. C., 485; 32 S. E., 539.

The answer is not to be taken as true, as under former equity practice, until the plaintiff has had an opportunity to controvert it.—Hubbell v. Courtney, 5 S. C., 87.

The defendant must plead in answer all his defenses, legal or equitable; he cannot bring a separate action on any matter that could have been so pleaded.—McAlily v. Barker, 4 S. C., 48; Rice v. Mahaffy, 9 S. C., 582.

And his answer must contain a general or specific denial, or new matter, constituting a defense or counter-claim.—Clement v. Riley, 29 S. C., 286; 6 S. E., 932. But under general denial he may insist on absence of demand.—Burckhalter v. Mitchell, 27 S. C., 24; 3 S. E., 225. Yet general denial raises no issue of failure of consideration, which is an affirmative defense.—Derry v. Holman, 27 S. C., 621; 2 S. E., 841.

A general denial will not put at issue the legal capacity of corporation to sue.—Commercial Co. v. Turner, 8 S. C., 111; Steamship Co. v. Rodgers, 21 S. C., 33; Palmetto Co. v. Risley, 25 S. C., 309; American Co. v. Hill, 27 S. C., 164; 3 S. E., 82; Land Co. v. Williams, 35 S. C., 367; 14 S. E., 821. But where the complaint against a corporation alleges it to be incorporated, and its answer makes only general denial, and it regularly appears by attorney and defends on the merits, that is admission of its corporate charter.—Rembert v. R. R., 31 S. C., 309; 9 S. E., 968. And where there is a specific denial of the allegation of partnership, the answer raises an issue triable by jury.—Kerr v. Cochran, 29 S. C., 61; 6 S. E., 905. But it will put at issue every fact necessary to prove plaintiff's claim and allow defendant to controvert his proof thereon.—Lyles v. Bolles, 8 S. C., 258. And upon plaintiff's failure to prove his case, the defendant may have a nonsuit. —*Ib.* The simple answer of "no knowledge" is a denial.—Tharin v. Seabrook, 6 S. C., 118.

Payment must be specially pleaded.—McElwee v. Hutchinson, 10 S. C., 438. So a plea of justification, which cannot be shown under a general denial.—Henderson v. Bennett, 58 S. C., 30; 36 S. E., 2.

But where certain credits are allowed by complaint, and judgment claimed for special balance, the defendant, under general denial, can prove other payments to show true balance.—*Ib.*

Where answer in action for assault and battery admitted the complaint, but

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pleaded that the defendant committed the assault in self-defense, it was sufficient.—Hughes v. Kellar, 34 S. C., 268; 13 S. E., 475. Plea of confession and avoidance does not establish issues raised by general denial.—Stanley v. Shoolbred, 25 S. C., 181.

Where matter of counter-claim is not so pleaded, and judgment thereon demanded, it can only serve as a defense, and not as a counter-claim.—Trimmier v. Thompson, 10 S. C., 185; Humbert v. Brisbane, 25 S. C., 506; McGee v. Wells, 37 S. C., 367; 16 S. E., 29. And as a counter-claim, cannot be proved at trial.—Sullivan v. Byrne, 10 S. C., 130; Williams v. Irby, 15 S. C., 458. There is no particular form prescribed for a counter-claim.—Cooperative Co. v. Walker, 61 S. C., 315; 39 S. E., 525.

No objection to answer that it is not responsive to complaint; its only effect is that any allegation not denied stands admitted.—Zimmerman v. Amaker, 10 S. C., 100.

Counter-claim. Several defences.

Ib., § 173.

Sec. 171. The counter-claim mentioned in the last Section must be one existing in favor of a defendant, and against a plaintiff, between whom a several judgment might be had in the action, and arising out of one of the following causes of action:

1. A cause of action arising out of the contract or transaction set forth in the complaint as the foundation of the plaintiff's claim, or connected with the subject of the action.

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

The defendant may set forth by answer as many defences and counter claims as he may have, whether they be such as have been heretofore denominated legal or equitable, or both. They must each be separately stated, and refer to the causes of action which they are intended to answer, in such manner that they may be intelligibly distinguished.

In action by executor to recover from defendant several notes due testator, he cannot set up as counter-claims legacies given him, but unassented to by executor.—Latimer v. Sullivan, 30 S. C., 111; 8 S. E., 639.

A defendant cannot set up as a counter-claim a debt purchased by him after commencement of the action.—Enter v. Queese, 30 S. C., 126; 8 S. E., 796.

A counter-claim for damages from tort cannot be set up against an action for damages from tort.—Simkins v. R. R., 20 S. C., 258.

A tort arising out of contract may be waived, and the same cause of action treated as a contract and set up as such, by way of counter-claim to action on another contract.—Boyce v. Parker, 11 S. C., 337. Unascertained damages arising *ex contractu* are admissible as a counter-claim.—*Ib.*

In action for damages by trespass, the defendant cannot set up a debt due by plaintiff, as counter-claim.—Sharp v. Kinsman, 18 S. C., 108. A cause of action for conversion of property cannot plead as counter-claim in an action on a note.—Lenhardt v. French, 57 S. C., 493; 35 S. E., 761.

A claim that does not fall under either of the above subdivisions cannot be set up as a counter-claim.—*Ex Parte* Bank, 18 S. C., 289; Copeland v. Young, 21 S. C., 276; Humbert v. Brisbane, 25 S. C., 506.

A counter-claim cannot be interposed in an action for recovery of personal property, unless, perhaps, under some exceptional circumstances, equitable relief may be demanded.—Williams v. Irby, 15 S. C., 561; Talbot v. Padgett, 30 S. C., 167; 8 S. E., 845; Badham v. Brabham, 54 S. C., 404; 32 S. E., 444; Ludden & Bates v. Hornsby, 45 S. C., 111; 22 S. E., 781.

Partnership account in favor of defendant may be set up as counter-claim to his individual debt, if partnership be unsettled and upon settlement a balance would be due him.—Mills v. Carrier, 30 S. C., 617; 9 S. E., 350; 741.

A separate judgment in favor of one of several defendants may be given on counter-claim, showing a separate cause of action in his favor.—Plyer v. Parker, 10 S. C., 465.

Defendant cannot set up against plaintiff, as counter-claim, a debt due the defendant by firm of which plaintiff is a member.—Byrd v. Charles, 3 S. C., 352.

The answer may set forth many and inconsistent defenses, either legal or equitable.—Cohrs v. Fraser, 5 S. C., 354; Mobley v. Cureton, 6 S. C., 68; Cooper v. Smith, 16 S. C., 331; Millan v. So. Ry. Co., 54 S C., 485; 32 S. E., 539. If he fail upon one, he may fall back on the others.—Ransom v. Anderson, 9 S. C., 440.

A plea of Statute of Limitations to the "money items" set up in a complaint, stating two causes of action, one of which was for a sum of money made up of several items and the other for a penalty, was not sufficient as a defense to the second cause of action.—County v. Miller, 16 S. C., 244.

Where accounts containing usurious interest have been settled by note, and action is brought on the latter, defendant cannot interpose counter-claim for the excessive interest charged.—Witte v. Weinberg, 37 S. C., 593; 17 S. E., 684.

An individual claim of partner against plaintiff cannot be set up as counter-claim by partnership.—Pope Mfg. Co. v. Welch, 33 S. E., 787; 55 S. C., 528; 37 S. E., 20; 59 S. E., 29.

Parol contract as foundation for counter-claim in action on written contract.—V.-C. Chemical Co. v. Moore, 61 S. C., 166; 39 S. E., 346.

Demurrer and answer, when allowed.

Ib., § 174.

Sec. 172. The defendant may demur to one or more of several causes of action stated in the complaint, and answer the residue.

Sham and irrelevant defences to be stricken out.

Ib., § 175.

Sec. 173. Sham and irrelevant answers and defences may be stricken out on motion, and upon such terms as the Court may, in its discretion, impose.

An answer making general denial cannot be stricken out as sham, whether verified or not.—Ransom v. Anderson, 9 S. C., 439.

Motion to so strike out such pleadings should not in terms demand judgment; but if nothing remains of the answer for trial, after motion is granted, judgment may be pronounced at once.—Tharin v. Seabrook, 6 S. C., 113.

Such motions ordinarily present questions of fact to be determined upon affidavits or as the Court may direct.—*Ib.*

If the defense is manifestly false and intended to delay, it may be struck out; but this should be done only in cases free from doubt.—*Ib.*

An answer is not untrue which has been sustained on Circuit.—Hall v. Woodward, 30 S. C., 564; 9 S. E., 684.

CHAPTER IV.

The Reply.

SEC.
174. Reply. Demurrer to answer.
175. Motion for judgment upon answer.
SEC.
176. Demurrer to reply.

Reply. Demurrer to answer.

Ib., § 176.

Section 174. When the answer contains new matter constituting a counter-claim, the plaintiff may, within twenty days, reply to such new matter, denying generally or specifically each allegation controverted by him, or any knowledge or informa-

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tion thereof sufficient to form a belief; and he may allege, in ordinary and concise language, without repetition, any new matter not inconsistent with the complaint, constituting a defence to such new matter in the answer; and the plaintiff may, in all cases, demur to an answer containing new matter, where, upon its face, it does not constitute a counter-claim or defence; and the plaintiff may demur to one or more of such defences or counter claims, and reply to the residue of the counter claims.

And in other cases, where an answer contains new matter constituting a defence by way of avoidance, the Court may, in its discretion, on the defendant's motion, require a reply to such new matter; and in that case the reply shall be subject to the same rules as a reply to a counter-claim.

The plaintiff's reply must deny the counter-claim or allege some new matter as defense thereto, or judgment will go against him for the counter-claim.—Hubbell v. Courtney, 5 S. C., 89; Latimer v. Sullivan, 30 S. C., 111; 8 S. E., 639.

A general denial of a counter-claim puts in issue all the allegations upon which it rested.—Atlantic Co. v. Sullivan, 34 S. C., 301; 13 S. E., 539.

When answer upon its face does not show matter constituting a counter-claim or defense it is demurrable.—Clement v. Riley, 29 S. C., 286; 6 S. E., 932; Lipscomb v. Lipscomb, 32 S. C., 243; 10 S. E., 929. But it may be replied to and determined at same time.—Latimer v. Sullivan, 30 S. C., 111; 8 S. E., 639; Talbert v. Padgett, 30 S. C., 167; 8 S. E., 845.

A reply without an order of Court where the answer contains no counter-claim is improper; but should not be formally stricken out.—Davis v. Schmidt, 22 S. C., 128; Egan v. Bissell, 54 S. C., 80; 32 S. E., 1; Price v. Ry. Co., 38 S. C., 210; 17 S. E., 736; Bank v. Gadsden, 56 S. C., 313; 33 S. E., 575.

Counter-claim set up in answer, served with motion for leave to file, is admitted, if not replied to within the time.—Sanders v. Sanders, 31 S. C., 604; 9 S. E., 813.

Where answer sets up payment and laches as defenses, it is demurrable when the facts set forth as proof thereof are insufficient to determine the defenses.—Mobley v. Cureton, 6 S. C., 49. An objection that the answer is not responsive to the complaint cannot be taken under the Code.—Zimmerman v. Amaker, 10 S. C., 98.

An oral demurrer will lie to a counter-claim, which shows on its face that it is based on a contract void under the Statute of Frauds.—Civil Code, Sec. 2652; Mendelsohn v. Banov, 57 S. C., 148; 35 S. E., 499.

Motion for judgment upon answer.

1870, XIV., § 177.

Sec. 175. If the answer contain a statement of new matter constituting a counter-claim, and the plaintiff fail to reply or demur thereto within the time prescribed by law, the defendant may move, on a notice of not less than ten days, for such judgment as he is entitled to upon such statement; and, if the case require it, a writ of inquiry of damages may be issued.

Demurrer to reply.

Ib., § 178.

Sec. 176. If a reply of the plaintiff to any defence set up by the answer of the defendant be insufficient, the defendant may demur thereto, and shall state the grounds thereof.

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CHAPTER V.

General Rules of Pleading.

SEC.
177. Pleadings to be subscribed and verified.
178. Pleadings, how verified.
179. How to state an account in pleading.
180. Pleadings to be liberally construed.
181. Irrelevant or redundant matter to be stricken out, and indefinite matter made more definite.
182. Judgment, how to be pleaded.
183. Conditions precedent, how to be pleaded.
184. Private statutes, how to be pleaded.
185. Libel and slander, how stated in complaint.
186. Answer in such cases.
186*a*. Pleading in action *ex delicto*.
187. Answer in action to recover property distrained for damage.
188. What causes of action may be joined.
189. Allegation not denied, when to be deemed true.

Pleadings to be subscribed and verified.

Ib., § 179.

Section 177. Every pleading in a Court of record must be subscribed by the party or his attorney; and when any pleading is verified, every subsequent pleading, except a demurrer, must be verified also.

Cited in Reeder v. Workman, 37 S. C., 416; 16 S. E., 18.

Pleadings—how verified.

Ib., § 180.

Sec. 178. The verification must be to the effect that the same is true to the knowledge of the person making it, except as to those matters stated on information and belief, and, as to those matters, he believes it to be true; and must be by the affidavit of the party, or, if there be several parties united in interest, and pleading together, by one at least of such parties acquainted with the facts, if such party be within the County where the attorney resides, and capable of making the affidavit. The affidavit may also be made by the agent or attorney, if the action or defence be founded upon a written instrument for the payment of money only, and such instrument be in the possession of the agent or attorney, or if all the material allegations of the pleading be within the personal knowledge of the agent or attorney. When the pleading is verified by any other person than the party, he shall set forth in the affidavit his knowledge, or the grounds of his belief on the subject, and the reasons why it is not made by the party. When a corporation is a party, the verification may be made by any officer thereof; and when the State, or any officer thereof in its behalf, is a party, the verification may be made by any person acquainted with the facts. The verification may be omitted when an admission of the truth of the allegation might subject the party to prosecution for felony. And no pleading can be used in a

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criminal prosecution against the party as a proof of a fact admitted or alleged in such pleading: *Provided,* That the verification of any pleading in any Court of record in this State may be omitted in all cases where the party called upon to verify would be privileged from testifying as a witness to the truth of any matter denied by such pleading.

When matters are pleaded upon knowledge, it is unnecessary to add the words "on information and belief."—Smalls v. Wilder, 6 S. C., 402. So, where it is upon information and belief, it is unnecessary to state that it is upon knowledge. —*Ib.*

Where the answer is negative merely of the complaint, the same form of verification is necessary.—*Ib.*

Where the complaint does not state which of its allegations are made on knowledge and which on information and belief, the verification is insufficient in form if it say that "the complaint is true of his own knowledge, except as to matters therein stated on information and belief, and as to those matters he believes it to be true."—Hecht v. Friesleben, 28 S. C., 181; 5 S. E., 475; Burmester v. Mosely, 33 S. C., 251; 11 S. E., 786; Addison v. Sujette, 50 S C., 201; 28 S. E., 948.

Where the verification is made by another than the party, it must set forth his knowledge or the grounds of his belief with sufficient clearness.—*Ib.*

An attorney may verify a complaint only in two cases: 1. Where the action is founded upon a written instrument and for payment of money only, and that instrument is in his possession; and, 2. Where all the material allegations are within his personal knowledge.—Hecht v. Friesleben, 28 S. C., 181; 5 S. E., 475.

Hence, attorney cannot verify complaint on an open account, verified by affidavit of plaintiff.—Bray Clothing Co. v. Shealy, 53 S. C., 12; 30 S. E., 620. Verification of statement in controversy without action must be made by the parties.—Reeder v. Workman, 37 S. C., 413; 16 S. E., 187.

How to state an account in pleading.

1870, XIV., § 181.

Sec. 179. It shall not be necessary for a party to set forth in a pleading the items of an account therein alleged; but he shall deliver to the adverse party, within ten days after a demand therefor in writing, a copy of the account, which, if the pleading is verified, must be verified by his own oath, or that of his agent or attorney, if within the personal knowledge of such agent or attorney, to the effect that he believes it to be true, or be precluded from giving evidence thereof. The Court, or a Judge thereof, may order a further account, when the one delivered is defective, and the Court may, in all cases, order a bill of particulars of the claim of either party to be furnished.

Defendant having failed to demand an itemized account, he cannot complain of the judgment upon the ground that the account was not itemized.—Sloan v. Westfield, 17 S. C., 589.

Pleadings to be liberally construed.

Ib., § 182.

Sec. 180. In the construction of a pleading for the purpose of determining its effect, its allegations shall be liberally construed, with a view of substantial justice between the parties.

Pleading must not be construed strongly against pleader.—Childers v. Verner, 12 S. C., 1; Wallace v. Lark, 12 S. C., 576; Dowie v. Joyner, 25 S. C., 123; Parks v. Brooks, 38 S. C., 300; 17 S. E., 23; Jerkowski v. Marco, 56 S. C., 241; 34 S. E., 388; Mason v. Carter, 8 S. C., 104; Harle v Morgan, 29 S. C., 258; 7 S. E., 487. But this Section does not permit allegations of fact in the alternative.—Iseman v. McMillan, 36 S. C., 28; 15 S. E., 336.

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Sec. 181. If irrelevant or redundant matter be inserted in a pleading, it may be stricken out, on motion of any person aggrieved thereby. And when the allegations of a pleading are so indefinite or uncertain that the precise nature of the charge or defence is not apparent, the Court may require the pleading to be made definite and certain by amendment.

Irrelevant or redundant matter to be stricken out, and indefinite matter made more definite.

Ib., § 183.

"An allegation is irrelevant when the issue formed by its denial can have no connection with, or effect upon, the cause of action."—Pom. Code Rem., Sec. 551; Smith v. Smith, 50 S. C., 54; 27 S. E., 612; Ragsdale v. Ry. Co., 60 S. C., 381; 38 S. E., 612; Nichols v. Briggs, 18 S. C., 473. The remedy is by motion to strike out.—*Ib.* The motion may be waived by answering the complaint.—Allen v. Cooley, 60 S. C., 353; 38 S. E., 627. But the right to make the motion may be reserved in the answer.—Whaley v. Lawton, 53 S. C., 582; 31 S. E., 660. Under Rule XX. of the Circuit Court the motion must be noticed before demurring or answering, and within twenty days after service of the pleading.—*Ib.* If irrelevant allegations are permitted to remain in the pleading, they may be supported by proof.—Dent v. R. R. Co., 61 S. C., 329; 39 S. E., 529.

If complaint is defective in mode of statement, the remedy is by motion to make allegations certain and not by demurrer.—Flenniken v. Buchanan, 21 S. C., 434;Sandel v. Ins. Co., 53 S. C., 245; 31 S. E., 230; State *ex rel.* Elliott v. Jeter, 59 S. C., 483; 38 S. E., 124; Buist v. Melchers, 44 S. C., 46; 21 S. E., 449; Garrett v. Weinberg, 50 S. C., 310; 27 S. E., 770; Savage v. Sanders, 51 S. C., 495; 29 S. E., 248; Long v. Hunter, 48 S. C., 179; 26 S. E., 228. And such motion should be made before trial.—Zimmerman v. McMakin, 22 S. C., 375.

If averments of answer are somewhat indefinite and uncertain, the remedy is under this Section by motion, and not by demurrer.—Mobley v. Cureton, 6 S. C., 49; Dowie v. Joyner, 25 S. C., 123.

If description of premises is not sufficiently particular, the objection must be made by motion to have it made so.—Childers v. Verner, 12 S. C., 1. Motions to have pleadings made definite and certain should be made before answer.—Bowden v. Winsmith, 11 S. C., 409. If not made in due time it is waived.—*Ib.*

When the complaint fails to state each of several causes of action, separately, it is a vice in pleading; but must be remedied, by motion to make more definite and certain.—Hellams v. Switzer, 24 S. C., 39; Westlake v. Farrow, 34 S. C., 270; 13 S. E., 469.

If defense and counter-claim are improperly united, motion to make more distinct, and not demurrer, is the remedy.—McCown v. McSween, 29 S. C., 130; 7 S. E., 45.

If several notes are sued on as one cause of action, and if the allegation is imperfect or informal, such motion, and not demurrer, is the remedy.—Holland v. Kemp, 27 S. C., 623; 3 S. E., 83.

If plaintiffs are not sufficiently referred to in complaint, motion to make more definite is the remedy.—Chapman v. City, 28 S. C., 373; 16 S. E., 158.

Where plaintiff desires to demur to certain defences, not separately stated, in the answer, he may make motion to have pleading made more definite and certain, and then move to strike out the irrelevant portions.—Buist v. Salvo, 44 S. C., 143; 21 S. E., 615.

The practice to be followed on motion to make more definite and certain indicated in Long v. Hunter, 48 S. C., 179; 26 S. E., 228; Savage v. Sanders, 51 S. C., 495; 29 S. E., 248.

Sec. 182. In pleading a judgment, or other determination of a Court or officer of special jurisdiction, it shall not be necessary to state the facts conferring jurisdiction, but such judgment or determination may be stated to have been duly given or made. If such allegation be controverted, the party plead-

Judgment, how to be pleaded.

Ib., § 184.

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ing shall be bound to establish on the trial the facts conferring jurisdiction.

Conditions precedent, how to be pleaded.

1870, XIV., § 185.

Sec. 183. In pleading the performance of conditions precedent in a contract, it shall not be necessary to state the facts showing such performance; but it may be stated generally that the party duly performed all the conditions on his part; and if such allegation be controverted, the party pleading shall be bound to establish, on the trial, the facts showing such performance. In an action or defence founded upon an instrument for the payment of money, it shall be sufficient for a party to give a copy of the instrument, and to state that there is due to him thereon from the adverse party a specified sum, which he claims.

Complaint against makers of a note held sufficient under this Section.—Watson v. Barr, 37 S. C., 466; 16 S. E., 188.

Private statutes, how to be pleaded.

Ib., § 186.

Sec. 184. In pleading a private statute, or a right derived therefrom, it shall be sufficient to refer to such statute by its title and the day of its passage, and the Court shall thereupon take judicial notice thereof.

Referred to in White v. R. R. Co., 14 S. C., 51.

Libel and slander, how stated in complaint.

Ib., § 187.

Sec. 185. In an action for libel or slander, it shall not be necessary to state, in the complaint, any extrinsic facts, for the purpose of showing the application to the plaintiff of the defamatory matter out of which the cause of action arose; but it shall be sufficient to state generally that the same was published or spoken concerning the plaintiff; and if such allegation be controverted the plaintiff shall be bound to establish, on trial, that it was so published or spoken.

An allegation that defendant, at a certain time and place, slandered plaintiff, by saying that he had sworn lies at a certain time and place, and in a named cause, states facts sufficient.—Zimmerman v. McMakin, 22 S. C., 376. And where the words of slander proved at trial are not the same as but similar to those alleged, it is for the jury to say whether they meant the same.—*Ib.*

Answer in such cases.

Ib., § 188.

Sec. 186. In the actions mentioned in the last Section, the defendant may, in his answer, allege both the truth of the matter charged as defamatory, and any mitigating circumstances, to reduce the amount of damages; and, whether he prove the justification or not, he may give, in evidence, the mitigating circumstances.

It may be that defendant can introduce evidence to show his belief in the truth of the charge made, in mitigation of damages.—Finch v. Finch, 21 S. C., 342.

Whether defendant sustain his plea of justification, the jury may consider the evidence of mitigating circumstances.—Burckhalter v. Coward, 16 S. C., 439.

Pleading in actions *ex delicto* for damages regulated.

1898, XXII., 693.

Sec. 186a. In all actions *ex delicto* in which vindicitive, punitive or exemplary damages are claimed in the complaint, it

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shall be proper for the party to recover also his actual damages sustained, and no party shall be required to make any separate statement in the complaint in such action, nor shall any party be required to elect whether he will go to trial for actual or other damages, but shall be entitled to submit his whole case to the jury under the instruction of the Court.

How two or more causes of action for damages may be pleaded.

In all cases where two or more acts of negligence or other wrongs are set forth in the complaint, as causing or contributing to the injury, for which such suit is brought, the party plaintiff in such suit shall not be required to state such several acts separately, nor shall such party be required to elect upon which he will go to trial, but shall be entitled to submit his whole case to the jury under the instruction of the Court and to recover such damages as he has sustained, whether such damages arose from one or another or all of such acts or wrongs alleged in the complaint.

Glover v. Ry. Co., 57 S. C., 234; 35 S. E., 510; Mew v. Ry. Co., 55 S. C., 96; 32 S. E., 828; Bowen v. Ry. Co., 58 S .C., 226; 36 S. E., 590; Proctor v. So. Ry. Co., 61 S. C., 184; 39 S. E., 351; Appleby v. So. Ry. Co., 60 S. C., 48; 38 S. E., 240.

Answer in actions to recover property distrained for damage.

Ib., § 189.

Sec. 187. In action to recover the possession of property distrained doing damage, an answer that the defendant, or person by whose command he acted, was lawfully possessed of the real property upon which the distress was made, and that the property distrained was at the time doing damage thereon, shall be good, without setting forth the title to such real property.

What causes of action may be joined.

Ib., § 190.

Sec. 188. The plaintiff may unite, in the same complaint, several causes of action, whether they be such as have been heretofore denominated legal or equitable, or both, where they all arise out of—

1. The same transaction, or transactions connected with the same subject of action; or,

2. Contract, express or implied; or,

3. Injuries with or without force, to person and property, or either; or,

4. Injuries to character; or,

5. Claims to recover real property, with or without damages for the withholding thereof, and the rents and profits of the same; or,

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

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

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But the causes of action, so united, must all belong to one of these classes, and, except in actions for the foreclosure of mortgages, must affect all the parties to the action, and not require different places of trial, and must be separately stated. In actions to foreclose mortgages, the Court shall have power to adjudge and direct the payment by the mortgagor of any residue of the mortgage debt that may remain unsatisfied after a sale of the mortgaged premises, in cases in which the mortgagor shall be personally liable for the debt secured by such mortgage; and if the mortgage debt be secured by the covenant or obligation of any person other than the mortgagor, the plaintiff may make such person a party to the action, and the Court may adjudge payment of the residue of such debt remaining unsatisfied after a sale of the mortgaged premises against such other person, and may enforce such judgment as in other cases.

Court may render judgment and order sale at same time.

Ib., 1894, XXI., 816, § 2.

The Court shall also have the power to render judgment against the parties liable for the payment of the debt secured by the mortgage and to direct at the same time the sale of the mortgaged premises. The said judgment so rendered may be entered and docketed in the Clerk's office in the same manner as other judgments. Upon sale of the mortgaged premises, the officer making the sale under the order of the Court shall credit upon the judgment so rendered for the debt the amount or amounts paid to the plaintiff from the proceeds of the sale.

Judgment to be credited.

Parties in actions for strict foreclosure and sale.

1900, XXIII., 349.

But it shall not be necessary to make the personal representative of a deceased mortgagor a party to any foreclosure proceeding; nor in any foreclosure proceeding (if the mortgagor be dead) shall it be necessary to first establish the debt by the judgment of some Court of competent jurisdiction in order to obtain a decree of foreclosure and sale; nor shall it be necessary to make the mortgagor who may have conveyed the mortgaged premises a party to any action for foreclosure where no judgment for any deficiency is demanded.

There is a limit to this union of causes of action.—Hellams v. Switzer, 24 S. C., 39. To be a cause of action the matter must be stated in a separate and distinct division of the complaint, in such manner that each division alone might be the subject of an independent action.—*Ib.*; Hammond v. R. R., 15 S. C., 10. Such failure to so state each cause of action separately is a vice in pleading, but only to be remedied by motion to make more definite and certain.—Hellams v. Switzer, 24 S. C., 39.

Action against administrators, their sureties and personal representatives, for account and settlement of the estate of intestate, which made a party defendant, who was alleged to claim the land of the intestate, was held to be multifarious as to that party.—Suber v. Allen, 13 S. C., 317.

A bill seeking settlement of all matters growing out of an estate is not multi-

farious.—Tucker v. Tucker, 13 S. C., 318. There is no misjoinder where, under a bill to marshal assets, two of the defendants claim different tracts of land.—Barret v. Watts, 13 S. C., 441. Nor where a single action is brought upon a note and account against a corporation and its directors, who are jointly and severally liable therefor.—Sullivan v. Sullivan, 14 S. C., 494.

Survivor and representative of surviving partner can be joined as defendants.—Wiesenfield v. Byrd, 17 S. C., 106. Causes of action on single bill, promissory note and money account may be joined.—Cureton v. Stokes, 20 S. C., 582.

Two or more demands for relief is not a misjoinder.—Emory v. Hazard Co., 22 S. C., 476.

Action for partition among remaindermen and for account of estate of life tenant is a misjoinder.—Shanks v. Mills, 25 S. C., 358.

A joint trespass by two and continued by one cannot be sued together.—Hines v. Jarrett, 26 S. C., 480; 2 S. E., 393.

Joint action by four wards against their guardian is not multifarious.—Stellings v. Barrett, 26 S. C., 474; 2 S. E., 483.

Claim of heirs to land descended, and as distributees, to an accounting, cannot be joined.—Rush v. Warren, 26 S. C., 72; 1 S. E., 363. But complaint being dismissed as to land, it was properly retained as to accounting.—*Ib.*

Demurrer for misjoinder is bad if one cause is imperfectly pleaded.—Machine Co. v. Wray, 28 S. C., 86; 5 S. E., 603.

Plaintiff may join suit on note, with claim to set aside fraudulent transactions of his debtor, and failing in last may have judgment for his debt.—McGruder v. Clayton, 29 S. C., 407; 7 S. E., 844.

As to judgment for balance due after sale of mortgaged premises.—Wagener v. Swygert, 30 S. C., 296. 9 S. E., 107.

Doubted whether two causes of action, one for partition and the other for recovery of real estate, can be joined.—Westlake v. Farrow, 34 S. C., 270; 13 S. E., 469.

Action for specific performance of contract to devise or for value of services rendered under such contract is not an improper joinder of actions.—Scoggins v. Smith, 31 S. C., 605; 9 S. E., 971.

Action of partner against devisee of copartner in possession of the land alleging that it was partnership property and demanding reconveyance or sale and division of proceeds did not improperly join several causes of action.—Jones v. Smith, 31 S. C., 527; 10 S. E., 340.

Plaintiff may join in same complaint an action against an association for illegally receiving his money, with an action against a bank for illegally paying it out. Both causes of action arising out of the same transaction.—Pollock v. B. & L. Ass'n, 48 S. C., 65; 25 S. E., 977.

Where several causes of action are separately stated in the same complaint, plaintiff cannot be required to elect which shall be first tried, or that they be separately tried.—Ross v. Jones, 47 S. C., 211; 25 S. E., 60.

An action for damages from a tort and for an injunction against the continuance of the tort, seeking two different modes of relief, states but one cause of action.—Threatt v. Mining Co., 49 S. C., 95; 26 S. E., 983. So also a complaint for dower against more than one defendant in possession of different tracts of land aliened by the husband in one tract, states but one cause of action.—Bostick v. Barnes, 59 S. C., 22; 37 S. E., 24.

Allegation not denied, when to be deemed true.

1870, XIV., § 191.

Sec. 189. Every material allegation of the complaint, not controverted by the answer, as prescribed in Section 170, and every material allegation of new matter in the answer, constituting a counter-claim, not controverted by the reply, as prescribed in Section 174, shall, for the purposes of the action, be taken as true. But the allegation of new matter in the answer, not relating to a counter-claim, or of new matter in a reply, is to be deemed controverted by the adverse party as upon a direct denial or avoidance, as the case may require.

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Material allegations in a special proceeding not controverted by answer are taken to be true.—Columbia Co. v. Columbia, 4 S. C., 388.

Allegations of complaint not controverted are to be taken as true.—Lupo v True, 16 S. C., 579. The only effect of an answer that is not responsive to the complaint is that the complaint so far stands admitted.—Zimmerman v. Amaker, 10 S. C., 98.

New matters stated in reply are deemed to be controverted.—Gravely v. Gravely, 20 S. C., 93. So are new matters stated in answer.—Hubbell v. Courtney, 5 S. C., 85; Geiger v. Kaigler, 15 S. C., 262; Simpson v. Ins. Co., 59 S. C., 195; 37 S. E., 18; Bank v. Gadsden, 56 S. C., 317; 33 S. E., 575. But that of counter-claim is not deemed controverted without reply.—Hubbell v. Courtney, 5 S. C., 87.

An answer setting up defenses, other than counter-claim, not set aside on demurrer is left still as controverting the complaint by direct denial or avoidance.—Mobley v. Cureton, 6 S. C., 49. Answer admitting complaint but stating sufficient new matter in avoidance is deemed to be controverted, and is good.—Hughey v. Kellar, 34 S. C., 268; 13 S. E., 475.

An allegation of his corporate existence is no part of plaintiff's cause of action, and is not put in issue by general denial.—Insurance Co. v. Turner, 8 S. C., 111; Steamship Co. v. Rodgers, 21 S. C., 33; Palmetto Co. v. Risley, 25 S. C. 309; American Co. v. Hill, 27 S. C., 164; Rembert v. R. R., 31 S. C., 309; 9 S. E., 968; Land Co. v. Williams, 35 S. C., 367; 14 S. E., 821.

Failure to deny is such admission of plaintiff's case as to allow defendant to open and reply.—Addison v. Duncan, 35 S. C., 165; 14 S. E., 305.

CHAPTER VI.

Mistakes in Pleadings and Amendments.

SEC.
190. Material variances, how provided for.
191. Immaterial variances, how provided for.
192. What not to be deemed a variance.
193. Amendments of course, and after demurrer.
194. Amendments by the Court.
195. Court may give relief in case of mistake.
196. Suing a party by a fictitious name.
197. No error or defect to be regarded unless it affect substantial rights.
198. Supplemental complaint, answer and reply.

The provisions of this Chapter do not seem to give a Circuit Judge greater power than that which was formerly exercised by the Chancellors in this State.—Coleman v. Heller, 13 S. C., 491.

Material variances, how provided for.

Ib., § 192.

Section 190. No variance between the allegation in a pleading and the proof shall be deemed material unless it have actually misled the adverse party, to his prejudice, in maintaining his action or defence, upon the merits. Whenever it shall be alleged that a party has been so misled, that fact shall be proved to the satisfaction of the Court, and in what respect he has been misled; and thereupon the Court may order the pleading to be amended, upon such terms as shall be just.

This Section applies to trials in actions pending when the Code was adopted.—Ahrens v. Bank, 3 S. C., 401. Nonsuit cannot be granted for variance between the allegations and the proof; the only remedy is by amendment upon such terms as shall be just, and for this the party must satisfy the Court, by affidavit, that he has been misled, and in what respect.—*Ib.;* State v. Scheper, 33 S. C., 562; 11

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S. E., 623. Unless the party prejudiced has actually been misled, he has no rights under this Section.—Hammond v. R. R. Co., 6 S. C., 130; Mew v. C. & S. Ry. Co., 55 S. C., 99; 32 S. E., 829. Judgment may be rendered on account stated, although no allegation of account stated was made.—Sloan v. Westfield, 17 S. C., 589.

Immaterial variances, how provided for.

1870, XIV., § 193.

Sec. 191. Where the variance is not material, as provided in the last Section, the Court may direct the fact to be found according to the evidence, or may order an immediate amendment without costs.

In all immaterial variances the Court may disregard them and direct a verdict according to the evidence or order immediate amendment.—Ahrens v. Bank, 3 S. C., 401.

Such amendment is to conform the pleadings to the facts proven, and may be made informally, sometimes orally, or by the Court of its own motion.—Chichester v. Hastie, 9 S. C., 330.

What not to be deemed a variance.

Ib., § 194.

Sec. 192. Where, however, the allegation of the causes of action or defence to which the proof is directed is not proved, not in some particular or particulars only, but in its entire scope and meaning, it shall not be deemed a case of variance within the last two Sections, but a failure of proof.

This failure of proof warrants a nonsuit.—Ahrens v. Bank, 3 S. C., 401.

Amendments of course, and after demurrer.

Ib., § 195.

Sec. 193. Any pleading may be once amended by the party of course, without costs, and without prejudice to the proceedings already had, at any time within twenty days after it is served, or at any time before the period for answering it expires; or it can be so amended at any time within twenty days after the service of the answer or demurrer to such pleading, unless it be made to appear to the Court that it was done for the purpose of delay, and the plaintiff or defendant will thereby lose the benefit of a circuit or term for which the cause is or may be docketed; and if it appear to the Court that such amendment was made for such purpose, the same may be stricken out, and such terms imposed as to the Court may seem just. In such case a copy of the amended pleading must be served on the adverse party. After the decision of a demurrer, the Court shall, unless it appear that the demurrer was interposed in bad faith, or for purposes of delay, allow the party to plead over upon such terms as may be just. If the demurrer be allowed for the cause mentioned in the fifth subdivision of Section 165, the Court may, in its discretion, and upon such terms as may be just, order the action to be divided into as many actions as may be necessary to the proper determination of the causes of action therein mentioned.

The allowance of voluntary amendment, it seems, does not allow a wholly different cause of action to be substituted in place of original one.—Sullivan v. Sullivan, 24 S. C., 474.

Facts occurring since commencement of action cannot be alleged as amendments

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in the original complaint; they can only be brought before the Court by supplemental complaint.—McCaslan v. Latimer, 17 S. C., 123.

Permission to answer over cannot be claimed as a right; it rests in the discretion of the Judge, and he may grant such relief upon payment of costs.—R. R. Co. v. White, 14 S. C., 51; Lowry v. Jackson, 27 S. C., 318; 3 S. E., 473. Or without payment of costs.—Stallings v. Barrett, 26 S. C., 474; 2 S. E., 483.

When Judge properly overruled demurrer made for several causes, and required defendant to answer over by a given time, he acted within authority herein conferred.—Cureton v. Stokes, 20 S. C., 582. When demurrer is taken in good faith, the Court in overruling it should allow defendant to answer.—The New Co. v. Wray, 28 S. C., 86; 5 S. E., 603. The plaintiff's right to amend as of course may be waived by motion for leave to amend; the granting of which is discretionary.—Hamilton v. Carrington, 41 S. C., 385; 19 S. E., 616.

See also Simms v. Ry. Co., 56 S. C., 30; 33 S. E., 746.

Amendments by the Court.

Sec. 194. The Court may, before or after judgment, in furtherance of justice, and on such terms as may be proper, amend any pleading, process, or proceeding, by adding or striking out the name of any party; or by correcting a mistake in the name of a party, or a mistake in any other respect; or by inserting other allegations material to the case; or, when the amendment does not change substantially the claim or defence, by conforming the pleading or proceeding to the facts proved.

The power of amendment herein is limited to the amendments of the character specified; it is intended only to perfect a proceeding in which the party has been successful, and not when he has lost his cause; and not to be used as a means to obtain a new trial on a new cause after the case has been lost on the original cause of action.—Kennerty v. Etiwan Co., 21 S. C., 226; Whaley v. Stevens, 21 S. C., 221; Hall v. Woodward, 30 S. C., 564; 9 S. E., 684; Clayton v. Mitchell, 31 S. C., 199; 9 S. E., 814. This limitation, however, applies only during or after trial.—Mason v. Johnson, 13 S. C., 21; Cleveland v. Cohrs, 13 S. C., 397; Trumbo v. Finley, 18 S. C., 316; Dunsford v. Brown, 19 S. C., 567; Nesbett v. Cavender, 27 S. C., 1; 2 S. E., 702; Hall v. Woodward, 30 S. C., 564; 9 S. E., 684; Edwards v. R. R. Co., 32 S. C., 117; 10 S. E., 822; Lilly v. R. R. Co., 32 S. C., 142; 10 S. E., 932.

But judgment will not be arrested because of defects in complaint which might have been cured by amendments before or after judgment.—Brickman v. R. R. Co., 8 S. C., 173.

A petition to enforce mechanic's lien is subject to the liberal rules of amendment under this Code.—McGee v. Piedmont Co., 7 S. C., 263. A proceeding in *mandamus* in name of party, to which no objection is made, may be amended by substituting name of State.—Runion v. Latimer, 6 S. C., 126.

Such a motion to amend is within the discretion of the Court.—Chichester v. Hastie, 9 S. C., 334. So motion for leave to amend answer to plead Statute of Limitations.—Seegers v. McCreery, 41 S. C., 548; 19 S. E., 696. And such discretion is not to be disturbed unless it deprives a party of substantial right.—Trumbo v. Finley, 18 S. C., 305; Stallings v. Barrett, 26 S. C., 474; 2 S. E., 483; Green v. Iredell, 31 S. C., 588; 10 S. E., 545; Garlington v. Copeland, 32 S. C., 57; 10 S. E., 616. And Circuit Judge has power at chambers to grant an order permitting an amendment of the complaint.—Ellen v. Ellen, 26 S. C., 99; 1 S. E., 413.

In actions against two, as copartners, the proof showing neither copartnership nor joint liability, and motion for nonsuit being made, the plaintiff was properly allowed to amend, striking out name of one defendant and proceeding against the other.—Bull v. Lambson, 5 S. C., 288.

Application to amend before trial, made in good faith, should be allowed, where the amendment is such as the Code permits.—Zimmerman v. Amaker, 10 S. C., 98.

It is proper, upon the admitted fact of the lunacy of the defendant, to allow amendment making guardian *ad litem* party.—Boyce v. Lake, 17 S. C., 481.

It is error, at the trial, to permit the name of sole plaintiff to be stricken out and another substituted without giving defendant time to answer.—Cleveland v.

Cohrs, 13 S. C., 397; Coleman v. Heller, 13 S. C., 491. But if time to answer is not asked, the Court may, in its discretion, proceed to trial upon the amended complaint.—Tarrant v. Gittelson, 16 S. C., 231.

Refusal to allow substitution of a new party, for a plaintiff, who shows no cause of action, is not error.—Strickland v. Bridges, 21 S. C., 21.

The Court may correct by amendment manifest errors and mere clerical mistakes.—Carroll v. Tompkins, 14 S. C., 223; Heyward v. Williams, 48 S. C., 564; 26 S. E., 797.

Where complaint alleged *quantum meruit* for work done, it was permissible to allow amendment, showing special contract, in order to allow proof of it.—Tarrant v. Gittelson, 16 S. C., 231.

Or where the complaint is for assault, it may be amended so as to be for assault and battery.—Sullivan v. Sullivan, 24 S. C., 474.

Plaintiff may be permitted to amend the complaint so as to conform it to the facts proved.—R. R. Co. v. Barrett, 12 S. C., 173.

But he cannot be permitted to amend by stating a wholly different and new cause of action, when his complaint is held to state no cause of action.—Trumbo v. Finley, 18 S. C., 305; Sullivan v. Sullivan, 24 S. C., 474.

Nor to change substantially the claim.—Whaley v. Stevens, 21 S. C., 221. As, to substitute a claim of right of way appurtenant for a right of way in gross.—*Ib.* Or a claim of cancellation of an instrument instead of reformation thereof.—Kennerty v. Etiwan Co., 21 S. C., 226. Or to change an action for accounting into a direct attack upon the settlement and receipt, set up in defense thereto.—Dunsford v. Brown, 19 S. C., 560. Or to make a case at law to recover mortgaged land a case in equity to redeem it.—Skinner v. Hodge, 24 S. C., 165. Or to change action to enjoin judgment as paid into one for specific performance of contract.—Miller v. Klugh, 29 S. C., 124; 7 S. E., 67. But in action on sealed notes against a firm, calling them promissory notes, an amendment alleging indebtedness on the account for which the notes were given does not substantially change the claim and should be allowed.—Sibley v. Young, 26 S. C., 415; 2 S. E., 314. Where the amendment is refused on legal grounds, the action of the Court will be reviewed.—*Ib.;* Madden v. Watts, 59 S. C., 81; 37 S. E., 209.

So amendment is allowed to allege sealed note instead of promissory note.—Moore v. Christian, 31 S. C., 338; 9 S. E., 981.

Wide as is the latitude allowed by this Section, an order to amend cannot be granted where its effect would be to incorporate into one action two distinct actions against different parties.—Howard v. Wofford, 16 S. C., 148.

An amendment to answer setting up a separate defence, when case is called for trial, allowed where the facts alleged in amendment are nearly identical with the facts set out in the original answer, and plaintiff asked no delay on account of such amendment.—Richardson v. Wallace, 39 S. C., 223; 17 S. E., 725.

In action for partition where defendant plead a general denial, and claimed title in himself, an amendment allowing him also to plead that plaintiff was estopped to claim title did not materially change the defence.—Woodward v. Williamson, 39 S. C., 336; 17 S. E., 778.

Can a petition for prohibition be changed by amendment so as to ask for an injunction?—Hunter v. Moore, 39 S. C., 396; 17 S. E., 797.

Where an action was brought under the statute against a railroad for damages from fire, the plaintiff will not, after an action for common law negligence has been barred, be allowed to amend the complaint so as to strike out the allegations referring to the statute and allege an action at common law.—Mayo v. Spartanburg &c., Ry. Co., 43 S. C., 225; 20 S. E., 10.

It is within the discretion of the Court to allow an amendment to a complaint converting it from an action against a copartnership to one against the individual members thereof.—Baker v. Herrick, 51 S. C., 313; 28 S. E., 941.

An amendment to conform to the facts proved is within the discretion of the Judge.—Interstate B. & L. Ass'n v. Waters, 50 S. C., 459; 27 S. E., 948; Booth v. Langley M'f'g Co., 51 S. C., 412; 29 S. E., 204.

Error to allow amendment during trial after plaintiff had rested, and the defendant had moved for a nonsuit so as to convert admissions into denials in the answer.—Cuthbert v. Brown, 49 S. C., 513; 27 S. E., 485. But amendments may be allowed to complete a defectively stated cause of action.—Brown v. C. M. Ry. Co., 58 S. C., 466; Ruberg v. Brown, 50 S. C., 397; 27 S. E., 873. Or to change

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the alleged date of the transaction in question where the other party is not misled thereby.—Dent v. S. B. R. R., 61 S. C., 329; 39 S. E., 527. A complaint in foreclosure may be amended after the testimony is in so as to allege a cause of action for the purchase money of the land only.—Whitmire v. Boyd, 53 S. C., 315; 31 S. E., 307. So an amendment may be allowed after the close of argument.—Mew v. C. & S. Ry. Co., 55 S. C., 90; 32 S. E., 831. Or after demurrer is overruled.—Bomar v. Means, 47 S. C., 190; 25 S. E., 60. And also after case is remanded from Supreme Court.—*Ib.*; Jennings v. Parr, 54 S. C., 109; 32 S. E., 73; Lawton v. S. B. R. R. Co., 61 S. C., 548; 39 S. E., 732. But when a litigant waits until after he has been successful in his appeal his motion to amend comes too late.—Cothran v. Knight, 47 S. C., 243; 25 S. E., 146. After judgment answer cannot be amended to change admissions into denials.—Martin v. Fowler, 51 S. C., 164; 28 S. E., 314. Amendment changing defense not allowed.—Pickett v. Fidelity and Casualty Co., 60 S. C., 477; 38 S. E., 160. Amendment not to set up usury after testimony had been taken and reported.

Court may give relief in case of mistake.

Ib., § 197.

Sec. 195. The Court may likewise, in its discretion, and upon such terms as may be just, allow an answer or reply to be made, or other act to be done, after the time limited by this Code of Procedure, or, by an order, enlarge such time; and may also, in its discretion, and upon such terms as may be just, at any time within one year after notice thereof, relieve a party from a judgment, order, or other proceeding, taken against him through his mistake, inadvertence, surprise, or excusable neglect, and may supply an omission in any proceeding; and whenever any proceeding taken by a party fails to conform in any respect to the provisions of this Code of Procedure, the Court may, in like manner, and upon like terms, permit an amendment of such proceeding, so as to make it conformable thereto.

A belief as to the effect of a consent decree is not such a mistake as will relieve one under this Section.—Alma Lumber Co. v. Beacham, 25 S. E., 285; 47 S. C., 393. A refusal to allow time to answer not an abuse of discretion.—McDaniel v. Addison, 53 S. C., 222; 31 S. E., 226. Where the rule of Court fixes the time within which an Act is to be done, a party cannot plead as surprise that he did not know what time was limited.—Brown v. Easterling, 59 S. C., 472; 38 S. E., 119.

After time to answer has expired, the Judge may impose as a condition of leave to answer the payment of all costs accrued.—Hecht v. Friesleben, 28 S. C., 181; 5 S. E., 475.

A decree will not be reversed for defects purely technical, which might have, upon objection, been cured by amendment.—Lanier v. Griffin, 11 S. C., 565.

Such relief is only to be given in cases where the judgment has been taken through party's own mistake, inadvertence, surprise or excusable neglect, and does not apply to cases where relief may be had upon application to same tribunal which rendered judgment under General Statutes.—Garvin v. Garvin, 13 S. C., 160.

It is intended for parties who may, through such cause, have lost the opportunity to be present at the trial or to be represented there; and not for parties who, represented at the trial, are only entitled to relief by application for new trial under the provisions of the law therefor.—Williams v. Charleston, 7 S. C., 71; Gibbes v. Elliott, 8 S. C., 60; Steele v. R. R., 14 S. C., 324; Hand v. R. R. Co., 17 S. C., 219; Clark v. Wimberly, 24 S. C., 138; Kamintsky v. R. R. Co., 25 S. C., 53; Hubbard v. Camperdown Mills, 26 S. C., 581; 2 S. E., 576; Woodward v. Elliott, 27 S. C., 368; 3 S. E., 477.

And extends to cases of such mistake or excusable neglect on the part of the party's attorney.—Vaughn v. Hewitt, 17 S. C., 442.

One Circuit Judge may allow absent party to file security for costs after the

time to do so, fixed by another has expired.—McMillan v. McCall, 2 S. C., 393; Williams v. Connor, 14 S. C., 621.

Upon application for such relief by defendant, upon grounds of failure to answer because of illness, refused by the Judge, it must be assumed that the Judge's order was the result of his conclusion as to the weight of evidence and not to be disturbed by the Supreme Court.—Buttz v. Campbell, 15 S. C., 614.

This Section authorizes Judge to vacate judgment by default.—Buttz v. Campbell, 15 S. C., 614; Truett v. Rains, 17 S. C., 453; Leconte v. Irwin, 19 S. C., 554.

This limitation of one year is the only limitation in the State to time for motion to set aside judgment.—Thew v. Porcelain Co., 5 S. C., 415; *Ex Parte* Carroll, 17 S. C., 446. There is no other limitation as to the time within which a motion to vacate or set aside a judgment may be made, than that provided in this Section.—Allen v. Allen, 48 S. C., 566; 26 S. E., 786.

Such relief against a judgment must be sought within the one year after notice thereof.—Vaughn v. Hewitt, 17 S. C., 442.

Where plaintiff's attorney failed to attend the trial because he was detained in Court in his own County, and judgment was obtained against him, he was not entitled to relief against this judgment under this Section.—Claussen v. Johnson, 32 S. C., 86; 11 S. E., 209.

Nor can party find such relief from a judgment by default when he entrusted a friend to hand the copy summons to an attorney, with directions to plead payment, but the friend failed to do so.—Sullivan v. Shell, 36 S. C., 578; 15 S. E., 377.

The Court can correct any mistake or clerical error in its own process to make it conform to the record.—Carroll v. Tompkins, 14 S. C., 223. But it has no authority to make such alteration as would contradict the record and change the whole scope of the judgment.—Trimmier v. Thomson, 19 S. C., 247. Nor to amend decree rendered in term time after adjournment of Court.—Garlington v. Copeland, 32 S. C., 57; 10 S. E., 616.

This Section does not relate to Courts of Magistrates.—Doty v. Duvall, 19 S. C., 143.

Does it apply to Supreme Court?—Clark v. Wimberly, 24 S. C., 138.

It does not apply to extension of time for filing security for costs.—Bomar v. R. R. Co., 30 S. C., 450; 9 S. E., 512; Cummings v. Wingo, 31 S. C., 427; 10 S. E., 107.

What is surprise?—Martin v. Fowler, 51 S. C., 164; 28 S. E., 312. The sufficiency of the evidence as to surprise is for the Judge.—*Ex Parte* Rountree; Michalson v. Rountree, 51 S. C., 405; 29 S. E., 66. This is an exclusive remedy, taking the place of a bill for rehearing or review.—Carolina Nal'l Bank v. Homestead B. & L. Ass'n, 56 S. C., 12; 33 S. E., 781; Odom v. Burch, 52 S. C., 305; 29 S. E., 726. The discretion of the Judge will not be reviewed on appeal, except in case of abuse.—*Ib.;* Washington v. Hesse, 56 S. E., 28; 33 S. E., 787.

Suing a party by a fictitious name.

1870, XIV., § 198.

Sec. 196. When the plaintiff shall be ignorant of the name of the defendant, such defendant may be designated in any pleading or proceeding by any name; and when his true name shall be discovered, the pleading or proceeding may be amended accordingly.

No error or defect to be regarded unless it affect substantial rights.

Ib., § 199.

Sec. 197. The Court shall, in every stage of action, disregard any error or defect in the pleadings or proceedings, which shall not affect the substantial rights of the adverse party; and no judgment shall be reversed or affected by reason of such error or defect.

If party wishes to take advantage of any irregularity in the pleadings he must move in due time before trial for such order as he deserves.—Blakely v. Fraser, 11 S. C., 122.

Judgment may be rendered on account stated, although no allegation of account stated was made.—Sloan v. Westfield, 17 S. C., 589.

This Section precludes the allowance of a nonsuit on the ground of informality alone.—Bowden v. Winsmith, 11 S. C., 409.

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A failure of plaintiff to allege his readiness to perform his part of the contract did not affect the substantial rights of the defendant and was properly disregarded by the Circuit Judge.—R. R. Co. v. Garland, 14 S. C., 63.

Failure to insert in endorsement on complaint for judgment the words "have judgment" was mere clerical error not affecting the substance, and should be disregarded in the supplementary proceedings thereon, which is but a stage of the original action.—Henlein v. Graham, 32 S. C., 303; 10 S. E., 1012.

A party cannot under this Section be relieved of consequences of failure to comply with order for security for costs within the time.—Bomar v. R. R. Co., 30 S. C., 450; 9 S. E., 512; Cummings v. Wingo, 31 S. C., 427; 10 S. E., 107.

Immaterial defects in allegation to the qualification of executors.—Jerkowski v. Marco, 34 S. E., 389; 56 S. C., 241. Effect given material facts, not in the pleadings, but brought out in the evidence, without objection.—Matthews v. Cantey, 48 S. C., 588; 26 S. E., 894.

Supplemental complaint, answer, and reply.

Ib., § 200.

Sec. 198. The plaintiff and defendant, respectively, may be allowed, on motion, to make a supplemental complaint, answer, or reply, alleging facts material to the case occurring after the former complaint, answer, or reply, or of which the party was ignorant when his former pleading was made, and either party may, by leave of the Court, in any pending or future action, set up by a supplemental pleading the judgment or decree of any Court of competent jurisdiction rendered since the commencement of such action, determining the matters in controversy in said action, or any part thereof; and if said judgment be set up by the plaintiff, the same shall be without prejudice to any provisional remedy theretofore issued, or other proceedings had in said action on his behalf.

The Court may examine into the merits of the proposed supplemental defence, or other matter, and exercise its discretion in passing on motion.—Copeland v. Copeland, 60 S. C., 135; 38 S. E., 269.

Facts occurring after commencement of action can only be brought before the Court by supplemental pleadings and not by amendment of original pleadings.—McCaslan v. Latimer, 17 S. C., 123.

But plaintiff cannot in action to recover real estate set up a legal title acquired after action brought.—Moore v. Johnson, 14 S. C., 434.

Such motion to make supplemental pleadings may be made at chambers.—Edwards v. Edwards, 14 S. C., 11.

But the opposite party should have notice of such motion.—*Ib.*; Parnell v. Maner, 16 S. C., 348. Four days' notice required.—Avery v. Wilson, 47 S. C., 78; 25 S. E., 286.

Where submission was agreed to and plaintiff opposed the award, the defendant had the right to plead it by supplemental answer.—McCrady v. Jones, 36 S. C., 136; 15 S. E., 430.

A bill in equity prior to 1870 must be revived and amended by such supplemental complaint and summons.—Arthur v. Allen, 22 S. C., 432.

The extinguishment of plaintiff's interest during the pendency of the action should be brought to the Court's attention by supplemental pleading.—Matthews v. Cantey, 48 S. C., 588; 26 S. E., 894.

TITLE VII.

OF THE PROVISIONAL REMEDIES IN CIVIL ACTIONS.

CHAPTER I. *Arrest and Bail.*
CHAPTER II. *Claim and Delivery of Personal Property.*
CHAPTER III. *Injunction.*
CHAPTER IV. *Attachment.*
CHAPTER V. *Provisional Remedies.*

CHAPTER I.

Arrest and Bail.

SEC.
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223. Proceedings on judgment against Sheriff.
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225. Vacating order of arrest or reducing bail.
226. Affidavits on motion to vacate order of arrest or reduce bail.

No person to be arrested in a civil action, except as prescribed.

Section 199. No person shall be arrested in a civil action, except as prescribed by this Code of Procedure; but the same shall not apply to proceedings for contempt.

1870, XIV., § 201.

Arrest in civil actions, in what cases.

Ib., § 202.

Sec. 200. The defendant may be arrested, as hereinafter prescribed, in the following cases:

1. In an action for money received, or property embezzled or fraudulently misapplied, by a public officer, or by an attorney, solicitor, or counsellor, or by an officer or agent of a corporation or banking association, in the course of his employment as such, or by any factor, agent, broker, or other person

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in a fiduciary capacity, or for any misconduct or neglect in office, or in a professional employment.

Sufficiency of complaint and affidavits in action against agent for monies collected in a fiduciary capacity.—National Bank of Greenville v. Jennings, 38 S. C., 372; 17 S. E., 16.

2. In an action to recover the possession of personal property fraudulently detained, or where the property, or any part thereof, has been fraudulently concealed, removed, or disposed of so that it cannot be found or taken by the Sheriff or Constable, and with intent that it should not be so found or taken, or with the intent to deprive the plaintiff of the benefit thereof.

3. 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, or when the action is brought to recover damages for fraud or deceit.

What are insufficient grounds for arrest under this subdivision.—Davis v. Cardue, 38 S. C., 471; 17 S. E., 247.

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

But no female shall be arrested in any action.

5. Whenever a person domiciled in this State, indebted by bond, note, or otherwise, is about to remove or abscond from the limits of this State, and the said debt is not yet due, but payable at some future date, it shall any may be lawful for the obligee, payee, or holder of said demand, or his assignee, or endorsee, as the case may be, upon swearing that such person is indebted to him, and that the demand is just and owing but not yet due, and that the debtor is about to abscond or remove without the limits of this State, and that such creditor was not aware that the debtor had any intention to remove from the State at the time when the original contract was made, or at the time of such assignment, or endorsement, as the case may be, to commence an action by issuing a summons and complaint and shall have power to arrest and hold to bail in such manner as is now prescribed in this Chapter in cases of debts actually due.

6. In an action for the recovery of damages in a cause of action not arising out of contract, when the defendant is a nonresident of the State or is about to remove therefrom, or when the action is for an injury to person or character, or for injury or for wrongfully taking, detaining or converting property.

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Arrest by execution under Section 308 is authorized by this Section and Section 202.—Hurst, Purnell & Co. v. Samuels, 29 S. C., 476; 7 S. E., 822.

Order for arrest, by whom to be made.

1870, XIV., § 203.

Sec. 201. An order for the arrest of the defendant must be obtained from a Judge, Magistrate, or Clerk of the Court, in which or before whom the action is brought.

Affidavit to obtain order for arrest. To what actions this Chapter applies.

Ib., § 204.

Sec. 202. The order may be made where it shall appear to the proper officer by the affidavit of the plaintiff, or of any other person, that a sufficient cause of action exists, and that the case, from the facts stated, is one of those mentioned in Section 200.

Affidavit held sufficient in National Bank of Greenville v. Jennings, 38 S. C., 372; 17 S. E., 16.

Security by plaintiff before obtaining order for arrest.

Ib., § 205.

Sec. 203. Before making the order, the Judge or other officer, shall require a written undertaking on the part of the plaintiff, with or without 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 arrest, not exceeding the sum specified in the undertaking, which shall be at least one hundred dollars. If the undertaking be executed by the plaintiff, without sureties, he shall annex thereto an affidavit that he is a resident and householder or freeholder within the State, and worth double the sum specified in the undertaking, over all his debts and liabilities.

Order for arrest, when it may be made, and its form.

1870, XIV., § 206.

Sec. 204. The order may be made to accompany the summons, or at any time afterwards before judgment. It shall require the Sheriff or Constable of the County where the defendant may be found forthwith to arrest him, and hold him to bail in a specified sum, and to return the order, at a place and time therein mentioned, to the plaintiff or attorney by whom it shall be subscribed or endorsed.

But said order of arrest shall be of no avail, and shall be vacated or set aside, on motion, unless the same is served upon the defendant, as provided by law, before the docketing of any judgment in the action; and the defendant shall have twenty days, after the service of the order of arrest, in which to answer the complaint.

Original affidavit and order to be delivered to Sheriff, and copy to be delivered to defendant.

Ib., § 207.

Sec. 205. The affidavit and order of arrest shall be delivered to the Sheriff or Constable, who, upon arresting the defendant, shall deliver to him a copy thereof.

Arrest, how made.

Ib., § 208.

Sec. 206. The Sheriff or Constable shall execute the order by arresting the defendant and keeping him in custody until

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discharged by law, and may call the power of the County to his aid in the execution of the arrest, as in case of process.

Defendant to be discharged on giving bail or making a deposit.

Ib., § 209.

Sec. 207. The defendant, at any time before execution, shall be discharged from the arrest, either upon giving bail or upon depositing the amount mentioned in the order of arrest, as provided in this Chapter, or he may be discharged under the provisions of Sections 2405 to 2423, inclusive, of the first volume of the Code of 1902.

This Section does not affect Chapter C. of the General Statutes, and under that Chapter the defendant may be discharged under final process.—Hurst, Purnell & Co. v. Samuels, 29 S. C., 476; 7 S. E., 822.

Bail, how given.

Ib., § 210.

Sec. 208. The defendant may give bail by causing a written undertaking to be executed by two or more sufficient bail, stating their places of residence and occupations, to the effect that the defendant shall, at all times, render himself amenable to the process of the Court, during the pendency of the action, and to such as may be issued to enforce the judgment therein; or if he be arrested for the cause mentioned in the second sub-division of Section 200, by an undertaking to the same effect as that provided by Section 232.

Surrender of defendant.

Ib., § 211.

Sec. 209. At any time before a failure to comply with the undertaking, the bail may surrender the defendant in their exoneration, or he may surrender himself to the Sheriff of the County where he was arrested, in the following manner:

1. A certified copy of the undertaking of the bail shall be delivered to the Sheriff or Constable, who shall, by a certificate in writing, acknowledge the surrender.

2. Upon the production of a copy of the undertaking and Sheriff's or Constable's certificate, a Judge or Clerk of the Court may, upon notice to the plaintiff of eight days, with a copy of the certificate, order that the bail be exonerated; and on filing the order and papers used on said application, they shall be exonerated accordingly. But this Section shall not apply to an arrest for cause mentioned in sub-division two of Section 200, so as to discharge the bail from an undertaking given to the effect provided by Section 232.

The like.

1870, XIV., § 212.

Sec. 210. For the purpose of surrendering the defendant, the bail, at any time or place, before they are finally charged, may themselves arrest him, or, by a written authority, endorsed on a certified copy of the undertaking, may empower any person of suitable age and discretion to do so.

Bail, how proceeded against.

Ib., § 213.

Sec. 211. In case of failure to comply with the undertaking, the bail may be proceeded against by action only.

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Bail, how exonerated.

Ib., § 214.

Sec. 212. The bail may be exonerated, either by the death of the defendant, or his imprisonment in a state prison, or by his legal discharge from the obligation to render himself amenable to the process, or by his surrender to the Sheriff or Constable of the County where he was arrested, in execution thereof, within twenty days after the commencement of the action against the bail, or within such further time as may be granted by the Court.

Delivery of undertaking of bail to plaintiff, and its acceptance or rejection by him.

Ib., § 215.

Sec. 213. Within the time limited for that purpose, the Sheriff or Constable shall deliver the order of arrest to the plaintiff, or attorney by whom it is subscribed, with his return endorsed, and a certified copy of the undertaking of the bail. The plaintiff, within ten days thereafter, may serve upon the Sheriff or Constable a notice that he does not accept the bail, or he shall be deemed to have accepted it, and the Sheriff or Constable shall be exonerated from liability.

Notice of justification. New bail.

Ib., § 216.

Sec. 214. On the receipt of such notice, the Sheriff or Constable, or defendant, may, within ten days thereafter, give to the plaintiff or attorney by whom the order of arrest is subscribed, notice of the justification of the same or other bail (specifying the places of residence and occupation of the latter) before a Judge or Clerk of the Court, at a specified time and place; the time to be not less than five nor more than ten days thereafter. In case other bail be given, there shall be a new undertaking, in the form prescribed in Section 208.

Qualification of bail.

Ib., § 217.

Sec. 215. The qualification of bail must be as follows:

1. Each of them must be a resident and householder, or freeholder, within the State.

2. They must each be worth the amount specified in the order of arrest, exclusive of property exempt from execution; but the Judge or Clerk of the Court, on justification, may allow more than two bail to justify severally in amounts less than that expressed in the order, if the whole justification be equivalent to that of two sufficient bail.

Justification of bail.

1870, XIV., § 218.

Sec. 216. For the purpose of justification, each of the bail shall attend before the Judge or Clerk of the Court at the time and place mentioned in the notice, and may be examined, on oath, on the part of the plaintiff, touching his sufficiency, in such manner as the Judge, or Clerk of the Court, in his discretion, may think proper. The examination shall be reduced to writing, and subscribed by the bail, if required by the plaintiff.

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Allowance of bail.

Ib., § 219.

Sec. 217. If the Judge or Clerk of the Court find the bail sufficient, he shall annex the examination to the undertaking, endorse his allowance thereon, and cause them to be filed in the office of the Clerk; and the Sheriff shall, thereupon, be exonerated from liability.

Deposit in lieu of bail.

Ib., § 220.

Sec. 218. The defendant may, at the time of his arrest, instead of giving bail, deposit with the Sheriff or Constable the amount mentioned in the order. The Sheriff shall thereupon give the defendant a certificate of the deposit, and the defendant shall be discharged out of custody.

Payment of deposit into Court.

Ib., § 221.

Sec. 219. The Sheriff or Constable shall, within four days after the deposit, pay the same into Court, and shall take from the officer receiving the same two certificates of such payment, the one of which he shall deliver to the plaintiff, and the other to the defendant. For any default in making such payment, the same proceedings may be had on the official bond of the Sheriff or Constable, to collect the sum deposited, as in other cases of delinquency.

Substituting bail for deposit.

Ib., § 222.

Sec. 220. If money be deposited, as provided in the last two Sections, bail may be given and justified upon notice, as prescribed in Section 214, any time before judgment; and thereupon the Judge, before whom the justification is had, shall direct, in the order of allowance, that the money deposited be refunded by the Sheriff or Constable to the defendant, and it shall be refunded accordingly.

Deposit, how disposed of after judgment in the action.

Ib., § 223.

Sec. 221. Where money shall have been so deposited, if it remain on deposit at the time of an order or judgment for the payment of money to the plaintiff, the Clerk shall, under the direction of the Court, apply the same to the satisfaction thereof, and, after satisfying the judgment, shall refund the surplus, if any, to the defendant. If the judgment be in favor of the defendant, the Clerk shall refund to him the whole sum deposited and remaining unapplied.

Sheriff, when liable as bail.

Ib., § 224.

Sec. 222. If, after being arrested, the defendant escape or be rescued, or bail be not given or justified, or a deposit be not made instead thereof, the Sheriff or Constable shall himself be liable as bail. But he may discharge himself from such liability by the giving and justification of bail, as provided in Sections 214, 215, 216 and 217, at any time before process against the person of the defendant to enforce an order or judgment in the action.

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Sec. 223. If a judgment be recovered against the Sheriff or Constable, upon his liability as bail, and an execution thereon be returned unsatisfied, in whole or in part, the same proceedings may be had on the official bond of the Sheriff or Constable, to collect the deficiency, as in other cases of delinquency.

Proceedings on judgment against Sheriff.

1870, XIV., § 225.

Sec. 224. The bail taken upon the arrest shall, unless they justify, or other bail be given or justified, be liable to the Sheriff or Constable by action for damages which he may sustain by reason of such omission.

Bail liable to Sheriff.

Ib., § 226.

Sec. 225. A defendant arrested may, at any time before judgment, apply, on motion, to vacate the order of arrest, or to reduce the amount of bail.

Vacating order of arrest or reducing bail.

Ib., § 227.

Sec. 226. If the motion be made upon affidavits on the part of the defendant, but not otherwise, the plaintiff may oppose the same by affidavits, or other proofs, in addition to those on which the order of arrest was made.

Affidavits on motion to vacate order of arrest or reduce bail.

Ib., § 228.

CHAPTER II.

Claim and Delivery of Personal Property.

Sec.
227. Claim and delivery of personal property.
228. Affidavit and its requisltes.
229. Requisition to Sheriff to take and deliver the property.
230. Security by plaintiff.
231. Exception to sureties.
232. Defendant, when entitled to redelivery.
233. Justification of defendant's sureties.

Sec.
234. Qualification and justification of sureties.
235. Property, how taken when concealed in building or inclosure.
236. Property, how kept.
237. Claim of property by third person.
238. Notice and affidavit, when and where to be filed.

Section 227. The plaintiff, in an action to recover the possession of personal property, may, at the time of issuing the summons, or at any time before answer, claim the immediate delivery of such property, as provided in this Chapter.

Claim and delivery of personal property.

Ib., § 229.

Claim and delivery is a civil action, subject to the same rules as other civil actions.—Jones v. Brown, 57 S. C., 14; 35 S. E., 397.

Sec. 228. Where a delivery is claimed, an affidavit must be made by the plaintiff, or by some one in his behalf, showing—

Affidavit and its requisites.

Ib., § 230.

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

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2. That the property is wrongfully detained by the defendant.

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

4. That the same has not been taken for a tax, assessment, or fine, pursuant to a Statute; or seized under an execution or attachment against the property of the plaintiff; or, if so seized, that it is, by Statute, exempt from such seizure. And,

5. The actual value of the property.

Requisition to Sheriff to take and deliver the property.

1870, XIV., § 231.

Sec. 229. The plaintiff may, thereupon, by an indorsement, in writing, upon the affidavit, require the Sheriff of the County where the property claimed may be, to take the same from the defendant and deliver it to the plaintiff.

Bardin v. Drafts, 10 S. C., 493.

Security by plaintiff.

Ib., § 232; 1873, XV., 498.

Sec. 230. Upon the receipt of the affidavit and notice, with a written undertaking executed by one or more sufficient sureties, approved by the Sheriff, to the effect that they are bound in double the value of the property, as stated in the affidavit for the prosecution of the action, for the return of the property to the defendant, if return thereof be adjudged, and for the payment to him of such sum as may, for any cause, be recovered against the plaintiff, the Sheriff shall forthwith take the property described in the affidavit, if it be in the possession of the defendant or his agent, and retain it in his custody. He shall also, without delay, serve on the defendant a copy of the affidavit, notice, and undertaking, by delivering the same to him personally, if he can be found, or to his agent, from whose possession the property is taken; or, if neither can be found, by leaving them at the usual place of abode of either, with some person of suitable age and discretion. In case the plaintiff does not execute the required undertaking, the party having possession of the property shall retain the same until the determination of the suit.

Exception to sureties.

1870, XIV., § 233.

Sec. 231. The defendant may, within three days after the service of a copy of the affidavit and undertaking, give notice to the Sheriff that he excepts to the sufficiency of the sureties. If he fail to do so, he shall be deemed to have waived all objections to them. When the defendant excepts, the sureties shall justify, on notice, in like manner as upon bail on arrest. And the Sheriff shall be responsible for the sufficiency of the sureties, until the objection to them is either waived, as above provided, or until they shall justify, or new sureties shall be sub-

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stituted and justify. If the defendant except to the sureties, he cannot reclaim the property, as provided in the next Section.

Defendant, when entitled to re-delivery.

Ib., § 234.

Sec. 232. At any time before the delivery of the property to the plaintiff, the defendant may, if he do not except to the sureties of the plaintiff, require the return thereof, upon giving to the Sheriff a written undertaking, executed by two or more sufficient sureties, to the effect that they are bound in double the value of the property, as stated in the affidavit of the plaintiff, for the delivery thereof to the plaintiff, if such delivery be adjudged, and for the payment to him of such sum as may, for any cause, be recovered against the defendant. If a return of the property be not so required within three days after the taking and service of notice to the defendant, it shall be delivered to the plaintiff, except as provided in Section 237.

Judgment having been rendered in the action in favor of plaintiff for damages, and not for delivery of the property, it was sufficient proof of breach of the bond given by the defendant under this Section in suit thereon.—Thompson v. Joplin, 12 S. C., 580.

The words "if such delivery be adjudged" mean adjudged by any *competent* authority.—Elder v. Green, 34 S. C., 154; 13 S. E., 323.

As to damages recoverable in claim and delivery.—Vance v. Vandercock Co., No. 2, 170 U. S., 481; Miami Powder Co. v. R. R. Co., 47 S. C., 324; 25 S. E., 153; Loeb v. Mann, 39 S. C., 465; 18 S. E., 1; Lipscomb v. Tanner, 9 S. E., 733; 31 S. C., 49; Brock v. Bolton, 37 S. C., 41; 16 S. E., 370.

Justification of defendant's sureties.

1870, XIV., § 235.

Sec. 233. The defendant's sureties, upon a notice to the plaintiff of not less than two nor more than six days, shall justify before a Judge, Clerk of the Court, or Magistrate, in the same manner as upon bail on arrest. Upon such justification, the Sheriff shall deliver the property to the defendant. The Sheriff shall be responsible for the defendant's sureties until they justify, or until justification is completed or expressly waived, and may retain the property until that time; but if they, or others in their place, fail to justify at the time and place appointed, he shall deliver the property to the plaintiff.

Qualification and justification of sureties.

Ib., § 236.

Sec. 234. The qualifications of sureties and their justification shall be as are prescribed by Sections 215 and 216 in respect to bail upon an order of arrest.

Property, how taken when concealed in building or enclosure.

Ib., § 237.

Sec. 235. If the property, or any part thereof, be concealed in a building or enclosure, the Sheriff shall publicly demand its delivery. If it be not delivered, he shall cause the building or enclosure to be broken open, and take the property into his possession; and if necessary, he may call to his aid the power of his County.

Property, how kept.

Ib., § 238.

Sec. 236. When the Sheriff shall have taken property, as in this Chapter provided, he shall keep it in a secure place, and

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deliver it to the party entitled thereto, upon receiving his lawful fees for taking, and his necessary expenses for keeping, the same.

Claim of property by third person.

Ib., § 239.

Sec. 237. If the property taken be claimed by any other person than the defendant or his agent, and such person shall make affidavit of his title thereto, and right to the possession thereof, stating the grounds of such right and title, and serve the same upon the Sheriff, the Sheriff shall not be bound to keep the property, or deliver it to the plaintiff, unless the plaintiff, on demand of him or his agent, shall indemnify the Sheriff against such claim, by an undertaking, executed by two sufficient sureties, accompanied by their affidavit that they are each worth double the value of the property, as specified in the affidavit of the plaintiff, and are freeholders and householders within this State. And no claim to such property, by any other person than the defendant or his agent, shall be valid against the Sheriff, unless made as aforesaid; and, notwithstanding such claim, when so made, he may retain the property a reasonable time to demand such indemnity.

Notice and affidavit, when and where to be filed.

Ib., § 240.

Sec. 238. The Sheriff shall file the notice and affidavit, with his proceedings thereon, with the Clerk of the Court in which the action is pending, within twenty days after taking the property mentioned therein.

No penalty for failure to comply with this Section.—Alexander v. Jamison, 56 S. C., 409; 34 S. E., 695.

CHAPTER III.

Injunction.

SEC.
239. Writ of injunction abolished, and order substituted
240. Temporary injunction, in what cases granted.
241. At what time it may be granted. Copy affidavit to be served.
242. Injunction after answer.
242*a*. Injunctions to stay execution or judicial sales.

SEC.
243. Security upon injunction. Damages, how ascertained.
244. Order to show cause why injunction should not be granted.
245. Security upon injunction to suspend business of corporation.
246. Motion to vacate or modify injunction.
247. Affidavits on motion.

Writ of injunction abolished, and order substituted.

1870, XIV., § 241.

Section 239. An order of injunction may be made by the Court of Common Pleas in which the action is brought, or by a Judge thereof, and in the absence from the circuit, or inability, from any cause, of a Judge thereof, by a Judge of any other cir-

cuit, or a Justice of the Supreme Court. And by any Probate Judges in the cases provided in Section 41 of this Code of Procedure.

Temporary injunction, in what cases granted.

Ib., § 242.

Sec. 240. 1. Where it shall appear by the complaint that the plaintiff is entitled to the relief demanded, and such relief, or any part thereof, consists in restraining the commission or continuance of some act, the commission or continuance of which, during the litigation, would produce injury to the plaintiff; or, 2. When, during the litigation, it shall appear that the defendant is doing, or threatens, or is about to do, or procuring or suffering some act to be done, in violation of the plaintiff's rights respecting the subject of the action, and tending to render the judgment ineffectual, a temporary injunction may be granted to restrain such act. 3. And where, during the pendency of an action, it shall appear by affidavit that the defendant threatens or is about to remove or dispose of his property, with intent to defraud his creditors, a temporary injunction may be granted to restrain such removal or disposition.

A perpetual injunction should not be granted at chambers.—Hornesby v. Burdell, 9 S. C., 303. When temporary injunction should not be dissolved on affidavits.—Cudd v. Calvert, 54 S. C., 457; 32 S. E., 503. As to granting injunction against continuous trespasses.—McClellan v. Taylor, 32 S. E., 527; 54 S. C., 430; Ragsdale v. Ry. Co., 60 S. C., 381; 38 S. E., 612.

The sole object of this Section is to preserve the subject of controversy in the condition in which it is when the order is made until an opportunity is afforded for a full and deliberate investigation. It cannot be used to take property out of the possession of one and put it into that of another.—Pelzer v. Hughes, 27 S. C., 408; 3 S. E., 781. Unless the party acquired the possession in breach of the order of injunction.—Columbia Water Power Co. v. Columbia, 4 S. C., 388. Order for temporary injunction may be granted without notice to the defendant.—Watson v. Bank, 5 S. C., 159. And is not void because an undertaking was not required of the plaintiff.—*Ib.*

At what time it may be granted. Copy affidavit to be served.

Ib., § 243.

Sec. 241. The injunction may be granted at the time of commencing the action, or at any time afterwards, before judgment, upon its appearing satisfactorily to the Court or Judge, by the affidavit of the plaintiff, or to any other person, that sufficient grounds exist therefor. A copy of the affidavit must be served with the injunction.

Upon such application for injunction the Judge may consider the merits of the case in order to determine whether it should be granted, and his refusal is not a decision upon the merits.—Sease v. Dobson, 34 S. C., 345; 13 S. E., 530.

The temporary injunction, except as provided in Sec. 242a, may be granted on an *ex parte* application to preserve the *status quo*.—Meinhard v. Youngblood, 37 S. C., 227; 15 S. E., 947. Where the affidavits are sufficient the complaint need not be verified.—*Ib.*

Injunction after answer.

Ib., § 244.

Sec. 242. An injunction shall not be allowed after the defendant shall have answered, unless upon notice or upon an order to show cause; but in such case the defendant may be re-

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strained until the decision of the Court or Judge granting or refusing the injunction.

Regulations for granting injunctions to stay certain sales.

1899, XXIII, 43.

Sec. 242a. An injunction to stay an execution or judicial sale shall not be allowed unless upon notice of at least four days to the adverse party or to his attorney, unless the Court or Judge before whom the application is made shall prescribe a shorter time, nor shall a motion for such an injunction be heard less than five days before the time fixed for such sale, unless the Court or Judge, upon cause being shown, shall order otherwise. And in all cases the decision of the Court or Judge upon such a motion shall be filed with the Clerk of the Court for the County before the time fixed for such sale, otherwise the sale shall not be stayed: *Provided, however,* That when an execution or judicial sale is stayed by injunction, the time of the existence of such stay shall not be deemed or taken to be a part of the time of the existence of the active energy of such execution, or a part of the time of the existence of the lien of any judgment or decree, whether such stay be obtained before or after the passage of this Section.

As to effect of injunction on leave to issue execution.—*Ex parte* Graham, *in re.* Flyler v. Robertson, 54 S. C., 163; 32 S. E., 67.

Security upon injunction. Damages, how ascertained.

1870, XIV., 423, § 245.

Sec. 243. When no provision is made by Statute as to security upon an injunction, the Court or Judge shall require a written undertaking on the part of the plaintiff, with or without sureties, to the effect that the plaintiff will pay to the party enjoined such damages, not exceeding an amount to be specified, as he may sustain by reason of the injunction, if the Court shall finally decide that the plaintiff was not entitled thereto. The damages may be ascertained by a reference or otherwise as the Court shall direct.

The Judge may, in his discretion, dispense with sureties on the undertaking.—Meinhard v. Strickland, 29 S. C., 491; 7 S. E., 838. The undertaking may be filed after the granting of the injunction.—Meinhard v. Youngblood, 37 S. C., 223; 18 S. E., 947. The words requiring an undertaking are plain and mandatory, and the Court should require one.—Smith v. Smith, 51 S. C., 379; 29 S. E., 227. But the failure to require the undertaking is not a jurisdictional defect.—Watson v. Bank, 5 S. C., 177.

Such damages may be ascertained by a reference.—Hill v. Thomas, 19 S. C., 230. Counsel fee for single act of dissolving injunction is allowable as part of damages; but a fee for general services in defending case is not.—Livingston v. Exum, 19 S. C., 223; Hill v. Thomas, 19 S. C., 230. Not determined whether costs are a part of the damages.—Hill v. Thomas, 19 S. C., 230. But creditor is allowed interest on debt enjoined, as part of his damages.—*Ib.*

In an action by the owner of land for rents and profits received by the defendant, the plaintiff is not precluded from recovering by her failure to assert her claim in a previous action to restrain her from taking possession of the land.—Rabb v. Patterson, 42 S. C., 528; 20 S. E., 540.

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Order to show cause why injunction should not be granted.

1870, XIV., § 246.

Sec. 244. If the Court or Judge deem it proper that the defendant, or any of several defendants, should be heard before granting the injunction, an order may be made, requiring cause to be shown, at a specified time and place, why the injunction should not be granted; and the defendant may, in the meantime, be restrained.

Security upon injunction to suspend business of corporation.

Ib., § 247.

Sec. 245. An injunction to suspend the general and ordinary business of a corporation shall not be granted except by the Court or a Judge thereof. Nor shall it be granted without due notice of the application therefor, to the proper officers of the corporation, except where the State is a party to the proceeding, and except in proceedings to enforce the liability of stockholders in corporations and associations for banking purposes, as such proceedings are or shall be provided by law, unless the plaintiff shall give a written undertaking, executed by two sufficient sureties, to be approved by the Court or Judge, to the effect that the plaintiff will pay all damages, not exceeding the sum to be mentioned in the undertaking, which such corporation may sustain by reason of the injunction, if the Court shall finally decide that the plaintiff was not entitled thereto. The damages may be ascertained by a reference or otherwise, as the Court shall direct.

Motion to vacate or modify injunction.

Ib., § 248.

Sec. 246. If the injunction be granted by the Court, or a Judge thereof, without notice, the defendant, at any time before the trial, may apply, upon notice, to the Court, or a Judge thereof, in which the action is brought, to vacate or modify the same. The application may be made upon the complaints and the affidavits on which injunction was granted or upon affidavits on the part of the defendant, with or without the answer.

Affidavits on motion.

Ib., § 249.

Sec. 247. If the application be made upon affidavits on the part of the defendant, but not otherwise, the plaintiff may oppose the same by affidavits or other proofs, in addition to those on which the injunction was granted.

A Circuit Judge can dissolve a temporary injunction granted by his predecessor until the further order of the Court.—Bouknight v. Davis, 33 S. C., 410; 12 S. E., 96. When it should not be dissolved.—Cudd v. Calvert, 54 S. C., 457; 32 S. E., 503.

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CHAPTER IV.

Attachment.

SEC.
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257. Attachment, how executed on property incapable of manual delivery.
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259. Judgment, how satisfied.
260. When action to recover notes, &c., of defendant may be prosecuted by the plaintiff in the action in which the attachment issued.
261. Bond to Sheriff on attachment, how disposed of on judgment for defendant.
262. Discharge of attachment, and return of property or its proceeds to defendant, on his appearance in the action.
263. Undertaking on the part of the defendant.
264. When Sheriff to return attachment, with his proceedings thereon.

Property of foreign corporations, and of non-resident, or absconding, or concealed defendants, may be attached.

1870, XIV., § 250; 1879, XVII., 23; 1897, XXII., 450.

Section 248. In any action arising for the recovery of money, or for the recovery of property, whether real or personal, and damages for the wrongful conversion and detention of personal property, or an action for the recovery of damages for injury done to either person or property, or against a corporation created by or under the laws of any other State, government or country, or against a defendant who is not a resident of this State, or against the master, captain or agent of any sailing vessel entering any of the ports of this State for pilotage services rendered such vessel, or against a defendant who has absconded or concealed himself, or whenever any person or corporation is about to remove any of his or its property from this State, or has assigned, disposed of, or secreted, or is about to assign, dispose of, or secrete, any of his or its property, with intent to defraud creditors as hereinafter mentioned, the plaintiff, at the time of issuing the summons, or any time afterwards, may have the property of such defendant or corporation attached, in the manner hereinafter prescribed, as a security for the satisfaction of such judgment as the plaintiff may recover; and for the purposes of this Section an action shall be deemed commenced when the summons is issued: *Provided,*

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however, That personal service of such summons shall be made or publication thereof commenced within thirty days.

An action commenced by attachment of property against a non-resident in which the defendant is not personally served, and does not appear, is a proceeding *in rem.*—Stanley v. Stanley, 35 S. C., 94; 14 S. E., 675; Gibson v. Everett, 41 S. C., 23; 19 S. E., 286.

The right to attachment in an action on contract is governed by the *lex fori,* and not by the *lex loci contractus.*—Pegram v. Williams, 4 Rich. L., 219. A non resident creditor may proceed by attachment on a cause of action arising out of this State.—Sheldon v. Blauvelt, 29 S. C., 453; 7 S. E., 593. So in causes of action between non-residents arising out of the State.—*Ex parte* Perry Store Co., 43 S. C., 176; 20 S. E., 980; Gibson v. Everett, 41 S. C., 23; 19 S. E., 286. Attachment will not be granted in an action for slander.—Addison v. Sujette, 50 S. C., 192; 28 S. E., 948; Sarjeant v. Helmbold, Harp., 219. It will be granted in an action to enforce collection of debt and set aside a fraudulent conveyance of the debtor's property.—Bank v. Stelling, 31 S. C., 360; 9 S. E., 1028; Fersts v. Powers, 58 S. C., 406; 36 S. E., 748. As to grounds of attachment; non residence, what is.—Munroe v. Williams, 37 S. C., 81; 16 S. E., 533. Removal of property.—Sloan v. Bangs, 10 Rich., 15. Fraudulent transfer and disposition of property.—Claussen v. Fultz, 13 S. C., 16; Tabb & Jenkins Hardware Co. v. Gelzer, 43 S. C., 342; 21 S. E., 261; Myers v. Whiteheart, 24 S. C., 196; Wando Phosphate Co. v. Rosenberg, 31 S. C., 301; 9 S. E., 969; Guckenheimer v. Libby, 42 S. C., 162; 19 S. E., 999; Kerchner v. McCormac, 25 S. C., 461; Meinhard v. Youngblood, 41 S. C., 312; 19 S. E., 675; Grollman v. Lipsitz, 43 S. C., 329; 21 S. E., 272; Fersts v. Powers, 58 S. C., 406; 36 S. E., 744; Bray Clothing Co. v. Shealy, 53 S. C., 12; 30 S. E., 620; *ex parte* Chase, 38 S. E., 718. Effect of Bankruptcy Law.—*Ib.*

Where action fails for want of jurisdiction, attachment therein falls with it, being a provisional remedy in aid of an action.—Central R. R. Co. v. Georgia Co., 32 S. C., 319; 11 S. E., 192.

The attachment is not void because it bears date before the date of the summons; the existence of the summons at date of attachment may be shown *aliunde.*—Smith v. Walker, 6 S. C., 169. Nor void when the summons bears same date as attachment but Sheriff's endorsement shows service next day.—Cureton v. Dargan, 12 S. C., 122. The summons is considered issued as soon as it is made out and an application for attachment founded on it.—*Ib.*

Attachment against foreign corporations.—Williamson v. Ass'n, 54 S. C., 598; 32 S. E., 765.

Attachment, by whom granted.

1870, XIV., 423, § 251.

Sec. 249. A warrant of attachment must be obtained from a Judge, or Clerk of the Court, or Magistrate, in which or before whom the action is brought, or from a Circuit Judge.

In what cases attachments may be issued; affidavit to be filed.

1897, XXII., 451; 1899, XXIII, 31; *Ib*, 252.

Sec. 250. The warrant may be issued whenever it shall appear by affidavit that a cause of action exists against such defendant, specifying the amount of the claim and the grounds thereof, and that the defendant is either a foreign corporation or not a resident of this State, or that the defendant is the master, captain or agent of any sailing vessel entering any of the ports of this State, and is about to take such vessel out of any port of this State, without paying the pilotage fees provided by law, or that the defendant has departed from the State with intent to defraud his or its creditors, or to avoid the service of a summons, or keeps himself concealed therein with the like intent, or that such corporation or person has removed, or is about to remove, any of his or its property from this State, with

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intent to defraud his or its creditors, or has assigned, disposed of or secreted, or is about to assign, dispose of or secrete, any of his or its property with the like intent, whether such defendant be a resident of this State or not. It shall be the duty of the plaintiff procuring such warrant, at the time of the issuing thereof, to cause the affidavits on which the same was granted to be filed in the office of the Clerk of the Court of Common Pleas, or with the Magistrate, in which or before whom the action is to be tried, within forty-eight hours after the issuance of the attachment. He shall also cause copies thereof to be served on the defendant with the summons, if he can be found within the County: *Provided, however,* That in cases where the defendant is the master, captain or agent of any vessel entering any of the ports of this State, it shall only be necessary that the affidavit show that a cause of action exists against such defendant for pilotage services, specifying the amount of the claim and the grounds thereof, and that the defendant is about to take such vessel out of any port of this State and refuse to pay or has not paid the fees provided by law for such pilotage services.

The affidavit need not be made by plaintiff, but may be made by agent or attorney on information and belief; and the same affidavit may be used in several cases.—Grollman v. Lipsitz, 43 S. C., 341; 21 S. E., 272; Guckenheimer v. Libbey, 42 S. C., 162; 19 S. E., 999. A verified complaint may be used as an affidavit.—Fersts v. Powers, 58 S. C., 398; 36 S. E., 744. But an unverified complaint cannot help affidavit.—Addison v. Sujette, 50 S. C., 200; 28 S. E., 948.

Attachment of non-resident against a foreign corporation is valid to the extent that the cause of action arose in this State.—Central R. R. Co. v. Georgia Co., 32 S. C., 319; 11 S. E., 192. But attachment will not lie in action of resident administrator against non-resident guardian of infants residing in another State because such action cannot be maintained.—Stevenson v. Dunlap, 33 S. C., 350; 11 S. E., 1017.

The affidavit is sufficient as to cause of action, if it state a cause of action, or if it state facts from which, as a legal conclusion, it must be inferred that it does exist.—Monday v. Elmore, 27 S. C., 126; 3 S. E., 65; Central R. R. Co. v. Georgia Co., 32 S. C., 319; 11 S. E., 192; Roddey v. Erwin, 31 S. C., 36; 9 S. E., 729; Bank v. Stelling, 31 S. C., 360; Ketchen v. Landecker, 32 S. C., 155; 10 S. E., 936.

Where ground of attachment is such non-residence of the defendant, the affidavit is sufficient if it state that fact without other facts and circumstances.—Smith v. Walker, 6 S. C., 156; Roddey v. Erwin, 31 S. C., 36; 9 S. E., 729.

But as to all the other grounds, the affidavit must positively state the facts; and if upon information, it must also state the sources of information and circumstances relied on to show them.—Smith v. Walker, 6 S. C., 169; Brown v. Morris, 10 S. C., 467; Clausen v. Fultz, 13 S. C., 478; Burch v. Brantley, 20 S. C., 506; Ivy v. Caston, 21 S. C., 588; Myers v. Whiteheart, 24 S. C., 196; Mixon v. Holley, 26 S. C., 256; 2 S. E., 385; Monday v. Elmore, 27 S. C., 126; 3 S. E., 65; Wando v. Rosenberg, 31 S. C., 301; 9 S. E., 969; Roddey v. Erwin, 31 S. C., 36; 9 S. E., 729; Sharp v. Palmer, 31 S. C., 444; 10 S. E., 98.

Whether *copies* of the affidavits filed will suffice.—Wagener v. Booker, 31 S. C., 375; 9 S. E., 1055.

Where the affidavits were not, prior to the amendment of 1899, XXIII., 30, filed in ten days the attachment will be discharged on motion.—Ketchen v. Landecker, 32 S. C., 155; 10 S. E., 936. Service of copies on the defendant

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within that time will not suffice.—*Ib.* And this requirement as to the time within which the affidavits must be filed still governs in proceedings to enforce agricultural liens.—Doty v. Boyd, 46 S. C., 39; 24 S. E., 59; Townsend v. Sparks, 50 S. C., 380; 27 S. E., 801; Blair v. Morgan, 59 S. C., 52; 37 S. E., 45. But the time within which the affidavits in attachment must now be filed has been reduced by that amendment to two days.—Fersts v. Powers, 58 S. C., 398; 36 S. E., 744.

While the affidavit must be signed by the affiant, the jurat thereto need not be signed by the officer administering the oath.—Doty v. Boyd, *supra.* The affidavit is filed when delivered to the Clerk, and by him received to be kept on record.—Townsend v. Sparks, *supra.* The affidavit need not state that the property disposed of was not a part of the homestead.—Grollman v. Lipsitz, *supra.*

Security on obtaining attachment.

1870, XIV., § 253.

Sec. 251. Before issuing the warrant, the Judge, Clerk, or Magistrate shall require a written undertaking, on the part of the plaintiff, with sufficient surety, to the effect that if the defendant recovered judgment, or the attachment be set aside by order of the Court, 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, which shall be at least two hundred and fifty dollars, except in case of a warrant issued by a Magistrate, when it shall be at least twenty-five dollars.

This written undertaking required must be signed by the plaintiff *before the warrant is issued,* or the attachment based on it will be set aside.—Bank v. Stelling, 31 S. C., 360; 9 S. E., 1028; Wagener v. Booker, 31 S. C., 375; 9 S. E., 1055.

It must be signed by the plaintiff, or is a nullity.—Booker v. Smith, 38 S. C., 228; 16 S. E., 774. And by all the plaintiffs.—Guckenheimer v. Dryfus, 43 S. C., 443; 21 S. E., 331. But plaintiffs may sign by their agent, a telegram being sufficient authority.—Fersts v. Powers, 58 S. C., 398; 36 S. E., 748. And one member of a firm can bind the firm by signing for the firm without special authority so to do.—Grollman v. Lipsitz, 43 S. C., 341; 21 S. E., 272. The signature may be either in the firm name or the individual names of the partners.—*Ib.;* Hampton v. Bogan, 55 S. C., 549; 33 S. E., 581. The undertaking need not be under seal.—*Ib.;* Fersts v. Powers, 58 S. C., 398; 36 S. E., 748.

Attachment, to whom directed, and what to require.

Ib., § 254.

Sec. 252. The warrant shall be directed to any Sheriff or Constable of any County in which property of such defendant may be, and shall require him to attach and safely keep all the property of such defendant within his County, or so much thereof as may be sufficient to satisfy the plaintiff's demand, together with costs and expenses, the amount of which must be stated in conformity with the complaint, together with costs and expenses. Several warrants may be issued at the same time to the Sheriffs or Constables of different Counties.

Debt due defendant by another is subject of attachments.—McElvey v. S. C. R. R. Co., 6 S. C., 446; Campbell v. Ins. Co., 1 S. C., 158.

The interest of a non-resident partner in partnership property cannot be attached for partnership debt where one of the partners resides here and is duly served.—Whitfield v. Hovey, 30 S. C., 117; 8 S. E., 840.

Property in hands of receiver cannot be attached.—Regenstein v. Pearlstein, 30 S. C., 192; 8 S. E., 850.

Debts evidenced by bonds and notes can be attached.—Williamson v. Eastern B. & L. Ass'n, 54 S. C., 582; 32 S. E., 765. As well as books of accounts.—Riely v. Middleton, Dud., 21; Waddle v. Cureton, 2 Speer, 53; Burrill v. Letson, *Ib.*, 378. While a claim for damages under former attachment act was held not

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to be the subject of attachment.—*Ib.* Alcoholic liquors, kept contrary to law, cannot be attached.—Lanahan v. Bailey, 53 S. C., 489; 31 S. E., 332.

Where an attachment is set aside after sale, the proceeds of the sale may be attached for the same debt, while in the Sheriff's hands.—Roddey v. Erwin, 31 S. C., 36; 9 S. E., 729. Property levied upon execution may also be attached under process against same defendant.—Day v. Becher, 1 McMul., 92. As to moneys received on execution, in hands of Sheriff, see Blair v. Cantey, 2 Speer, 34.

Property to be attached.

Ib., § 255.

Sec. 253. The Sheriff or Constable to whom such warrant is directed and delivered shall immediately attach all the real estate of such debtor, and all his personal estate, including money and bank notes, except such real and personal estate as is exempt from attachment, levy, or sale, by the Constitution, and shall take into his custody all books of account, vouchers and papers relating to the property, debts, credits, and effects of such debtor, together with all evidences of his title to real estate, which he shall safely keep, to be disposed of as hereinafter directed.

When real estate is attached, a true and attested copy of such attachment, together with a description of the real estate attached, shall be, by the officer serving the same, delivered to the party whose real estate is attached, or left at his last and usual place of abode; and the officer making such service shall also leave a true and attested copy of such attachment, together with a description of the real estate so attached, in the office where, by law, a deed of such estate is required to be recorded; and, if the party whose estate is attached does not reside in this State, then such copy shall be delivered to his tenant, agent, or attorney, if any be known; and, if no such agent, tenant, or attorney, be known, then a copy of such warrant of attachment, with the officer's return thereon, lodged in the office where, by law a deed of such real estate ought to be recorded, shall be deemed sufficient service. It shall be the duty of the Clerk or Register of the office wherein said warrant of attachment is required to be lodged, to receive the same, and enter in a book kept for that purpose the names of the parties, the date of the warrant of attachment, the sum demanded, and the officer's return thereon. Said attachment shall be a lien, subject to all prior liens, and bind the real estate attached from the date of lodgment: *Provided,* That all attachments lodged upon the same day shall take rank together.

The affidavits and warrant need not be served on the defendant in attaching personalty.—Grollman v. Lipsitz, 43 S. C., 341; 21 S. E., 272.

Two attachments levied upon personal property of the debtor at different hours of the same day, they rank together as liens.—Steffens v. Wanbacker, 17 S. C., 475.

Sec. 254. He shall, immediately on making such seizure, with the assistance of two disinterested freeholders, make a

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just and true inventory of all the property so seized, and of the books, vouchers, and papers taken into custody, stating therein the estimated value of the several articles of personal property, and enumerating such of them as are perishable, which inventory, after being signed by the Sheriff and appraisers, shall, within ten days after such seizure, be returned to the officer who issued the warrant; and the Sheriff or Constable shall, under the direction of such officer, collect, receive, and take into his possession, all debts, credits, and effects of such debtor, and commence such suits, and take such legal proceedings, either in his own name or in the name of such debtor, as may be necessary for that purpose, prosecute and discontinue the same at such times, and on such terms, as the Court may direct. The property so seized, or the proceeds of such as shall have been sold and debts collected, shall be kept to answer any judgment which may be obtained in such action.

Sheriff's duties in case of seizure.

1870, XIV., § 256.

An action may be brought by the Sheriff on a note seized under this Section, while a motion to vacate the attachment is pending. The same defences may be made as though the action were brought by the defendant in attachment.—Nichols v. Hill, 42 S. C., 28; 19 S. E., 1017.

Sec. 255. If any of the property so seized be perishable, the Sheriff shall sell the same at public auction, under order of the Court or of a Judge thereof, and shall retain in his hands the proceeds of such sale, after deducting his expenses, to be allowed by such Court or Judge, which proceeds shall be disposed of in the same manner as the property so sold would have been if it had remained unsold.

As to perishable property seized.

1883, XVIII., 491; *Ib.*, 257.

Where a motion to vacate the attachment was made, refused, appeal taken to the Supreme Court, and a stay of proceedings asked for, held the Court had a right to order the sale of personal property.—So. Ry. Co. v. Sheppard, 42 S. C., 543; 20 S. E., 481.

Sec. 255a. If the person in whose possession such property shall be attached shall appear at the return of the writ and file his answer thereto, and deny the possession or control of any property belonging to the defendant, or claim the money, lands, goods and chattels, debts and books of account as creditor in possession, or in his own right, or in the right of some third person, or if any part of the said property be claimed by any other person than such defendant, then, if the plaintiff be satisfied therewith, the party in possession shall be dismissed and the plaintiff pay the cost of his action. But if the plaintiff shall contest the said return or the claim of said third person, an issue shall be made up under the direction of the Judge to try the question, and the party that shall prevail in said issue

Claim of third persons. Proceedings on.

Ib.

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shall recover the costs of such proceeding of the opposite party, and judgment shall be given accordingly. If the party in possession or the third person claiming the property, as the case may be, resides in a different County from that in which the action is brought, and an issue be made up between him and the plaintiff, the action shall be tried in the County where the party in possession resides. In case the property is claimed by a third person, the plaintiff shall execute to such person the same undertaking that he is now required to give under Section 251; the said undertaking to be executed within ten (10) days after notice of such claim.

Under this Section, assignee of defendant's property, under deed of assignment, must establish his right to the property before he can move to discharge the attachment under Section 263.—Bryce v. Foot, 25 S. C., 467.

This Section does not provide that a third person may move to vacate the attachment, but simply provides a remedy by which he may retain or regain possession of the property attached, unless the attaching creditor gives the undertaking required by the Act within the time prescribed.—Ford v. Calhoun, 53 S. C., 110; 30 S. E., 830. The provisions of this Section do not apply to proceedings to enforce agricultural liens.—So. Ry. Co. v. Sarratt, 58 S. C., 103; 36 S. E., 504.

As to attachment when debt is not due.

Ib.

Sec. 255b. Whenever a debt is not yet due, and it appears to the satisfaction of a Circuit Judge, the Clerk of the Court of Common Pleas, or Magistrate, by affidavit, that the debtor has departed from the State with intent to defraud his creditors, or to avoid the service of a summons, or keep himself concealed therein with a like intent, or that such person has removed or is about to remove any of his property from this State with intent to defraud his creditors, or has assigned, disposed of or secreted, or is about to assign, dispose of or secrete, any of his property with like intent, it shall be lawful for the plaintiff forthwith to institute suit upon such debt or cause of action, and for said Circuit Judge, Clerk or Magistrate to issue his warrant of attachment as if said debt were then due and payable: *Provided,* That no judgment shall be had thereon till after the maturity of the debt: *And provided further,* That the plaintiff pay the costs in case the debtor pays the debt on or before its maturity.

Action on debt not yet due; affidavit held insufficient.—Correll v. Ga. Co., 37 S. C., 444; 16 S. E., 157. Affidavit sufficient.—*Ex parte* Chase, 38 S. E., 78.

As to shares incorporations, vessels, &c.

1870, XIV., 258; 1883, XVIII., 491.

Sec. 256. The rights or shares which such defendant may have in any vessel, or in the stock of any association or corporation, together with the interest and profits thereon, and all other property in this State of such defendant, except that exempt from attachment by the Constitution, shall be liable to be attached and levied upon and sold to satisfy the judgment and execution.

Right of Sheriff to sell stock in corporation.—Richardson v. Wallace, 39 S. C., 216; 17 S. E., 725.

Attachment, how executed on property incapable of manual delivery.

Ib., § 259.

Sec. 257. The execution of the attachment upon any such rights, shares, or any debts or other property incapable of manual delivery to the Sheriff or Constable, shall be made by leaving a certified copy of the warrant of attachment with the President or other head of the association or corporation, or the secretary, cashier, or managing agent thereof, or with the debtor or individual holding such property, with a notice showing the property levied on.

Not necessary to serve copy on defendant in seizing personal property capable of manual delivery.—Groliman v. Lipsitz, 43 S. C., 329; 21 S. E., 272.

Certificate of defendant's interest to be furnished.

Ib., § 260.

Sec. 258. Whenever the Sheriff or Constable shall, with a warrant of attachment or execution against the defendant, apply to such officer, debtor, or individual, for the purpose of attaching or levying upon such property, such officer, debtor, or individual shall furnish him with a certificate, under his hand, designating the number of rights or shares of the defendant in the stock of such association or corporation, with any dividend or encumbrance thereon, or the amount and description of the property held by such association, corporation, or individual, for the benefit of or debt owing to the defendant. If such officer, debtor, or individual refuse to do so, he may be required by the Court or Judge to attend before him, and be examined on oath concerning the same, and obedience to such order may be enforced by attachment.

Judgment, how satisfied.

Ib., § 261.

Sec. 259. In case judgment be entered for the plaintiff in such action, the Sheriff or Constable shall satisfy the same out of the property attached by him, if it shall be sufficient for that purpose:

1. By paying over to such plaintiff the proceeds of all sales of perishable property, and of any vessel, or share or interest in any vessel, sold by him, or of any debts or credits collected by him, or so much as shall be necessary to satisfy such judgment.

2. If any balance remain due, and an execution shall have been issued on such judgment, he shall proceed to sell, under such execution, so much of the attached property, real or personal, except as provided in subdivision 4 of this Section, as may be necessary to satisfy the balance, if enough for that purpose shall remain in his hands; and in case of the sale of any rights or shares in the stock of a corporation or association, the Sheriff or Constable shall execute to the purchaser a certificate of sale thereof, and the purchaser shall thereupon have

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all the rights and privileges in respect thereto which were had by such defendant.

Question as to efficacy of Sheriff's sale of corporate stock.—Richardson v. Wallace, 39 S. C., 224; 17 S. E., 72.

3. If any of the attached property belonging to the defendant shall have passed out of the hands of the Sheriff or Constable without having been sold or converted into money, such Sheriff or Constable shall repossess himself of the same, and for that purpose shall have all the authority which he had to seize the same under the attachment; and any person who shall wilfully conceal or withhold such property from the Sheriff or Constable, shall be liable to double damages, at the suit of the party injured.

4. Until the judgment against the defendant shall be paid, the Sheriff or Constable may proceed to collect the notes and other evidences of debt, and the debts that may have been seized or attached under the warrant of attachment, and to prosecute any bond he may have taken in the course of such proceedings, and apply the proceeds thereof to the payment of the judgment.

If the attachment is a foreign attachment, it is only a proceeding *in rem.*, unless the defendant appear; and if he fail to appear, the Court cannot render a judgment that would have any effect beyond the property attached and so subjected to a lien.—Stanley v. Stanley, 35 S. C., 94; 14 S. E., 675.

At the expiration of six months from the docketing of the judgment, the Court shall have power, upon the petition of the plaintiff accompanied by an affidavit, setting forth fully all the proceedings which have been had by the sheriff or Constable since the service of the attachment, the property attached, and the disposition thereof, and also the affidavit of the Sheriff or Constable that he has used diligence and endeavored to collect the evidences of debt in his hands so attached, and that there remains uncollected of the same any part or portion thereof, to order the Sheriff or Constable to sell the same, upon such terms and in such manner as shall be deemed proper. Notice of such application shall be given to the defendant, or his attorney, if the defendant shall have appeared in the action. In case the summons has not been personally served on the defendant, the Court shall make such rule or order, as to the service of notice and the time of service, as shall be deemed just.

When the judgment and all costs of the proceedings shall have been paid, the Sheriff or Constable, upon reasonable de-

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mand, shall deliver over to the defendant the residue of the attached property, or the proceeds thereof.

When action to recover notes, &c., of defendant may be prosecuted by the plaintiff in the action in which the attachment issued.

1870, XIV., § 262.

Sec. 260. The actions herein authorized to be brought by the Sheriff or Constable may be prosecuted by the plaintiff, or under his direction, upon the delivery by him to the Sheriff or Constable of an undertaking executed by two sufficient sureties, to the effect that the plaintiff will indemnify the Sheriff or Constable from all damages, costs, and expenses on account thereof, not exceeding two hundred and fifty dollars in any one action. Such sureties shall, in all cases, when required by the Sheriff or Constable, justify by making an affidavit that each is a householder, and worth double the amount of the penalty of the bond, over and above all demands and liabilities.

Bond to Sheriff on attachment, how disposed of on judgment for defendant.

Ib., § 263.

Sec. 261. If the foreign corporation, or absent or absconding or concealed defendant, recover judgment against the plaintiff in such action, any bond taken by the Sheriff or Constable, except such as are mentioned in the last Section, all the proceeds of sales and moneys collected by him, and all the property attached remaining in his hands, shall be delivered by him to the defendant, or his agent, on request, and the warrant shall be discharged and the property released therefrom.

Discharge of attachment, and return of property or its proceeds to defendant, on his appearance in the action.

Ib., § 264.

Sec. 262. Whenever the defendant shall have appeared in such action, he may apply to the officer who issued the attachment, or to the Court, for an order to discharge the same; and, if the same be granted, all the proceeds of sales and moneys collected by him, and all the property attached remaining in his hands, shall be delivered or paid by him to the defendant or his agent, and released from the attachment. And where there is more than one defendant, and the several property of either of the defendants has been seized by virtue of the order of attachment, the defendant whose several property has been seized may apply to the officer who issued the attachment for relief under this Section.

Where defendants moved on affidavits to vacate the attachment, and plaintiffs offered affidavits in reply, the Judge should indicate what affidavits were considered by him.—Grollman v. Lipsitz, 43 S. C., 338; 21 S. E., 272. The weight to be given the affidavits must be determined by the Circuit Court.—*Ib.*

Pendency of another action for same cause is sufficient to vacate.—Fersts v. Powers, 58 S. C., 411; 36 S. E., 749.

Defendant having given bond under next Section does not thereby waive his right to have attachment discharged under this.—Bates v. Killian, 17 S. C., 553.

Circuit Judge, on motion upon notice, may discharge an attachment at chambers.—Cureton v. Dargan, 12 S. C., 122; Clothing Co. v. Shealy, 53 S. C., 14; 30 S. E., 620. And in so doing he may decide whether or not the plaintiff has a cause of

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action.—Williamson v. Ass'n, 54 S. C., 582; 32 S. E., 765. But he cannot decide questions of fact determining the merits of the case.—*Ib.*; *ex parte* Rountree, 57 S. C., 77; 35 S. E., 386.

Refusal to so discharge the attachment is *res adjudicata* as to moving party, and he cannot raise the question again in formal suit.—Darby v. Shannon, 19 S. C., 526.

Such discharge may be had either for invalidity or irregularity of the attachment.—Smith v. Walker, 6 S. C., 169; Brown v. Morris, 10 S. C., 467; Claussen v. Fultz, 13 S. C., 476; Cureton v. Dargan, 12 S. C., 122; Darby v. Shannon, 19 S. C., 526; Bates v. Killian, 17 S. C., 553; Kerchner v. McCormac, 25 S. C., 461.

Such motion to discharge the attachment on partnership property against non-resident partner granted upon the disclosure of the fact by the papers and affidavits that the non-resident had no other property here.—Whitfield v. Hovey, 30 S. C., 117; 8 S. E., 840.

Assignee under deed of assignment of defendant cannot move to discharge attachment until he has established his right to the property under issue on his return to the attachment.—Copeland v. Ins. Co., 17 S. C., 116; Metts v. Ins. Co., 17 S. C., 120; Bryce v. Foot, 25 S. C., 467; *Ex parte* Dickinson, 29 S. C., 453; 7 S. E., 593.

When third party intervenes and claims right to the property, such claimant should be actor on trial of issue of ownership.—Central R. R. Co. v. Georgia Co., 32 S. C., 319; 11 S. E., 192.

Another attaching creditor cannot question the regularity of the attachment proceedings, and his voluntary appearance in the action for that purpose gives the jurisdiction over him.—*Ex parte* Perry Stove Co., 43 S. C., 176; 20 S. E., 980; Ford v. Calhoun, 53 S. C., 110; 30 S. E., 830. Property attached may be released by the agreement of parties without an order of Court.—Sullivan v. Williams, 43 S. C., 489; 21 S. E., 642.

Undertaking on the part of the defendant.

Ib., §265.

Sec. 263. Upon such application, the defendant shall deliver to the Court or officer an undertaking executed by at least two sureties, who are resident and freeholders or householders in this State, approved by such Court or officer, to the effect that such sureties will, on demand, pay to the plaintiff the amount of judgment that may be recovered against the defendant in the action, not exceeding the sum specified in the undertaking, which shall be at least double the amount claimed by the plaintiff in his complaint. If it shall appear by affidavit that the property attached be less than the amount claimed by the plaintiff, the Court, or officer issuing the attachment, may order the same to be appraised, and the amount of the undertaking shall then be double the amount so appraised. And in all cases the defendant, or any person who establishes a right to the property attached, may move to discharge the attachment, as in the case of other provisional remedies.

And where there is more than one defendant, and the several property of either of the defendants has been seized by virtue of the order of attachment, the defendant whose several property has been seized may deliver to the Court or officer an undertaking, in accordance with the provisions of this Section, to the effect that he will, on demand, pay to the plaintiff the amount of judgment that may be recovered against

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such defendant. And all the provisions of this Section applicable to such undertaking shall be applied thereto.

Bond not good as a statutory bond, held valid as a common law bond.—Sullivan v. Williams, 43 S. C., 489; 21 S. E., 642.

When Sheriff to return attachment, with his proceedings thereon.

1870, XIV., § 266.

Sec. 264. When the warrant shall be fully executed or discharged, the Sheriff or Constable shall return the same, with his proceedings thereon, to the Court in which the action was brought.

CHAPTER V.

Provisional Remedies.

SEC. 265. Powers of Courts as to receivers, deposit of money, &c., in Court, and other provisional remedies; judgment for sum admitted due.

Powers of Courts as to receivers.

1870, XIV., § 267.

Section 265. A receiver may be appointed by a Judge of the Circuit Court, either in or out of Court:

1. Before judgment, on the application of either party, when he establishes an apparent right to property which is the subject of the action, and which is in the possession of an adverse party, and the property, or its rents and profits, are in danger of being lost, or materially injured or impaired; except in cases where judgment upon failure to answer may be had without application to the Court.

2. After judgment, to carry the judgment into effect.

3. After judgment, to dispose of the property according to the judgment, or to preserve it during the pendency of an appeal, or when an execution has been returned unsatisfied, and the judgment debtor refuses to apply his property in satisfaction of the judgment.

4. When a corporation has been dissolved, or is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights; and, in like cases, of the property within this State of foreign corporations. Receivers of the property within this State of foreign or other corporations shall be allowed such commissions as may be fixed by the Court appointing them, not exceeding five per cent. on the amount received and disbursed by them.

5. In such other cases as are now provided by law, or may be in accordance with the existing practice, except as otherwise provided in this Code of Procedure.

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Receiver not to be appointed without notice.

1897, XXII., 510.

6. No receiver of the property of any person or corporation shall be hereafter appointed by any Court or Judge, either in term time or at chambers, without notice of the application for such appointment to the party or parties to the action whose property is sought to be put in the hands of a receiver and to the party or parties to the action in possession of such property claiming an interest therein under any contract, lease or conveyance thereof from the alleged owner. At least four days' notice of the application must be given, unless the Court shall, upon it being made to appear that delay would work injustice, prescribe a shorter time.

Notice to non-resident.

Where the party whose property is sought to be placed in the hands of a receiver cannot be found within the State, then notice of the application to the party in possession of such property shall be sufficient; and where the property is abandoned and not in the possession of any one, and the party claiming the same cannot be found within the State, then the appointment may be made without the notice of the application: *Provided*, That wherever a receiver is appointed and the party claiming the property cannot be found within the State, notice of such appointment shall be forthwith given by publication or personal service without the State, as prescribed by law in the case of a summons in a civil action.

On whom served.

Proviso.

Temporary injunction may be granted without notice.

Ib.

7. The Court or Judge may by temporary injunction, without notice, pending the hearing of such application, restrain the delivery of the property, or any part thereof, sought to be put in the hands of a receiver to any other person whomsoever, and the Court shall be deemed to have taken jurisdiction over such property from the time of the issuance of such temporary injunction: *Provided*, That no such temporary injunction shall issue so as to interfere with the use and disposition of such property by any person or corporation in the usual and customary mode and course of business and use of the same without the Court or Judge first requiring from the party applying for such injunction a bond, with security, in a sufficient sum, not less than two hundred and fifty dollars, to pay all damages arising from said temporary injunction should no receiver be appointed on the hearing of the application.

Proviso.

No receiver to be appointed before judgment without bond.

Ib.

8. No receiver of the property of any person or corporation shall be hereafter appointed before final judgment in the cause if the party claiming the property so sought to be placed in the hands of a receiver or the party in possession thereof shall

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offer a bond, in the penalty of double the value of the property, with sufficient security, approved by the Clerk of the Court of Common Pleas of the Courts in which the action is brought, to fully account for and deliver over whenever thereafter required by any final adjudication in the cause the property sought to be placed in the hands of a receiver, and to meet and satisfy any decree or judgment or order that may be made in the cause.

Court to fix the value of the property to be affected.

Ib.

9. Whenever the Court or Judge before whom such application is made shall appoint a receiver before final judgment in the cause, there shall be inserted in the order of appointment a clause fixing the value of the property for which the bond may be given, as prescribed in sub-division 8 of this Section; and upon the due execution and filing of such bond thereafter before final judgment in the cause, the Court or Judge shall vacate the appointment of such receiver and direct the redelivery of the property to the party from whose possession it was taken: *Provided,* That where, under the orders of the Court or Judge, the receiver has incurred any lawful charges and expenses in the care and custody of the property put into his hands, the Court or Judge, before directing the redelivery, may require sufficient security to be given in addition for the payment of such lawful charges and expenses should they be thereafter finally adjudged to be chargeable against the property.

How damages ascertained if Receiver is improperly appointed.

Ib.

10. Whenever a receiver shall have been appointed of any property against the opposition of any party to the cause, and shall have taken possession of the same, and thereafter by any final adjudication such receiver shall be held to have been improperly appointed, the costs, charges and expenses of such receivership shall not be charges upon the property as a whole, but only upon the interests therein of the party or parties procuring the appointment; and any party to the cause having opposed such receivership may apply to the Court after final adjudication, as aforesaid, and have it referred to a Master, Referee or jury, as the practice in the case presented may be proper, to have his actual damages by reason of such receivership ascertained and assessed and for judgment therefor against the party or parties having procured such receiver.

Bonds to be made payable to the Clerk of Court, &c.

Ib.

11. The several bonds required by this Chapter shall be made payable to the Clerks of the respective Courts in which the action is pending in which the bonds shall be made, and

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shall be conditioned as required by this Chapter, and shall, upon execution and approval as to form and sufficiency by the Court or Judge, or such other officer as the order shall prescribe, be filed in the office of the Clerk of Court, who shall, upon demand of any party to the cause and payment of the legal fees therefor, give certified copies of such bonds, on which any party entitled to the benefit thereof may sue the parties liable thereon in any Court of competent jurisdiction; and the production of such certified copy shall be *prima facie* evidence of the bond. Should the security become insufficient upon any of such bonds after the same have been given and approved, the Court or Judge may, upon application, after notice, require the security to be made sufficient, and on default therein may proceed as if no bond had been given, but without prejudice to the right of any party entitled to the benefit of such bond, to enforce it according to the terms and conditions thereof.

In application for Receiver under subdivision 1 he may be appointed under subdivision 2.—Green v. Bookhart, 19 S. C., 417.

Receiver may be appointed in supplementary proceedings without notice.—Dilling v. Foster, 21 S. C., 338.

Although another Judge upon application of other creditors had previously refused to do so.—Dauntless Co. v. Davis, 22 S. C., 584. And notwithstanding creditors' action in another Court and a previous assignment by debtor.—*Ib.*

But there can be only one Receiver so appointed.—Sparks v. Davis, 25 S. C., 381.

Receiver may be appointed at chambers.—Kilgore v. Hair, 19 S. C., 486; Regenstein v. Pearlstein, 30 S. C., 192; 8 S. E., 850; Harmon v. Wagener, 33 S. C., 487; 12 S. E., 98.

But the power is a delicate one and must be exercised with great care.—Pelzer v. Hughes, 27 S. C., 408; 3 S. E., 781.

The Master of the Court cannot be appointed Receiver.—Kilgore v. Hair, 19 S. C., 486.

Admissions in answer are sufficient evidence on motion for appointment of Receiver.—Meinhard v. Strickland, 29 S. C., 491; 7 S. E., 838.

Where President and Directors of an insolvent railroad are directed by the Court to continue in possession of the property under order of and subject to the Court, they are thus made Receivers.—*In re* Mortgage Bonds, 15 S. C., 314; *Ex parte* Brown, 15 S. C., 531.

Where complaint claims title to land and seeks to recover it and alleges insolvency of defendant and danger of loss of rents, and all these are denied in answer, there is no case for appointment of Receiver.—DeWalt v. Kinard, 19 S. C., 293.

Even under Assignment Act creditors cannot have Receiver appointed to take charge of the assigned estate, where they have not exhausted their legal remedies, nor show danger of loss of property or injury thereto.—Pelzer v. Hughes, 27 S. C., 408; 3 S. E., 781.

But upon showing of insolvency, negligence and incompetency on the part of the assignee, satisfactory to the Judge, he was justified in appointing a Receiver.—Regenstein v. Pearlstein, 30 S. C., 192; 8 S. E., 850.

So in action by executor to marshal assets, where he is shown to be guilty of misconduct, and that he and estate were insolvent, creditors would, without exhausting their legal remedies, have Receiver appointed.—Harmon v. Wagener, 33 S. C., 487; 12 S. E., 98.

Unless mortgagee establishes an apparent right or claim to the assets and profits, he is not entitled to have a Receiver thereof appointed in his action for foreclosure.—Hardin v. Hardin, 34 S. C., 77; 12 S. E., 936.

Even though the mortgagor be insolvent and the property insufficient to pay the mortgage.—Seignious v. Pate, 32 S. C., 134; 10 S. E., 880.

Receivers may be appointed by the Court to make sales under its orders.—Clyburn v. Reynolds, 31 S. C., 91; 9 S. E., 973. But a Receiver was properly appointed in an action for partition where the party in possession was insolvent.—McCrady v. Jones, 36 S. C., 136; 15 S. E., 430.

Receiver need not give bond to collect rents in pending action.—DeWalt v. Kinard, 19 S. C., 293. Nor is bond essential for Receiver appointed in supplementary proceedings.—Dilling v. Foster, 21 S. C., 338.

Receiver should not be appointed where corporation is solvent.—Miller v. So. Land and Lumber Co., 53 S. C., 364; 31 S. E., 281.

Notice of application for appointment of a Receiver left with defendant's wife, at his residence, is good service.—Allen v. Cooley, 53 S. C., 414; 31 S. E., 634.

The appearance of defendant held to be waiver of service of notice; practice under the Act of 1897, XXII., 510, subdivisions 6 to 11 above.—*Ib.*

Deposit of money, &c., in Court.

1870, XIV., 423, § 267.

When it is admitted, by the pleading or examination of a party, that he has in his possession, or under his control, any money or other thing capable of delivery, which, being the subject of litigation, is held by him as trustee, for another party, or which belongs or is due to another party, the Court may order the same to be deposited in Court, or delivered to such party, with or without security, subject to the further direction of the Court.

Other provisional remedies.

Whenever, in the exercise of its authority, a Court shall have ordered the deposit, delivery, or conveyance of money or other property, and the order is disobeyed, the Court, besides punishing the disobedience as for contempt, may make an order requiring the Sheriff or Constable to take the money or property, and deposit, deliver, or convey it, in conformity with the direction of the Court.

Judgment for sum admitted due.

When the answer of the defendant expressly, or by not denying, admits part of the plaintiff's claim to be just, the Court, on motion, may order such defendant to satisfy that part of the claim, and may enforce the order as it enforces a judgment or provisional remedy.

Where President and Directors of an insolvent railroad are directed by the Court to continue in possession of the property under order of and subject to the Court, they are thus made Receivers.—*In re* Mortgage Bonds, 15 S. C., 314; *Ex parte* Brown, 15 S. C., 531.

Where complaint claims title to land and seeks to recover it and alleges insolvency of defendant and danger of loss of rents, and all these are denied in answer, there is no case for appointment of Receiver.—DeWalt v. Kinard, 19 S. C., 293.

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TITLE VIII.

OF THE TRIAL AND JUDGMENT IN CIVIL ACTIONS.

CHAPTER I. *Judgment upon Failure to Answer, &c.*
CHAPTER II. *Issues, and the Mode of Trial.*
CHAPTER III. *Trial by Jury.*
CHAPTER IV. *Trial by the Court.*
CHAPTER V. *Trial by Referees.*
CHAPTER VI. *Of the Manner of Entering Judgment.*

CHAPTER I.

Judgment Upon Failure to Answer, &c.

SEC.
266. Judgment defined.
267. Judgment on failure of defendant to answer, or for excess over counter claim, where service of summons by publication.
268. Judgment on frivolous demurrer, answer, or reply.

Judgment defined.

1870, XIV., § 268.

Section 266. A judgment is the final determination of the rights of the parties in the action.

A judgment must ascertain and fix these rights to an extent amounting to a substantial termination of all the issues.—Donaldson v. Bank, 4 S. C., 106; Agnew v. Adams, 24 S. C., 86. It is erroneous if based on grounds not raised by the pleadings.—Magovern v. Richard, 27 S. C., 272; 3 S. E., 340.

When granted upon contract, it determines what the contract is and closes it, giving the means of enforcing it or redress for its breach.—Moore v. Holland, 16 S. C., 15.

Judgment is not invalid because Circuit Judge made a mistake in the heading of it.—Woodward v. Woodward, 36 S. C., 118; 15 S. E., 355.

A decree cannot be regarded as final that leaves in doubt the question whether in the end the plaintiff will be entitled to recover.—Donaldson v. Bank, 4 S. C., 106.

To entitle a decree to rank as a final judgment for money it must ascertain a definite sum to be paid and order its payment, and authorize execution therefor.—*Ex parte* Farrars, 13 S. C., 254. But where the decision disposes of all the issues and directs judgment for balance due on a former judgment particularly stated in the record and orders execution for the amount to be ascertained by the calculation of Clerk, it is a final judgment.—Adickes v. Allison, 21 S. C., 245.

Judgment on failure of defendant to answer, or for excess over counter-claim.

1870, XIV., § 269; 1873, XV., 502; 1882, XVIII., 112; 1884, 709; 1899; XXIII., 41.

Sec. 267. Judgment may be had, if the defendant fail to answer the complaint, as follows:

1. In any action on contract the plaintiff may file proof of lawful service of summons and complaint on one or more of the defendants, or of the summons, according to provision of Section 151, and that no appearance, answer or demurrer has been served on him. It shall be the duty of the Clerk to place all such cases on the default calendar, and said calendar shall

be called the first day of the term. When the action is on a complaint for the recovery of money only, judgment may be given for the plaintiff by default if the demand be liquidated; and if unliquidated, and the plaintiff itemize his account, and append thereto an affidavit that it is true and correct, and no part of the sum sued for has been paid, by discount or otherwise, and a copy be served with the summons and complaint on the defendant; or if the plaintiff prove his claim in open Court, whether itemized or not, and the defendant shall neither answer, demur nor serve notice of appearance, the plaintiff shall have judgment for the sum sued for as in the case of liquidated demands. But in case notice of appearance in an action has been given by, or on behalf of, a defendant, but no answer or demurrer has been, or thereafter shall be, served within the time required by law, the plaintiff, upon filing proof of such facts, shall have his judgment by default against such defendant in the same manner, and with like effect, as in cases where no notice of appearance has been given. In all other cases the relief to be afforded the plaintiff shall be ascertained either by the verdict of a jury or in cases in chancery by the Judge, with or without a reference, as he may deem proper. The order for judgment in such cases shall be endorsed upon or attached to the complaint. Where the defendant, by his answer in any such action, shall not deny the plaintiff's claims, but shall set up a counter-claim amounting to less than the plaintiff's claim, judgment may be had by the plaintiff for the excess of said claim over the said counter-claim in like manner in any such action, upon the plaintiff's filing with the Clerk of the Court a statement admitting such counter-claim, which statement shall be annexed to and be a part of the judgment roll.

Judgments in other cases.

Where time to answer expires after day fixed for opening of Court, but before Court is actually opened, and no appearance, answer or demurrer has been served, the case may be docketed and judgment by default taken.—McCoomb v. Woodside, 13 S. C., 479.

The omission of the words "have judgment" in the Judge's order for judgment endorsed on the complaint is merely clerical, and does not vitiate the judgment.—Henlien v. Graham, 32 S. C., 303; 10 S. E., 1012.

When defendant does not deny plaintiff's claim, but sets up a counter-claim, the plaintiff upon filing with the Clerk an admission of such counter-claim is entitled, on call of default docket, to judgment for excess claimed above the counter-claim.—Burges v. Pollitzer, 19 S. C., 451.

In order to obtain a judgment by default, without taking a verdict of the jury, on an open account, an itemized copy of the account, duly verified, must be served on the defendant with the summons and complaint.—Roberts v. Pawley, 50 S. C., 491; 27 S. E., 913.

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Where a defendant neither answers nor demurs to a complaint in foreclosure, he cannot demand time to the report of the referee, as to the amount due.—Johnson v. Masters, 49 S. C., 525; 27 S. E., 474.

In an action on a liquidated demand an answer was served, and the case docketed on calendar one; an oral demurrer was sustained to the answer, and judgment rendered on that calendar; held that it was unnecessary for the plaintiff to prove his case before the jury, the defendant could not object to his doing so.—Jones v. Garlington, 44 S. C., 533; 22 S. E., 741.

When service of summons by publication.

2. In actions where the service of the summons was by publication, the plaintiff may, in like manner, apply for judgment, and the Court must thereupon require proof to be made of the demand mentioned in the complaint, and, if the defendant be not a resident of the State, must require the plaintiff or his agent to be examined, on oath, respecting any payments that have been made to the plaintiff, or to any one for his use, on account of such demand, and may render judgment for the amount which he is entitled to recover. Before rendering judgment, the Court may, in its discretion, require the plaintiff to cause to be filed satisfactory security, to abide the order of the Court, touching the restitution of any estate or effects which may be directed by such judgment to be transferred or delivered, or the restitution of any money that may be collected under or by virtue of such judgment, in case the defendant or his representatives shall apply and be admitted to defend the action, and shall succeed in such defence.

It is not necessary that the judgment record show the reference here required to have been had.—Clemson College v. Pickens, 42 S. C., 511; 20 S. E., 401.

Judgment on frivolous demurrer, answer, or reply.

1870, XIV., § 270.

Sec. 268. If a demurrer, answer, or reply, be frivolous, the party prejudiced thereby, upon a previous notice of five days, may apply to a Judge of the Court, either in or out of the Court, for judgment thereon, and judgment may be given accordingly.

An answer, to be adjudged frivolous, must be clearly so in its whole scope and bearing, and not merely through a formal defect that might be cured by amendment. If argument is necessary to show its character as frivolous, the Court will not dispose of it as such.—Boylston v. Crews, 2 S. C., 422.

An answer is frivolous when it fails to deny any allegation of the complaint or to state any new matter by way of defense.—American Co. v. Hill, 27 S. C., 164; 3 S. E., 82.

But to make the answer frivolous the objection must extend to and embrace the whole answer, so that nothing is left of it that can entitle the party to trial.—Tharin v. Seabrook, 6 S. C., 113. So that answer that presents two issues material to plaintiff's case is not frivolous.—Hall v. Woodward, 30 S. C., 564; 9 S. E., 684; Machine Co. v. Henry, 43 S. C., 17; 20 S. E., 790.

An answer denying that defendant "ever was indebted to the plaintiff in any sum whatever, exceeding eighty dollars" held frivolous.—Grayson v. Harris, 37 S. C., 606; 16 S. E., 154. So also is an answer presenting no issues which can be determined in the action; as attempting to interpose a counter-claim in an action for claim and delivery.—Badham v. Brabham, 54 S. C., 402; 32 S. E., 444. This motion may be made at the time of serving written demurrer.—*Ib.* Where the motion is heard at chambers, and the answer adjudged frivolous, judgment cannot be then and there given as by default for the plaintiff.—*Ib.*

CHAPTER II.

Issues and the Mode of Trial.

SEC.
269. The different kinds of issues.
270. Issue of law.
271. Issue of fact.
272. On issues of both law and fact, the issues to be tried together.
273. Trial defined.
274. Issues, how tried.
275. Issues triable by the Court.
276. Summons and complaint to be filed in Clerk's office; docket fee in First Circuit for salary of stenographer.
277. Stenographer to be appointed by the Judge of First Circuit, to take stenographic notes.
278. Duty of stenographer.
279. Order of disposing of issues on the calendar.

The different kinds of issues
1870, XIV., § 271.

Section 269. Issues arise upon the pleadings when a fact or conclusion of law is maintained by the one party and controverted by the other. They are of two kinds—

1. Of law; and
2. Of fact.

Issue of law.
Ib., § 272.

Sec. 270. An issue of law arises—

1. Upon a demurrer to the complaint, answer, or reply, or to some part thereof.

Railroad Co. v. Gibbes, 23 S. C., 370.

Issue of fact.
Ib., § 273.

Sec. 271. An issue of fact arises—

1. Upon a material allegation in the complaint controverted by the answer; or,
2. Upon new matter in the answer controverted by the reply; or,
3. Upon new matter in the reply, except an issue of law is joined thereon.

On issues of both law and fact, the issues to be tried together.
Ib., § 274; 1873, XV., 498.

Sec. 272. Issues, both of law and of fact, may arise upon different parts of the pleadings in the same action.

In such case the cause shall be placed on the calendar of issues of fact, and the issues shall be tried together, unless the Court otherwise direct.

Trial defined.
1870, XIV., § 275.

Sec. 273. A trial is the judicial examination of the issues between the parties, whether they be issues of law or fact.

Meetze v. Railroad Co., 23 S. E., 13.

Issues, how tried.
Ib., § 276.

Sec. 274. An issue of law must be tried by the Court, as also cases in chancery, unless they be referred as provided in Chapter V. of this Title. An issue of fact, in an action for the recovery of money only, or of specific real or personal property, must be tried by a jury, unless a jury trial be waived, as provided in Section 288, or a reference be ordered.

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This Section not affected by the Master's Act.—16 Stat., 608.—Chapman v. Lipscomb, 15 S. C., 470.

This Section specifies the cases in which a trial by jury may be demanded as a legal right.—Rollin v. Whipper, 17 S. C., 32.

An action to set aside a deed of Sheriff on the ground that the judgment debtor held the land as trustee for plaintiff is not an action to recover real property.—Price v. Bowen, 4 S. C., 151.

Title to land must be so tried; it cannot be tried on motion by assignee of land to discharge attachment thereon.—Copeland v. Piedmont Ins. Co., 17 S. C., 116. And defendant does not waive the right by failure to demand it.—DeWalt v. Kinard, 19 S. C., 286.

An action for the recovery of money only does not require a jury trial, unless the pleadings raise an issue of fact.—R. R. Co. v. Gibbes, 23 S. C., 370. If the only issue raised is one of law, it must be tried by the Court.—*Ib.*

An action for partition, where the question of title arises, it is not an issue out of chancery, but for trial by a jury at law.—Adickes v. Lowry, 12 S. C., 97; Brock v. Nelson, 29 S. C., 49; 6 S. E., 899; Reams v. Spann, 28 S. C., 530; 6 S. E., 325; Carrigan v. Evans, 31 S. C., 262; 9 S. E., 852; Capel v. Moses, 36 S. C., 559; 15 S. E., 711. Or where in equity cause defendant sets up title to land in controversy which, if sustained, would defeat the action, he is entitled to a jury trial of that issue.—Adickes v. Lowry, 12 S. C., 108; Cooper v. Smith, 16 S. C., 333; Smith v. Bryce, 17 S. C., 544; Chapman v. Lipscomb, 18 S. C., 232; Dewalt v. Kinard, 19 S. C., 289; McGee v. Hall, 23 S. C., 388; Sale v. Megget, 25 S. C., 72; Reagin v. Bishop, 25 S. C., 585; Pelzer v. Hughes, 27 S. C., 408; 3 S. E., 781; Dupont v. DuBos, 33 S. C., 389; 11 S. E., 1073. But where the action is in equity for cancellation of deed for fraud, a trial by jury is not demandable of right.—Dupont v. DuBos, 33 S. C., 389; 11 S. E., 1073.

Where a defendant is entitled to specific personal property in hands of executor, answers the complaint and agrees to a reference to the Master of all the issues, he thereby waives right to a trial by jury of his title to such property.—Trenholm v. Morgan, 28 S. C., 268; 5 S. E., 521.

On appeal from Probate Court there is only a right of jury trial of those issues required to be so tried by this Section.—Stewart v. Blease, 4 S. C., 37; Lucken v. Wichman, 5 S. C., 411; Prater v. Whipple, 16 S. C., 40; Rollin v. Whipper, 17 S. C., 32; *Ex parte* White, 33 S. C., 442; 12 S. E., 5; *Ex parte* Apeler, 35 S.C., 417; 14 S. E., 931; Hughes v. Kirkpatrick, 37 S. C., 169; 15 S. E., 912.

Consent to a reference is waiver of a trial by jury.—Meetze v. R. R. Co., 23 S. E., 25; Griffith v. Cromley, 58 S. C., 458; 36 S. E., 738, and other cases cited in note to Sec. 288.

Where title is involved in an action for partition, it must be determined by a jury, unless a jury trial is waived.—Osborne v. Osborne, 41 S. C., 195; 19 S. E., 494. So in an action for trespass and to enjoin continuance of same.—Alston v. Limehouse, 60 S. C., 559; 39 S. E., 188; Threatt v. Brewer Mining Co., 42 S. C., 92; 19 S. E., 1009; Heyward v. Farmers Mining Co., 42 S. C., 138; 19 S. E., 963. Where the issues are equitable the cause must be heard by the Court.—Greenville v. Ormand, 44 S. C., 116; 21 S. E., 64. So in an action for foreclosure where usury is interposed as a defence and counter-claim.—McLaurin v. Hodges, 43 S. C., 187; 20 S. E., 991. So in action for foreclosure where counter-claim is interposed for damages from breach of warranty.—Sullivan Hardware Co. v. Washington, 25 S. E., 45; 47 S. C., 187.

In actions where the issues are partly legal and partly equitable.—Greenville v. Ormand, 42 S. C., 119; 21 S. E., 642.

Framing of issues.

1890, XX., 696.

In all equity causes now pending or hereafter instituted in the Courts of Common Pleas of this State, the presiding Judge may, in his discretion, cause to be framed an issue or issues of fact, to be tried by a jury.

Trial of issues regulated.

Such issues shall be tried at the same term of Court at which they are ordered, and, if necessary, a day shall be set for the trial of the same: *Provided*, That a continuance may be ordered by the Court in proper cases.

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Upon the first day of the term, immediately after the call of Calendar Three, the presiding Judge shall call for cases in which such issues are desired, and if any are presented in which such issues are, in his judgment, proper, he shall at once call the same to be framed and placed upon the proper Calendar for trial.

When to be ordered.

The findings of fact upon such issues by the jury shall be conclusive of the same: *Provided,* That the presiding Judge may grant new trials therein, according to the practice in other jury trials: *And provided, further,* That exceptions to the rulings of the presiding Judge upon such trials may be taken by either party, and such rulings may be reviewed by the Supreme Court upon appeal from the final judgment.

Force of a verdict.

New trials.

Exceptions and appeals.

At some time during the term the presiding Judge shall hear the cause out of which such issues are ordered, and shall, some time during said term or thereafter, file his decision therein as in other equity causes, from which decision there shall be the same right of appeal now existing in like causes.

Trial and decision at same term.

Appeal.

Refusal to frame an issue under this Section does not affect right of Judge to order an issue in chancery.—Land Mortgage Co. v. Gillam, 46 S. C., 345; 26 S. E., 990; Hammond v. Foreman, 43 S. C., 264; 21 S. E., 3. An order of reference preparatory to hearing on merits held not to interfere with right to an issue under this Section.—Bank of Hampton v. Fennell, 55 S. C., 379; 33 S. E., 485. The discretion of the Circuit Judge in refusing to frame issues under this Section will not be interfered with on appeal.—DeLoach v. Sarratt, 55 S. C., 276; 33 S. E., 2; Neal v. Suber, 56 S. C., 303; 33 S. E., 463.

Sec. 275. Every other issue is triable by the Court, which, however, may order the whole issue, or any specific question of fact involved therein, to be tried by a jury, or may refer it, as provided in Sections 292 and 293.

Issues triable by the Court.

Ib., § 277.

This Section not affected by Master's Act.—16 Stat., 608.—Lipscomb v. Chapman, 15 S. C., 470.

Construing this and preceding Section together, it is conclusive that there are two general modes of trial, *i. e.,* trials by Court and trials by jury. To the Court belongs all issues of law and all cases in chancery, and to the jury all questions of fact in cases at law for the recovery of money or of any specific real or personal property.—Meetze v. R. R. Co., 23 S. C., 1.

Under this Section a party has no right to demand a jury, unless he proceeds according to the 28th Rule of Circuit Court.—Lucken v. Wichman, 5 S. C., 411; Ex parte Apeler, 35 S. C., 417; 14 S. E., 931.

The mode of trial, whether by the Judge, a referee or a jury, is discretionary with the Court.—Lucken v. Wichman, 5 S. C., 411.

The Constitutional declaration that "the right of jury trial shall remain inviolate" does not apply to cases within the equitable jurisdiction of the Court.—*Ib.* And in such cases neither party has the right to demand a submission of the issues to a jury.—Pelzer v. Hughes, 27 S. C., 408; 3 S. E., 781. An action to set aside a Sheriff's conveyance of land, sold under execution, on the ground that judgment debtor held the land as trustee of plaintiffs, is an equitable action and triable by the Court.—Price v. Brown, 4 S. C., 157.

Summons to renew execution is not case for issues out of chancery.—Adams v. Richardson, 30 S. C., 217; 9 S. E., 95.

Where Judge orders such issues of fact to be tried by a jury, he does so only that he may be aided by their verdict; he is not to be controlled thereby.—Flinn

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v. Brown, 6 S. C., 209; Gadsden v. Whaley, 9 S. C., 147; Ivy v. Claussen, 14 S. C., 273; Small v. Small, 16 S. C., 76; Grierson v. Harmon, 16 S. C., 619; Peake v. Peake, 17 S. C., 425; Pelzer v. Hughes, 27 S. C., 408; 3 S. E., 781. And such findings of the jury are properly to be considered on new trial by the Judge as ordered by the Supreme Court.—Rynerson v. Allison, 30 S. C., 534; 9 S. E., 656.

But all equitable issues must be tried by the Judge either alone or with such aid of a jury.—Gadsden v. Whaley, 9 S. C., 147; Sloan v. Westfield, 11 S. C., 447; Adickes v. Lowry, 12 S. C., 108; Cooper v. Smith, 16 S. C., 331.

A case involving cancellation of deed for fraud may be referred to the Master.—Dupont v. DuBos, 33 S. C., 389; 11 S. E., 1073.

On appeal from decree of Probate Court, declaring a paper offered for probate no will, it was error in Circuit Judge to form issues and submit them to jury without notice to appellant, and a judgment based on verdict on such issues must be set aside.—*Ex parte* Apeler, 35 S. C., 417; 14, S. E., 931.

On appeal from Probate Court disallowing claim against an estate, the appellant is not entitled as of right to a jury trial.—Hughes v. Kirkpatrick, 37 S. E., 169; 15 S. E., 912.

Summons and complaint to be filed in Clerk's office; docketing cases.

Ib., § 278; 1873, XV., 498; 1882, XVIII., 41; 1887, XIX., 836.

Notice of trial.

Docketing of causes.

Carrying the dockets forward.

Sec. 276. In all issues to be tried by the Court or a jury, the plaintiff shall, at least fourteen days before Court, file in the Clerk's office the summons and the complaint in the action, endorsing thereon the nature of the issue and the docket upon which the same shall be placed; and if the plaintiff fail so to do, the defendant, seven days before the Court, may file copies of said papers with a like endorsement, and the Clerk shall thereupon forthwith enter said cause upon its appropriate docket, and it shall stand for trial without any further notice of trial or notice of issue. The Clerk shall, within twenty days after every adjournment of the Court of Common Pleas, carry forward on Calendars numbers one and two, for trial or hearing at the next term, all causes not finally disposed of at the preceding term, and shall enter in regular order all subsequent causes duly filed and endorsed as above provided, and upon entering the same shall endorse upon the summons the date of filing, the number of the Calendar in which the cause is entered, and its number on the Calendar. In case of his failure to comply with any of the requirements of this Section, the Clerk shall forfeit all docketing fees for the term of the Court next succeeding.

Forfeiture of fees.

There is nothing in this Section which declares that failure to have the case so docketed within a prescribed time after action begun puts a party out of Court.—Hagood v. Riley, 21 S. C., 143.

When the time for answering expires, after the day for the Court to open, but before it is actually opened, the case may be put on calendar 3 and judgment by default taken.—McComb v. Woodbury, 13 S. C., 479.

Sufficiency of endorsement by plaintiff of instructions to docket.—Bank of Camden v. Thompson, 46 S. C., 499; 24 S. E., 332. The placing on the docket fourteen days before Court is the notice of trial.—*Ib.*; Steffens v. Bulwinkle, 48 S. C., 362; 26 S. E., 666. Where case is docketed on the wrong calendar, the remedy is by motion to transfer.—Threatt v. Brewer Mining Co., 42 S. C., 92; 19 S. E., 1009. The requirement that a case be docketed before trial does not apply to motions for orders preparatory to the hearing of the case on its merits.—Bank v. Fennell, 55 S. C., 379; 33 S. E., 485. Answer being stricken out on oral demurrer, retaining the case of calendar one, and there giving judgment, held

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harmless error.—Jones v. Garlington, 41 S. C., 533; 22 S. E., 741. A legal action to which an equitable defence has been interposed, which was docketed on calendar one, may be transferred to calendar two in order to have the equitable defense tried by the Court.—Knox v. Campbell, 52 S. C., 461; 30 S. E., 485.

Stenographers to be appointed by Circuit Judges; salaries and duties.

1887, XIX., 815; 1889, XX., 361; 1883, XVIII., 465, 643; 1884, XVIII., 700; 1885; XIX., 287, 329; Code Pro., § 279.

Sec. 277. A Stenographer for each of the Judicial Circuits of the State shall be appointed by the resident Judge thereof, who shall be a sworn officer of the Court, and shall hold office for the term of four years, subject to the power of the Judge to remove him, at any time, upon sufficient cause being shown therefor. Each Stenographer so appointed shall receive an annual salary as follows: To Stenographers of the First Circuit, eighteen hundred dollars, and the several Stenographers of the other Circuits, twelve hundred dollars; such salaries to be paid by the State Treasurer in the same manner provided by law for the payment of the salaries of the Circuit Judges and Solicitors of the State. It shall be the duty of every Stenographer so appointed, under the direction of the presiding Judge of his Circuit, to take full stenographic notes of all proceedings, including the rulings and charge of the Court in every trial thereat; and in case the presiding Judge, or the Solicitor, for use in criminal cases, shall require a transcript of said stenographic notes, the Stenographer shall furnish the same written out in full.

Stenographers to furnish copies; fees.

1870, § 279; 1883, XVIII., 465; 1884, *Ib.*, 700; 1885, XIX, 287-329; 1889, XX., 362.

Sec. 278. It shall be the duty of the Stenographer to furnish to any party to such trials, upon request, a copy of the evidence and proceedings taken by him in such trials, or of such part thereof as may be required, on payment in advance, on behalf of such party, to the Stenographers of the First and Second Circuits, respectively, of ten cents, and to the Stenographers of the other Circuits, respectively, of three cents, for every hundred words of the copy so furnished: *Provided,* Said copy is furnished within ten days after the rising of the Court and written demand therefor and tender of said fees. Any sum so paid by any party shall be considered a necessary disbursement in the taxation of costs.

Order of disposing of issues on the calendar.

Ib., § 281.

Sec. 279. The issues on the calendar shall be disposed of in the following order, unless, for the convenience of parties or the despatch of business, the Court shall otherwise direct:

1. Issues of fact to be tried by a jury.
2. Issues of fact to be tried by the Court.
3. Issues of law.

The order in which issues should be tried is discretionary with the Court.—Knox v. Campbell, 52 S. C., 461; 30 S. E., 485. Retaining case on calendar one, and there giving judgment, after sustaining demurrer to answer, if error, is harmless.—Jones v. Garlington, 22 S. E., 741; 44 S. C., 533.

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CHAPTER III.

Trial by Jury.

SEC.
280. Trial. Separate trials.
281. Court to be furnished with a copy of the pleadings.
282. General and special verdicts defined.
283. When jury may render either general or special verdict and when the Court may direct a special finding.

SEC.
284. On a special finding with a general verdict, the former to control.
285. Jury to assess defendant's damages in certain cases.
286. Entry of the verdict. Motion for new trial.
287. Motion for new trial, or for judgment on special verdict, where to be heard.

Trial. Separate trials.

1870, XIV., § 282.

Section 280. Either party complying with the requirements of Section 276 may bring the issue to trial, and, in absence of the adverse party, unless the Court for good cause otherwise direct, may proceed with his case, and take a dismissal of the complaint, or a verdict or judgment, as the case may require. A separate trial between a plaintiff and any of the several defendants may be allowed by the Court whenever, in its opinion, justice will thereby be promoted.

Court to be furnished with a copy of the pleadings.

Ib., § 283.

Sec. 281. When the issue shall be brought to trial by the plaintiff, he shall furnish the Court with a copy of the summons and pleadings, with the offer of defendant, if any shall have been made. When the issue shall be brought to trial by the defendant, and the plaintiff shall neglect or refuse to furnish the Court with a copy of the summons and pleadings and the offer of the defendant, the same may be furnished by the defendant.

General and special verdicts defined.

Ib., § 284.

Sec. 282. A general verdict is that by which the jury pronounce generally upon all or any of the issues, either in favor of the plaintiff or defendant. A special verdict is that by which the jury finds the facts only, leaving the judgment to the Court.

When jury may render either general or special verdict, and when the Court may direct a special finding.

Ib., § 285.

Sec. 283. In an action for the recovery of specific personal property, if the property have not been delivered to the plaintiff, or if it have, and the defendant, by his answer, claim a return thereof, the jury shall assess the value of the property, if their verdict be in favor of the plaintiff, or if they find in favor of the defendant, and that he is entitled to a return thereof; and may at the same time assess the damages, if any are claimed in the complaint or answer, which the prevailing party has sustained by reason of the detention or taking and withholding such property.

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In every action for the recovery of money only, or specific real property, the jury, in their discretion, may render a general or special verdict. In all other cases, the Court may direct the jury to find a special verdict in writing, upon any or all of the issues; and in all cases may instruct them, if they render a general verdict, to find upon particular questions of fact, to be stated in writing, and may direct a written finding thereon. The special verdict or finding shall be filed with the Clerk, and entered upon the minutes.

Where plaintiff takes possession of the property, a verdict in the words "We find for the defendant the return of the property or $507.95" is in compliance with this Section.—Bardin v. Drafts, 10 S. C., 493. But where the action is to recover "patterns" in foundry proved to be worth $5,000, and the Judge charged that defendants were entitled to a part thereof, the verdict in these words, "We find the plaintiff patterns the value of $100," does not identify the property, and is void.—Eason v. Kelly, 18 S. C., 381.

In such action a verdict which calls for a delivery or return of the property is insufficient and illegal, unless it assess the value of the property, even though there be no testimony as to value. The Section is mandatory.—Eason v. Kelly, 18 S. C., 381; Thompson v. Lee, 19 S. C., 489; Lockhart v. Little, 30 S. C., 326; 9 S. E., 511; Robbins v. Slattery, 30 S. C., 328; 9 S. E., 510.

An alternative verdict is only required when the defendant is entitled to the return of the property.—Finley v. Cudd, 42 S. C., 121; 20 S. E., 32.

Where the defendants are not jointly liable, a general verdict for the plaintiff for certain property valued at a certain sum, with damages for detention, is too indefinite, as it should be against each defendant separately for the specific property in his possession, or its value.—Norris v. Clinkscales, 47 S. C., 488; 25 S. E., 797.

To entitle plaintiff to damages he must give some proof thereof.—*Ib.* As to what damages are allowed.—Miami Powder Co. v. R. R., 47 S. C., 324; 25 S. E., 153; Brock v. Bolton, 37 S. C., 41; 16 S. E., 370; Lipscomb v. Tanner, 31 S. C., 49; 9 S. E., 733; Loeb v. Mann, 39 S. C., 469; 18 S. E., 1; Jones v. Hires, 57 S. C., 427; 35 S. E., 748; Vance v. Vandercook Co., No. 2, 170 U. S., 472; Buford v. Fannen, 1 Bay, 273; Banks v. Hatton, 1 N. & McC., 221; Kid v. Mitchell, *Ib.*, 324. Where the defendant answers that the property does not belong to him, but to his assignee, the plaintiff cannot be adjudged to return the goods, or pay their value, to the defendant, but the Court, of its own motion, should compel the assignee to intervene.—Wilkins v. Lee, 42 S. C., 31; 19 S. E., 1016. See also Sec. 299 and note, *post.*

On special finding with a general verdict, the former to control.

Sec. 284. Where a special finding of facts shall be inconsistent with the general verdict, the former shall control the latter, and the Court shall give judgment accordingly.

1870, XIV., § 286.

Jury to assess defendant's damages in certain cases.

Ib., § 287.

Sec. 285. When a verdict is found for the plaintiff in an action for the recovery of money, or for the defendant when a set-off for the recovery of money is established, beyond the amount of the plaintiff's claim as established, the jury must also assess the amount of the recovery; they may also, under the direction of the Court, assess the amount of the recovery when the Court gives judgment for the plaintiff on the answer. If a set-off, established at the trial, exceed the plaintiff's demand so established, judgment for the defendant must be given for the excess; or if it appear that the defendant is entitled to

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any other affirmative relief, judgment must be given accordingly.

Entry of the verdict. Motion for new trial.

Ib., § 288.

Sec. 286. 1. Upon receiving a verdict, the Clerk shall make an entry in his minutes, specifying the time and place of the trial, the names of the jurors and witnesses, the verdict, and either the judgment rendered thereon or an order that the cause be reserved for argument or further consideration. If a different direction be not given by the Court, the Clerk must enter judgment in conformity with the verdict. 2. If an exception be taken, it may be reduced to writing at the time, or entered in the Judge's minutes, and afterwards settled as provided by the rules of Court, and then stated in writing in a case, or separately, with so much of the evidence as may be material to the questions to be raised, but need not be sealed or signed, nor need a bill of exceptions be made. 3. If the exceptions be, in the first instance, stated in a case, and it be afterwards necessary to separate them, the separation may be made under the direction of the Court, or a Judge thereof. 4. The Judge who tries the cause may, in his discretion, entertain a motion, to be made on his minutes, to set aside a verdict and grant a new trial upon exceptions, or for insufficient evidence, or for excessive damages; but such motions, if heard upon the minutes, can only be heard at the same term at which the trial is had. When such motion is heard and decided upon the minutes of the Judge, and an appeal is taken from the decision, a case or exceptions must be settled or agreed upon in the usual form, upon which the argument of the appeal must be had.

Unless otherwise directed by the Court, the Clerk must enter judgment in conformity with the verdict or it will be void.—Eason v. Kelly, 15 S. C., 200; *Ib.*, 18 S. C., 381; Kaminsky v. R. R., 25 S. C., 53. But where the judgment is based upon a verdict on an equitable issue, that should have been tried by the Court, it is void.—Gadsden v. Whaley, 9 S. C., 147; Sloan v. Westfield, 11 S. C., 447; Cooper v. Smith, 16 S. C., 331.

When, upon rendition of verdict, the Court ordered the case to be transferred to Calendar No. 2 and that plaintiffs have leave to apply for judgment thereon, the Clerk could not enter judgment on the verdict.—Whitesides v. Barber, 22 S. C., 47.

This Section, as to the power of the Judges in granting new trials, is not to be restricted by any construction of Cons. of 1868, Art. IV., Sec. 26.—Wood v. R. R. Co., 19 S. C., 579.

This Section dispenses with the use of "bills of exceptions," and substitutes a statement of the exceptions taken at the trial, containing so much of the evidence as may be necessary to show the bearing of the exceptions.—Caston v. Brock, 14 S. C., 104.

Exceptions to the orders and rulings of the Judge may be taken at the trial, and, if so taken, they need not be served within ten days after the rising of the Court.—Coleman v. Heller, 13 S. C., 491.

The better practice is to notify the Court at the time that the party "excepts,"

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and have it so noted on the record; but it has been held that when it appears from the record that the Judge was apprised that the party intended to rely on his propositions advanced by way of exceptions, that is sufficient to constitute an exception, though there is no formal request to note it.—Fox v. R. R., 4 S. C., 543; S. C. R. R. v. Wilmington R. R., 7 S. C., 416; Clark v. Harper, 8 S. C., 257; Coleman v. Heller, 13 S. C., 491; Godbold v. Vance, 14 S. C., 458.

Under motion for new trial on the minutes, upon the ground of excessive damages, the Circuit Judge has power to order a new trial, unless the plaintiff enter a remittitur for a specified amount.—Warren v. Lagrone, 12 S. C., 45.

Where the Judge thought the evidence insufficient, but refused to grant new trial because he underrated his power to do so, under the Constitution, he committed error in law.—Wood v. R. R. Co., 19 S. C., 579.

A Judge cannot grant such a new trial at chambers.—Charles v. Jacobs, 5 S. C., 348; Clawson v. Hutchison, 14 S. C., 520. And an order transferring the hearing to another Judge is of no effect.—Donly v. Fort, 42 S. C., 200; 20 S. E., 51.

Where a case for appeal has not been settled or agreed on, it must be returned to Circuit for settlement.—Chalk v. Patterson, 4 S. C., 98.

See also note to Sec. 2734 in Civil Code.

Motion for new trial, or for judgment on special verdict, where to be heard.

Ib., § 289.

Sec. 287. A motion for a new trial on a case or exceptions, or otherwise, and an application for judgment on a special verdict or case reserved for argument or further consideration, must, in the first instance, be heard and decided at the same term, except that when exceptions are taken, the Judge trying the cause may, at the trial, direct them to be heard at some subsequent term, and the judgment in the meantime suspended; and in that case they must be there heard in the first instance, and judgment there given. And when, upon a trial, the case presents only questions of law, the Judge may direct a verdict.

"Same term" means the term at which the trial was had.—Hinson v. Catoe, 10 S. C., 311.

The Circuit Judge cannot hear a motion on the minutes for a new trial after the term has ended.—Caston v. Brock, 14 S. C., 104; Molair v. R. R., 31 S. C.,510; 10 S. E., 243. Where the motion is made and heard during the term, the decision may be filed *nunc pro tunc* after the term has ended.—Calhoun v. R. R. Co., 42 S. C., 132; 20 S. E., 30. This and Section 286 relate only to motions for new trials upon a ground arising out of something that occurred at the trial.—State v. David, 14 S. C., 428; Clawson v. Hutchison, 14 S. C., 517; Sams v. Hoover, 33 S. C., 401; 12 S. E., 8.

Referred to in Charles v. Jacobs, 5 S. C., 349; Caston v. Brock, 14 S. C., 111.

CHAPTER IV.

Trial by the Court.

SEC.
288. Trial by jury, how waived.
289. On trial by the Court, judgment how given. Motion for new trial.

SEC.
290. Exceptions, how and when taken. Judgment at general term.
291. Proceedings upon judgment on issue of law.

Trial by jury, how waived.

1870, XIV., § 290.

Section 288. Trial by jury in the Court of Common Pleas may be waived by the several parties to an issue of fact in

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actions on contract, and with the assent of the Court in other actions, in the manner following:

1. By failing to appear at the trial.

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

3. By oral consent in open Court, entered in the minutes.

This Section in the terms "actions on contract" includes such actions as before its adoption were recognized as actions at common law.—State v. R. R., 8 S. C., 129.

Party may waive right to jury trial, by consenting to reference of such issues in the cause.—City Council v. Ryan, 22 S. C., 339; Meetze v. R. R., 23 S. C., 1; Martin v. Martin, 24 S. C., 446; Calvert v. Nichols, 26 S. C., 304; 2 S. E., 116; Archer v. Ellison, 28 S. C., 238; 5 S. E., 713; Rhodes v. Russel, 32 S. C., 585; 10 S. E., 828. Or by consenting to trial by the Court.—Whaley v. Charleston, 5 S. C., 206; Magruder v. Clayton, 29 S. C., 407; 7 S. E., 844; Griffith v. Cromley, 58 S. C., 458; 36 S. E., 738.

But party cannot so waive such right by his conduct.—Sale v. Meggett, 25 S. C., 72.

Where the Judge in an action on contract withdrew the trial of the issues of fact from the jury without the consent of the several parties, the party requesting the Judge so to do cannot complain on appeal that it was error.—Stepp v. Ass'n, 37 S. C., 432; 16 S. E., 134.

On trial by the Court, judgment how given. Motion for new trial.

Ib., § 291.

Sec. 289. Upon the trial of a question of fact by the Court, its decision shall be given in writing, and shall contain a statement of the facts found, and the conclusions of law, separately; and upon a trial of an issue of law, the decision shall be made in the same manner, stating the conclusions of law. Such decision shall be filed with the Clerk within sixty days after the Court at which the trial took place. Judgment upon the decision shall be entered accordingly.

The demand as to the form of the decision should be complied with.—Visanska v. Bradley, 4 S. C., 288.

But where there is no contest as to the facts, there need be no finding of fact.—Briggs v. Winsmith, 10 S. C., 133.

The rule is directory and not mandatory, and an omission on the part of the Court to contain in its decision a statement of the facts found and the conclusions of law separately is not ground for reversal unless it appear that appellant has suffered prejudice thereby, as to the merits of the case.—Joplin v. Carrier, 11 S. C., 329; State v. Columbia, 12 S. C., 393; Bouknight v. Brown, 16 S. C., 166; Briggs v. Briggs, 24 S. C., 377; May v. Cavender, 29 S. C., 598; 7 S. E., 489; Stepp v. Ass'n, 37 S. C., 432; 16 S. E., 134; Harrell v. Kea, 37 S. C., 372; 16 S. E., 42; Aultman v. Utsey, 41 S. C., 304; 19 S. E., 617.

Where decision of the Court found a balance due on former judgment and directed execution thereof, the Clerk properly entered up judgment on the decision for the balance.—Garvin v. Garvin, 21 S. C., 83.

The Judge has power upon hearing referee's report in law case to reverse, affirm or modify his finding of fact.—Meetze v. R. R., 23 S. C., 1; Griffith v. R. R., 23 S. C., 25.

Decision valid though filed more than sixty days after Court.—Koon v. Munro, 11 S. C., 139.

Exceptions, how and when taken. Judgment at general term.

Ib., § 292.

Sec. 290. 1. For the purpose of an appeal, either party may except to a decision on a matter of law arising upon such trial, within ten days after written notice of the filing of the decision, order, or decree, as provided in Sections 344 and 345: *Pro-*

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vided, however, That where the decision filed under Section 289 does not authorize a final judgment, but directs further proceedings before a referee or otherwise, either party may move for a new trial at the next term, and for that purpose may, within ten days after notice of the decision being filed, except thereto, and make a case or exceptions as above provided in cases of an appeal.

2. And either party desiring a review upon the evidence appearing on the trial, either of the questions of fact or of law, may, at any time within ten days after notice of the judgment, or within such time as may be prescribed by the rules of the Court, make a case or exceptions, in like manner as upon a trial by jury, except that the Judge, in settling the case, must briefly specify the facts found by him, and his conclusions of law.

If exception has been taken to a decision on a matter of law arising on the trial, no further exception need be made thereto as required by this Section.—Coleman v. Heller, 13 S. C., 491.

In appealing from a decree in chancery rendered in vacation, it was held not necessary to serve the Judge with a copy of the exceptions.—Godbold v. Vance, 14 S. C., 458. Since the amendments to Sec. 345, it is not now necessary to serve the Judge with the exceptions in any case.

Matters stated only in the exceptions are not facts in the case.—Lites v. Addison, 27 S. C., 226; 3 S. E., 214.

This Section controls on hearing of referee's report in a law case on exceptions taken, and allows a review of his findings of fact as well as of law.—Meetze v. R. R., 23 S. C., 1; Griffith v. R. R., 23 S. C., 25.

Proceedings upon judgment on issue of law.

1870, XIV., § 293.

Sec. 291. On a judgment for the plaintiff upon an issue of law, the plaintiff may proceed in the manner prescribed by Section 267, upon the failure of the defendant to answer, where the summons was personally served. If judgment be for the defendant, upon an issue of law, and if the taking of an account or the proof of any fact be necessary to enable the Court to complete the judgment, a reference or assessment by jury may be ordered, as in that Section provided.

CHAPTER V.

Trial by Referees.

SEC.
292. All issues referable by consent.
293. When a reference may be compulsorily ordered.
SEC.
294. Mode of trial. Effect of report. Review.
295. Referees, how chosen. Report.

As to the application of this Chapter in those Counties where the office of Master exists, see Chapman v. Lipscomb, 15 S. C., 474.

All issues referable by consent.

R. S. 1872, 180, § 15.

Section 292. All or any of the issues in the action, whether of fact or of law, or both, may be referred upon the written con-

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sent of the parties; and, in such case, the order, if taken in vacation, may be made by the Clerk.

All issues in law may be so referred.—Meetze v. R. R., 23 S. C., 1; Griffith v. R. R., 23 S. C., 25. But not except upon written consent.—Sale v. Meggett, 25 S. C., 72. An order of reference, by consent, is sufficient.—City Council v. Ryan, 22 S. C., 339; Martin v. Martin, 24 S. C., 446; Calvert v. Nichols, 26 S. C., 304; 2 S. E., 116; Trenholm v. Morgan, 28 S. C., 268; 5 S. E., 721.

An order of reference which does not adjudge the rights of the parties is an administrative order which may be changed by a succeeding Judge for cause shown.—*Ex parte Simms*, 43 S. E., 311; 21 S. E., 113.

When a reference may be compulsorily ordered.

Sec. 293. Where the parties do not consent, the Court may, upon the application of either, or of its own motion, except where the investigation will require the decision of difficult questions of law, direct a reference in the following cases:

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

2. Where the taking of an account shall be necessary for the information of the Court, before judgment, or for carrying a judgment or order into effect; or,

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

4. The reference shall be made, in all Counties in which the office of Master has been established, to a Master; in all other Counties the reference shall be made to such person or persons as shall be appointed as provided in Section 295.

This Section does not impair the common law power of the Court to submit a case, with consent of parties, to arbitration and make the award the judgment of the Court.—Bollman v. Bollman, 6 S. C., 29.

The provision of this Section is permissive merely, and not mandatory, and the matter of reference is addressed to the discretion of the Judge.—Bouland v. Carpin, 27 S. C., 235; 3 S. E., 219. While he can only refer in the specified cases, it must be assumed that the Judge had before him sufficient to show that the case did fall under one of the subdivisions.—Ferguson v. Harrison, 34 S. C., 169; 13 S. E., 332. And in proper case reference may be ordered at same time it is required that other persons be made parties.—Sullivan v. Latimer, 32 S. C., 281; 10 S. E., 1071.

This Section, as to subdivision 1, must be construed to apply to such cases only as were not triable by jury prior to 1868, and where an action on open account or account stated presents no special feature of equitable cognizance the parties are entitled to a jury trial, even though the examination of a long account may be involved.—Smith v. Bryce, 17 S. C., 538.

Where a creditor, defendant, claims priority of payment out of a fund in Court, through a lien on the property it represented, the case was referable under this Section.—State v. R. R., 8 S. C., 129.

So when the defendant to an equitable action sets up a claim for damages, the Court may still refer the case.—Lamar v. R. R., 10 S. C., 476; Bath Co. v. Langley, 23 S. C., 145; Bouland v. Carpin, 27 S. C., 235; 3 S. E., 219.

An order of reference under this Section is not appealable, unless it deprive the appellant of a mode of trial to which he is entitled by law.—Devereaux v. Mc-

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Cready, 49 S. C., 423; 27 S. E., 467; Ferguson v. Harrison, *supra*. Where a party is entitled to a jury trial, inconvenience of witnesses, and the length of time the case would take, if the testimony were taken before the jury, are not grounds for granting a compulsory order of reference.—Wilson v. Township of York, 43 S. C., 299; 21 S. E., 82.

Mode of trial. Effect of report. Review.

1870, XIV., § 296.

Sec. 294. The trial by a Master, or by referees, shall be conducted in the same manner and on similar notice as a trial by the Court. Every referee appointed pursuant to this Code of Procedure shall have power to administer oaths in any proceedings before him, and shall have, generally, the powers vested in a reference by law. Masters and referees shall have the same power to grant adjournments, and to allow amendments to any pleadings and to the summons, as the Court, upon such trial, upon the same terms, and with the like effect. They shall have the same power to preserve order and punish all violations thereof upon such trial, and to compel the attendance of witnesses before them by attachment, and to punish them as for contempt for non-attendance or refusal to be sworn or testify, as is possessed by the Court. They must state the facts found, and the conclusions of law, separately; and their decision must be given, and may be excepted to and reviewed in like manner, and with like effect, in all respects, as in cases of appeal under Section 290; and they may in like manner settle a case or exceptions. When the reference is to report the facts, the report shall have the effect of a special verdict.

Must decide objections to evidence.

1884, XVII., 733; 1889, XX., 294.

Masters and referees to whom causes may be referred, whether to hear and decide the whole issues or to report upon any specific question of fact, or upon the facts generally, shall hear and decide any objection which may be made to the competency, relevancy, or admissibility of any testimony which may be offered; and in case, upon hearing such testimony, the Master or referee shall decide the same inadmissible, he shall take the same, subject to such objection, but shall not incorporate such testimony so held by him inadmissible with the rest of the testimony in the body of his report, but shall append the same separately at the end of his report.

And report separately.

May employ Stenographer.

The Master or referee, at the request of any party to a cause who may tender the necessary expenses incident thereto, may employ a competent stenographer to take testimony in such cause: *Provided*, That such expenses shall not be taxed in the costs or included in the disbursements of the same.

To be read and signed by witness.

Whenever any cause shall be referred to any Master or referee by any Court in this State, and testimony be taken

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therein, it shall be the duty of such Master or referee to reduce the testimony of the witnesses to writing and require the same to be read over and signed by the witness: *Provided, however,* That nothing herein contained shall be construed to prevent the use of stenographers for the purpose of taking testimony at such references, or to require that the testimony so taken by such stenographers shall be read over to or signed by such witnesses.

Proviso as to stenographers.

Time prescribed.

In all cases referred to Masters and referees by the Courts of Common Pleas, as now provided by law, the Masters or referees shall make and file with the Clerks of the Courts of Common Pleas of their respective Counties their reports within sixty days from the time the action shall be finally submitted to them, and in default thereof they shall not be entitled to any fees: *Provided,* That nothing herein contained shall prevent parties to said action, or their attorneys, from extending the time by mutual consent in writing.

Penalty.

Extension of time.

When the case shall have been heard and decided upon the report of the referee and exceptions, the decision may be reviewed on appeal to the Supreme Court.

An order of reference, reserving equities, does not prevent Master from determining objection to testimony.—Devereaux v. McCrady, 49 S. C., 423; 27 S. E., 467.

Referee has power to allow amendments.—Mason v. Johnson, 13 S. C., 20.

This Section does not authorize a Master to require a party to produce a deed.—Cartee v. Spence, 24 S. C., 550.

It is not mandatory, but directory merely, as to the statement "of facts found and conclusions of law," separately.—Bollman v. Bollman, 6 S. C., 29.

The "facts found" are the conclusions of facts drawn from the testimony. There should first be a clear statement of all material facts, and then should follow the conclusions of the referee.—Moore v. Johnson, 7 S. C., 303.

An exception to the report cannot by its own statement supply such defect of facts.—Thompson v. Thompson, 6 S. C., 279. Nor can the Judge hearing the case upon the report call for a paper to be produced which was not before the referee.—Griffin v. Griffin, 20 S. C., 486.

It is the duty of the Judge to determine by his own judgment all the issues in an equity cause; and the report of the referee merely aids the Judge in reaching his judgment.—Thorpe v. Thorpe, 12 S. C., 154.

While the report of the referee upon an issue of fact "shall have the effect of a special verdict," as such a verdict it may be set aside, for any cause for which verdicts may be set aside.—Fields v. Hurst, 20 S. C., 282. But in equity his findings of fact are only to assist the Court and for its information, and may be disregarded by the Court.—*Ib.*

When there is a consent order of reference, of all issues, in a law case, the Judge has power to review the findings of fact as well as of law, made by the referee, when the report, the testimony and exceptions are all before him.—Meetze v. R. R., 23 S. C., 1; Griffith v. R. R., 23 S. C., 25; Calvert v. Nickles, 26 S. C., 305; 2 S. E., 116.

A party can be heard in opposition to the confirmation of the report of the referee, without having excepted thereto, when he has not been served with a copy or notice thereof ten days before Court.—*Ex parte* Fort, 36 S. C., 20; 15 S. E., 723.

The hearing of the exceptions to the Master's report within ten days after notice of filing the report is error.—McGee v. Merriman, 43 S. C., 103; 20 S. E.,

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971. Time to file additional exceptions cannot be extended beyond ten days.—Verner v. Perry, 45 S. C., 262; 22 S. E., 888.

Referees, how chosen. Report.

1870, XIV., § 297.

Sec. 295. In all cases of reference to referees, the parties to the issues in the action, except when the defendant is an infant or an absentee, may agree in writing upon a person or persons, not exceeding three, and a reference shall be ordered to him or them, and to no other person or persons. And if such parties do not agree, the Court shall appoint one or more referees, not more than three, who shall be free from exception. And no person shall be appointed referee to whom all parties in the action shall object. And no Judge or Justice of any Court shall sit as referee in any action pending in the Court of which he is Judge or Justice, and not already referred, unless the parties otherwise stipulate. The referee or referees shall make and deliver a report within sixty days from the time the action shall be finally submitted; and in default thereof, and before the report is delivered, either party may serve notice upon the opposite party that he elects to end the reference; and thereupon the action shall proceed as though no reference had been ordered, and the referees shall not, in such case, be entitled to any fees.

CHAPTER VI.

Manner of Entering Judgment.

SEC.

296. Judgment may be for or against any of the parties to the action; may grant defendant affirmative relief. Complaint may be dismissed for neglect to prosecute the action. Judgment against married women.

297. The relief to be awarded to the plaintiff.

298. Rates of damages where damages are recoverable.

SEC.

299. Judgment in action for recovery of personal property; how directed.

300. Clerk to keep "Abstract of Judgments."

301. Judgment to be entered in Abstract.

302. Judgment-roll. Transcript of Judgment filed in any other County—effect of.

Judgment may be for or against any of the parties to the action; may grant defendant affirmative relief. Complaint may be dismissed for neglect to prosecute the action. Judgment against married women.

1870, XIV., § 298.

Section 296. 1. Judgment may be given for or against one or more of several plaintiffs, and for or against one or more of several defendants; and it may determine the ultimate rights of the parties on each side, as between themselves.

2. And it may grant to the defendant any affirmative relief to which he may be entitled.

Harrison v. Manufacturing Co., 10 S. C., 278.

In action against survivor of joint obligors and the executor of deceased one, the judgment should be separate.—Trimmier v. Thompson, 10 S. C., 164.

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A separate judgment may be rendered in favor of one defendant against the plaintiff, upon a counter-claim.—Plyer v. Parker, 10 S. C., 464.

Does not apply to partnership contracts where the liability is joint.—Pope M'f'g Co. v. Welch, 55 S. C., 528; 33 S. E., 787.

The Court may give judgment for one defendant as against another, if it can be done without injury to the plaintiff.—Beattie v. Latimer, 42 S. C., 313; 20 S. E., 53.

3. In an action against several defendants, the Court may, in its discretion, render judgment against one or more of them, leaving the action to proceed against the others, whenever a several judgment may be proper.

4. The Court may also dismiss the complaint, with costs in favor of one or more defendants, in case or unreasonable neglect on the part of the plaintiff to serve the summons on other defendants, or to proceed in the cause against the defendant or defendants served.

Mere failure by plaintiff to proceed with his case after service of summons and docketing does not have the effect, under this Section, of putting the plaintiff out of Court.—Hagood v. Riley, 21 S. C., 143.

In an action brought by or against a married woman, judgment may be given against her as well for costs as for damages, or both for such costs and for such damages, in the same manner as against other persons, to be levied and collected of her separate estate, and not otherwise.

The provision for the levy and collection out of her separate estate is merely directory.—Clinkscales v. Hall, 15 S. C., 602. Only intended to indicate what property of the woman could be made liable.—Habenicht v. Rawls, 24 S. C., 461.

The relief to be awarded to the plaintiff.

Ib., § 299.

Sec. 297. The relief granted to the plaintiff, if there be no answer, cannot exceed that which he shall have demanded in his complaint; but in any other case, the Court may grant him any relief consistent with the case made by the complaint, and embraced within the issue.

The prayer for relief is not essential to the complaint.—Balle v. Moseley, 13 S. C., 439.

Relief not limited by prayer of complaint, if answer is filed and the relief is consistent with the case made.—Christopher v. Christopher, 18 S. C., 600.

Where complaint states notes and credits and demands judgment for a certain sum, and answer admitted the allegation, it was error in the Judge to reduce the credits and give judgment for a larger sum; this was not consistent with the case made.—Straub v. Screven, 19 S. C., 445.

Rates of damages where damages are recoverable.

Ib., § 300.

Sec. 298. Whenever damages are recoverable, the plaintiff may claim and recover, if he show himself entitled thereto, any rate of damages which he might have heretofore recovered for the same cause of action.

This Section only remands such cases to the former practice, and in actions for damages not punitive the recovery is limited to the direct pecuniary loss.—Sullivan v. Sullivan, 20 S. C., 509.

See also Vance v. Vandercook Co., 170 U. S., 474.

Judgment in action for recovery of personal property.

Ib., § 301.

Sec. 299. In an action to recover the possession of personal property, judgment for the plaintiff may be for the possession, or for the recovery of possession, or the value thereof, in case

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a delivery cannot be had, and of damages for the detention. If the property have been delivered to the plaintiff, and the defendant claim a return thereof, judgment for the defendant may be for a return of the property, or the value thereof, in case a return cannot be had, and damages for taking and withholding the same.

For measure of damages in claim and delivery, and form of verdict, see cases cited in note to Sec. 283.

This Section does not apply to action for general damages.—Joplin v. Carrier, 11 S. C., 327; Richey v. DuPre, 20 S. C., 6.

Judgment may be given for value of the property, though only its recovery and damages be demanded.—Joplin v. Carrier, 11 S. C., 327.

In action for bale of cotton, which defendant had sold, or for the value thereof, a verdict for stated amount is not invalid, the plaintiff so electing.—Richey v. DuPre, 20 S. C., 6.

In such action, where plaintiff takes possession of the property and the verdict gives him a portion of it with damages, and the remainder to the defendant with damages, each party is entitled to enter judgment.—Stoney v. Bailey, 28 S. C., 156; 5 S. E., 347.

Clerk to keep "Abstract of Judgments."

1839, XI., 103, § 8.

Sec. 300. The Clerk shall keep among the records of the Court a book for the entry of judgments, to be called the "Abstract of Judgments."

The judgment must be entered on the abstract before execution can issue.—Mason &c., Co. v. Killough Music Co., 45 S. C., 11; 22 S. E., 755.

Judgment to be entered in Abstract.

Ib.

Sec. 301. In this book shall be entered each case wherein judgment may be signed, including each case in dower, partition and escheat, after judgment or final order, with separate columns, showing number of enrollment, names of parties, cause of action, attorney, date of judgment, amount of judgment, time of bearing interest, how judgment obtained, costs, (separating attorney, clerk, Sheriff, witness and total,) kind of execution, date of issuing, Sheriff's return, when renewed, and satisfaction, together with an index, by the names of defendants, and a cross index by the names of plaintiffs, each alphabetically arranged and kept in separate volumes, with the number of enrollment of judgment. And whenever judgment against any party plaintiff or defendant has been entered, the names of such party, and each of them, shall appear in the index, and the name of the party plaintiff or defendant in whose favor judgment has been entered, and each of them, shall appear in cross index.

What Index to judgments shall contain.

1897, XXII., 436.

Mason, &c., Co. v. Killough, 45 S. C., 11; 22 S. E., 755.

Judgment-roll. Transcript of judgment filed in any other County—effect of.

1870, XIV., § 305.

Sec. 302. Unless the party or his attorney shall furnish a judgment roll, the Clerk, immediately after entering the judgment, shall attach together and file the following papers, which shall constitute the Judgment-roll:

1. In case the complaint be not answered by any defendant,

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the summons and complaint, or copies thereof, proof of service, and that no answer has been received, the report, if any, and a copy of the judgment.

2. In all other cases, the summons, pleadings, or copies thereof, and a copy of the judgment, with any verdict or report, the offer of the defendant, exceptions, case, and all orders and papers in any way involving the merits and necessarily affecting the judgment.

A transcript of a final judgment, directing, in whole or in part, the payment of money, may be docketed with the Clerk of the Court of Common Pleas in any other County, and, when so docketed, shall have the same force and effect as a judgment of that Court. Such transcript shall set out the names of the parties plaintiff and defendant, the attorneys of record, the date and amount of the judgment, the time from which interest is to be computed, and the amount of costs.

"Case" required as part of judgment roll, is the case prepared on application for new trial, and not case for appeal.—Tribble v. Poore, 28 S. C., 565; 6 S. E., 577.

Final judgment applies to the Circuit Court.—Garrison v. Dougherty, 18 S. C., 486.

A transcript of a final judgment is a copy of the entry in the judgment book.—Harrison v. Manufacturing Co., 10 S. C., 278. But is good although certified to be from the docket of judgments instead of the judgment book, and without the Clerk's name, but with his seal.—*Ib.*

TITLE IX.

OF THE EXECUTION OF THE JUDGMENT IN CIVIL ACTIONS.

CHAPTER I. *The Execution.*
CHAPTER II. *Proceedings Supplementary to the Execution.*

CHAPTER I.

The Execution.

SEC.
303. Execution within ten years of course.
304. Judgments, how enforced.
305. The different kinds of execution.
306. To what Counties execution may be issued, sales by whom made. Execution against a married woman.
307. Execution against the person, in what cases.
308. Forms of execution.
309. Final judgments a lien on real estate for ten years.
310. Personal property bound only by levy.
311. Actions on Judgments after lapse of twenty years.

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Sec. 303. Writs of execution for the enforcement of judgments shall conform to this Title; and the party in whose favor judgment has been heretofore or shall hereafter be given, and, in case of his death, his personal representatives duly appointed, may, at any time within ten years after the entry of judgment, proceed to enforce the same, as prescribed by this Title.

Execution within three years of course.

1870, XIV., § 306; 1873, XV., 498, § 15; 1885, XIX., 229

This Section is expressly retrospective and applies to executions on previous as well as subsequent judgments.—Garvin v. Garvin, 34 S. C., 388; 13 S. E., 625.

Execution may issue at any time within ten years without leave; and at any time after ten years with leave; and if then issued without leave, the execution is not void, but only voidable for irregularity.—Lawrence v. Grambling, 13 S. C., 120. Consent will cure want of leave, and it may be presumed from payment on the execution or failure to move to set it aside.—*Ib.*

Sec. 304. Where a judgment requires the payment of money, or the delivery of real or personal property, the same may be enforced, in those respects, by execution, as provided in this Title. Where it requires the performance of any other act, a certified copy of the judgment may be served upon the party against whom it is given, or the person or officer who is required thereby or by law to obey the same, and his obedience thereto enforced. If he refuse, he may be punished by the Court as for a contempt.

Judgments, how enforced.

Ib., § 308.

Judgment of foreclosure and sale of mortgaged premises is not a judgment for delivery of real property to be enforced by execution alone, but may be enforced by attachment.—Trenholm v. Wilson, 13 S. C., 174; LeConte v. Irwin, 23 S. C., 106; *Ex parte* Winkler, 31 S. C., 171.

Sec. 305. There shall be three kinds of executions: one against the property of the judgment debtor; another against his person; and the third for the delivery of the possession of real or personal property, or such delivery with damages for withholding the same. They shall be deemed the process of the Court.

The different kinds of execution.

1870, XIV., § 309.

Sec. 306. When the execution is against the property of the judgment debtor, it may be issued to the Sheriff of any County where judgment is docketed. When it requires the delivery of real or personal property, it must be issued to the Sheriff of the County where the property, or some part thereof, is situated. Executions may be issued at the same time to different Counties.

To what Counties execution may be issued; sales, by whom made. Execution against a married woman.

Ib., § 310; 1872, XV., 194; 1878, XVI., 336, 558; 1884, XVIII., 708; 1885, XIX., 7.

Property adjudged to be sold must be sold in the County where it lies, except as hereinafter otherwise provided, and in the following manner:

All sales of real estate under the orders of the Probate Court shall be made by the Judge of Probate; all sales under the

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order of the Court where the title is to be made by the Clerk of the Circuit Court shall be made by the Clerk. In those Counties where the office of Master exists, the Master shall make all sales ordered by the Court in granting equitable relief, conformably to the practice of the Circuit Court, or to the practice of the Courts of Equity of this State before said Courts were abolished. And whenever real estate is adjudged to be sold by a Master, such sale may take place by consent of the parties to the cause, or their attorneys, or, when infants are parties, by the consent of their guardians *ad litem*, or their attorneys, in any County which the Court may direct.

Whenever the Court of Common Pleas in any County shall have acquired jurisdiction over real estate lying in another County, it shall be lawful for the Master for the County in which the action is brought to sell such real estate in the County in which the land is situated.

All other judicial sales shall be made by the Sheriffs, as now provided by law.

Upon such sale being made, and the terms complied with, the officer making the same must execute a conveyance to the purchaser, which conveyance shall be effectual to pass the rights and interests of the parties adjudged to be sold.

An execution may issue against a married woman, and it shall direct the levy and collection of the amount of the judgment against her from her separate property, and not otherwise.

A sale by referee is invalid, but binds defendant until notice of appeal from the decree, and a purchaser at the sale will not be affected by appeal afterwards taken.—Armstrong v. Humphreys, 5 S. C., 128.

Execution may issue upon a transcript of the judgment filed in a new County, against lands embraced in the new County.—Garvin v. Garvin, 34 S. C., 388; 13 S. E., 625. Where Sheriff sells land under execution on a judgment not rendered when the land was sold by defendant, the purchaser will take good title, against the vendee, when there is in Sheriff's office an execution on an older judgment.—*Ib.*

In Counties where there is no Master, the Court may order a sale of foreclosure to be made by the Sheriff.—Childs v. Alexander, 22 S. C., 169. Or where he orders titles made by the Clerk he may order the sale to be made by him also.—Fort v. Assman, 38 S. C., 253; 16 S. E., 887. If sale is ordered to be made by one other than the proper officer, he may intervene to protect his rights.—*Ex parte* Simms, 43 S. C., 311; 21 S. E., 113.

The sale of Sheriff made in another County than where the land lies gives indisputable title to purchaser, as to defendant and his vendee, where the defendant failed, when served with summons, to show cause against renewal of the execution.—Freer v. Tupper, 21 S. C., 75. So, sale by Sheriff under renewal of execution more than twenty years old where defendant failed to object, when summoned to show cause against the renewal.—Jackson v. Patrick, 10 S. C., 197; McNair v. Ingraham, 21 S. C., 70.

This provision as to execution against a married woman is merely directory, and not necessary to its validity.—Clinkscales v. Hall, 15 S. C., 602.

Cited to show that the limitation upon the right of a married woman to con-

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tract was not intended to indicate what property would be liable for the breach thereof.—Habenicht v. Rawls, 24 S. C., 461.

Execution against the person, in what cases.

1870, XIV., § 311.

Sec. 307. If the action be one in which the defendant might have been arrested, as provided in Section 200 and Section 202, an execution against the person of the judgment debtor may be issued to any County within the jurisdiction of the Court, after the return of an execution against his property unsatisfied in whole or in part. But no execution shall issue against the person of a judgment debtor, unless an order of arrest has been served, as in this Code of Procedure provided, or unless the complaint contains a statement of facts showing one or more of the causes of arrest required by Section 200.

A person so arrested is entitled to obtain a discharge under the insolvent debtor's Act.—Civil Code, 3072-3090; Hurst, Purnell & Co. v. Samuels, 29 S. C., 476; 7 S. E., 822.

Forms of execution.

1870, XIV., § 312.

Sec. 308. The execution must be directed to the Sheriff, or Coroner when the Sheriff is a party or interested, attested by the Clerk, subscribed by the party issuing it, or his attorney, and must intelligibly refer to the judgment, stating the Court, the County where the judgment roll or transcript is filed, the names of the parties, the amount of the judgment if it be for money, the amount actually due thereon, and the time of docketing in the County to which the execution is issued, and shall require the officer, substantially, as follows:

1. If it be against the property of the judgment debtor, it shall require the officer to satisfy the judgment out of the personal property of such debtor; and if sufficient personal property cannot be found, out of the real property belonging to him.

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

3. If it be against the person of the judgment debtor, it shall require the officer to arrest such debtor and commit him to the jail of the County until he shall pay the judgment or be discharged according to law.

4. If it be for the delivery of the possession of real or personal property, it shall require the officer to deliver the possession of the same, particularly describing it, to the party entitled thereto, and may, at the same time, require the officer to satisfy any costs, damages, or rents or profits recovered by the same judgment, out of the personal property of the party

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against whom it was rendered, and the value of the property for which the judgment was recovered, to be specified therein; if a delivery thereof cannot be had, and if sufficient personal property cannot be found, then out of the real property belonging to him, and shall, in that respect, be deemed an execution against property.

The judgment must be entered on the abstract before execution can issue.—Mason, &c., Co. v. Killough Music Co., 45 S. C., 11; 22 S. E., 755.

Final judgments a lien on real estate for ten years.

Ib., § 313; 1873, XV., 498; 1884, XVIII., 749; 1885, XIX, 229.

Judgment to constitute lien in the County for 10 years.

Transcripts.

Lien where filed.

Sec. 309. Final judgments entered in any Court of record in this State, subsequent to the twenty-fifth day of November, A. D. 1873, shall constitute a lien upon the real estate of the judgment debtor in the County where the same is entered for a period of ten years from the date of entry thereof. And a transcript of such judgment may be filed in the office of the Clerk of the Court of Common Pleas of any other County, and when so filed shall constitute a lien on the real property of the judgment debtor in that County from the date of the filing thereof, with the same force and effect as the original judgment, for the period of ten years from the entry of said original judgment.

Revival within 10 years.

How done.

2. A final judgment may be revived at any time within the period of ten years from the date of the original entry thereof by the service of a summons upon the judgment debtor, as provided by law, or, if the judgment debtor be dead, upon his heirs, executors or administrators, or, if he be removed out of the State, by publication of such summons in the manner provided in Section 156 for publication of summons on complaint to be filed, to show cause, if any he or they may have, why such judgment should not be revived; and if no good cause be shown to the contrary, it shall be decreed that such judgment is revived. And such judgment shall thereupon constitute a lien upon the real estate of the judgment debtor, then owned or thereafter to be acquired by them, in the County where the judgment is entered, for a period of ten years from the entry of such decree; but such lien shall not revert back to the date of the original entry of such judgment. And a transcript of said summons and decree may be filed in the office of the Clerk of the Court of any other County, and when so filed the judgment shall have like liens in that County from the date of filing of such transcript and for a like period as in the County in which the judgment is revived as aforesaid: *Provided,* That a judgment shall not in any case constitute a lien on any property of the judgment debtor in any County after

A lien for 10 years from revival.

Transcripts.

But not a lien for more than 20 years in all.

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the lapse of twenty years from the date of the original entry of the judgment.

Code judgments prior to November, 1883.

3. Judgments obtained between the 1st day of March, 1870, and the 25th day of November, 1873, may be revived and made a lien at any time within two years from the 24th day of December, 1885, by service of summons upon the judgment debtor, his heirs, executors or administrators, or, if he or they be removed out of the State, by publication of the summons as hereinbefore provided, to show cause, if any he have, why the judgment should not be revived and made a lien according to the provisions of this Chapter; and if no sufficient cause be shown to the contrary, then it shall be decreed that such judgment is revived, and it shall thereupon constitute a lien on all the real property of the judgment debtor in the County where said decree is entered for a period of ten years from the date of the entry of said decree. A transcript of such summons and decree may be filed in the office of the Clerk of the Court of Common Pleas of any other County, and when so filed such judgment shall have like liens in that County from the date of the filing thereof, and for a like period, as in the County in which the judgment is revived and made a lien as aforesaid.

How revived.

Decree of revivor a lien.

Transcripts.

Not a lien on property exempt.

4. This Section shall not be construed so as to make final judgments in any case a lien on the real property of the judgment debtor exempt from attachment, levy and sale by the Constitution.

Not to apply to judgments prior to 1870.

5. Nothing herein contained shall be construed to affect the lien of judgments or executions entered prior to the 1st day of March, A. D. 1870.

As to effect on injunction against enforcing execution on lien, see Sec. 242a; *Ex parte* Graham, 54 S. C., 171; 32 S. E., 67. Mode of renewal.—*Ib.*; McLaurin v. Kelly, 40 S. C., 488; 19 S. E., 143.

The lien allowed to decrees and judgments is no part of the remedy of enforcement, and an Act which prevented such lien in absence of levy did not impair the obligation of the contract and was valid.—Moore v. Holland, 16 S. C., 15. So is an Act that limits the duration of such retrospectively.—Henry v. Henry, 31 S. C., 1; 9 S. E., 726.

The Section providing no time within which the summons to revive a judgment and give it a lien, the Courts cannot fix any.—Alsbrook v. Watts, 19 S. C., 539. Any legal objection in response to the summons may be considered by the Courts as to whether it is sufficient.—*Ib.* The provisions as to the renewal of judgments after they have lost their active energy do not apply to judgments entered prior to March 1st, 1870. The only change as to such judgments is the substitution of the summons to revive them or to renew executions in place of the old remedy of *scire facias.*—Lauderdale v. Mahon, 41 S. C., 104; 19 S. E., 294; Lawton v. Perry, 40 S. C., 255; 18 S. E., 861.

Executions having an unexpired lien before the Act of 25th November, 1873. then and thereunder acquired an extended lien for ten years from date the lien attached.—Arnold v. McKellar, 9 S. C., 335; Adickes v. Lowry, 12 S. C., 97.

A judgment so revived continues to have a lien from its original entry and

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ranks as of that date.—Railroad Co. v. Marshall, 40 S. C., 63; 18 S. E., 247; *Ex parte* Witte Bros., 32 S. C., 226; 10 S. E., 950. Subdivision 2 does not apply to judgments previously obtained.—King v. Belcher, 30 S. C., 381; 9 S. E., 359. The judgment may be revived, although signed by one who styled himself "deputy clerk," but was never regularly appointed.—*Ib.*

The proceeding to revive is not by action, but by summons to show cause; and when defendant fails to do so at time notified, the Court may, in its discretion, give judgment by default or allow him to answer.—Carroll v. Simkins, 14 S. C., 223.

Where such summons to revive judgment before the Code is served within twenty years and defendant consents to revival and acknowledges debt to be due, the presumption of payment ceases to run, and upon revival the lien is continued for twenty years longer.—Adams v. Richardson, 32 S. C., 139; 10 S. E., 931; Wood v. Milling, 32 S. C., 378; 10 S. E., 1081; Leitner v. Metz, 32 S. C., 383; 10 S. E., 1082; Railroad Co. v. Marshall, 40 S. C., 63; 18 S. E., 247.

There is no lien under a decree in equity as a judgment until it is properly entered in the abstract of judgments.—Reid v. McGowan, 28 S. C., 74; 5 S. E., 215.

A judgment is not a lien on the homestead of debtor, either in his possession or that of vendee.—Cantrell v. Fowler, 24 S. C., 424; Ketchin v. McCarley, 26 S. C., 1; 11 S. E., 1099. Or even in lands unpartitioned.—Nance v. Hill, 26 S. C., 227; 1 S. E., 897.

The renewal of the lien exists as to the original parties, but not as to purchasers for value, before the renewal is made effective.—Woodward v. Woodward, 39 S. C., 261; Kaminsky v. Trantham, 45 S. C., 393; 23 S. E., 132. The order of renewal need not be entered on abstract to be effective.—Rowland v. Shockley, 43 S. C., 246; 21 S. E., 21.

As to renewal of Magistrate's judgments, see Roadt v. Patrick, 37 S. C., 520; 16 S. E., 536. Proceedings under this Section *res judicata*.—Babb v. Sullivan, 43 S. C., 436; 21 S. E., 277.

When executions may issue.

1875, XV., 499; 1885, XIX, 229.

Sec. 310. 1. Executions may issue upon final judgments or decrees at any time within ten years from the date of the original entry thereof, or within ten years from the date of any revival of the same, and shall have active energy during said periods respectively without any renewal or renewals thereof, and thus whether any return or returns may or may not have been made during such periods respectively in said executions:

But not after 20 years.

Provided, The execution shall not issue or be renewed in any case after the lapse of twenty years from the date of original entry of the judgment.

Not to bind personal property except after levy, for 4 months.

Executions shall not bind the personal property of their debtor, but personal property shall only be bound by actual attachment or levy thereon for the period of four months from the date of such levy.

Leave to issue execution on Magistrate's judgment.

When judgment shall have been rendered in a Court of a Magistrate, or other inferior Court, and docketed in the office of the Clerk of the Circuit Court, the application for leave to issue execution must be to the Circuit Court of the County where the judgment was rendered.

2. The Sheriff, Coroner, or other officer, with whom final process as aforesaid shall be lodged, shall, at each regular term of the Court from which the said execution or process was sued out, during the continuance of its active energy, until full execution thereof be returned, make a return to the office of the

Clerk of the Court of Common Pleas of his actings and doings thereunder. If he shall have fully executed, he shall return the process, with the manner of its execution; if he shall have partially executed, he shall return, on oath, to the Clerk, a statement in writing, under his hand, of such partial execution, with the reason of his failure as to the remainder; if he shall have wholly failed to make execution, he shall return, on oath, a statement in writing, under his hand, of his failure, with the reasons; and in any event, on the first day of the term at which the active energy of the process shall cease as herein provided, he shall return the process, if the same has not been before returned as fully executed; and the return of the officer made as aforesaid shall, for all purposes, have the same legal effect as if the said process had been made returnable to the term succeeding its first lodgment, and renewed after each subsequent regular term. For failure or neglect to make any of the returns above mentioned, or for any false return, the Sheriff, or other officer as aforesaid, shall be subject to rule, attachment, action, penalty, and all other consequences provided by law for neglect of duty by executive or judicial officers.

Judgments never were a lien on personal property, and under the Code an execution has no lien until levy.—Kohn v. Meyer, 19 S. C., 200.

This Section has no retroactive effect; applies only to executions issued after adoption of Code, and does not divest lien of execution of judgment obtained before that time.—Warren v. Jones, 9 S. C., 288; Railroad Company v. Marshall, 40 S. C., 63; 18 S. E., 247; Lauderdale v. Mahon, 41 S. C., 104; 19 S. E., 294; Lawton v. Perry, 40 S. C., 255; 18 S. E., 861. Applies to Magistrates' judgments.—59 S. C., 70; 37 S. E., 39. Such lien continues after active energy of execution has expired and attaches to personal property acquired after adoption of the Code.—Carrier v. Thompson, 11 S. C., 79. Such execution may be renewed by consent.—*Ib.* Although the Sheriff fails to make such return, it is no reason why he should not be competent to prove that endorsements on executions were made by him and that he had not sold the property levied on.—Bank v. Kinard, 28 S. C., 101; 5 S. E., 464.

A term of the Common Pleas held at the conclusion of the General Sessions, under Sec. 26 is not a regular term within the meaning of this Section.—McLaurin v. Kelly, 19 S. E., 143. An order giving leave to issue execution has the effect of reviving the judgment.—*Ib.*

Actions on judgments after lapse of 20 years.

1885, XVIII, 229.

Sec. 311. Nothing in the two preceding Sections contained shall be construed to prevent an action upon a judgment after the lapse of twenty years from the date of the original entry thereof, and a recovery thereon, in case it shall be established by competent and sufficient evidence that said judgment, or some part thereof, remains unsatisfied and due; nor shall be construed as prejudicing any action pending on the 24th of December, 1885.

The time during which a defendant is absent from the State must be deducted from the time prescribed by the Statute to bar an action on a judgment, and the same rule applies to the presumption of payment from lapse of time.—Latimer v.

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Trowbridge, 52 S. C., 193; 29 S. E., 634. This Section applies to judgments obtained before as well as to those obtained after Nov. 25, 1873.—Lawton v. Perry, 40 S. C., 255; 18 S. E., 861.

CHAPTER II.

Proceedings Supplementary to the Execution.

SEC.
312. Order for discovery of property; examination of judgment debtor, &c.
313. Any debtor to execution debtor may pay his debt to Sheriff.
314. Examination of debtors of judgment debtor, or of those having property belonging to him.
315. Witnesses required to testify.
316. Compelling party or witnesses to attend.
317. What property may be ordered to be applied to the execution.
318. Judge may appoint receiver, and prohibit transfer of property.
319. Proceedings upon claim of another party to property, or on denial of indebtedness to judgment debtor.
320. Reference by Judge.
321. Cost of proceeding.
322. Disobedience of order, how punished.

Order for discovery of property; examination of judgment debtor, &c.

1870, XIV., § 318.

Section 312. When an execution against property of the judgment debtor, or any one of several debtors in the same judgment, issued to the Sheriff of the County where he resides or has a place of business, or, if he do not reside in the State, to the Sheriff of the County where a judgment roll, or a transcript of a Justice's judgment for twenty-five dollars or upwards, exclusive of costs, is filed, is returned unsatisfied, in whole or in part, the judgment creditor, at any time after such return made, is entitled to an order from a Judge of the Circuit Court, requiring such judgment debtor to appear and answer concerning his property before such Judge, at a time and place specified in the order, within the County to which the execution was issued.

2. After the issuing of an execution against property, and upon proof by affidavit of a party, or otherwise, to the satisfaction of the Court, or a Judge thereof, that any judgment debtor has property which he unjustly refuses to apply towards the satisfaction of the judgment, such Court or Judge may, by an order, require the judgment debtor to appear at a specified time and place to answer concerning the same; and such proceedings may thereupon be had for the application of the property of the judgment debtor towards the satisfaction of the judgment as are provided upon the return of an execution.

3. On an examination under this Section, either party may examine witnesses in his behalf, and the judgment debtor may be examined in the same manner as a witness.

4. Instead of the order requiring the attendance of the judgment debtor, the Judge may, upon proof by affidavit, or otherwise, to his satisfaction, that there is danger of the debtor's leaving the State or concealing himself, and that there is reason to believe he has property which he unjustly refuses to apply to such judgment, issue a warrant requiring the Sheriff of any County where such debtor may be, to arrest him and bring him before such Judge. Upon being brought before the Judge, he may be examined on oath, and, if it then appears that there is danger of the debtor's leaving the State, and that he has property which he has unjustly refused to apply to such judgment, ordered to enter into an undertaking, with one or more sureties, that he will, from time to time, attend before the Judge, as he shall direct, and that he will not, during the pendency of the proceedings, dispose of any portion of his property not exempt from execution. In default of entering into such undertaking, he may be committed to prison by warrant of the Judge, as for a contempt.

5. No person shall, on examination, pursuant to this Chapter, be excused from answering any question on the ground that his examination will tend to convict him of the commission of a fraud; but his answer shall not be used as evidence against him in any criminal proceeding or prosecution. Nor shall he be excused from answering any question, on the ground that he has, before the examination, executed any conveyance, assignment, or transfer of his property for any purpose; but his answer shall not be used as evidence against him in any criminal proceeding or prosecution.

Every judgment creditor who can make the requisite showing is entitled to institute supplementary proceedings.—Sparks v. Davis, 25 S. C., 381. And to have examination of debtor even after appointment of receiver.—*Ib.*

The remedy given by this Section cannot be taken by way of defense to an action; it is a summary remedy, based directly on the judgment and supplementary to the prior proceedings.—Wylie v. Lyle, 7 S. C., 202.

The judgment debtor has the right to have examination conducted in his own County.—Bank v. Northrop, 19 S. C., 473. But he may waive this right by submitting his own written statement.—*Ib.*

It is no ground for dismissing the proceeding that the copy-order to appear before referee, served on the defendant, was without seal of Court to Clerk's certificate.—Dilling v. Foster, 21 S. C., 334.

Upon proper proceeding hereunder the Court may order money of defendant, in its hands, to be applied to execution against him returned unsatisfied.—McDaniel v. Stokes, 19 S. C., 60.

Although application for appointment of a receiver was made under subdivision

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1, the appointment might be made under subdivision 2, if the facts justified it, although no execution had issued.—Green v. Bookhart, 19 S. C., 466.

When defendant debtor, residing in another County, appears in the Court of another County, where the judgment was rendered, and, without objection, was examined, and a receiver was appointed, he waives his right to examination in his own County and to object to appointment of receiver.—*Ib.*

Any debtor to execution debtor may pay his debt to Sheriff.

1870, XIV., § 319.

Sec. 313. After the issuing of execution against property, any person indebted to the judgment debtor may pay to the Sheriff the amount of his debt, or so much thereof as shall be necessary to satisfy the execution; and the Sheriff's receipt shall be a sufficient discharge for the amount so paid.

Such payment, with instructions to apply to a junior execution against creditor which had lost its active energy, was a valid payment and discharged the debtor therefor.—Isbell v. Dunlap, 17 S. C., 581.

This applies only to claims which have not been reduced to judgment.—Gray v. Putnam, 51 S. C., 97; 28 S. E., 149.

Examination of debtors of judgment debtor, or of those having property belonging to him.

Ib., § 320.

Sec. 314. After the issuing or return of an execution against property of the judgment debtor, or of any one of several debtors in the same judgment, and upon an affidavit that any person or corporation has property of such judgment debtor, or is indebted to him in an amount exceeding ten dollars, the Judge may, by an order, require such person or corporation, or any officer or member thereof, to appear at a specified time and place, and answer concerning the same. The Judge may also, in his discretion, require notice of such proceeding to be given to any party to the action, in such manner as may seem to him proper.

The proceedings mentioned in this Section, and in Section 312, may be taken upon the return of an execution unsatisfied issued upon a judgment recovered in an action against joint debtors, in which some of the defendants have not been served with the summons by which said action was commenced, so far as relates to the joint property of such debtors; and all actions by creditors to obtain satisfaction of judgments out of the property of joint debtors are maintainable in the like manner and to the like effect. These provisions shall apply to all proceedings and actions now pending, and not actually terminated by any final judgment or decree.

Witnesses required to testify.

Ib., § 321.

Sec. 315. Witnesses may be required to appear and testify on any proceedings under this Chapter, in the same manner as upon the trial of an issue.

Compelling party or witnesses to attend.

Ib., § 322.

Sec. 316. The party or witness may be required to attend before the Judge, or before a referee appointed by the Court or Judge. If before a referee, the examination shall be taken by the referee, and certified to the Judge. All examinations and

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answers before a Judge or referee, under this Chapter, shall be on oath, except that when a corporation answers, the answer shall be on the oath of an officer thereof.

Where the same referee is appointed in separate cases of supplementary proceedings by two creditors against the same defendant, the two cases may be heard together.—Kennesaw Mills Co. v. Walker, 19 S. C., 104.

A referee, no matter how limited his power, must sometimes necessarily decide questions in making the examination.—*Ib.*

A Circuit Judge may pass the final order in such proceedings at his chambers in a County other than that in which the defendant resides, the examination having been held in his County.—*Ib.*

What property may be ordered to be applied to the execution.

Ib., § 323.

Sec. 317. The Judge may order any property of the judgment debtor, not exempt from execution, in the hands either of himself or any other person, or due to the judgment debtor, to be applied towards the satisfaction of the judgment; except that the earnings of the debtor for his personal services, at any time within sixty days next preceding the order, cannot be so applied, when it is made to appear, by the debtor's affidavit or otherwise, that such earnings are necessary for the use of a family supported wholly or partly by his labor.

After return of execution unsatisfied, the Court may, upon hearing, order defendant's property in its hands to be so applied.—McDaniel v. Stokes, 19 S. C., 60; Bank v. Northrop, 19 S. C., 473. Or money due the defendant to be so applied.—Rhodes v. Casey, 20 S. C., 491.

But cannot require debtor's sureties to give up property pledged to them as indemnity.—Cheatham v. Seawright, 30 S. C., 101; 8 S. E., 526. Nor require innocent assignee of a judgment, who bought after order to show cause and enjoining assignment had been passed but not served.—Robertson v. Segler, 24 S. C., 387.

The Judge may enforce his order for such application of property by attachment for contempt.—Kennesaw Co. v. Walker, 19 S. C., 104.

But such attachments should not issue until party has had an opportunity to answer.—*Ib.*

A fee earned in litigation ended more than sixty days before such order was made against the defendant, was not an earning of the debtor's so exempt.—Bank v. Northrop, 19 S. C., 473.

Where there are several judgment plaintiffs the property should go to those alone who move hereunder.—Rhodes v. Casey, 20 S. C., 491.

Judge may appoint receiver and prohibit transfer of property.

1870, XIV., § 324.

Sec. 318. The Judge may also, by order, appoint a receiver of the property of the judgment debtor, in the same manner, and with the like authority, as if appointment was made by the Court, according to Section 265. But before the appointment of such receiver, the Judge shall ascertain, if practicable, by the oath of the party or otherwise, whether any other supplementary proceedings are pending against the judgment debtor, and if such proceedings are so pending, the plaintiff therein shall have notice to appear before him, and shall likewise have notice of all subsequent proceedings in relation to said receivership. No more than one receiver of the property of a judgment debtor shall be appointed. The Judge may also, by order, forbid a transfer or other disposition of the property of the judg-

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ment debtor not exempt from execution, and any interference therewith.

Whenever the Judge shall grant an order for the appointment of a receiver of the property of the judgment debtor, the same shall be filed in the office of the Clerk of the Court of Common Pleas of the County where the judgment roll in the action, or transcript from Magistrate's judgment, upon which the proceedings are taken, is filed; and the said Clerk shall record the order in a book, to be kept for that purpose in his office, to be called "Book of Orders Appointing Receivers of Judgment Debtors," and shall note the time of the filing of said order therein. A certified copy of said order shall be delivered to the receiver named therein, and he shall be vested with the property and effects of the judgment debtor from the time of the filing and recording of the order, as aforesaid. The receiver of the judgment debtor shall be subject to the direction and control of the Court in which the judgment was obtained, or docketed, upon which the proceedings are founded.

A certified copy of said order shall also be filed and recorded in the office of the Register of Mesne Conveyances of the County in which any real estate of such judgment debtor sought to be affected by such order is situated, and, also, in the office of the Register of Mesne Conveyances of the County in which such judgment debtor resides.

Where judgment debtor, residing in another County, appeared without objection, and was examined in the County where the judgment was entered, and a receiver was then appointed, he cannot afterwards object to such appointment.—Green v. Bookhart, 19 S. C., 466.

On hearing referee's report, Judge may appoint a receiver, without notice having been given therefor.—Dilling v. Foster, 21 S. C., 334. And it will be assumed, in absence of testimony to the contrary, that the Judge did his duty and ascertained that no other supplementary proceedings were then pending against defendant.—*Ib.* And a receiver may be appointed although it appears that there is sufficient property in debtor's hands to satisfy the judgment.—*Ib.* It is better practice to require bond of receiver so appointed.—*Ib.* A receiver should not be authorized to sell choses in action, unless they represent desperate debts.—*Ib.* He should, after paying the debts, return to the debtor all property remaining in his hands.—*Ib.*

A creditor who obtains his judgment after the appointment of a receiver in a former proceeding is entitled to have an examination of the debtor; but not to have appointment of another receiver.—Sparks v. Davis, 25 S. C., 381.

Where the execution is returned unsatisfied and the debtor has property which he refuses to apply to the debt, the creditor may obtain the appointment of a receiver to recover such property, however slight its value may be.—Burdett v. McAllister, 42 S. C., 352; 20 S. E., 86. Practice and costs in such proceedings.—*Ib.*

Proceedings upon claim of another party to property, or on denial of indebtedness to judgment debtor.

Ib., § 325.

Sec. 319. If it appear that a person or corporation alleged to have property of the judgment debtor, or, indebted to him, claims an interest in the property adverse to him, or denies the debt, such interest or debt shall be recoverable only in an

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action against such person or corporation by the receiver; but the Judge may, by order, forbid a transfer or other disposition of such property or interest, till a sufficient opportunity be given to the receiver to commence the action, and prosecute the same to judgment and execution; but such order may be modified or dissolved by the Judge granting the same, at any time, on such security as he shall direct.

One not a party to the proceedings, but indebted to the defendant in execution, may be enjoined from paying the debt to anyone but the receiver.—Globe Phos. Co. v. Pinson, 52 S. C., 185; 29 S. E., 549.

Reference by Judge.

Ib., § 326.

Sec. 320. The Judge may, in his discretion, order a reference to a referee agreed upon by the parties, or appointed by him, to report the evidence or the facts, and may, in his discretion, appoint such referee in the first order, at any time.

Costs of proceeding.

1870, XIV., § 327.

Sec. 321. The Judge may allow to the judgment creditor, or to any party so examined, whether a party to the action or not, witness' fees and disbursements, and a fixed sum in addition, not exceeding thirty dollars, as costs.

Fee to plaintiff's attorney not allowed.—Dilling v. Foster, 21 S. C., 334. And a fixed sum as costs must be fixed by the Judge and not by the Clerk of the Court. —*Ib.*

A party is allowed not only the sum provided by this Section, but also other costs due the officers of Court, and the attorneys, for their services.—Dauntless Co. v. Davis, 24 S. C., 536. Costs of $10 for motion for appointment of receiver cannot be taxed, without order of Court allowing same.—*Ib.*

No error to allow sureties of debtor their fees and disbursements as witnesses and also a fixed sum of ten dollars.—Cheatham v. Seawright, 30 S. C., 101; 8 S. E., 526.

But their payment cannot be enforced by judgment and execution; but must be enforced under next Section.—*Ib.*

The costs being statutory, a direction as to their payment falls with the reversal of the order on its merits.—Burdett v. McAllister, 42 S. C., 352; 20 S. E., 86.

Sec. 322. If any person, party or witness, disobey an order of the Judge or referee, duly served, such person, party or witness, may be punished by the Judge as for a contempt. And, in all cases of commitment under this Chapter, the person committed may, in case of inability to perform the act required, or to endure the imprisonment, be discharged from imprisonment by the Court or Judge committing him, or the Court in which the judgment was rendered, on such terms as may be just.

This power of the Court to enforce its own orders by attachment for contempt is not in violation of the declaration of rights in Constitution of State.—Kennesaw Co. v. Walker, 19 S. C., 104.

But such attachment should not issue until the party has had an opportunity to answer.—Earle v. Stokes, 5 S. C., 336; Kennesaw Co. v. Walker, 19 S. C., 104. The debtor's only relief, therefore, is appeal, not *habeas corpus*.—*In re* Knox, 5 S. C., 71.

The payment of all amounts ordered to be paid under the preceding Section must be enforced as here prescribed, and not by judgment and execution.—Cheatham v. Seawright, 30 S. C., 101; 8 S. E., 526.

TITLE X.

OF THE COSTS IN CIVIL ACTIONS.

Sec.
323. Costs, except in chancery cases, to follow event of action; proviso; chancery costs.
324. Officers may take out execution for costs.
325. Interest on verdict or report, when allowed.
326. Costs, how to be inserted in judgment; adjustment of interlocutory costs
327. Costs on postponement of trial.
328. Costs on a motion.
329. Costs against an infant plaintiff.
330. Costs in action by or against an executor or administrator, trustee of an express trust, or a person expressly authorized by statute to sue.
331. Costs on review of a decision of an inferior Court in a special proceeding.
332. Costs in an action by the State.
333. The like.
334. Costs against assignee after action brought, of cause of action.

Costs, except in chancery cases to follow event of action. Proviso.

Section 323. In every civil action commenced or prosecuted in the Courts of record of this State, (except cases in chancery,) the attorneys of plaintiff or defendant shall be entitled to recover costs and disbursements of the adverse party as prescribed in Chapter CIII. of the Civil Code of 1902, such costs to be allowed as of course to the attorneys of plaintiff or defendant, and all officers of the Court thereto entitled, accordingly as the action may terminate, and to be inserted in the judgment against the losing party to such action: *Provided*, That wherever, in any action for assault, battery, false imprisonment, libel, slander, malicious prosecution, criminal conversation, or seduction, the amount recovered shall be less than one hundred dollars, the total amount of costs and disbursements shall not exceed the amount so recovered in the action.

Chancery costs.

In cases in chancery the same rule as to costs shall prevail, unless otherwise ordered by the Court.

A co-defendant is entitled to costs as the prevailing party on appeal.—Murray v. Aiken M'f'g Co., 39 S. C., 414; 18 S. E., 5. The right to disbursements was not included in the repealing Act of 1892.—Durham Fert. Co. v. Glenn, 48 S. C., 494; 26 S. E., 796.

Costs cannot be allowed without statutory warrant.—State v. Treasurer, 10 S. C., 41; Scott v. Alexander, 27 S. C., 15; 2 S. E., 706; Sease v. Dobson, 36 S. C., 554; 15 S. E., 703. The right to costs is purely statutory.—Kershaw Co. v. Richland County, 61 S. C., 75; 29 S. E., 263; Whittle v. Saluda Co., 56 S. C., 506; 35 S. E., 203; Green v. Anderson Co., 56 S. C., 411; 34 S. E., 691; Hightower v. Bamberg Co., 54 S. C., 536; 32 S. E., 576; Lancaster v. Barnwell Co., 40 S. C., 446; 19 S. E., 74; Carolina National Bank v. Senn, 25 S. C., 572. Costs are in the nature of penalties.—Kershaw Co. v. Richland Co., 61 S. C., 75; 39 S. E., 263; State v. Co. Treas., 10 S. C., 43; Lancaster v. Barnwell Co., 40 S. C., 445; 19 S. E., 74; Thompson v. Farr, 1 Rich. L., 4. Costs are governed by the fee bill in force at time of verdict or order for judgment.—Kapp v. Lyons, 13 S. C., 288; Benbow v. Richardson, 21 S. C., 602; Winship v. Tewberry, 13 S. E., 554. And can only be taxed against the parties to the record.—State v. Marshall, 28 S. C., 559; 6 S. E., 564.

Costs are not allowed in special proceedings; only in actions.—Columbia Co. v.

Columbia, 4 S. C., 402. Exception appeal.—Sease v. Dobson, 36 S. C., 554; 15 S. E., 703.

Where all issues in a pending cause have been submitted to arbitrators, they may award who shall pay the costs.—Bollman v. Bollman, 6 S. C., 48.

The Court declined to consider whether, since the Code, costs under former laws could be taxed.—Thompson v. Thompson, 6 S. C., 287.

Where complaint is dismissed, plaintiff is liable for all costs of the references in the action.—Huffman v. Stork, 25 S. C., 267.

Where in action of claim and delivery the verdict gives to each party a portion of the property and damages, each is entitled to costs.—Stoney v. Bailey, 28 S. C., 156; 5 S. E., 347.

Costs follow the judgment in action at law.—Shuford v. Shingler, 30 S. C., 612; 8 S. E., 799.

The Court that gives final judgment in a chancery case is the Court to order as to the costs.—Cooke v. Poole, 26 S. C., 321; 2 S. E., 609. A succeeding Judge cannot disturb such order by the trial Judge.—*Ib.*

The payment of costs in cases in chancery is within the discretion of the Court.—Mars v. Connor, 4 S. C., 70; Nimmons v. Stewart, 13 S. C., 445; Cooke v. Pennington, 15 S. C., 185; Winsmith v. Winsmith, 15 S. C., 611; Childs v. Frazee, 15 S. C., 612; Jacobs v. Bush, 17 S. C., 595; Pearson v. Carlton, 18 S. C., 47; Bratton v. Massey, 18 S. C., 555; Lake v. Shumate, 20 S. C., 23; Hand v. R. R., 21 S. C., 162; Covar v. Sallat, 22 S. C., 265; Johnson v. Pelot, 24 S. C., 264; Gary v. Barnwell, 24 S. C., 595; McAfee v. McAfee, 28 S. C., 218; 5 S. E., 593; Bean v. Bean, 28 S. C., 607; 5 S. E., 827; Alexander v. Meroney, 30 S. C., 335; 9 S. E., 266; Geddes v. Hutchinson, 40 S. C., 402; 19 S. E., 9; Younger v. Massey, 41 S. C., 50; 19 S. E., 125; Brown v. Brown, 44 S. C., 378; 22 S. E., 412.

Costs in equity cases, being within discretion of the Circuit Judge, would not ordinarily be disturbed by the Supreme Court.—Mars v. Connor, 9 S. C., 79; Bratton v. Massey, 18 S. C., 555; Covar v. Sallat, 22 S. C., 265; Gravely v. Gravely, 25 S. C., 2; Finch v. Finch, 28 S. C., 165; 5 S. E., 348; McAfee v. McAfee, 28 S. C., 218; 5 S. E., 480; Bean v. Bean, 28 S. C., 607; 5 S. E., 527; Scott v. Scott, 29 S. C., 414; 7 S. E., 811; Hunter v. Mills, 29 S. C., 72; 6 S. E., 907; Booker v. Wingo, 29 S. C., 116; 7 S. E., 49; Miller v. Stork, 29 S. C., 325; 7 S. E., 501; Alexander v. Maroney, 30 S. C., 336; 9 S. E., 266; Anderson v. Butler, 31 S. C., 184; 9 S. E., 797; Bredenburg v. Landrum, 32 S. C., 216; 10 S. E., 556; Young v. Edwards, 33 S. C., 437; Dendy v. Waite, 36 S. C., 569; 15 S. E., 712. The Judge may in such cases, preparatory to their insertion in his decree, order the Clerk to estimate the costs.—Dial v. Tappan, 20 S. C., 167.

But an appeal alleging error in awarding costs against parties not liable in law therefor will be determined by the Supreme Court.—Scott v. Alexander, 20 S. C., 120. When a board of aldermen have the one issue involved in a case, charging them with excess of authority, decided against them, they are liable for costs.—*Ib.*

But plaintiff should not be required to pay costs incurred in contest between co-defendants.—McCrady v. Jones, 36 S. C., 138; 15 S. E., 430. And a pretended purchaser who resists action for foreclosure should pay costs.—Dendy v. Waite, 36 S. C., 569; 15 S. E., 712.

The special provision in the General Statutes as to dower, requiring the defendant to pay the expenses, must be regarded as an exception to this general rule as to costs, and the defendant is not liable for costs on exceptions to return of commissioners.—Fooshe v. Merriweather, 20 S. C., 337.

Plaintiff should not be required to pay costs incurred in a contest between co-defendants.—McCrady v. Jones, 36 S. C., 138. Pretended purchaser resisting action for foreclosure should pay costs.—Dendy v. Waite, 36 S. C., 569; 15 S. E., 712. If Circuit Court makes no order as to such costs the Supreme Court will not.—Walker v. Walker, 17 S. C., 339; Harbin v. Parker, 19 S. C., 598; Scott v. Alexander, 23 S. C., 120; Johnson v. Pelot, 24 S. C., 255; Webb v. Chisolm, 24 S. C., 487; Gary v. Barnwell, 24 S. C., 595. The reversal on appeal of a decree which directs the payment of the costs sets aside this direction, although it is not made a ground of appeal.—Bratton v. Massey, 18 S. C., 555. In actions for the benefit of persons unable to contract, or by one of a class for the benefit of all, the costs and disbursements should be apportioned and paid out of the fund in Court.—Nimmons v. Stewart, 13 S. C., 445; Roberts v. Johns, 24 S. C., 580. But where there are liens upon part of the fund, costs are primarily chargeable upon the unen-

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cumbered part.—Baxter v. Baxter, 23 S. C., 114. An appeal lies from a judgment, in an action at law, as to taxation of costs.—Stegall v. Bolt, 11 S. C., 522; Dilling v. Foster, 21 S. C., 340; Dauntless Co. v. Davis, 24 S. C., 539. An appeal alleging error of law may be taken from an order made upon the sole question of costs in a chancery case.—Scott v. Alexander, 23 S. C., 120. But the Supreme Court has no original jurisdiction as to costs.—Huff v. Watkins, 20 S. C., 479.

See also note to Sec. 3098 Civil Code, as to costs on appeal.

Officers may take out execution for costs.

1878, XVI., 631.

Sec. 324. Whenever a case may be settled or determined at the mutual costs of parties, or discontinued or settled by plaintiff, or the judgment shall be for defendant, or the execution against the defendant shall be returned *nulla bona,* any of the officers aforesaid shall have power to issue an execution for his costs, or the Clerk may issue for the whole, directed to the Sheriff, who is authorized and required to execute such process as in other cases of execution delivered to him.

Interest on verdict or report, when allowed.

1870, XIV., § 336.

Sec. 325. When the judgment is for the recovery of money, interest from the time of the verdict or report, until judgment be finally entered, shall be computed by the Clerk, and added to the costs of the party entitled thereto.

Stegall v. Bolt, 11 S. C., 552.

Costs, how to be inserted in judgment; adjustment of interlocutory costs.

Ib., § 337.

Sec. 326. The Clerk shall insert in the entry of judgment, on the application of the prevailing party, upon five days' notice to the other, except when the attorneys reside in the same city, village, or town, and then, upon two days' notice, the sum of the allowances for costs and disbursements, as provided by law, the necessary disbursements, including the fees of officers allowed by law, the fees of witnesses, the reasonable compensation of commissioners in taking depositions, the fees of referees, and the expense of printing the papers for any hearing, when required by a rule of the Court. The disbursements shall be stated in detail and verified by affidavit. A copy of the items of the costs and disbursements shall be served, with a notice of adjustment.

Whenever it shall be necessary to adjust costs in any interlocutory proceeding in an action, or in any special proceedings, the same shall be adjusted by the Judge before whom the same may be heard, or the Court before which the same may be decided or pending, or in such other manner as the Judge or Court may direct.

Taxation of costs must await final judgment when Circuit decree has been reversed.—Addison v. Duncan, 35 S. C., 165; 14 S. E., 305. Costs and disbursements should be inserted in the judgment.—Lewis v. Brown, 16 S. C., 58. Fees of officers of Court and witnesses should be taxed to them as costs, if not paid by the party.—Lewis v. Brown, 16 S. C., 58; Cureton v. Westfield, 24 S. C., 457; Dauntless Co. v. Davis, 24 S. C., 536. But if so paid by him they are considered as disbursements by the prevailing party.—Lewis v. Brown, 16 S. C., 58; Cureton v. Westfield, 24 S. C., 457; Dauntless Co. v. Davis, 24 S. C., 536. Disbursements should be taxed under fee bill of force at time incurred.—Lewis v. Brown, 16

S. C., 58. Expenses of keeping property taken in claim and delivery is properly a disbursement to be taxed by Clerk.—Addison v. Sugette, 60 S. C., 58; 39 S. E., 229; Railway Co. v. Sheppard, 42 S. C., 543; 20 S. E., 481. Disbursements do not bear interest before taxation.—Addison v. Sugette, 60 S. C., 58; 38 S. E., 229. The right to disbursements was not affected by the repeal of the Act allowing attorney's costs.—Durham Fertilizer Co. v. Glenn, 48 S. C., 494; 26 S. E., 796. What are disbursements.—*Ib.* Printing arguments for Supreme Court.—McElwee v. Kennedy, 59 S. C., 335; 37 S. E., 920; Finley v. Cudd, 45 S. C., 87; 22 S. E., 753. Disbursements should be verified by affidavit.—*Ib.;* Cureton v. Westfield, 24 S. C., 457. Points and authorities in Supreme Court are taxable as disbursements.—Elder v. R. R., 15 S. C., 610. But copying of case for printer is not so taxable.—*Ib.*

Costs are allowed in lieu of damages by expense in carrying on the litigation.—Loeb v. Mann, 39 S. C., 469; 18 S. E., 2. Though they are to be inserted in the judgment as matter of course, it is not error to direct in the decree that the Clerk shall enter them.—Johnson v. Masters, 49 S. C., 525; 27 S. E., 474.

This Section does not require that the costs and disbursements shall be taxed by the Clerk exclusively; but the Court in equity cases has control of the question of costs.—Dial v. Tappan, 20 S. C., 167.

And it does not prevent taxation by the Master.—*Ib.* But erroneous taxation directed by the Court will be reviewed by the Supreme Court.—Dilling v. Foster, 21 S. C., 334.

Unless the costs have been taxed by the Clerk and a motion to correct the taxation has been decided in the Court below, the Supreme Court will not consider any question as to same.—Bradley v. Rodlesperger, 6 S. C., 291; Dilling v. Foster, 21 S. C., 334; Cooke v. Poole, 26 S. C., 321; 2 S. E., 609; Hecht v. Friesleben, 28 S. C., 181; 5 S. E., 475; Armstrong v. Friesleben, 28 S. C., 605; 5 S. E., 479.

But when the taxation has been heard and confirmed by Circuit Court, appeal lies to Supreme Court.—Stegall v. Bolt, 11 S. C., 522. But such order of confirmation is not a final judgment that allows previous orders to be reviewed.—Huffman v. Stork, 25 S. C., 267.

Notice of taxation may be given by Clerk as well as by the attorneys.—Cureton v. Westfield, 24 S. C., 457.

The fees of the officers and witnesses are in theory the disbursements paid by prevailing party; but it is not error to tax them as due to them.—Lewis v. Brown, 16 S. C., 58. And the costs of the officers need not be sworn to or certified by them.—Cureton v. Westfield, 24 S. C., 451.

Production of subpœna writ is not necessary to entitle witness to tax his fees.—*Ib.*

Disbursements must be taxed under the fee bill in force at time incurred.—*Ib.*

But they must be verified or not allowed.—Cureton v. Westfield, 24 S. C., 457.

"A rule of Court" means a pre-existing rule of general operation, and not a mere order *pro hoc vice.*—Scott v. Alexander, 27 S. C., 15; 2 S. E., 706.

The rules of Court require printing of papers only in the Supreme Court; so that printing of papers in the Circuit Court cannot be taxed.—*Ib.*

Fees of stenographers cannot be taxed.—*Ib.*

Costs on postponement of trial.

Ib., § 340.

Sec. 327. When an application shall be made to a Court or referee to postpone a trial, the payment to the adverse party of a sum not exceeding ten dollars, besides the fees of witnesses, may be imposed, as the condition of granting the postponement.

Cost on a motion.

Ib., § 341.

Sec. 328. Costs may be allowed on a motion, in the discretion of the Court or Judge, not exceeding ten dollars, and may be absolute or directed to abide the event of the action.

Such costs are discretionary with the Court and cannot be taxed without order allowing them.—Dauntless Co. v. Davis, 24 S. C., 536.

Appeal from refusal of Clerk to tax costs is not such motion.—State v. Marshall, 28 S. C., 559; 6 S. E., 564.

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Cost against an infant plaintiff.

Ib., § 342.

Sec. 329. When costs and disbursements are adjudged against an infant plaintiff, the guardian by whom he appeared in the action shall be responsible therefor, and payment thereof may be enforced by attachment.

Costs in action by or against an executor or administrator, trustee of an express trust, or a person expressly authorized by statute to sue.

1870, XIV., § 343.

Sec. 330. In an action prosecuted or defended by an executor, administrator, trustee of an express trust, or a person expressly authorized by Statute, costs shall be recovered, as in an action by and against a person prosecuting or defending in his own right; but such costs shall be chargeable only upon or collected of the estate, fund, or party represented, unless the Court shall direct the same to be paid by the plaintiff or defendant personally, for mismanagement or bad faith in such action or defence.

The Court has no right to require an administrator to pay costs of an action, *personally*, unless he has been guilty of mismanagement or bad faith *in that action*.—Clark v. Wright, 26 S. C., 196; 1 S. E., 814. And the Court should charge the assigned estate with costs where the assignee had not made himself so liable "for mismanagement or bad faith in the conduct of the business."—Akers v. Rowan, 36 S. C., 87; 15 S. E., 30.

A committee held liable for the costs of a suit maliciously prosecuted by him without cause.—Ashley v. Holman, 44 S. C., 145; 21 S. E., 624.

Costs on review of a decision of an inferior Court in a special proceeding.

Ib., § 344.

Sec. 331. When the decision of a Court of inferior jurisdiction in a special proceeding, including appeals from Probate Courts, shall be brought before the Circuit Court for review, such proceeding shall, for all purposes of costs, be deemed an action at issue, on a question of law, from the time the same shall be brought into Court, and costs thereon shall be awarded and collected as provided by law.

A proceeding before Master under the direct tax refunding Act of 1891 was not a proceeding in an inferior Court, and no costs were taxable thereon.—Campbell v. Sanders, 42 S. C., 522; 20 S. E., 415.

Costs in an action by the State.

Ib., § 345.

Sec. 332. In all civil actions, prosecuted in the name of the State, by an officer duly authorized for that purpose, the State shall be liable for costs in the same cases, and to the same extent, as private parties. If a private person be joined with the State as plaintiff, he shall be liable in the first instance for the defendant's costs, which shall not be recovered of the State till after execution issued therefor against such private party and return unsatisfied.

The like.

Ib., § 346.

Sec. 333. In an action prosecuted in the name of the State, for the recovery of money or property, or to establish a right of claim for the benefit of any County, city, town, village, corporation, or person, costs awarded against the plaintiff shall be a charge against the party for whose benefit the action was prosecuted, and not against the State.

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Costs against assignee after action brought, of cause of action.

Ib., § 347.

Sec. 334. In actions in which the cause of action shall, by assignment after the commencement of the action, or in any other manner, become the property of a person not a party to the action, such person shall be liable for the costs and disbursements in the same manner as if he were a party, and payment thereof may be enforced by attachment.

Costs against a person not party to the action cannot be taxed by the Clerk; they can only be enforced by attachment on rule to show cause.—State v. Marshall, 28 S. C., 559; 6 S. E., 564.

TITLE XI.

OF APPEALS IN CIVIL ACTIONS.

Chapter I. *Appeals in General.*
Chapter II. *Appeals to the Supreme Court.*
Chapter III. *Appeal to the Circuit Court from an Inferior Court.*

CHAPTER I.

Appeals in General.

Sec.
335. Mode of reviewing judgment or order.
336. Orders made out of Court, how vacated or modified.
337. Who may appeal.
338. Parties, how designated on appeal.
339. Appeal, how made.
340. Clerk to transmit papers to Appellate Court.
341. Intermediate orders affecting the judgment may be reviewed on the appeal from the judgment.
342. Judgment on appeal.
343. How and when printing, etc., dispensed with.

Mode of reviewing judgment or order.

1870, XIV., § 349.

Section 335. The only mode of reviewing a judgment or order in a civil or criminal action, shall be that prescribed by this Title.

No appeal lies from a verdict of a jury.—Winsmith v. Walker, 5 S. C., 473; Bank v. Gary, 14 S. C., 572. Nor from an order made out of Court, without notice to the adverse party.—Hill v. Watson, 10 S. C., 268. Nor from a judgment by default.—Washington v. Hesse, 56 S. C., 28; 33 S. E., 787.

Orders made out of Court, how vacated or modified.

Ib., § 350.

Sec. 336. An order, made out of Court, without notice to the adverse party, may be vacated or modified, without notice, by the Judge who made it, or may be vacated or modified, on notice, in the manner in which other motions are made.

Who may appeal.

Ib., § 351.

Sec. 337. Any party aggrieved may appeal in the cases prescribed in this Title.

Special proceedings are included by the word "cases."—Sease v. Dobson, 36 S. C., 554; 15 S. E., 703.

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Parties, how designated on appeal.

Sec. 338. The party appealing shall be known as the appellant, and the adverse party as the respondent. But the title of the action shall not be changed in consequence of the appeal.

Ib., § 352.

Appeal, how made.

Ib., § 353; 1878, XVI, 698; 1880, XVII., 368.

Sec. 339. (1.) An appeal must be made by the service of a notice, in writing, on the adverse party or his attorney, and, in the cases provided by law, on the Judge or Magistrate, or other officer who heard the cause, with whom the judgment or order appealed from is entered, stating the appeal from the same, or some specified part thereof. (2.) When a party shall give, in good faith, notice of appeal from a judgment or order, and shall omit, through mistake, to do any other act necessary to perfect the appeal or to stay proceedings, the Court may permit an amendment on such terms as may be just.

Failure to serve exceptions in time, when relieved.—Crosswell v. Connecticut Indemnity Ass'n, 49 S. C., 374; 27 S. E., 388.

A notice of appeal must be in writing.—Abney v. Cole, 30 S. C., 607; 10 S. E., 390; Barnwell v. Marion, 56 S. C., 54; 33 S. E., 719. And should be from the judgment, instead of the mere order for judgment.—Boylston v. Crews, 2 S. C., 422; Grayson v. Harris, 37 S. C., 606; 16 S. E., 154.

Clerk to transmit papers to Appellate Court.

1870, XIV., § 354.

Sec. 340. If the appellant shall not, within twenty days after his appeal is perfected, cause a certified copy of the notice of appeal and of the judgment roll, or, if the appeal be from an order or any part thereof, a certified copy of such order, and the papers upon which the order was granted, to be transmitted to the Appellate Court by the Clerk with whom the notice of appeal is filed, the respondent may cause such certified copy to be transmitted by such Clerk to the Appellate Court, and recover the expenses thereof, as a disbursement on such appeal, in case the judgment or order appealed from shall be in whole or in part affirmed; and this provision shall apply to all appeals heretofore taken, where the appeal has not been dismissed in the manner provided by the rules of the Appellate Court.

Intermediate orders affecting the judgment may be reviewed on the appeal from the judgment.

Sec. 341. Upon an appeal from a judgment, the Court may, review any intermediate order involving the merits and necessarily affecting the judgment.

See cases in note to Sec. 11.

1870, XIV., § 355.

Judgment on appeal.

Ib., § 356.

Sec. 342. Upon an appeal from a judgment or order, the Appellate Court may reverse, affirm, or modify the judgment or order appealed from, in the respect mentioned in the notice of appeal, and as to any or all of the parties, and may, if necessary or proper, order a new trial. When the judgment is reversed or modified, the Appellate Court may make complete restitution of all property and rights lost by the erroneous judgment.

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In an action at law the Supreme Court cannot modify a judgment of the Court below; it must either reverse or affirm.—Hosford v. Winn, 22 S. C., 313. But it may direct the respondent to enter a remittitur on the judgment below, and grant a new trial upon his failure to so do.—Cave v. Ins. Co., 57 S. C., 347; 35 S. E., 580.

How and when printing, etc., dispensed with.

1873, XV., 501.

Sec. 343. No rule or order of any Court or Judge shall require the printing of any brief, report, or other paper connected with appeals by any party to an action or proceeding, who makes an affidavit, to be filed with the Clerk of the Supreme Court, that he or she is unable to pay for such printing.

Where typewritten copies are substituted for printed, the cost of having same made may be taxed as a disbursement.—Finley v. Cudd, 45 S. C., 87; 22 S. E., 753.

CHAPTER II.

Appeals to the Supreme Court.

SEC.
344. Appeal, in what cases.
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346. When notice of appeal may stay execution; undertaking on appeal.
347. New undertaking in case sureties insolvent.
348. Extending time for certain steps in appeals.
349. Appeal, how perfected.
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351. If judgment be to execute conveyance, it must be executed and deposited.
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Appeal, in what cases.

1870, XIV., § 358.

Section 344. An appeal may be taken to the Supreme Court in the cases mentioned in Section 11. When the Circuit Court shall render judgment upon a verdict taken, subject to the opinion of the Court, the questions or conclusions of law, together with a concise statement of the facts upon which they arose, shall be prepared by and under the direction of the Court, and shall be filed with the judgment roll, and be deemed a part thereof, for the purposes of a review in the Supreme Court.

The provisions of this Section shall apply to any judgment therein mentioned that has been heretofore rendered, and upon which an appeal has been brought and is now pending, or upon which an appeal shall hereafter be brought. When the return has already been filed with the Clerk of the Supreme Court,

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such statement shall be filed with him, and be deemed a part of such return.

When appeal may be taken; appellant to give notice; case; amendments; docketing appeal; waiver of appeal; statement may be agreed upon.

See A. A., 1880, XVII., 369; 1889, XX., 368; 1878, XVI., 698; 1880, XVII, 356.

Time for giving notice of appeal in vacation.

In other appeals.

Time for serving case with exceptions.

Time for proposing amendments.

Settlement of case.

Sec. 345. 1. In every appeal to the Supreme Court from an order, decree or judgment granted or rendered at Chambers from which an appeal may be taken to the Supreme Court, the appellant or his attorney shall, within ten days after written notice that such order has been granted, or decree or judgment rendered, give notice to the opposite party or his attorney of his intention to appeal; and in all other appeals to the Supreme Court the appellant or his attorney shall, within ten days after the rising of the Circuit Court, give like notice of his intention to appeal to the opposite party or his attorney, and within thirty days after such notice the appellant or his attorney shall prepare a case with exceptions and serve them on the opposite party or his attorney. The respondent, within ten days after service of such case, may propose any objection thereto or alteration thereof, and the case shall be settled in such mode as may be provided in the rules of the Supreme Court.

3. The case shall be placed on the docket of the Supreme Court at such time as may be fixed by the rules of the Supreme Court.

4. Whenever the appellant shall fail to perfect his appeal, his failure to do so shall amount to a waiver thereof, unless the Court permit the appeal to be perfected as provided in Sections 339 and 349.

1875, XV., 862.

5. Upon appeals to the Supreme Court, in case the attorney for the appellant and respondent shall agree upon a statement of the case as prepared by them for the hearing of the Supreme Court, such statement of the case shall be a sufficient brief of the same, and no return or other paper from the Circuit Court shall be required.

Upon the transmission of a certified copy of such agreement to the Clerk of the Appellate Court, within the time now required by law, he shall place said cause on the docket for a hearing by said Court.

The time within which to appeal does not commence to run until the order appealed from is filed.—Archer v. Long, 46 S. C., 292; 24 S. C., 83. Where an order overruling a motion for a new trial is filed six days after the adjournment of the term, and judgment entered on the verdict the next day, the judgment is to be deemed for the purpose of an appeal as though rendered at chambers, and the notice of intention to appeal may be given within ten days after written notice that such order was granted or judgment entered.—Appleby v. S. C. & G. Ry. Co., 58 S. C., 33; 36 S. E., 109. Mailing on the tenth day is sufficient service.—Walters v. Laurens Cotton Mill, 53 S. C., 155; 31 S. E., 110.

The time for appeal runs from written notice of the judgment at chambers, notwithstanding actual notice previously had.—Lake v. Moore, 12 S. C., 564.

Notice of appeal within ten days after entry of judgment on a verdict, but more than ten days after rising of the Court, is sufficient.—Bank v. Gary, 14 S. C., 571; Molair v. R. R. Co., 31 S. C., 510; 10 S. E., 243.

Where party fails to serve notice of appeal within the time, the appeal will be dismissed on motion.—Rogers v. Nash, 12 S. C., 559. So if he fail to serve his case within time.—*Ib.;* McElwee v. McElwee, 14 S. C., 623.

The Supreme Court has no power to remedy the omission to give notice of appeal within the ten days, which is imperative.—Renneker v. Warren, 20 S. C., 581.

Nor to extend the time within which to serve the case.—Scurry v. Coleman, 14 S. C., 166.

Notice of appeal within ten days from notice of filing a decree at chambers, and service of case within thirty days thereafter, is a compliance with the law.—Godbold v. Vance, 14 S. C., 458.

Appeal dismissed because notice was not served in time.—Service being denied, appellant was bound to prove it.—Allen v. Stokes, 19 S. C., 602.

The appellant is confined to matters in Judge's view of the case and embraced in his exceptions; but respondent may rely upon other and any grounds to sustain the judgment.—Southern Co. v. Thew, 5 S. C., 5; Sheriff v. Welborn, 14 S. C., 487.

Where an exception is founded on facts, they must appear in the case, and not in the exception alone, or the Supreme Court will not consider it.—Thompson v. Thompson, 6 S. C., 279; State v. Satterwhite, 20 S. C., 538; McPherson v. McPherson, 21 S. C., 267; State v. Jenkins, 21 S. C., 596.

The exceptions must be served within the required time.—Bell v. Wheeler, 3 S. C., 104; Weatherly v. Jackson, 3 S. C., 228; Spratt v. Pierson, 4 S. C., 308; Kibler v. McIlwaine, 12 S. C., 555; Rogers v. Nash, 12 S. C., 559; Sullivan v. Speights, 12 S. C., 561; *Ex parte* Clyde, 14 S. C., 385; Blakely v. Frazier, 15 S. C., 600.

A "case" is a clear and intelligible statement of all the proceedings on the trial important to a review of a cause, upon the points raised by the appeal.—Sullivan v. Thomas, 3 S. C., 531.

The proposed case may be served in parts, so they are within time.—Archer v. Long, 35 S. C., 585; 14 S. E., 24. A copy of the case may be filed.—*Ib.*

The power of a Judge to settle a case is not personal, but may be exercised by his successor in office.—Chalk v. Patterson, 4 S. C., 98.

He settles the case at the time and place for settlement, and must not regard the respondent's amendments proposed as abandoned because his attorney does not appear.—*Ib.*

The case may be settled upon affidavits and other proofs, as well as upon the minutes and personal recollections of the Judge.—*Ib.*

If case proposed does not satisfy respondent, he must proceed to remedy it under the rules, as no *ex parte* statements will be considered by the Supreme Court.—Hornesby v. Burdell, 9 S. C., 303; Ransom v. Anderson, 9 S. C., 438.

If brief presented is not the case as settled, the appeal will be dismissed.—Collins v. Roumillat, 22 S. C., 389.

If case for appeal is incorrect or improper, it can only be taken advantage of on proper motion before the submission or hearing; it is too late after hearing begins.—Sullivan v. Thomas, 3 S. C., 548; Redding v. R. R. Co., 5 S. C., 67; Green v. R. R. Co., 6 S. C., 342.

The case is defective if it does not contain a proper statement of the nature of the issue to which the judgment appealed relates.—Trotter v. Robinson, 6 S. C., 410.

And when it does not contain an intelligible statement of the case and grounds of appeal it will be stricken from the docket.—Shumate v. Powell, 5 S. C., 286. Or if it does not contain exceptions specifying the errors complained of.—Cureton v. Dargan, 16 S. C., 619. A statement referring to papers filed in the office of the Clerk of the Supreme Court is not sufficient.—*In re* Perry's estate, 42 S. C., 183; 20 S. E., 84; Moore v. Perry, 42 S. C., 369; 20 S. E., 200.

When party fails to file return within forty days as required by the Rule 1 of Supreme Court, his appeal will be dismissed on motion.—Agnew v. Adams, 24 S. C., 90; Nabors v. Latimer, 30 S. C., 607; 10 S. E., 390; Abney v. Cole, 30 S. C., 607; 10 S. E., 390; Calvo v. R. R. Co., 30 S. C., 608; 10 S. E., 389. Where both parties appeal, one docketing is sufficient.—Coleman v. Keels, 31 S. C., 601; 9 S. E., 735.

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Where appellant fails to appear on regular call of case on the docket, the appeal will be dismissed, on motion, for want of prosecution.—Varn v. Williams, 30 S. C., 608; 10 S. E., 390.

Where waiver and order of dismissal by Clerk have not been brought to attention of the Court, and the papers presented show an appeal, the Court will consider it.—Coleman v. Keels, 31 S. C., 601; 9 S. E., 335.

An "agreed case," with notice of appeal and exceptions, constitutes the return, and no other papers are required to be filed.—McNair v. Craig, 34 S. C., 9; 12 S. E., 367; Davis v. Pollock, 35 S. C., 584; 13 S. E., 897.

It must be filed with Clerk of the Circuit Court, within ten days, under Rule 49 of that Court.—Chisolm v. Providence Co., 35 S. C., 599; 14 S. E., 349, 480.

Upon failure to serve proposed case within the time limited, an order may be taken declaring the appeal abandoned; in the Circuit Court, if the return to the Supreme Court has not been filed; and if it has been filed, in the Supreme Court.—State v. Johnson, 52 S. C., 505; 30 S. C., 592. The jurisdiction of the latter Court not attaching until the filing of the return.—*Ib.*; Pickens v. Quillian, 31 S. C., 602; 9 S. E., 743; Pelzer M'f'g Co. v. Celey, 40 S. C., 430; 18 S. E., 790.

As to form of exceptions, see Rules of Court.

When notice of appeal may stay execution; undertaking on appeal.

1870, XIV., § 360; 1873, XV., 501.

Sec. 346. A notice of appeal from a judgment directing the payment of money shall not stay the execution of the judgment, unless the presiding Judge before whom the judgment was obtained shall grant a stay of execution; but, after notice of appeal, the plaintiff shall not enforce a sale of property without giving an undertaking or bond to the defendant, with two good sureties, in double the appraised value of the property, or double the amount of the judgment, conditioned to pay all damages which the defendant may sustain by reason of such sale, in case the judgment is reversed. Nor shall the plaintiff in such case be allowed to proceed with a sale of defendant's property if the defendant do enter into an undertaking, with good sureties, in double the appraised value of the said property, or the amount of the judgment, to pay the judgment with legal interest, and all costs and damages which the plaintiff may sustain by reason of the appeal, or produce the property levied on, and submit to the sale in case the judgment be confirmed.

Notice of appeal from decree directing payment of money does not stay execution, unless a stay is granted.—Pelzer M'f'g Co. v. Celey, 40 S. C., 430; 18 S. E., 790.

The stay of execution is discretionary with the Judge; it is not mandatory.—Brown v. Buttz, 15 S. C., 488.

Sheriff after appeal is not guilty of any breach of duty in failing to enforce a sale of property, without the plaintiff giving the bond so required.—State v. Gilreath, 16 S. C., 100.

New undertaking in case sureties insolvent.

1870, XIV., § 360.

Sec. 347. Whenever it shall be made satisfactorily to appear to the Court that since the execution of the undertaking the sureties have become insolvent, the Court may, by rule or order, require the appellant to execute, file, and serve a new undertaking as above; and, in case of neglect to execute such undertaking within twenty days after the service of a copy of the rule or order requiring such new undertaking, the appeal

may, on motion to the Court, be dismissed with costs. Whenever it shall be necessary for a party to any action or proceeding to give a bond or an undertaking with surety or sureties, he may, in lieu thereof, deposit with the officer or into Court, as the case may require, money to the amount for which such bond or undertaking is to be given. The Court in which such action or proceeding is pending may direct what disposition shall be made of such money, pending the action or proceeding. In any case where, by this Section, the money is to be deposited with an officer, a Judge of the Court, in term or at Chambers, upon the application of either party, may, before such deposit is made, order it to be deposited in Court instead of with such officer; and a deposit, made pursuant to such order, shall be of the same effect as if made with such officer.

Extending time for certain steps in appeals.

Sec. 348. The time for taking any step or proceeding in the preparation and perfection of appeals from the Circuit Courts to the Supreme Court as now prescribed by law, may be extended by the Judge who heard the cause, or by any one of the Justices of the Supreme Court, upon four days' notice of such motion being first given to the opposite party, except the time of giving notice of appeal to the opposite party.

The Supreme Court has no power to remedy the omission to give the notice of appeal within the required time of ten days.—Renneker v. Warren, 20 S. C., 581.

Such motion for *extension* of time must be made *before* the expiration of the time limited.—Stribbling v. Johns, 16 S. C., 112; Tribble v. Poore, 28 S. C., 565; 6 S. E., 577.

Such extension may be granted where record cannot be prepared in the time limited.—Lysaght v. Berkeley Co., 41 S. C., 554; 19 S. E., 747.

This Section relates only to proceedings on appeal.—Brown v. Easterling, 59 S. C., 472; 38 S. E., 121.

Appeal, how perfected.

1880, XVII., 368.

Sec. 349. When any party shall omit, through mistake or inadvertence, to do any act or acts necessary to perfect an appeal, or to stay proceedings, the Supreme Court may, in their discretion, permit such act or acts to be done at any time to perfect the appeal on such terms as may be just, provided that the Court shall be satisfied that the appeal was taken *bona fide*, and provided that notice of the same was given as now required by law.

Extension of time to perfect appeal given on account of inadvertence, counsel being engaged in the discharge of public duties.—Price v. Price, 45 S. C., 57; 20 S. E., 743; 22 *Ib.*, 791. To relieve against in construing an indefinite agreement as to extension of time.—Buerhaus v. DeSaussure, 39 S. C., 548; 17 S. E., 500. Or where a party is misled by another to believe that time will not be insisted on.—Geddes v. Hutchinson, 39 S. C., 550; 17 S. E., 560.

Relief will not be granted for mistakes of law.—Simonds v. Marco, 38 S. C., 554; 16 S. E., 830. Nor for failure to file points and authorities under Rule 8.—N. E. M'tg'e Co. v. McMillan, 41 S. C., 547; 19 S. E., 692.

This Section is only intended to supply defects in order to perfect appeals; and

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as after appeal has been dismissed there is no appeal, it cannot apply.—Clark v. Wimberly, 24 S. C., 138.

But notice of appeal having been given, the Court has power to relieve against the consequences of other omissions.—Wardlaw v. Erskine, 20 S. C., 582.

Court may grant leave to perfect appeal for excusable neglect in failing to file exceptions within ten days after rising of Court in case of jury trial.—Harle v. Morgan, 30 S. C., 611; 9 S. E., 659.

Where notice of appeal has not been given in writing, as required by law, no relief under this Section can be had.—Abney v. Cole, 30 S. C., 607; 10 S. E., 390.

Where appellant was honestly mistaken in supposing that the "case" for appeal should constitute a part of the judgment roll and failed to file the return within the time, he was allowed to reinstate his appeal, dismissed by the Clerk for such failure.—Tribble v. Poore, 28 S. C., 565; 6 S. E., 577; Cummings v. Wingo, 28 S. C., 610; 7 S. E., 48.

But such relief must be obtained on motion based upon affidavits, and the notice of motion and copies of the affidavits must be served on the opposite party at least eight days before hearing.—Cummings v. Wingo, 28 S. C., 610; 7 S. E., 48.

If judgment be to deliver document or personal property, it must be deposited or security given.

1870, XIV., § 361.

Sec. 350. If the judgment appealed from direct the assignment or delivery of documents or personal property, the execution of the judgment shall not be stayed by appeal, unless the things required to be assigned or delivered be brought into Court, or placed in the custody of such officer or receiver as the Court shall appoint, or unless an undertaking be entered into on the part of the appellant, by at least two sureties, and in such amount as the Court, or a Judge thereof, shall direct, to the effect that the appellant will obey the order of the Supreme Court upon the appeal.

An order directing executor to turn over assets to a receiver is not stayed by appeal to Supreme Court unless a *supersedeas* bond be given as required by order of that Court.—Harmon v. Wagener, 33 S. C., 487; 12 S. E., 98.

If judgment be to execute conveyance, it must be executed and deposited.

Ib., § 362.

Sec. 351. If the judgment appealed from direct the execution of a conveyance or other instrument, the execution of the judgment shall not be stayed by the appeal until the instrument shall have been executed and deposited with the Clerk with whom the judgment is entered, to abide the judgment of the Supreme Court.

When appeal will stay execution, and when not.

Ib., 363; 1898, XXII., 689; 1900, XXIII., 351.

Sec. 352. If the judgment appealed from direct the sale or delivery of possession of real property, the execution of the same shall not be stayed unless a written undertaking be executed on the part of the appellant, with two sureties, to the effect that, during the possession of such property by the appellant, he will not commit, or suffer to be committed, any waste thereon, and that if the judgment be affirmed, he will pay the value of the use and occupation of the property, from the time of the execution of the undertaking until the delivery of possession thereof, pursuant to the judgment, not exceeding a sum to be fixed by a Judge of the Court by which judgment was rendered, and which shall be specified in the undertaking.

When the judgment directs the sale of land to satisfy a mortgage of, or other lien, the undertaking shall provide that in case the judgment appealed from be affirmed, and the said land be finally sold for less than the judgment debt and costs, then the appellant shall pay for any waste committed, or suffered to be committed, on said lands, and shall pay a reasonable rental value for the use and occupation for said land from the time of the execution of said undertaking to the time of said sale, but not exceeding the amount of such deficiency, which said sum shall be duly entered as a payment of said judgment; and in case the said lands shall be unimproved lands, then in any action or proceeding now pending or hereafter begun in any of the Courts of this State, said undertaking shall further provide for the payment by appellant (if the judgment be affirmed) of any taxes due at the time of such appeal, or already paid by the mortgagee, or becoming due during the pendency of said appeal, and also for the payment by appellant of the interest on the debt falling due during the pendency of such appeal.

Stay of sale, pending appeal from decree of foreclosure, is not permitted unless the appellant has executed the written undertaking required.—City Council v. Caulfield, 19 S. C., 201; Gerald v. Gerald, 30 S. C., 348; 9 S. E., 274; Stanley v. Stanley, 35 S. C., 584; 14 S. E., 675.

When defendant surrendered possession of the premises, at the sale, that was "delivery of possession pursuant to the judgment," and the undertaking was then payable.—Gerald v. Gerald, 30 S. C., 348; 9 S. E., 274; *Ex parte* Winkler, 31 S. C., 171; 9 S. E., 792.

Stay of proceedings upon security being given.

Ib., § 364; 1873, XV., 501.

Sec. 353. Whenever the defendant executes the bond hereinbefore prescribed, or the appeal is perfected as provided by Sections 346, 350, 351, and 352, it stays all further proceedings in the Court below upon the judgment appealed from, or upon the matter embraced therein; but the Court below may proceed upon any other matter included in the action, and not affected by the judgment appealed from. And the Court below may, in its discretion, dispense with or limit the security required by Sections 346, 350, and 352, when the appellant is an executor, administrator, trustee, or other person acting in another's right; and may also limit such security to an amount not less than fifty thousand dollars, in the cases mentioned in Sections 350, 351, and 352, where it would otherwise, according to those Sections, exceed that sum.

The discretion of the Court as to security required will not be exercised without proper showing to justify it.—Stanley v. Stanley, 35 S. C., 584; 14 S. E., 675.

Sec. 354. The undertakings prescribed by Sections 346, 347, and 352, may be in one instrument or several, at the option of

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the appellant; and a copy, including the names and residences of the sureties, must be served on the adverse party, with a notice of appeal, unless a deposit is made as provided in Section 347, and notice thereof given.

Undertakings may be in one instrument or several.

1870, XIV., § 365; 1873, XV., 501.

Securities to be approved and sureties to justify.

1901, XXIII., 697.

Sec. 355. An undertaking upon an appeal shall be of no effect unless it be accompanied by the affidavit of the sureties that they are each worth double the amount specified therein. The respondent may however except to the sufficiency of the sureties within ten days after the notice of appeal; and unless they or other sureties justify before a Judge or Clerk of the Court below, as prescribed by Sections 216 and 217 within ten days thereafter the appeal shall be regarded as if no undertaking had been given. The justification shall be upon notice of not less than five days. No Clerk shall take the justification of any surety or sureties in a case in which he may be interested or when either of the parties or such surety or sureties shall be connected with him by affinity or consanguinity within the sixth degree and in all cases where the Clerk may have approved or disapproved of the sufficiency of a surety or sureties his action may be reviewed on motion after notice before a Circuit Judge. And in case at any time in any action now pending or hereafter brought a respondent shall be of opinion that the surety or sureties on any bond already approved are insufficient and shall make affidavit of the fact, setting out the grounds of such belief and serving a copy thereof upon appellant's attorney, then the said sureties or other sureties shall justify anew thereon in the same manner and with the same effect as though such new justification were an original justification on said bond.

When appeal stays proceedings below; exceptions.

1887, XVIII., 837; 1889, XX., 355.

Sec. 356. In cases not provided for in Sections 346, 350, 351, 352 and 353, the notice of appeal shall stay proceedings in the Court below, upon the judgment appealed from, except that where it directs the sale of perishable property, the Court below may order the property to be sold and the proceeds thereof to be deposited, or invested in this State or United States bonds, to abide the judgment of the Supreme Court: *Provided,* An appeal from a judgment or decree overruling a demurrer shall stay the further hearing of the cause unless the presiding Judge shall be satisfied that the ends of justice will be subserved by proceeding with the trial, and shall order the trial of the cause to proceed to judgment: *Provided, further,* That nothing contained in the preceding proviso shall be construed to prevent a

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review upon appeal from the final order or judgment in the cause of any judgment or decree on demurrer.

Appeal from order overruling demurrer to one cause of action shall stay proceedings as to second cause of action.—Hammond v. R. R. Co., 15 S. C., 10.

When appeal from an order confirming the sale in an action for foreclosure has been taken, it operates to stay proceedings to put the purchaser in possession.—LeConte v. Irwin, 23 S. C., 106.

A notice of appeal, orally given, from an order refusing an oral demurrer, stays the further hearing of the cause on the Circuit.—Elliott v. Pollitzer, 24 S. C., 81.

Appeal from return of homestead appraisers operates as a *supersedeas* upon all the proceedings in the Court below.—Simonds v. Haithcock, 26 S. C., 595; 2 S. E., 616.

But appeal from order setting aside attachment does not stay trial of cause upon merits.—Cureton v. Dargan, 16 S. C., 619.

Undertaking must be filed. 1870, XIV., § 368.

Sec. 357. The undertaking must be filed with the Clerk with whom the judgment or order appealed from was entered. The provisions of this Chapter, as to the security to be given upon appeals, and as to the stay of proceedings, shall apply to appeals taken under Subdivision 3 of Section 11.

CHAPTER III.

Appeal to the Circuit Court From an Inferior Court.

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Appeals from inferior Courts

Supersedeas.

By what Courts judgments to be reviewed; to be heard on the papers.

1870, XIV., § 369; 1887, XIX, 832.

Section 358. When a judgment is rendered by a Magistrate's Court, by the County Commissioners or any other inferior Court or jurisdiction, save the Probate Court heretofore provided for in this Code of Procedure, the appeal shall be to the Circuit Court of the County wherein the judgment was rendered, and shall amount to a supersedeas, if the party against whom judgment is rendered shall execute a good and sufficient bond with surety to pay the amount of the judgment and costs in the event that he fail to sustain such appeal, and in all cases in which such bond with surety shall be filed no execution shall issue until the termination of such appeal. The said appeal shall be heard by the Court upon all the papers in the

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case, including the testimony on the trial, which shall be taken down in writing and signed by the witnesses, and the grounds of exception made, without the examination of witnesses in Court.

This Section does not purport to confer the right of appeal in any case; but simply to provide to what Court such appeal shall be made, how it shall operate as a *supersedeas,* and how it shall be heard.—Whipper v. Talbird, 32 S. C., 1; 10 S. E., 578.

No appeal lies from the decision of a State Board of Canvassers, it not being an inferior Court.—*Ib.*

An appeal from the City Court of Charleston does not lie to Circuit Court, but must be taken to the Supreme Court exclusively, under the particular intention declared in Section 2790 of the Civil Code, although it is an inferior Court.—City Council v. Weller, 34 S. C., 357; 13 S. E., 628.

This Section as to hearing of appeal in Circuit Court did not apply to appeals before it went into effect, May 1st, 1892.—McFadden v. Tant, 20 S. C., 585.

An appeal from an order made by two Magistrates discharging a prisoner under *habeas corpus* proceedings cannot be taken to the Supreme Court; it must be taken to the Circuit Court.—State v. Duncan, 22 S. C., 87.

Party may appeal from judgment by Magistrate without making a motion for new trial before him.—Minnick v. Fort, 13 S. C., 215.

The Circuit Court cannot review findings of fact to which no exceptions were taken.—Burns v. Gower, 34 S. C., 160; 13 S. E., 331.

The object of exceptions is to point out the particulars in which the errors of law complained of consist.—Wolfe v. R. R. Co., 25 S. C., 379.

And where the ground of appeal taken is that "manifest injustice had been done, and that defendant's default in not being present at trial was excusable," it is insufficient.—*Ib.*

An appeal lies to the Circuit Court from an order of Magistrate granting a new trial.—Redfearn v. Douglass, 35 S. C., 569; 15 S. E., 244.

Adjustment and taxation of costs by Clerk is not a judgment, and is to be review by exceptions, not appeal, in the Circuit Court.—State *ex rel.* Bartless v. Town Council, 44 S. C., 500; 22 S. E., 719.

Appeal, when to be taken.

Ib., § 370.

Sec. 359. The appellant shall, within five days after judgment, serve a notice of appeal, stating the grounds upon which the appeal is founded. If the judgment is rendered upon process not personally served, and the defendant did not appear, he shall have five days, after personal notice of the judgment, to serve the notice of appeal provided for in this and the next Section.

The Circuit Judge has no power to extend this time within which to appeal.—Davis v. Vaughan, 7 S. C., 342. Nor jurisdiction to hear an appeal where notice in writing was not served within that time.—Davis v. Vaughan, 7 S. C., 343; Scott v. Pratt, 9 S. C., 82; Foot v. Williams, 13 S. C., 601. Notice served seven days after order refusing new trial is too late.—Manuel v. Loveless, 56 S. C., 426; 35 S. E., 1.

The notice of appeal must state the grounds in every case.—Sternberger v. McSween, 14 S. C., 35.

The grounds of appeal being referred to in notice, as being made before the Magistrate on motion for new trial and on the evidence and records, is a sufficient statement of the grounds.—Dargan v. West, 27 S. C., 156; 3 S. E., 68. When no objection is raised in the Circuit Court as to the sufficiency of the notice of appeal, it cannot properly be raised on appeal to Supreme Court.—*Ib.*

Sec. 360. The notice of appeal must, within the same time, be served on the Magistrate personally, if living and within the County, or on his clerk, if there be one, and upon the attor-

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ney for the respondent, or on the respondent personally, or by leaving it at his residence, with some person of suitable age and discretion; or in case the respondent is not a resident of such County, or cannot, after due diligence, be found therein, in the same manner, on the agent, if any, who is a resident of such County, who appeared for the respondent on the trial; and, if neither the respondent nor such agent or attorney can be found in the County, the notice may be served on the respondent by leaving it with the Clerk of the Appellate Court.

Notice of appeal to be served on Magistrate, and on respondent, agent, or attorney.

Ib., § 371; 1873, XV., 501, § 20; 1880, XVII., 306.

Failure to serve the Magistrate with such notice of appeal within the five days is fatal, and Circuit will dismiss the appeal, being without jurisdiction to hear it.—Scott v. Pratt, 9 S. C., 82; Davis v. Vaughan, 7 S. C., 343; Foot v. Williams, 13 S. C., 601; Manuel v. Loveless, 56 S. C., 426; 35 S. C., 1.

Where respondent was a non-resident, service of the notice on the agent who appeared for him at the trial, but was also a non-resident of the County, was held insufficient in Sheldon v. Pearson, 42 S. C., 111; 20 S. E., 26. The notice must be served personally, not by mail.—Bingham v. Holliday, 52 S. C., 528; 30 S. E., 485. An acknowledgement of personal service by the Magistrate is sufficient to show service on him.—Baker v. Irvine, 58 S. C., 436; 36 S. E., 742. But insufficient to show service on the respondent.—Whetstone v. Livingston, 54 S. C., 539; 32 S. E., 561.

Sec. 361. When, by reason of the death of a Magistrate, or his absence from the County, or any other cause, the notice of appeal cannot be served as provided by Section 360, it may be served by leaving the same with the Clerk of the County.

Filing in lieu of service of notice of appeal.

1870, XIV., § 376.

Sec. 362. The Court below shall thereupon, after ten days, and within thirty days after service of the notice of appeal, make a return to the Appellate Court of the testimony, proceedings, and judgment, and file the same in the Appellate Court. The return may be compelled by attachment.

Return, when and how made and compelled.

Ib., § 377; 1880, XVII., 306.

Sec. 363. When a Magistrate, by whom a judgment appealed from was rendered shall have gone out of office before a return is ordered, he shall, nevertheless, make a return in the same manner, and with the like effect, as if he were still in office.

How made if Magistrate be out of office.

1870, XIV., § 378.

Sec. 364. If the return be defective, the Appellate Court may direct a further or amended return as often as may be necessary, and may compel a compliance with its order by attachment. And the Court shall always be deemed open for these purposes.

Further return.

Ib., § 379.

Where a return has been made, though defective, it is discretionary with the Circuit Court whether to order a further or amended return.—Lynch v. Heyward, 56 S. C., 562; 35 S. E., 220.

Sec. 365. If a Magistrate, whose judgment is appealed from, shall die, become insane, or remove from the state, before having made a return, the Appellate Court may examine witnesses on oath as to the facts and circumstances of the trial or judg-

Magistrate, dead, insane, or absent.

1870, XIV., § 380.

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ment, and determine the appeal, as if the facts had been returned by the Magistrate. If he shall have removed to another County within the State, the Appellate Court may compel him to make the return, as if he were still within the County where the judgment was rendered.

Hearing upon return.

Ib., § 381; XV., 498, § 20.

Sec. 366. If a return be made, the appeal may be brought to a hearing by either party. It shall be placed upon the calendar, and continue thereon until finally disposed of. But if neither party bring it to a hearing before the end of the second term, the Court shall dismiss the appeal, unless it continue the same by special order, for cause shown. At least eight days before the Court, the party desiring to bring on the appeal shall file the return and accompanying papers, if any, with the Clerk, and the Clerk shall thereupon enter the cause on the calendar, according to the date of the return, and it shall stand for trial without any further notice.

The Statute does not fix the time when the Clerk shall place the case on the calendar.—Marshall v. Mitchell, 59 S. C., 523; 38 S. E., 158. The party desiring to bring on the appeal is only required to file the return and accompanying papers in the office of the Clerk of Court eight days before Court.—*Ib.* This Section is not mandatory.—Manuel v. Loveless, 54 S. C., 346; 32 S. E., 421. Where continued at first term by consent, should be dismissed on last day of second term.—Bell v. Pruitt, 51 S. C., 344; 29 S. E., 5. Dismissal for failure of Magistrate to file return. —Ramseur v. Moore, 43 S. C., 304; 21 S. E., 81.

Appeal to be heard on the original papers.

Sec. 367. The appeal shall be heard on the original papers, and no copy thereof need be furnished for the use of the Court.

1870, XIV., § 382.

Judgment on appeal. New trial.

Ib., § 383.

Sec. 368. 1. Upon hearing the appeal, the Appellate Court shall give judgment according to the justice of the case, without regard to technical errors and defects which do not affect the merits. In giving judgment, the Court may affirm or reverse the judgment of the Court below, in whole or in part, and as to any or all the parties, and for errors of law or fact. If the appeal is founded on an error in fact in the proceedings, not affecting the merits of the action, and not within the knowledge of the Magistrate, the Court may determine the alleged error in fact on affidavits, and may, in its discretion, inquire into and determine the same upon examination of the witnesses. If the defendant failed to appear before the Magistrate, and it is shown by the affidavits served by the appellant, or otherwise, that manifest injustice has been done, and he satisfactorily excuses his default, the Court may, in its discretion, set aside or suspend judgment, and order a new trial, before the same or any other Magistrate in the same County, at such time and place, and on such terms, as the Court may deem proper. Where a new trial shall be ordered

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before a Magistrate, the parties must appear before him according to the order of the Court, and the same proceedings must thereupon be had in the action as on the return of a summons personally served.

The Supreme Court will not lend a ready ear to any objections based upon mere matter of form; but will decide without regard to technical errors and defects.—Dargan v. West, 27 S. C., 156; 3 S. E., 68.

And the Circuit Court will, in order to do justice when the verdict in Magistrate's Court is not in proper form, send the case back there for new trial.—DuBose v. Armstrong, 29 S. C., 290; 6 S. E., 934.

The Circuit Court, on appeal, can review and reverse errors of fact in Magistrate's Court.—Redfearn v. Douglass, 35 S. C., 569; 15 S. E., 244.

But it cannot review findings of fact by Magistrate not excepted to.—Burns v. Gower, 34 S. C., 160; 13 S. E., 331.

The only mode of relief from a Magistrate's judgment, rendered against a party through his excusable defaults, is by appeal to the Circuit Court.—Doty v. Duvall, 19 S. C., 143; Wolfe v. R. R. Co., 25 S. C., 379; Lawrence v. Isear, 27 S. C., 244; 3 S. E., 322.

Such relief applies only to cases of judgment by default, and not where there was trial.—Miller v. Schmidt, 20 S. C., 588; Green v. County Commissioners, 27 S. C., 9; 2 S. E., 618.

Whether Circuit Court can remand a case to County Commissioners for new trial not determined.—Green v. County Commissioners, 27 S. C., 9; 2 S. E., 618.

On appeal from the County Commissioners, the Circuit Court may review the facts, but its finding thereon is not reviewable.—Tinsley v. Union Co., 40 S. C., 276; 18 S. E., 794; Aull v. Newberry Co., 42 S. C., 321; 20 S. E., 61.

Failure to file notice and grounds of appeal a mere technical error.—Perkins v. Douglass, 46 S. C., 6; 24 S. E., 42.

An irregularity or defect in summons is waived by appearance.—Grant v. Clinton Cotton Mills, 56 S. C., 554; 35 S. E., 193.

2. If the issue joined before the Magistrate was an issue of law, the Court shall render judgment thereon according to the law of the case; and if such judgment be against the pleadings of either party, an amendment of such pleading may be allowed on the same terms, and in like case, as pleadings in actions in the Circuit Court, and the Court may thereupon require the opposite party to answer such amended pleading, or join issue thereon, as the case may require, summarily.

3. If, upon an appeal in an issue of law, the Court should adjudge the pleading complained of to be valid, it shall, in like manner, require the opposite party summarily to answer such pleading, or join issue thereon, as the case may require.

4. Every issue of fact so joined or brought upon an appeal shall be tried in the manner as provided in Section 358.

5. The Court shall have the same power over its own determinations, and shall render judgment thereon in the same manner, as the Circuit Court in actions pending therein, without trial by jury, and may allow either party to amend his pleadings upon such terms as shall be just; and in any appeal, either party may, at any time before the trial, serve upon the

1873, XV., 502, § 20.

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opposite party an offer, in writing, to allow judgment to be taken against him for the sum or property, or to the effect in such offer specified, and with or without costs, as said offer shall specify. If the party receiving such offer accept the same, and give notice thereof, in writing, within ten days, he may file the return and offer, with an affidavit of service of notice of acceptance thereof, and judgment shall be entered thereon according to said offer. If the notice of acceptance be not given, the offer is to be deemed withdrawn, and cannot be given in evidence. And if the party to whom such offer is made fail to obtain a judgment more favorable to him than that specified in said offer, then he shall not recover costs, but must pay the other party's costs from the date of the service of the offer.

6. Either party may move for a new trial in said Court on a case or exceptions, or otherwise, and such motion may be made before or after judgment has been entered; and the provisions of this Code of Procedure in relation to the proceedings, exceptions to the decisions of the Court, making and settling cases and exceptions, motions for new trials, and making up the judgment roll in the Circuit Court, are hereby made applicable to all appeals brought up for trial, as in this Chapter provided.

Sec. 369. To every judgment upon an appeal there shall be annexed the return on which it was heard, the notice of appeal, with any offer, decision of the Court, exceptions, case, and all orders and papers in any way involving the merits and necessarily affecting the judgment, which shall be filed with the Clerk of the Court, and shall constitute the judgment roll.

The return may be used in evidence to show pendency of the case in the Magistrate's Court.—Cothran v. Knight, 47 S. C., 243; 25 S. E., 142.

Judgment roll.

1870, XIV., § 384.

Sec. 370. If the judgment be affirmed, costs shall be awarded to the respondent. If it be reversed, costs shall be awarded to the appellant. If it be affirmed in part, the costs, or such part as to the Court shall seem just, may be awarded to either party.

Sec. 371. If the judgment below, or any part thereof, be paid or collected, and the judgment be afterwards reversed, the appellate Court shall order the amount paid or collected to be restored, with interest from the time of such payment or collection. The order may be obtained on proof of the facts made at or after the hearing, upon a previous notice of six days; and if the order shall be made before the judgment is entered, the amount may be included in the judgment.

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Setting off costs and recovery.

Ib., § 387.

Sec. 372. If, upon an appeal, a recovery be had by one party, and costs be awarded to the other, the appellate Court shall set off the one against the other, and render judgment for the balance.

The costs on appeal.

Ib., § 388; 1873, XV., 502, § 20.

Sec. 373. Costs shall be allowed to the prevailing party, in judgments rendered on appeal, in all cases, with the following exceptions and limitations: In the notice of appeal, the appellant shall state in what particular, or particulars, he claims the judgment should have been more favorable to him. If he claims that the amount of judgment is less favorable to him than it should have been, he shall state what should have been its amount. Within fifteen days after the service of the notice of appeal, the respondent may serve upon the appellant and Magistrate an offer, in writing, to allow the judgment to be corrected in any of the particulars mentioned in the notice of appeal. The appellant may thereupon, and within five days thereafter, file with the Magistrate a written acceptance of such offer, who shall thereupon make a minute thereof in his docket, and correct such judgment accordingly, and the same, so corrected, shall stand as his judgment, and be enforced accordingly; and any execution which has been issued upon the judgment appealed from shall be amended by the Magistrate to correspond with the amended judgment. If such offer be not made, and the judgment in the appellate Court be more favorable to the appellant than the judgment of the Court below, or if such offer be made and not accepted, and the judgment in the appellate Court be more favorable to the appellant than the offer of the respondent, the appellant shall recover costs: *Provided, however,* That the appellant shall not recover costs unless the judgment appealed from shall be reversed on such appeal, or be made more favorable to him, to the amount of at least ten dollars. If the offer be made and accepted by the appellant, the appellant shall recover all his disbursements on appeal, and all his costs in the Court below. But the appellant shall not recover costs, except as provided in this Chapter. The respondent shall be entitled to recover costs where the appellant is not. Whenever costs are awarded to the appellant, and when the judgment in the suit before the Court below was against such appellant, he shall further be allowed to tax the costs incurred by him which he would have been entitled to recover in case the judgment below had been rendered in his favor. If, upon an appeal, a recovery for any

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debt or damages be had by one party, and costs be awarded to the other party, the Court shall set off such costs against such debt or damages, and render judgment for the balance. The following fees and costs, and no others, except fees of officers, disbursements, and witnesses' fees, shall be allowed, on appeal, to the party entitled to costs, as herein provided, when the new trial is in the Circuit Court: For the proceedings before trial, three dollars; for trial of the cause, five dollars; when the amount sued for is under twenty dollars, only two dollars and fifty cents. If the judgment appealed from be reversed in part, and affirmed as to the residue, the amount of costs allowed to either party shall be such sum as the appellate Court may award, not exceeding five dollars. If the appeal be dismissed for want of prosecution, as provided by Section 366, no costs shall be allowed to either party. In every appeal, the Magistrate, before whom the judgment appealed from was rendered, shall receive sixty cents for his return. If the judgment be reversed for an error of fact in the proceedings, not affecting the merits, costs shall be in the discretion of the Court. If, in the notice of appeal, the appellant shall not state in what particular, or particulars, he claims the judgment should have been more favorable to him, he shall not be entitled to costs, unless the judgment appealed from shall be wholly reversed.

1873, XV., 502, § 20; XVII., 297, § 2.

Ib., § 7.

Where a party appeals from judgment of a Magistrate without stating in what particular or particulars the judgment should have been more favorable to him, he will not be entitled to costs unless the judgment be wholly reversed.—Wall v. Davis, 19 S. C., 455. And where appellant is not entitled to costs the respondent is.—*Ib.*

Where appellant refuses to accept offer of respondent to allow judgment for certain amount, and finally obtains judgment for less than defendants offer, he is liable for all costs subsequent to the offer.—Williford v. Gadsden, 27 S. C., 87; 2 S. E., 858.

An application to the Circuit Court to correct errors in the adjustment of costs by the Clerk is not an appeal under this Section.—State *ex rel.* Bartless v. Town Council of Beaufort, 44 S. C., 500; 22 S. E., 719.

As to appeal dismissed for failure to file return.—Ramseur v. Moore, 43 S. C., 304; 21 S. E., 81.

TITLE XII.

OF THE MISCELLANEOUS PROCEEDINGS IN CIVIL ACTIONS, AND GENERAL PROVISIONS.

CHAPTER I. *Submitting a Controversy without Action.*
CHAPTER II. *Proceedings against Joint Debtors.*
CHAPTER III. *Confession of a Judgment without Action.*
CHAPTER IV. *Offer of the Defendant to Compromise the Whole or a Part of the Action.*
CHAPTER V. *Admission or Inspection of Writings.*
CHAPTER VI. *Examination of Parties.*
CHAPTER VII. *Examination of Witnesses.*
CHAPTER VIII. *Motions and Orders.*
CHAPTER IX. *Entitling Affidavits.*
CHAPTER X. *Computation of Time.*
CHAPTER XI. *Notices, and Filing and Service of Papers.*
CHAPTER XII. *Miscellaneous Provisions.*

CHAPTER I.

Submitting a Controversy Without Adtion.

SEC.
374. Controversy, how submitted without action.
375. Judgment, how enforced.
376. Judgment, how enforced or appealed from.

Section 374. Parties to a matter in dispute, which might be the subject of a civil action, may, without action, agree upon a case containing the facts upon which the controversy depends, and present a submission of the same to any Court which would have jurisdiction if an action had been brought. But it must appear by affidavit that the controversy is real, and the proceedings in good faith, to determine the rights of the parties. The Court shall thereupon hear and determine the case, and render judgment thereon, as if an action were depending.

Controversy, how submitted without action.

1870, XIV., § 389.

Cases submitted to Supreme Court.—Simpson v. Willard, 14 S. C., 191; Macoy v. Curtis, 14 S. C., 367. Original proceedings in *mandamus*.—Carolina Grocery Co. v. Burnet, 61 S. C., 205; 39 S. E., 381.

The Court of Common Pleas refused to entertain a case for prohibition under this Section because Section 452, Code, provides that this Section shall not affect the procedure in cases of *mandamus* and prohibition.—The South Carolina Society v. Gurney, 3 S. C., 51.

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The Court has no jurisdiction unless the affidavit is filed.—Reeder v. Workman, 37 S. C., 415; 16 S. E., 187; Bradford v. Buchanan, 39 S. C., 242; 17 S. E., 503. The agreement must be signed by the parties themselves, and not by their attorneys for them.—*Ib.*

The Court will look alone to the facts stated in the agreement, without regard to any legal conclusions incorporated with them.—So. Ry. Co. v. City Council of Greenville, 49 S. C., 449; 27 S. E., 652.

Judgment, how enforced. *Ib.*, § 390.

Sec. 375. Judgment shall be entered, as in other cases, but without costs for any proceeding prior to the trial. The case, the submission, and a copy of the judgment, shall constitute the judgment roll.

Judgment, how enforced or appealed from. *Ib.*, § 391.

Sec. 376. The judgment may be enforced in the same manner as if it had been rendered in an action, and shall be subject to appeal in like manner.

CHAPTER II.

Proceedings Against Joint Debtors.

Sec.
377 Parties not summoned in action on joint contract, may be summoned after judgment.
378. Form of summons.
379. Summons to be accompanied by affidavit of amount due.
380. Party summoned may answer and defend.
381. Subsequent pleadings and proceedings the same as in an action.
382. Answer and reply to be verified as in an action.

Parties not summoned in action on joint contract, may be summoned after judgment. 1870, XIV., § 392.

Section 377. When a judgment shall be recovered against one or more of several persons jointly indebted upon a contract, by proceeding as provided in Section 157, those who were not originally summoned to answer the complaint may be summoned to show cause why they should not be bound by the judgment, in the same manner as if they had been originally summoned.

Judgment was obtained against a copartnership and one of the firm. Several years afterwards, the other copartner, having returned to the State, was summoned to show cause why he should not be bound by the judgment. Judgment against him was entered for the sum of the original judgment, with interest to date. This was error, as judgment against him should have been that he "be bound by" the original judgment, and that plaintiff have leave to issue execution thereon.—Form of such judgment suggested.—Adickes v. Allison, 21 S. C., 245.

Form of summons. *Ib.*, § 394.

Sec. 378. The summons provided in the last Section shall be subscribed by the judgment creditor, his representative or attorney, shall describe the judgment, and require the person summoned to show cause, within twenty days after the service of the summons; and shall be served in like manner as the original summons.

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Summons to be accompanied by affidavit of amount due.

Ib., § 395.

Sec. 379. The summons shall be accompanied by an affidavit of the person subscribing it, that the judgment has not been satisfied, to his knowledge or information and belief, and shall specify the amount due thereon.

Party summoned may answer and defend.

Ib., § 396.

Sec. 380. Upon such summons any party summoned may answer within the time specified therein, denying the judgment, or setting up any defense thereto, which may have arisen subsequently to such judgment; and, in addition thereto, if the party be proceeded against according to Section 377, he may make any defense which he might have made to the action if the summons had been served on him at the time when the same was originally commenced and such defense had been then interposed to such action.

In answer to such summons the Statute of Limitations cannot be pleaded to the claim upon which the judgment had been entered, if not barred when the action commenced.—Adickes v. Allison, 21 S. C., 245.

Subsequent pleadings and proceedings the same as in an action.

Ib., § 397.

Sec. 381. The party issuing the summons may demur or reply to the answer, and the party summoned may demur to the reply; and the issues may be tried and judgment may be given in the same manner as in an action, and enforced by execution; or the application of the property charged to the payment of the judgment may be compelled by attachment, if necessary.

Answer and reply to be verified as in an action.

Ib., § 398.

Sec. 382. The answer and reply shall be verified in the like cases and manner, and be subject to the same rules, as the answer and reply in an action.

CHAPTER III.

Confession of Judgment Without Action.

SEC.
383. Judgment may be confessed for debt due or for contingent liability.
384. Statement in writing, and form thereof.
385. Judgment and execution.

Judgment may be confessed for debt due or for contingent liability.

1870, XIV., § 399.

Section 383. A judgment by confession may be entered, without action, either for money due, or to become due, or to secure any person against contingent liability on behalf of the defendant, or both, in the manner prescribed in this Chapter.

A confession of judgment may be made by a client to his attorney, if made with entire fairness and full knowledge.—Wise v. Hardin, 5 S. C., 325.

A judgment by confession has all the characteristics of an ordinary judgment and cannot be attacked collaterally; the remedy is by application to the Court in which the confession is entered to vacate or modify it, if it is insufficient in form or for any reason void.—Southern Co. v. Thew, 5 S. C., 5. A confession of judgment against it, by the president of a corporation, is invalid, it not appearing that he had authority to make it, or that it had been confirmed by acquiescence.—*Ib.*

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A confession of judgment entered without action in the Clerk's office during vacation is valid. Section 267, subdivision 1, does not conflict with this Section.—Weinges v. Cash, 15 S. C., 44.

There is no law which requires a confession of judgment to be obtained or read in open Court.—*Ib.*

A confession made with view to protect debtor's property against debts present or which he expects to contract may be set aside for fraud, by the subsequent creditors.—Kohn v. Meyer, 19 S. C., 190.

The Clerk of Court may take a confession of judgment in his own favor.—Trimmier v. Winsmith, 23 S. C., 449.

The confession can only be entered in the County where the action could be brought and tried.—*Ex parte* Ware Furniture Co., 49 S. C., 20; 27 S. E., 9.

Statement in writing, and form thereof.

Ib., § 400.

Sec. 384. A statement in writing must be made and signed by the defendant, and verified by his oath, to the following effect:

1. It must state the amount for which judgment may be entered, and authorize the entry of judgment therefor.

2. If it be for money due, or to become due, it must state concisely the facts out of which it arose, and must show that the sum confessed therefor is justly due, or to become due.

3. If it be for the purpose of securing the plaintiff against a contingent liability, it must state concisely the facts constituting the liability, and must show that the sum confessed therefor does not exceed the same.

A confession is not void merely because the value of the consideration is less than the amount of the confession.—Wise v. Hardin, 5 S. C., 325.

A confession for an amount less than what is actually due contains a sufficient statement.—Weinges v. Cash, 15 S. C., 44.

A description of the debt without a statement of its consideration and facts out of which it arose is insufficient.—*Ex parte* Carroll, 17 S. C., 446; Kohn v. Meyer, 19 S. C., 190. A confession insufficient in statement is not merely irregular but is invalid.—*Ex parte* Carroll, 17 S. C., 446; Kohn v. Meyer, 19 S. C., 190. And cannot be corrected by amendment.—*Ex parte* Carroll, 17 S. C., 446. And should be set aside on motion, as proper proceeding.—*Ib.* And such motion may be made at any time within five years.—*Ib.*

When statement is false or so grossly inaccurate as to mislead inquirers, it is void as to other creditors.—Kohn v. Meyer, 19 S. C., 190.

"For goods sold and delivered" is a sufficient statement.—*Ex parte* Graham, *in re.* Plyler v. Robertson, 54 S. C., 163; 32 S. E., 67. A confession of judgment on note without mentioning the indebtedness for which the note was given is void.—Woods v. Bryan, 41 S. C., 74; 19 S. E., 218.

Judgment and execution.

Ib., 401; 1884, XVIII., 693.

Sec. 385. The statement may be filed with the Clerk of the Court of Common Pleas, or with a Magistrate, if the amount for which judgment is confessed shall not exceed one hundred dollars, who shall enter a judgment endorsed upon the statement for the amount confessed, with five dollars, plaintiff's attorney's costs, when the confession is entered by an attorney, and the usual fees provided by law to the Clerk of the Court of Common Pleas or Magistrate, as the case may be, for entering up judgments and issuing executions in any cases, together with any necessary disbursements of the plaintiff. The state-

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ment and affidavit, with the judgment endorsed, shall thereupon become the judgment roll. Executions may be issued and enforced thereon in the same manner as upon judgments in other cases in such Courts. When the debt for which the judgment is entered is not all due, or is payable in installments, and the installments are not all due, the execution may issue upon such judgment for the collection of such installments as have become due, and shall be in the usual form, but shall have endorsed thereon, by the attorney or person issuing the same, a direction to the Sheriff to collect the amount due on such judgment, with interest and costs, which amount shall be stated, with interest thereon, and the costs of said judgment. Notwithstanding the issue and collection of such execution, the judgment shall remain as security for the installments thereafter to become due, and whenever any further installments become due, execution may, in like manner, be issued for the collection and enforcement of the same.

Debtor confessing judgment to Clerk himself, his creditor cannot object that the Clerk had no right to consider his application and statement and enroll the judgment.—Trimmier v. Winsmith, 23 S. C., 449.

"The Clerk" is the Clerk of the County where the defendant resides.—*Ex parte* Ware Furniture Co., 49 S. C., 20; 27 S. E., 9. Entry on the abstract of judgments is sufficient.—Putney v. McDow, 54 S. C., 172; 32 S. E., 67.

CHAPTER IV.

Offer of the Defendant to Compromise the Whole or a Part of the Action.

SEC.
386. Offer of compromise.
387. Defendant may offer to liquidate damages.
SEC.
388. Effect of acceptance or refusal of offer.

Offer of compromise.

1870, XIV., § 402; 1873, XV., 502, § 21.

Section 386. The defendant may, at any time before the trial or verdict, serve upon the plaintiff an offer in writing to allow judgment to be taken against him for the sum or property, or to the effect therein specified, with costs. If the plaintiff accept the offer, and give notice thereof in writing within ten days, he may file the summons, complaint, and offer, with an affidavit of notice of acceptance, and the Court shall direct judgment to be entered thereon accordingly. If the notice of acceptance be not given, the offer is to be deemed withdrawn, and cannot be given in evidence; 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; and

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in case the defendant shall set up a counter-claim in his answer to an amount greater than the plaintiff's claim, or sufficient to reduce the plaintiff's recovery below fifty dollars, then the plaintiff may serve upon the defendant an offer in writing to allow judgment to be taken against him for the amount specified, or to allow said counter-claim to the amount specified, with costs. If the defendant accept the offer, and give notice thereof in writing within ten days, he may enter judgment as above for the amount specified, if the offer entitled him to judgment, or the amount specified in said offer shall be allowed him in the trial of the action. If the notice of acceptance be not given, the offer is to be deemed withdrawn, and cannot be given in evidence; and if the defendant fail to recover a more favorable judgment, or to establish his counter-claim for a greater amount than is specified in said offer, he cannot recover costs, but must pay the plaintiff's costs from the time of the offer.

Defendant may offer to liquidate damages.

Ib., § 403.

Sec. 387. In an action arising on contract, the defendant may, with his answer, serve upon the plaintiff an offer in writing that, if he fail in his defense, the damages be assessed at a specified sum; and if the plaintiff signify his acceptance thereof in writing, before trial, and on the trial have a verdict, the damages shall be assessed accordingly.

Effect of acceptance or refusal of offer.

Ib., § 404.

Sec. 388. If the plaintiff do not accept the offer, he shall prove his damages as if the offer had not been made, and shall not be permitted to give it in evidence. And if the damages assessed in his favor shall not exceed the sum mentioned in the offer, the defendant shall recover his costs incurred in consequence of any necessary preparation or defence in respect to the question of damages.

CHAPTER V.

Admission or Inspection of Writings.

Sec. 389. Inspection and copy of books, papers, &c., how obtained.

Inspection and copy of books, papers, &c., how obtained.

1870, XIV., § 405.

Section 389. Either party may exhibit to the other, or to his attorney, at any time before the trial, any paper material to the action, and request an admission in writing of its genuineness. If the adverse party, or his attorney, fail to give the admission, within four days after the request, and if the party

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exhibiting the paper be afterwards put to expense in order to prove its genuineness, and the same be finally proved or admitted on the trial, such expense shall be paid by the party refusing the admission, unless it appear to the satisfaction of the Court that there were good reasons for the refusal. The Court before which an action is pending, or a Judge or Justice thereof, may, in their discretion, and upon due notice, order either party to give to the other, within a specified time, an inspection and copy, or permission to take a copy, of any books, papers, and documents in his possession or under his control, containing evidence relating to the merits of the action or the defense therein. If compliance with the order be refused, the Court, on motion, may exclude the paper from being given in evidence, or punish the party refusing, or both.

The Master is a special tribunal and has no power as a Court to require the defendants to produce a deed in their possession, no such power having been conferred upon him.—Cartee v. Spence, 24 S. C., 550.

Doubted whether a Circuit Judge or Court authorized to do so.—*Ib.*

Before the order can be made the affidavit must show the facts which call for the exercise of the Judge's discretion. It must show there was a request for the inspection and notice given the other party.—Wenzel v. Palmetto Brewing Co., 48 S. C., 80; 26 S. E., 1.

A penalty for refusal to comply with the order will not be imposed until it is judicially ascertained that such refusal was without good reason.—Jenkins v. Bennett, 40 S. C., 393; 18 S. E., 929.

CHAPTER VI.

Examination of Parties.

SEC.
390. Action for discovery abolished.
391. A party may examine his adversary as a witness.
392. Such examination also allowed before trial. Proceedings therefor.
393. Party, how compelled to attend.
394. Testimony of party may be rebutted.
395. Effect of refusal to testify.
396. Testimony of a party not responsive to the inquiries may be rebutted by the oath of the party calling him.
397. Persons for whom action is brought or defended may be examined.
398. Examination of co-plaintiff or co-defendant.

Action for discovery abolished.

Ib., § 406.

Section 390. No action to obtain discovery under oath, in aid of the prosecution or defense of another action, shall be allowed, nor shall any examination of a party be had on behalf of the adverse party, except in the manner prescribed by this Chapter.

A party may examine his adversary as a witness.

Ib., § 407.

Sec. 391. A party to an action may be examined as a witness, at the instance of the adverse party, or of any one of several adverse parties, and for that purpose may be compelled, in

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the same manner, and subject to the same rules of examination as any other witness, to testify, either at the trial, or conditionally, or upon commission.

Party examined on his own behalf is entitled to the same means of refreshing his memory as are allowed to other witnesses.—Bull v. Lambson, 5 S. C., 285.

One of two defendants may be examined on behalf of the plaintiff.—Devereaux v. McCready, 46 S. C., 133; 24 S. E., 77.

This Section does not authorize the physical examination of the plaintiff in an action for personal injuries.—Easler v. So. Ry. Co., 60 S. C., 117; 38 S. E., 258.

Such examination also allowed before trial. Proceedings therefor.

1870, XIV., § 408.

Sec. 392. The examination, instead of being had at the trial, as provided in the last Section, may be had at any time before trial, at the option of the party claiming it, before a judge of the Court, on a previous notice to the party to be examined, and any other adverse party, of at least five days, unless, for good cause shown, the Judge order otherwise. But the party to be examined shall not be compelled to attend in any other County than that of his residence, or where he may be served with a summons for his attendance.

Party, how compelled to attend.

Ib., § 409.

Sec. 393. The party to be examined, as in the last Section provided, may be compelled to attend in the same manner as a witness who is to be examined conditionally; and the examination shall be taken and filed by the Judge in like manner, and may be read by either party on the trial.

Testimony of party may be rebutted.

Ib., § 410.

Sec. 394. The examination of the party, thus taken, may be rebutted by adverse testimony.

Effect of refusal to testify.

Ib., § 411.

Sec. 395. If a party refuse to attend and testify, as in the last four Sections provided, he may be punished as for a contempt, and his complaint, answer, or reply may be stricken out.

Testimony of a party not responsive to the inquiries may be rebutted by the oath of the party calling him.

Ib., § 412.

Sec. 396. A party examined by an adverse party, as in this Chapter provided, may be examined on his own behalf, subject to the same rules of examination as other witnesses. But if he testify to any new matter, not responsive to the inquiries put to him by the adverse party, or necessary to explain or qualify his answers thereto, or discharge when his answers would charge himself, such adverse party may offer himself as a witness on his own behalf in respect to such new matter, subject to the same rules of examination as other witnesses, and shall be so received.

Persons for whom action is brought or defended may be examined.

Ib., § 413.

Sec. 397. A person for whose immediate benefit the action is prosecuted or defended, though not a party to the action, may be examined as a witness, in the same manner and subject to the same rules of examination as if he were named as a party.

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Sec. 398. A party may be examined on behalf of his co-plaintiff, or of a co-defendant, as to any matter in which he is not jointly interested or liable with such co-plaintiff or co-defendant, and as to which a separate and not joint verdict or judgment can be rendered. And he may be compelled to attend in the same manner as at the instance of an adverse party; but the examination thus taken shall not be used in the behalf of the party examined. And whenever, in the case mentioned in Sections 391 and 392, one of the several plaintiffs or defendants who are joint contractors, or are united in interest, is examined by the adverse party, the other of such plaintiffs or defendants may offer himself as a witness to the same cause or action or defense, and shall be so received.

Examination of co-plaintiff or co-defendant.

Ib., § 414.

CHAPTER VII.

Examination of Witnesses.

SEC.
399. Interest not to exclude a witness.

SEC.
400. Parties to actions and special proceedings may be witnesses on their own behalf except in certain cases.

Section 399. No person offered as a witness shall be excluded by reason of his interest in the event of the action.

Interest not to exclude a witness.

1870, XIV., § 414.

Sec. 400. A party to an action or special proceeding in any and all Courts, and before any and all officers and persons acting judicially, may be examined as a witness on his own behalf, or in behalf of any other party, conditionally, on commission, and upon the trial or hearing in the case, in the same manner and subject to the same rules of examination as any other witness: *Provided, however,* That no party to the action or proceeding, nor any person who has a legal or equitable interest which may be affected by the event of the action or proceeding, nor any person who, previous to such examination, has had such an interest, however the same may have been transferred to, or come to the party to the action or proceeding, nor any assignor of anything in controversy in the action, shall be examined in regard to any transaction or communication between such witness and a person at the time of such examination, deceased, insane, or lunatic, as a witness against a party then prosecuting or defending the action as executor, administrator, heir at law, next of kin, assignee, legatee, de-

Parties to actions and special proceedings may be witnesses on their own behalf, except in certain cases.

Ib., § 415.

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visee, or survivor of such deceased person, or as assignee or committee of such insane person or lunatic, when such examination, or any judgment or determination in such action or proceeding, can in any manner affect the interest of such witness or the interest previously owned or represented by him. But when such executor, administrator, heir at law, next of kin, assignee, legatee, devisee, survivor, or committee, shall be examined on his own behalf in regard to such transaction or communication, or the testimony of such deceased or insane person or lunatic, in regard to such transaction or communication, (however the same may have been perpetuated or made competent,) shall be given in evidence on the trial or hearing in behalf of such executor, administrator, heir at law, next of kin, assignee, legatee, devisee, survivor, or committee, then all other persons not otherwise rendered incompetent shall be made competent witnesses in relation to such transaction or communication on said trial or hearing. Nothing contained in Section 8 of this Code of Procedure shall be held or construed to affect or restrain the operation of this Section:

1. In any trial or inquiry in any suit, action, or proceeding in any Court, or before any person having, by law, or consent of parties, authority to examine witnesses or hear evidence, the husband or wife of any party thereto, or of any person in whose behalf any such suit, action, or proceeding is brought, prosecuted, opposed, or defended, shall, except as hereinafter stated, be competent and compellable to give evidence, the same as any other witness, on behalf of any party to such suit, action, or proceeding.

2. No husband or wife shall be compellable to disclose any confidential communication made by one to the other during their marriage.

"This Section describes four classes of persons and three characteristics of testimony. The four classes of persons are these: (1) A party to the action or proceeding; (2) a person having an interest that may be affected by the event of the trial; (3) a person who has had such an interest, but which has been in any manner transferred to, or has in any manner come to, a party to the action or proceeding; (4) an assignor of a thing in controversy in the action. The three characteristics of the testimony are these: (a) In regard to any transaction or communication between the witness and a person deceased, insane, or lunatic; (b) against a party prosecuting or defending the action as executor, administrator, heir at law, next of kin, assignee, legatee, devisee, or survivor of such deceased person, or as assignee or committee of such insane person or lunatic; (c) when the present or previous interest of the witness may in any manner be affected by the testimony or by the event of the trial. It will thus be seen that, to justify the exclusion of testimony under this proviso of Section 400, it should be shown to the satisfaction of the trial Judge—First, that the witness belongs to one or more or all of the four classes of persons whose testimony may under certain circumstances be excluded; and, secondly, that his testimony partakes of, not merely one

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or two of the disqualifying characteristics classified under a, b, and c, but that it possesses all three of those characteristics."—Norris v. Clinkscales, 47 S. C., 488; 25 S. E., 797; Lewie v. Hallman, 53 S. C., 32; 30 S. E., 601; Martin v. Jennings, 52 S. C., 371; 29 S. E., 808; Burkim v. Pinkhussohn, 58 S. C., 469; 36 S. E., 908; Westbury v. Simons, 57 S. C., 472; 35 S. E., 764; Sloan v. Hunter, 56 S. C., 385; 34 S. E., 658.

This Section is in restriction of the general right conferred by the preceding Section and cannot be extended by construction beyond its clearly expressed design.—Guery v. Kinsler, 3 S. C., 423; Jones v. Plunkett, 9 S. C., 392. The provisions of this Section apply to criminal as well as civil actions.—State v. Reynolds, 48 S. C., 384; 26 S. C., 679.

Only persons included in the particular relations therein referred to can be considered as embraced in the proviso or exceptions; others not named, though within the mischief intended to be prevented, cannot be included.—Guery v. Kinsler, 3 S. C., 423; Jones v. Plunkett, 9 S. C., 392; Colvin v. Phillips, 25 S. C., 228; Brown v. Moore, 26 S. C., 160; 2 S. E., 9; Huff v. Latimer, 33 S. C., 225; 11 S. E., 758; Rapley v. Klugh, 40 S. C., 142; 18 S. E., 680. But the Section must be construed by the intent appearing on its face, and whether the proviso should be applied must be determined by the issue raised through the pleadings and not by the form of the action.—Boykin v. Watts, 6 S. C., 76.

These provisions do not apply where the witness is not a party to the action, has no interest in the event of it, and cannot be affected by it.—Bollman v. Bollman, 6 S. C., 29; Twitty v. Houser, 7 S. C., 153; Blakely v. Frazier, 11 S. C., 122; Shaw v. Cunningham, 16 S. C., 631.

"It was not error to allow an assignee of a life policy, who had assigned to defendant, to testify, in an action to recover the money collected by defendant thereunder, that he had advanced the money to pay the first premium on the policy.—Westbury v. Simons, 57 S. C., 473; 35 S. E., 764.

A person is not excluded as a witness whose liability on a note will in no way be increased or diminished by the event of the suit.—Twitty v. Houser, 7 S. C., 153; Sanders v. Bagwell, 37 S. C., 145; 15 S. E., 714.

It is the possibility that "any person who has a legal or equitable interest which may be affected by the event of the action" that will exclude him as a witness.—Roe v. Harrison, 9 S. C., 279.

If the defendant, though not named as executor, defends for the benefit of the estate of his testator, whose declarations the plaintiff is offered to prove, he is protected against such testimony.—Boykin v. Watts, 6 S. C., 76.

A party as witness is incompetent to testify as to communication with deceased person against his administrator where the judgment *would* affect his interest.—Earle v. Harrison, 18 S. C., 329; Trammell v. Trammell, 57 S. C., 89; 35 S. E., 533.

A witness in interest is not incompetent to testify to communications and transactions had between a person deceased and some third person.—Roe v. Harrison, 9 S. C., 279; Brock v. Odell, 44 S. C., 25; 21 S. E., 977; Hughey v. Eichelberger, 11 S. C., 36; Shaw v. Cunningham, 16 S. C., 631; McLaurin v. Wilson, 16 S. C., 402; Robinson v. Robinson, 20 S. C., 567; Kennemore v. Kennemore, 26 S. C., 251; 1 S. E., 881; Moore v. Trimmier, 32 S. C., 511; 11 S. E., 548; Brice v. Miller, 35 S. C., 537; 15 S. E., 272; Sloan v. Hunter, 56 S. C., 385; 34 S. E., 658; Archer v. Long, 38 S. C., 272; 16 S. E., 998; Brockle v. Leach, 55 S. C., 510; 33 S. E., 720.

Nor to testify against his own interest, though his testimony should affect the rights of others.—Shell v. Boyd, 32 S. C., 539; 11 S. E., 205.

The interest affected means the interest promoted; parties are competent to testify against their interest.—Boykin v. Watts, 6 S. C., 76; Robinson v. Robinson, 20 S. C., 567; Moffatt v. Hardin, 22 S. C., 25; Griffin v. Earle, 34 S. C., 246; 13 S. E., 473.

A factor in his action against executor of owners of cotton for reclamation cannot testify to conversation had with him.—Blakely v. Frazier, 11 S. C., 122.

Where assignee of sealed note sues, the defendant may prove the loss of the receipt given him by assignor, since deceased, but he cannot testify to contents of it.—Standeridge v. Powell, 11 S. C., 549.

The introduction of testimony other than that of the representative of the deceased, as to certain transactions or communications of the deceased, does not render a party in interest competent to testify as to the same matter.—Brice v. Hamilton, 12 S. C., 32.

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A legatee under lost will, in attempting to set up same, cannot testify to communications or transactions with testator.—Bauskett v. Keitt, 22 S. C., 187.

In proceeding to revive execution by administrator of the assignee the defendant cannot testify that he had placed two notes in hands of the deceased assignee to collect.—Monts v. Koon, 21 S. C., 110.

A ward, in action for account brought by him after majority, against the executor of his deceased guardian, cannot testify to communications made to him by the deceased upon the matter of compromise formerly made between them, as to the value of the estate, although the returns of the guardian had been introduced in evidence by the executor.—Owens v. Watts, 24 S. C., 76.

Where plaintiff sues administrator of deceased on account for services rendered the deceased, he cannot testify that the account is correct, as that is, in substance and effect, testifying that the services had been rendered under contract or upon request, and related to a contract with deceased.—Boyd v. Cauthen, 28 S. C., 72; 5 S. E., 170.

A surviving executor may not testify to communications or transactions between himself and the deceased executor affecting their liability to each other for the administration of their testator's estate.—Williams v. Mower, 29 S. C., 332; 7 S. E., 505.

In action by creditor to set aside a judgment confessed by father, since deceased, to defendant, his daughter, and to set aside sale of land thereunder, the plaintiff could not prove communications had by him with the deceased.—Martin v. Adams, 29 S. C., 597; 6 S. E., 860.

In action by survivor of firm against devisee of deceased partner to recover his share of certain lands held in deceased partner's name, but being really partnership property, the plaintiff was incompetent to prove any communications or transactions between the deceased and himself.—Jones v. Smith, 31 S. C., 527; 10 S. E., 340.

When defendant, as administrator of deceased son, being sued on note by the executor of the deceased father, testified as to the facts of the conversations with the testator, relative to the note, without giving any detail thereof, the plaintiff could not, in reply, prove the substance of conversation with his testator about the note.—Richards v. Munro, 30 S. C., 284; 9 S. E., 108.

A trustee is not the representative of his deceased predecessor, and the obligor of bond, given to the latter, can prove payment to him in the action thereon by the former.—Guery v. Kinsler, 3 S. C., 423.

In an action to recover land, brought against one who claimed as purchaser under A, who had purchased from C, deceased, A was a competent witness to prove C's declarations as to the title to the land.—Jones v. Plunkett, 9 S. C., 392.

A remote alienee of one deceased is within the mischief intended to be remedied by the exception, but she is not within its express terms, and can testify as to communications and transactions between herself and the deceased as to the land she seeks to recover in the action.—Cantey v. Whittaker, 14 S. C., 527; Brice v. Miller, 35 S. C., 537; 15 S. E., 272; Rapley v. Klugh, 40 S. C., 142; 18 S. E., 680.

Plaintiff in action against a town can testify as to the transactions between himself and a former Intendant of the town, acting for the corporation, but at the time of trial deceased.—Coleman v. Chester, 14 S. C., 286.

In action to recover share of crop made by plaintiff on defendant's farm revived after defendant's death against his executors, the plaintiff could testify as to his own acts in connection with the subject matter, in no way attempted to be connected with the deceased.—Rookheart v. Dean, 21 S. C., 597.

In action by executrix, an attorney can testify to communications between himself as attorney for the testator and the administrator, now deceased, of an estate under which defendants claim.—Reynolds v. Rees, 23 S. C., 438.

A defendant to an action for partition is not incompetent to testify to communications between himself and a former trustee of the property now deceased, under whom plaintiff claimed, the plaintiff not holding any of the relations to the deceased specified in this Section.—Minton v. Pickens, 24 S. C., 592.

And the assignee of a judgment, in his action thereon against the administrator of the deceased judgment debtor, can testify to communications between his assignor, then owner of the judgment, and the judgment debtor.—Colvin v. Phillips, 25 S. C., 228.

In a contest between two claimants under the obligee in a bond for titles, the

obligor can testify to communications between himself and the deceased obligee, as such a witness, though a party to the cause, has no interest in the action.—Wood v. Wood, 25 S. C., 600.

Witness, through whom defendants claimed, was competent to testify in their behalf that he permitted another party, since deceased, to remain on the land in dispute, the testimony relating to an act of the witness and not to a transaction with the deceased.—Brown v. Moore, 26 S. C., 160; 2 S. E., 9.

A grantor, as against her grantee, is a competent witness to prove the declaration of one deceased under whom both of the parties to the cause derived their title.—Blohme v. Lynch, 26 S. C., 300; 2 S. E., 136.

In action by beneficiaries under a policy of life insurance against a bank for the possession of the policy, the President and Cashier of the bank can testify as to conversations and transactions by them with the assured, since deceased, as to the policy, because the plaintiffs are not prosecuting the action in any of the representative characters referred to in this Section.—McCauley v. National Bank, 27 S. C., 215; 3 S. E., 193.

Where the defendant, as administrator of deceased executor, brings out on cross-examination of the plaintiff, the surviving co-executor, that certain payments have been made to him by defendant's intestate, the plaintiff was allowed to testify as to whether other alleged payments had been made to him.—Williams v. Mower, 29 S. C., 332; 7 S. E., 505.

In action by creditor to set aside judgment confessed to defendant by her father, who died before the trial, and to set aside the sale of land under the judgment, a witness who held none of the relations prohibited under this Section could testify to communications had by him with the father.—Martin v. Adams, 29 S. C., 597; 6 S. E., 860.

Defendant, as administrator of deceased son, being sued on note by executor of deceased father, was competent to prove the facts that he had had repeated conversations with the father and he had never made demand upon the defendant, as administrator, for payment of the note.—Richards v. Munro, 30 S. C., 284; 9 S. E., 108.

In action by creditor to set aside for fraud a deed made by his debtor, now deceased, one of the grantees to the deed, and party *defendant,* who has sold his interest in the land, can testify to the circumstances of the transaction and the declarations of the grantor, to show the fraud.—Shell v. Boyd, 32 S. C., 359; 11 S. E., 205.

In action by tenant to recover personal property seized by the executor of the land owner for rent, which had been paid by plaintiff to one from whom he claimed to have leased the land, such person can testify as to communications and transactions with the deceased land owner, he being no party to action nor interested in the result, and the action being against the defendants individually and not as executors.—Huff v. Latimer, 33 S. C., 255; 11 S. E., 758.

In action against administrator of a deceased debtor to recover the value of work done in building and repairing houses, the plaintiff may testify as to what work was done by him on the premises of intestate, in his presence, that being an independent fact.—Fogette v. Gaffney, 33 S. C., 303.

The testimony of the plaintiff, in a suit for services rendered to a person since deceased, that she rendered services for a specified time, and on cross-examination as to what she received from the deceased, was not incompetent.—Marshall v. Mitchell, 59 S. C., 523; 38 S. E., 158.

In action by assignee of mortgage, the mortgagor may testify that she never had any communication or transaction with the mortgagee, now deceased.—Griffin v. Earle, 34 S. C., 246; 13 S. E., 473.

In action by surviving executor against administrator of deceased co-executor, for account and settlement, the plaintiff can testify to the fact that he had conversations with defendant's intestate as to certain matters, and when, where, and in whose presence such conversation was had, the statements of witness or deceased not being disclosed.—Williams v. Mower, 35 S. C., 206; 14 S. E., 483.

Testimony incompetent under this Section is admissible if not objected to at time.—Tompkins v. Tompkins, 18 S. C., 1; Burris v. Whitner, 3 S. C., 510; Bollman v. Bollman, 6 S. C., 30; McCougan v. Hall, 21 S. C., 601.

It was error for Probate Judge to strike out on motion testimony as incompetent under this Section, where such testimony had been previously given without

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objection.—Stark v. Hopson, 22 S. C., 42. And Circuit Judge erred in holding such testimony to be competent and sustaining the decree below; he should have ordered a new trial so that the Court below might first consider such testimony. —*Ib.*

A party examined on his own behalf may, like other witnesses, refresh his memory by book entries and other memoranda.—Bull v. Lambson, 5 S. C., 284.

An heir at law, co-defendant with an administrator, in a suit on a debt of the intestate, may testify as to conversation between her and the deceased, and as to the contents of a letter from plaintiff to the deceased.—Martin v. Jennings, 52 S. C., 371; 29 S. E., 808.

To permit a defendant in a suit by an administrator to testify he met the deceased on several occasions, with certain amounts of money on his person, that he did not have when he left him, is a palpable effort to evade the provisions of this Section.—Martin v. Fowler, 51 S. C., 499; 29 S. E., 261.

One who petitioned for letters of administration could testify that he paid a doctor's bill for the deceased, since the testimony was not given in an action against any of the parties named in the Section.—Burkim v. Pinkhussohn, 58 S. C., 469; 36 S. E., 908.

Testimony of physician, who presents bill for services in attending on deceased, as to his physical condition, is competent.—Sullivan v. Latimer, 38 S. C., 158; 17 S. E., 701.

An executor is a competent witness as to a conversation had with his testator, against the interest of the testator, if such witness has no individual interest in the controversy.—Devereaux v. McCrady, 46 S. C., 133; 24 S. E., 77.

The heirs at law and grantee of deceased, by introducing the testimony of deceased, taken *de bene esse*, as to transactions between her and the plaintiff, make the testimony of the plaintiff as to such transactions competent.—Ellis v. Cribb, 55 S. C., 328; 33 S. E., 484.

CHAPTER VIII.

Motions and Orders.

SEC.
401. Definition of an order.
402. Definition of a motion. Motions, how and when made. Stay of proceeding. Compelling parties to testify on motions. Decision on motion.
403. Notice of motion.
404. In absence, &c., of Judge at Chambers, motion may be transferred to another Judge
405. Enlarging time for the proceedings in an action.

Definition of an order.

1870, XIV., § 416.

Section 401. Every direction of a Court or Judge, made or entered in writing, and not included in a judgment, is denominated an order.

The refusal of a motion for nonsuit, never being "made or entered in writing," is not an order.—Agnew v. Adams, 24 S. C., 86.

A Judge has no power of his own mere motion to make an order affecting the rights of a party.—State v. Parker, 7 S. C., 235.

The order of one Court or Judge cannot be set aside or disregarded for irregularity by another.—Furman v. R. R. Co., 3 S. C., 438.

The order of one Judge granting leave to a party to make a motion before another Judge is without force.—Steele v. R. R. Co., 14 S. C., 324.

Order passed in equity cause valid, although the cause is not on calendar.—Wright v. Herlong, 16 S. C., 620.

Sec. 402. 1. An application for an order is a motion.

Motion is proper mode of obtaining relief in a cause not ended.—Wright v. Herlong, 16 S. C., 620.

Such motions must be first made before the Judge of the Court having jurisdiction of the case.—State v. Black, 34 S. C., 194; 13 S. E., 361.

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Definition of a motion. Motions, how and when made. Stay of proceeding. Compelling parties to testify on motions. Decision on motion.

Ib., § 417; 1899, XXIII., 39.

2. Motions may be made to a Judge or Justice out of Court, except for a new trial on the merits.

As to motions at chambers, see Sec. 2736, Civil Code and note. As a Judge cannot vacate a judgment at chambers.—Bank v. Mellett, 44 S. C., 383; Claussen v. Hutchinson, 14 S. C., 517; Charles v. Jacobs, 5 S. C., 348; Turner v. Foreman, 47 S. C., 31; 24 S. E., 989. So he cannot give a judgment at chambers.—Badham v. Brabham, 54 S. C., 400; 32 S. E., 444. Nor can he, on motion to dissolve an attachment, decide on the merits of the action.—Williamson v. Ass'n, 54 S. C., 582; 32 S. E., 765; Moore v. Rountree, 35 S. E., 386; 57 S. C., 75. So a Judge of one Circuit cannot hear a petition for *mandamus* arising in another Circuit, the Courts of which he is not holding.—State *ex rel.* Cunningham v. Williams, 52 S. C., 416; 29 S. E., 814. Nor can application for such writ be heard outside of Circuit.—State *ex rel.* LaMotte v. Smith, 50 S. C., 558; 27 S. E., 933.

The following motions may be made at chambers:

Motion to dissolve an attachment upon notice.—Cureton v. Dargan, 12 S. C., 122.

Motion for leave to file a supplemental complaint.—Edwards v. Edwards, 14 S. C., 11.

Motion to vacate a warrant of seizure to enforce agricultural lien.—Segler v. Coward, 24 S. C., 119; Moore v. Rountree, 57 S. C., 75; 35 S. E., 386.

Motion for leave to amend complaint.—Ellen v. Ellen, 26 S. C., 99; 1 S. E., 413.

Motion for order of reference, on notice.—Bank of Hampton v. Fennell, 55 S. C., 379; 33 S. E., 485.

Motion for alimony *pendente lite.*—Smith v. Smith, 51 S. C., 379; 29 S. E., 227.

Motion to authorize issuance of receiver's certificates.—State v. R. R. Co., 45 S. C., 413; 23 S. E., 362.

3. Orders made out of Court, without notice, may be made by the Judge of the Court, in any part of the State.

Judge can correct mere clerical error in his decree on *ex parte* application out of Court.—Chafee v. Rainey, 21 S. C., 11.

It is doubted whether this subdivision applies to the granting of a writ of *certiorari.*—State v. Black, 34 S. C., 194; 13 S. E., 361.

Orders at foot of decree to carry it into effect.—Miller v. Cramer, 48 S. C., 282; 26 S. E., 657. Or give certificate as to default judgment being for purchase money.—Odom v. Burch, 52 S. C., 305; 29 S. E., 726.

4. Motions upon notice must be made within the Circuit in which the action is triable, or, in the absence or inability of the Judge of the Circuit, may be made before the resident or presiding Judge of a Circuit adjoining that in which it is triable.

This subdivision does not empower a Circuit Judge to perform judicial duties outside of his own Circuit.—*Ex parte* Parker, 6 S. C., 472.

But Judge may render a decree in cause heard by him in one Circuit after he had entered upon his duties in another Circuit.—Chafee v. Rainey, 21 S. C., 11.

Motion to set aside a decree of foreclosure can be made only in the Circuit where the action is pending.—Thomas v. Raymond, 4 S. C., 347.

It is error to grant relief beyond the terms of the notice.—De Walt v. Kinard, 19 S. C., 286.

Applications for writ of *mandamus* must be heard in Circuit.—State *ex rel.* LaMotte v. Smith, 50 S. C., 588; 27 S. E., 933. And must be heard by the Judge of, or holding the Courts in the Circuit.—State *ex rel.* Cunningham v. Williams, 52 S. C., 416; 29 S. E., 814.

5. A motion to modify or vacate a provisional remedy, and an appeal from an order allowing a provisional remedy, shall have preference over all other motions.

6. No order to stay proceedings for a longer time than

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twenty days shall be granted by a Judge out of Court, except upon previous notice to the adverse party, of at least four days, unless the Circuit Judge prescribe a shorter period.

This Section applies only to a Circuit Judge, and not to a Justice of the Supreme Court.—Salinas v. Aultman, 49 S. C., 378; 27 S. E., 407. Nor does it refer to injunctions against individuals; or, if so, it merely makes the restraining order nugatory after the lapse of twenty days, and not irregular *ab initio*.—Strom v. American Freehold, &c., Co., 42 S. C., 97; 20 S. E., 16. The defect, if any, by motion to vacate within the twenty days.—Meinhard v. Youngblood, 37 S. C., 223; 15 S. E., 947.

7. When any party intends to make or oppose a motion in any Court of record, and it shall be necessary for him to have the affidavit of any person who shall have refused to make the same, such Court, or a Judge thereof, may, by order, appoint a referee to take the affidavit or deposition of such person. Such person may be subpœnaed and compelled to attend and make an affidavit before such referee, the same as before a referee to whom it is referred to try an issue. And the fees of such referee for such service shall be three dollars per day.

8. Whenever a motion shall be made in any cause or proceeding in any of the Courts in this State to obtain an injunction order, order of arrest, or warrant of attachment, granted in any such case or proceeding, it shall be the duty of the Judge, Magistrate, or other officer before whom such motion is made, to render and make known his decision on such motion within twenty days after the day upon which such motion shall or may be submitted to him for his decision.

Notice of motion.

1870, XIV., § 418.

Sec. 403. When a notice of a motion is necessary, it must be served four days before the time appointed for the hearing; but the Court or Judge may, by an order to show cause, prescribe a shorter time.

An order cannot be made without notice to the party prejudiced by it.—State v. Parker, 7 S. C., 235.

An order to enjoin a decree for sale of mortgaged premises cannot be made without four days' notice.—Rice v. Mahaffey, 9 S. C., 281.

Motion for security for costs should be notified four days before the time for hearing.—Dulany v. Elford, 22 S. C., 304.

Orders granted upon notice for less time should be set aside.—*Ex parte* Apeler, 35 S. C., 419; 14 S. E., 931.

Notice of motion to change venue.—Willoughby v. N. E. Ry. Co., 46 S. C., 317; 24 S. E., 308, and Sec. 2785, Civil Code.

In absence, &c., of Judge at Chambers, motion may be transferred to another Judge.

Ib., § 419.

Sec. 404. When notice of a motion is given, or an order to show cause is returnable before a Judge out of Court, and at the time fixed for the motion he is absent or unable to hear it, the same may be transferred, by his order, to some other Judge, before whom the motion, in case of his absence or inability, might originally have been made.

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This Section extends the provisions of Section 402, subdivision 4, to the case of a motion already noticed or ordered to be heard in proper Circuit.—*Ex parte* Parker, 6 S. C., 472.

It does not enlarge the authority of the Judges to perform judicial acts beyond the limits of their own Circuits.—*Ib.*

Does not apply to proceedings in *mandamus.*—*State* ex rel. Cunningham v. Williams, 52 S. C., 416; 29 S. E., 814.

Enlarging time for the proceedings in an action.

Ib., § 420.

Sec. 405. The time within which any proceeding in an action must be had, after its commencement, except the time within which an appeal must be taken, may be enlarged, upon an affidavit showing grounds therefor, by a Judge of the Circuit Court. The affidavit, or a copy thereof, must be served with a copy of the order, or the order may be disregarded.

CHAPTER IX.

Entitling Affidavits.

Sec. 406. Affidavits defectively entitled valid.

Affidavits defectively entitled valid.

Ib., § 421.

Section 406. It shall not be necessary to entitle an affidavit in the action; but an affidavit made without a title, or with a defective title, shall be as valid and effectual, for every purpose, as if it were duly entitled, if it intelligibly refer to the action or proceeding in which it is made.

It is not necessary to state the venue in the affidavit.—Clemson College v. Pickens, 42 S. C., 511; 20 S. E., 401. An affidavit defined; before whom to be taken.—Marine Wharf Co. v. Parsons, 49 S. C., 136; 26 S. E., 956. The affidavit need not be signed by the affiant.—Armstrong v. Austin, 45 S. C., 69; 22 S. E., 767. As to the necessity of the officer signing the jurat.—Doty v. Boyd, 46 S. C., 39; 24 S. E., 59.

CHAPTER X.

Computation of Time.

Sec. 407. Time, how computed.

Time, how computed.

1870, XIV., § 422.

Section 407. The time within which an act is to be done, as herein provided, shall be computed by excluding the first day and including the last. If the last day be Sunday, it shall be excluded.

When an order allowing twenty days in which to serve an answer is affirmed, the defendant has twenty days after the answer reaches the lower Court in which to do so.—Barnwell v. Marion, 56 S. C., 54; 33 S. E., 719.

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CHAPTER XI.

Notices, and Filing and Service of Papers.

SEC.
408. Notices, &c., how served.
409. Service, how made.
410. Service by mail.
411. The like.
412. Double time where service by mail.
413. Notice of motion, &c., where personally served.
414. When papers need not be served on defendant.
415. Service of papers where parties reside out of the State.
416. Summons and pleadings to be filed.
417. Service on attorney.
418. When this Chapter does not apply.

Notices, &c., how served.
Ib., § 423.

Section 408. Notices shall be in writing, and notices and other papers may be served on the party or attorney, in the manner prescribed in the next three Sections, where not otherwise provided by this Code of Procedure.

Telephone notices, being verbal, do not comply to this Section.—*Ex parte* Apeler, 35 S. C., 417; 14 S. E., 931. Notice of appeal.—Abney v. Cole, 30 S. C., 607; 10 S. E., 390; Barnwell v. Marion, 56 S. C., 54; 33 S. E., 719.

Service, how made.
Ib., § 424.

Sec. 409. The service may be personal, or by delivery to the party or attorney on whom the service is required to be made; or it may be as follows:

1. If upon an attorney, it may be made during his absence from his office, by leaving it with the clerk therein, or with a person having charge thereof; or, when there is no person in the office, by leaving it, between the hours of six in the morning and nine in the evening, in a conspicuous place in the office; or, if it be not open so as to admit of such service, then by leaving it at the attorney's residence, with some person of suitable age and discretion.

2. If upon a party, it may be made by leaving the paper at his residence between the hours of six in the morning and nine in the evening, with some person of suitable age and discretion.

Leaving with wife at residence sufficient.—Allen v. Cooley, 53 S. C., 414; 31 S. E., 634.

Service by mail.
Ib., § 425.

Sec. 410. Service by mail may be made where the person making the service and the person on whom it is to be made reside in different places, between which there is a regular communication by mail.

Service by mailing on last day sufficient.—53 S. C., 155; 31 S. E., 1.

The like.
Ib., § 426.

Sec. 411. In case of service by mail, the paper must be deposited in the postoffice, addressed to the person on whom it is to be served, at his place of residence, and the postage paid.

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Double time where service by mail.

1870, XIV., § 427.

Sec. 412. When the service is by mail, it shall be double the time required in cases of personal service.

This provision is intended for the benefit of the party *upon* whom the service is made and not for the party making the service. The service is complete as soon as the paper is deposited in postoffice, properly addressed and stamped.—Sullivan v. Speights, 12 S. C., 561. The time for service of exceptions upon the Judge, after rising of the Court, not extended when sent by mail.—*Ib.*

Notice of motion, &c., where personally served.

Ib., § 428.

Sec. 413. Notice of a motion or other proceeding before a Court or Judge, when personally served, shall be given at least four days before the time appointed therefor.

An order to enjoin a decree for sale of mortgaged premises cannot be made without four days' notice.—Rice v. Mahaffey, 9 S. C., 281. Motion requiring security for costs should be notified four days beforehand.—Dulany v. Elford, 22 S. C., 304.

Notice of motion for change of venue.—Willoughby v. N. E. Ry. Co., 46 S. C., 317; 24 S. E., 308; Civil Code, Sec. 2785.

When papers need not be served on defendant.

Ib., § 429.

Sec. 414. When a defendant shall not have demurred or answered, service of notice or papers in the ordinary proceedings in an action need not be made upon him unless he be imprisoned for want of bail, but shall be made upon him or his attorney, if notice of appearance in the action has been given.

Service of papers where parties reside out of the State.

Ib., § 430.

Sec. 415. Where a plaintiff or a defendant who has demurred or answered, or gives notice of appearance, resides out of the State, and has no attorney in the action, the service may be made by mail, if his residence be known; if not known, on the Clerk, for the party.

Summons and pleadings to be filed.

Ib., § 431.

Sec. 416. The summons and the several pleadings in an action shall be filed with the Clerk within ten days after the service thereof respectively, or the adverse party, on proof of the omission, shall be entitled without notice to an order from a Judge that the same be filed within a time to be specified in the order, or be deemed abandoned.

Service on attorney.

Ib., § 432.

Sec. 417. Where a party shall have an attorney in the action, the service of papers shall be made upon the attorney instead of the party.

Applies only after action has been commenced.—Duncan v. Brown, 15 S. C., 416. Notice to set aside an execution should be served on the parties; service upon attorney who renewed the execution is not sufficient.—*Ib.*

When this Chapter does not apply.

Ib., § 433.

Sec. 418. The provisions of this Chapter shall not apply to the service of a summons, or other process, or of any paper to bring a party into contempt.

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CHAPTER XII.

Miscellaneous Provisions.

SEC.
419. Papers lost or withheld, how supplied.
420. Where undertakings to be filed.
421. Time for publication of notices, how computed.
422. Laws of other States and Governments, how proved.

Papers lost or withheld, how supplied.

Ib., § 437.

Section 419. If an original pleading or paper be lost or withheld by any person, the Court may authorize a copy thereof to be filed and used instead of the original.

This Section confers no new powers, but simply recognizes the general power already existing in the Court of so substituting new records.—DuBois v. Thomas, 14 S. C., 30. Such general authority includes judgments.—*Ib.*

Where undertakings to be filed.

Ib., § 438.

Sec. 420. The various undertakings required to be given by this Code of Procedure must be filed with the Clerk of the Court, unless the Court expressly provides for a different disposition thereof, except that the undertakings provided for by the Chapter on the claim and delivery of personal property, shall, after the justification of the sureties, be delivered by the Sheriffs to the parties, respectively, for whose benefit they are taken.

Time for publication of notices, how computed.

1870, XIV., § 440.

Sec. 421. The time for publication of legal notices shall be computed so as to exclude the first day of publication, and include the day on which the act or event, of which notice is given, is to happen, or which completes the full period required for publication.

Laws of other States and Governments, how proved.

Ib., § 441.

Sec. 422. Printed copies, in volumes, of statutes, code, or other written law, enacted by any other sovereignty, State or Territory, or foreign government, purporting or proved to have been published by the authority thereof, or proved to be commonly admitted as evidence of the existing law in the Courts and judicial tribunals of such sovereignty, State, Territory, or government, shall be admitted by the Courts and officers of this State, on all occasions, as presumptive evidence of such laws. The unwritten or common law of any other sovereignty, State, or Territory, or foreign government, may be proved as facts by parol evidence; and the books of reports of cases adjudged in their Courts may also be admitted as presumptive evidence of such law.

TITLE XIII.

ACTIONS IN PARTICULAR CASES.

CHAPTER I. *Actions against Foreign Corporations.*
CHAPTER II. *Actions in place of Scire Facias, Quo Warranto, and of Informations in the nature of Quo Warranto.*

CHAPTER I.

Actions Against Foreign Corporations.

SEC. 423. Where and by whom action brought.

Where and by whom action brought.

Ib., § 442.

Section 423. An action against a corporation created by or under the laws of any other State, government, or country, may be brought in the Circuit Court—

1. By any resident of this State, for any cause of action.

2. By a plaintiff not a resident of this State, when the cause of action shall have arisen, or the subject of the action shall be situated, within this State.

A complaint in a Court of general jurisdiction is not demurrable on the ground of want of jurisdiction, because of the non-residence of the plaintiff, it not appearing therefrom what his residence is.—Pollock v. B. & L. Ass'n, 48 S. C., 65; 25 S. E., 977.

Where such corporation appears and answers on the merits, it submits itself to the jurisdiction of the Court, and the complaint will not then be held defective because it failed to show that the plaintiff was a resident of the State.—Chafee v. Postal Co., 35 S. C., 372.

A non-resident can sue a foreign corporation *only* in the two cases specified in subdivision 2, and this action cannot be maintained unless it appear that it is brought in one case or the other.—Central R. R. v. Georgia Company, 32 S. C., 319.

The cause of action arises at the place of performance, presumably the place of making.—Tillinghast v. Boston Lumber Co., 38 S. C., 319; 18 S. E., 120; Curnow v. Phœnix Ins. Co., 37 S. C., 407; 16 S. E., 132; Carpenter v. American Accident Co., 46 S. C., 541; 24 S. E., 500.

CHAPTER II.

Action in Place of Scire Facias, Quo Warranto, and of Informations in the Nature of Quo Warranto.

SEC.
424. *Scire facias* and *quo warranto* abolished, and this Chapter substituted.
425. Action may be brought, by direction of the Legislature, by the Attorney General, to vacate a charter.
426. Action to annul a corporation, when and how brought by the Attorney General, by leave of the Supreme Court.
427. Leave to sue, how obtained.
428. Action upon information or complaint of course.
429. Action, when and how brought to vacate letters patent.
430. Relator, when to be joined as plaintiff.
431. Complaint and arrest of defendant in action for usurping an office.
432. Judgment in such actions.
433. Assumption of office, &c., by relator, when judgment is in his favor.
434. Proceedings against a defendant, on his refusal to deliver books or papers.
435. Damages, how recovered.
436. One action against several persons claiming office and franchise.
437. Penalty for usurping office or franchise, how awarded.
438. Judgment of forfeiture against a corporation.
439. Costs against a corporation, or persons claiming to be such, how collected.
440. Restraining corporation, and appointment of receiver.
441. Copy of judgment roll against corporation, where to be filed.
442. Entry of judgment relating to letters patent.
443. Action for forfeiture of property to the State.

Scire facias quo warranto abolished, and this Chapter substituted.

1870, XIV., § 443.

Section 424. The writ of *scire facias*, the writ of *quo warranto*, and proceedings by information in the nature of *quo warranto*, are abolished; and the remedies heretofore obtainable in those forms may be obtained by civil actions under the provisions of this Chapter. But any proceeding heretofore commenced, or judgment rendered, or right acquired, shall not be affected by such abolition.

The Supreme Court still retains the power conferred upon it by Cons., Art. IV., Sec. 4, to issue writs of *quo warranto* in the sense that it has jurisdiction of such proceedings. This Section does not attempt to abolish that jurisdiction, but simply to abolish the formal characteristics of the writ.—Alexander v. McKenzie, 2 S. C., 81; State v. Bowen, 8 S. C., 382.

Relates only to *scire facias* as a civil remedy; does not affect it as a remedy to estreat a recognizance in the Court of General Sessions.—State v. Wilder, 13 S. C., 344.

Action may be brought, by direction of the Legislature, by the Attorney General, to vacate a charter.

Ib., § 444.

Sec. 425. An action may be brought by the Attorney General, in the name of the State, whenever the Legislature shall so direct, against a corporation, for the purpose of vacating or annulling the Act of incorporation, or an Act renewing its corporate existence, on the ground that such Act or renewal was procured upon some fraudulent suggestion or concealment of a material fact, by the persons incorporated, or by some of them, or with their knowledge and consent.

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Action to annul a corporation, when and how brought by the Attorney General, by leave of the Supreme Court.

Ib., § 445.

Sec. 426. An action may be brought by the Attorney General in the name of the State, on leave granted by the Supreme Court or a Justice thereof, or a Circuit Judge, for the purpose of vacating the charter or annulling the existence of a corporation, other than municipal, whenever such corporation shall—

1. Offend against any of the provisions of this Code of Procedure, or the Acts creating, altering, or renewing such corporation; or,

2. Violate the provisions of any law by which such corporation shall have forfeited its charter by abuse of its powers; or,

3. Whenever it shall have forfeited its privileges or franchises by failure to exercise its powers; or,

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

5. Whenever it shall exercise a franchise or privilege not conferred upon it by law.

And it shall be the duty of the Attorney General, whenever he shall have reason to believe that any of these acts or omissions can be established by proof, to apply for leave, and, upon leave granted, to bring the action, in every case of public interest, and, also, in every other case in which satisfactory security shall be given to indemnify the State against the costs and expenses to be incurred thereby.

Leave to sue, how obtained.

1870, XIV., § 446.

Sec. 427. Leave to bring the action may be granted upon the application of the Attorney General; and the Court or Judge may, at discretion, direct notice of such application to be given to the corporation or to its officers, previous to granting such leave, and may hear the corporation in opposition thereto.

Action upon information or complaint of course.

Sec. 428. An action may be brought by the Attorney General in the name of the State, upon his own information, or upon the complaint of any private party, or by a private party interested, on leave granted by a Circuit Judge, against the parties offending, in the following cases:

1. When any person shall usurp, intrude into, or unlawfully hold or exercise any public office, civil or military, or any franchise within this State, or any office in a corporation created by the authority of this State; or,

2. When any public officer, civil or military, shall have done

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or suffered an act which, by the provisions of law, shall make a forfeiture of his office; or,

3. When any association or number of persons shall act within this State as a corporation, without being duly incorporated.

Action, when and how brought to vacate letters patent.

Ib., § 448.

Sec. 429. An action may be brought by the Attorney General, in the name of the State, for the purpose of vacating or annulling letters patent granted by the people of this State in the following cases:

1. When he shall have reason to believe that such letters patent were obtained by means of some fraudulent suggestion or concealment of a material fact, made by the person to whom the same were issued or made, or with his consent or knowledge; or,

2. When he shall have reason to believe that such letters patent were issued through mistake, or in ignorance of material fact; or,

3. When he shall have reason to believe that the patentee, or those claiming under him, have done or committed an act, in violation of the terms and conditions on which the letters patent were granted, or have, by any other means, forfeited the interest acquired under the same.

Relator, when to be joined as plaintiff.

1870, XIV., § 449.

Sec. 430. When an action shall be brought by the Attorney General, by virtue of this Chapter, on the complaint of any private party, or by a person having an interest in the question, the name of such person shall be joined with the State as plaintiff; and, in every case, the Attorney General, or Circuit Judge, as the case may be, may require as a condition precedent to bringing such action, that satisfactory security shall be given to indemnify the State against the costs and expenses to be incurred thereby; and in every case brought by the Attorney General where such security is given, the measure of compensation to be paid by such person to the Attorney General, shall be left to the agreement, express or implied, of the parties.

Complaint and arrest of defendant in action for usurping an office.

Ib., § 450.

Sec. 431. When such an action shall be brought against a person for usurping an office, the Attorney General, or private party bringing the same, in addition to the statement of the cause of action, may also set forth in the complaint the name of the person rightfully entitled to the office, with a statement of his right thereto; and in such case, upon proof by affidavit that the defendant has received fees or emoluments belonging to the office, and by means of his usurpation thereof, an order

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may be granted by a Judge of the Circuit or Justice of the Supreme Court for the arrest of such defendant, and holding him to bail; and thereupon he shall be arrested and held to bail in the manner, and with the same effect, and subject to the same rights and liabilities, as in other civil actions where the defendant is subject to arrest.

Judgment in such actions.

Ib., § 451.

Sec. 432. In every case, judgment shall be rendered upon the right of the defendant, and also upon the right of the party so alleged to be entitled, or only upon the right of the defendant, as justice shall require.

Assumption of office, &c., by relator, when judgment is in his favor.

Ib., § 452.

Sec. 433. If the judgment be rendered upon the right of the person so alleged to be entitled, and the same be in favor of such person, he shall be entitled, after taking the oaths of office, and executing such official bond as may be required by law, to take upon himself the execution of the office; and it shall be his duty, immediately thereafter, to demand of the defendant in the action all the books and papers in his custody, or within his power belonging to the office from which he shall have been excluded.

Proceedings against a defendant, on his refusal to deliver books or papers.

Ib., § 453.

Sec. 434. If the defendant shall refuse or neglect to deliver over such books or papers, pursuant to the demand, he shall be guilty of a misdemeanor, and the following proceedings shall be had, to compel delivery of such books or papers:

1. Whenever any person shall be removed from office, or the term for which he shall have been elected or appointed shall expire, he shall, on demand, deliver over to his successor all the books and papers in his custody as such officer, or in any way appertaining to his office. Every person violating this provision shall be deemed guilty of a misdemeanor.

2. If any person shall refuse or neglect to deliver over to his successor any books or papers, as required in the preceding Section, such successor may make complaint thereof to any Judge of the Circuit Court, or Justice of the Supreme Court, where the person so refusing shall reside; and if such officer be satisfied by the oath of the complainant, and such testimony as shall be offered, that any such books or papers are withheld, he shall grant an order directing the person so refusing to show cause before him, within some short reasonable time, why he should not be compelled to deliver the same.

3. At the time so appointed, or at any other time to which the matter may be adjourned, upon due proof being made of the service of the said order, such officer shall proceed to inquire

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into the circumstances. If the person charged with withholding such books or papers shall make affidavit before such officer that he has truly delivered over to his successor all such books and papers in his custody, or appertaining to his office, within his knowledge, all further proceedings before such officer shall cease, and the person complained against shall be discharged.

4. If the person complained against shall not make such oath, and it shall appear that any such books or papers are withheld, the officer before whom such proceedings shall be had shall, by warrant, commit the person so withholding to the jail of the County, there to remain until he shall deliver such books and papers, or be otherwise discharged according to law.

A party having *prima facie* title to an appointive office is entitled to a summary order against the party in possession of the books belonging to the office.—Verner v. Seibels, 39 S. E., 274.

5. In the case stated in the last Section, if required by the complainant, such officer shall also issue his warrant, directed to any Sheriff or Constable, commanding him in the day time to search such places as shall be designated in such warrant for such books and papers as belong to the officer so removed, or whose term of office expired, in his official capacity, and which appertained to such office, and seize and bring them before the officer issuing the warrant.

6. Upon any books or papers being brought before such officer, by virtue of such warrant, he shall inquire and examine whether the same appertained to the office from which the person so refusing to deliver was removed, or of which the term expired, and he shall cause the same to be delivered to the complainant.

7. If any person appointed or elected to any office shall die, or his office shall in any way become vacant, and any books or papers belonging or appertaining to such office shall come to the hands of any person, the successor to such office may, in like manner as hereinbefore prescribed, demand such books or papers from the person having the same in his possession; and on the same being withheld, an order may be obtained, and the person charged may, in like manner, make oath of the delivery of all such books and papers that ever came to his possession; and in case of omission to make such oath, and to deliver up the books and papers so demanded, such person may be committed to jail, and a search warrant may be issued,

and the property seized by virtue thereof may be delivered to the complainant, as hereinbefore prescribed.

Where a person has been elected Probate Judge and he qualifies and is commissioned as such, he is *prima facie* entitled to the possession of the office and its books, records and property, without awaiting a judgment in his favor under a proceeding in *quo warranto;* and his predecessor in office may be committed to jail, as for contempt, for refusal to obey an order of the Circuit Judge directing him to surrender such office and property to his successor.—*Ex parte* Whipper, 32 S. C., 5; 10 S. E., 579.

Damages, how recovered.

1870, XIV., § 454.

Sec. 435. If judgment be rendered upon the right of the person so alleged to be entitled, in favor of such person, he may recover, by action, the damages which he shall have sustained by reason of the usurpation by the defendant of the office from which such defendant has been excluded.

One action against several persons claiming office and franchise.

Ib., § 455.

Sec. 436. Where several persons claim to be entitled to the same office or franchise, one action may be brought against all such persons, in order to try their respective rights to such office or franchise.

Penalty for usurping office or franchise, how awarded.

Ib., § 456.

Sec. 437. When a defendant, whether a natural person or corporation, against whom such action shall have been brought, shall be adjudged guilty of usurping or intruding into, or unlawfully holding or exercising, any office, franchise, or privilege, judgment shall be rendered that such defendant be excluded from such office, franchise, or privilege, and also that the plaintiff recover costs against such defendant. The Court may also, in its discretion, fine such defendant a sum not exceeding two thousand dollars, which fine, when collected, shall be paid into the Treasury of the State.

Judgment of forfeiture against a corporation.

Ib., § 457.

Sec. 438. If it shall be adjudged that a corporation against which an action shall have been brought pursuant to this Chapter, has, by neglect, abuse, or surrender, forfeited its corporate rights, privileges, and franchises, judgment shall be rendered that the corporation be excluded from such corporate rights, privileges, and franchises, and that the corporation be dissolved.

Costs against a corporation, or persons claiming to be such, how collected.

Ib., § 458.

Sec. 439. If judgment be rendered in such action against a corporation, or against persons claiming to be a corporation, the Court may cause the costs herein to be collected by execution against the persons claiming to be a corporation, or by attachment or process against the Directors or other officers of such corporation.

Restraining corporation, and appointment of receiver.

Ib., § 459.

Sec. 440. When such judgment shall be rendered against a corporation, the Court shall have power to restrain the corporation, to appoint a receiver of its property, and to take an

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account, and make distribution thereof among its creditors; and it shall be the duty of the Attorney General, immediately after the rendition of such judgment, to institute proceedings for that purpose.

Copy of judgment roll against corporation, where to be filed.

1870, XIV., § 460.

Sec. 441. Upon the rendition of such judgment against a corporation, or for the vacating or annulling of letters patent, it shall be the duty of the Attorney General to cause a copy of the judgment roll to be forthwith filed in the office of the Secretary of State.

Entry of judgment relating to letters patent.

Ib., § 461.

Sec. 442. Such Secretary shall thereupon, if the record relates to letters patent, make an entry in the records of the office of the Secretary of State, of the substance and effect of such judgment, and of the time when the record thereof was docketed; and the real property granted by such letters patent may thereafter be disposed of in the same manner as if such letters patent had never been issued.

Action for forfeiture of property to the State.

Ib., § 462.

Sec. 443. Whenever, by the provisions of law, any property, real or personal, shall be forfeited to the State, or to any officer for its use, an action for the recovery of such property, alleging the grounds of the forfeiture, may be brought by the proper officer in the Circuit Court.

TITLE XIV.

GENERAL PROVISIONS.

SEC.
444. Definition of real property.
445. Definition of personal property.
446. Definition of property.
447. Definition of Clerk.
448. Rules of construction.
449. Inconsistent statutory provisions repealed.

SEC.
450. Judges to meet and make general rules.
451. Justices of Supreme Court may make rules.
452. Proceedings by *mandamus* and prohibition not affected, &c.
453. Equity rules to prevail in cases of conflict.

Definition of real property.

Ib., § 466.

Section 444. The words "real property" and "real estate," as used in this Code of Procedure, are co-extensive with lands, tenements, and hereditaments.

Definition of personal property.

Ib., § 467.

Sec. 445. The words "personal property," as used in this Code of Procedure, include money, goods, chattels, things in action, and evidences of debt.

Held to include debts evidenced by bonds and mortgages.—Williamson v. Ass'n, 54 S. C., 582; 32 S. E., 765.

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Sec. 446. The word "property," as used in this Code of Procedure, includes property, real and personal.

Definition of property.

Ib., § 468.

Sec. 447. The word "Clerk," as used in this Code of Procedure, signifies the Clerk of the Court where the action is pending, and, in the Supreme Court, the Clerk of the County mentioned in the title of the Complaint, or in another County to which the Court may have changed the place of trial, unless otherwise specified.

Definition of Clerk.

Ib., § 469.

Sec. 448. The rule of common law, that Statutes in derogation of that law are to be strictly construed, has no application to this Code of Procedure.

Rules of construction.

Ib., § 470.

Sec. 449. All Statutory provisions inconsistent with this Code of Procedure are repealed; but this repeal shall not revive a Statute or law which may have been repealed or abolished by the provisions hereby repealed. And all rights of action given or secured by existing laws may be prosecuted in the manner provided by this Code of Procedure. If a case shall arise in which an action for the enforcement or protection of a right, or the redress or prevention of a wrong, cannot be had under this Code of Procedure, the practice heretofore in use may be adopted so far as may be necessary to prevent a failure of justice.

Inconsistent statutory provisions repealed.

1870, XIV., § 471.

Remedy can be had under the Code, in action already pending, according to its new forms of proceeding if practicable; if not practicable, in order to prevent failure of justice, resort might be had to the former practice.—Parnell v. Maner, 16 S. C., 348; Arthur v. Allen, 22 S. C., 432. In the light of this Section so much of the Act of 1878 as to appeals (16 Stat., 698,) is inconsistent with Section 345, subdivision 2, and must be considered as repealed.—Molair v. R. R. Co., 31 S. C., 510; 10 S. E., 243.

The Code making no provision as to proceedings in case of *certiorari*, the "practice heretofore in use" must govern in such case.—*Ex parte* Black, 34 S. C., 194; 13 S. E., 361.

Sec. 450. The Justices of the Supreme Court and the Judges of the Circuit Courts shall meet in general convention on such day and at such place as may be designated by the Chief Justice, at least once in every two years, counting from the year of our Lord one thousand eight hundred and eighty-two, for the purpose of revising and amending the rules of the Circuit Court, and establishing such additional rules as may be deemed necessary to regulate the practice in the Circuit Courts: *Provided*, Such alterations or additions be not inconsistent with any of the Statutes of this State.

Judges to meet and make general rules.

Ib., § 473; 1882, XVIII., 56.

Such convention has no power to prescribe rules for the exercise of any special jurisdiction conferred by statute upon a Clerk or Magistrate. Rule 66 of the Circuit Court does not apply to sureties on a bond given by lienee to obtain warrant for seizure of crop under agricultural lien.—Sharp v. Palmer, 31 S. C., 444; 10 S. E., 98.

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The authority of the Rules, so adopted, not inconsistent with the Code, recognized.—Ketchin v. Landecker, 32 S. C., 155; 10 S. E., 936; Townsend v. Sparks, 50 S. C., 380; 27 S. E., 802.

Justices of Supreme Court may make rules

Ib., § 474.

Sec. 451. The Justices of the Supreme Court shall, from time to time, make such rules for the orderly conduct of business in said Court as they may deem proper, not inconsistent with this Code of Procedure.

Proceedings by *mandamus* and prohibition not affected, &c.

Ib., § 475.

Sec. 452. Until the Legislature shall otherwise provide, the second part of this Code of Procedure shall not affect proceedings by *mandamus* or prohibition.

State *ex rel.* LaMotte v. Smith, 50 S. C., 558; 27 S. E., 933; State *ex rel.* Cunningham v. Williams, 52 S. C., 416; 29 S. E., 814.

Equity Rules to prevail in cases of conflict.

Sec. 453. Generally in all matters in which there is any conflict or variance between the rules of equity and the rules of the common law, with reference to the same matter, the rules of equity shall prevail.

ADDENDA

TO

Code of Civil Procedure.

Being a List of Sections Construed by Supreme Court in Volumes 62 and 63 S. C. Reports.

Published Since Adoption of Code.

Sec. 11, s. d. 1. When appeal may be taken from a default judgment.—McMahon v. Pugh, 62 S. C., 509; 40 S. E., 961. A motion to recommit to Master is not appealable.—Halk v. Stoddard, 62 S. C., 563; 40 S. E., 957.

Sec. 11, s. d. 2. An order refusing petition to be made a party is appealable.—Rutledge v. Tunno, — S. C., —; 41 S. E., 308.

Sec. 11, s. d. 4. Order denying injunction appealable.—South Bound R. R. v. Burton, 63 S. C., 348; 41 S. E., 451. Interlocutory order restraining operation of ginnery appealable.—Williams v. Jones, 62 S. C., 472; 40 S. E., 880.

Section 26. Term of Common Pleas.—Burwell v. Chapman, 59 S. C., 581; 38 S. E., 224; Ward v. Tel. Co., 62 S. C., 274; 40 S. E., 670.

Section 59. Probate Court cannot grant administration during pendency of appeal from its judgment on question of "Will" or "No Will."—In re estate of Seay, 63 S. C., 130; 41 S. E., 11.

Section 94. Adverse possession may be shown under general denial.—Loyd v. Rawl, 63 S. C., 241; 41 S. E., 312.

Section 98. Adverse possession.—Kolb v. Jones, 62 S. C., 193; 40 S. E., 168.

Section 101. Adverse possession.—Loyd v. Rawl, 63 S. C., 241; 41 S. E., 312.

Section 131b. An allegation of a payment by defendant on a day certain is an allegation of a new promise.—McBrayer v. Mills, 62 S. C., 36; 39 S. E., 788.

Section 148. The summons is the process by which jurisdiction of defendant's person is acquired.—Wren v. Johnson, 62 S. C., 533; 40 S. E., 937.

Section 155. Service on foreign corporation.—Emanuel v. Ferris, 63 S. C., 104; 41 S. E., 20.

Section 156. Service of summons out of State, without order of publication and attachment is void.—Wren v. Johnson, 62 S. C., 533; 40 S. E., 937; Emanuel v. Ferris, 63 S. C., 104; 41 S. E., 20.

Section 160. An appearance for purpose of motion to vacate judgment obtained by void service of summons in foreign State gives no jurisdiction of the person.—Wren v. Johnson, 62 S. C., 533; 40 S. E., 937.

Section 163. It is unnecessary to allege in what State defendant corporation is chartered.—Machen v. W. U. Tel. Co., 63 S. C., 363; 41 S. E., 448.

Section 170. Suicide when a cause of forfeiture must be specifically plead in an ac-
S. C., 38; 40 S. E., 1023.
tion on insurance policy.—Latimer v. Woodman of the World, 62, S. C., 145; 40 S. E., 155.

Section 178. A party may always verify his own pleading.—Holmes v. Moore, 63 S. C., 182; 41 S. E., 90. Sufficiency of verification by agent.—Carolina Grocery Co. v. Moore, 63 S. C., 184; 41 S. E., 88.

Section 181. Remedy for indefiniteness is by motion.—Smith v. Bradstreet Co., 63 S. C., 525; 41 S. E., 763. Allegations held not irrelevant.—Simmons v. W. U. Tel. Co., 63 S. C., 425; 41 S. E., 521.

Section 186a. It is unnecessary to separate allegations as to actual and exemplary damages.—Machen v. W. U. Tel. Co., 63 S. C., 425; 41 S. E., 763. Butler v. Same, 62 S. C., 235; 40 S. E., 162.

Section 193. The limitation of right to amend applies only during or after trial; not to amendments of course, before trial.—McDaniel v. Monroe Bros., 63 S. C., 307; 41 S. E., 456.

Section 195. The remedy where default judgment goes beyond relief demanded is by appeal.—McMahon v. Pugh, 62 S. C., 509; 40 S. E., 961.

Section 230. The undertaking on part of plaintiff must be executed by him.—Polite v. Bero, 63 S. C., 241; 41 S. E., 312.

Section 232. The undertaking on part of the defendant here required need not be executed by him.—Polite v. Bero, 63 S. C., 209; 41 S. E., 300.

Section 240. The wheels of a going concern should not be stopped before it is determined to be a nuisance.—Williams v. Jones, 62 S. C., 483; 40 S. E., 880. The issue as to existence of nuisance, sought to be enjoined, should be tried by a jury.—Lipscomb v. Littlejohn, 63 S. C., 38; 40 S. E., 1023.

Section 248. The property of a foreign corporation may be attached in an action for unliquidated damages, sounding in tort.—Chitty v. Penn. Ry. Co., 62 S. C., 526; 40 S. E., 944.

Sec. 265, s. d. 7. The undertaking required cannot be dispensed with.—Roberts v. Pipkin, 63 S. C., 252; 41 S. E., 300.

Sec. 267, s. d. 1. The order for judgment may be on paper separate from complaint.—Melchers & Co., v. Moore, 62 S. C., 389; 40 S. E., 773. Giving two orders for judgment not prejudicial error.—Carolina Grocery Co. v. Moore, 63 S. C., 184; 41 S. E., 88. Renditions of judgment on admission of counter claim.—Melchers & Co. v. Moore, 62 S. C., 389; 40 S. E., 773.

Section 274. Motion to recommit to Master discretionary.—Halk v. Stoddard, 62 S. C., 564; 40 S. E., 1023. Issue as to existence of nuisance must be tried by jury. Lipscomb v. Littlejohn, 63 S. C., 38; 40 S. E., 1023.

Section 275. Nonsuit is improper on trial of issue in chancery.—So. Ry. Co v. Beaudrot, 63 S. C., 266; 41 S. E., 299.

Section 276. Placing on wrong calendar is a mere irregularity, and not a jurisdictional defect.—Ward v. Western U. Tel. Co., 62 S. C., 279; 40 S. E., 670; Carolina Grocery Co. v. Moore, 63 S. C., 386; 41 S. E., 88. Case is properly retained on Calendar 2 after withdrawal of demurrer to give judgment on admission of counter-claim.—Melchers & Co. v. Moore, 62 S. C., 386; 40 S. E., 773.

Section 297. Where the relief given exceeds that demanded, the remedy is by appeal.—McMahon v. Pugh, 62 S. C., 509; 40 S. E., 901.

Section 417. Service of notice of survey, after action commenced, should be made on attorneys.—Kolb v. Jones, 62 S. C., 193; 40 S. E., 168.

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TO

CODE OF LAWS OF SOUTH CAROLINA.

VOLUME II.

Code of Civil Procedure.

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TITLE I.

CRIMINAL PROCEDURE.

CHAPTER I. *Of Arrests, Examination, Commitment and Bail.*
CHAPTER II. *Jurisdiction of Magistrates and their Courts.*
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CHAPTER I.

Of Arrest, Examination, Commitment and Bail.

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SEC.
1. Who may arrest a felon, and where.
2. When citizens may arrest, and the means to be used.
3. Sheriffs and Deputies may arrest for offences committed in their view.
4. No civil process to be executed on any person attending musters.
5. Officers may issue warrants for arrest of fugitives from justice charged with crime, and shall transmit copies of papers to the Governor.
6. Agents to receive three dollars a day and expenses; how paid.
7. Proceeding for the discharge of prosecutor on his own recognizance in criminal cases not capital.
8. Witnesses may be discharged in like manner.
9. Penalty for failure to appear.
10. Clerk's costs.

Who may arrest a felon, and where.

G. S. 2616; R. S. 1; 1866, XIII., 406; § 11; 1898, XXII, 809.

Section 1. Upon view of felony committed, or upon certain information that a felony has been committed or upon view of a larceny committed, any person may arrest the felon or thief, and take him to a Judge or Magistrate, to be dealt with according to law.

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Prior to the amendments of 1898, such an arrest could not be made where only a simple petit larceny was committed.—State v. Davis, 50 S. C., 426; 27 S. E., 905. See also Sec. 590 as to arrests for violation of Dispensary Law.

It is sufficient to justify an arrest in this State, by private persons, without warrant, to show that *prima facie* a felony has been committed in a sister State and the party arrested is the perpetrator.—State v. Anderson, 1 Hill, 327; State v. Whittle, 59 S. C., 297; 37 S. E., 923.

The jury is the judge as to how much force was necessary to be used in making the arrest.—State v. Golden, 1 S. C., 292; State v. Anderson, 1 Hill, 237. How arrest should be made.—*Ib.* Resistance to arrest.—State v. Brownfield, 60 S. C., 515; 39 S. E., 2. A person has the same right to resist an unlawful arrest as he has to resist an assault.—State v. Davis, 53 S. C., 150; 31 S. E., 62.

When citizens may arrest and the means to be used.

G. S. 2617; R. S. 2; *Ib.*, § 12.

Sec. 2. It shall be lawful for any citizen to arrest any person in the night time, by such efficient means as the darkness and the probability of his escape render necessary, even if his life should be thereby taken, in cases where he has committed a felony, or has entered a dwelling house with evil intent, or has broken or is breaking into an out-house, with a view to plunder, or has in his possession stolen property, or, being under circumstances which raise just suspicion of his design to steal or to commit some felony, flees when he is hailed.

This only applies to arrests in the night time, under the circumstances named.—State v. Davis, 50 S. C., 426; 27 S. E., 905.

Sheriffs and Deputies to arrest for offenses committed in view.

1898, XXII., 808.

Sec. 3. It shall be lawful for the Sheriffs and Deputy Sheriffs of this State to arrest without warrant any and all persons who, within their view, violate any of the criminal laws of this State: *Provided,* Such arrest be made at the time of such violation of law or immediately thereafter.

Applies where the offence was committed within the hearing of the officer.—State v. Williams, 36 S. C., 493; 15 S. E., 554.

No civil process to be executed on any person attending musters.

1794, VIII., 489, § 16; 1839, XI., 41, § 12; 1841, XI., 210, § 161; G. S. 2618; R. S. 3.

Sec. 4. No civil officer shall execute any process arresting and confining the person, or requiring bail or surety, (unless for treason, felony, or breach of the peace,) on any person engaged in the military service required by the laws of this State, going to or returning from the same, under the penalty of twenty-five dollars, and the service of any such process shall be void.

This Section does not apply to officers in the military service.—Moses v. Millett, 3 Strob., 210; applied.—Gregg v. Summers, 1 McC., 461.

1. Officers may issue warrants for arrest of fugitives charged with crime. Proceedings in relation thereto.

G. S. 2620; R. S. 4; 1882, XVII., 784.

Sec. 5. 1. Any officer in the State authorized by law to issue warrants for the arrest of any persons charged with crime, shall, on satisfactory information laid before him under the oath of any credible person, that any fugitive in the State has committed, out of the State, and within any other State, any offence which by the law of the State in which the offence was committed is punishable, either capitally or by imprisonment for one year or upwards in any State prison, shall have full power and authority, and is hereby required, to issue a warrant

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for said fugitive, and commit him to any jail within the State for the space of twenty days, unless sooner demanded by the public authorities of the State wherein the offense may have been committed, agreeable to the Act of Congress in that case made and provided; if no demand be made within the time, the said fugitive shall be liberated, unless sufficient cause be shown to the contrary: *Provided,* That nothing herein contained shall be construed to deprive any person so arrested of the right to release on bail as in cases of similar character of offenses against the laws of this State.

2. To keep record and transmit copy to Governor.

2. Every officer committing any person under this Section, shall keep a record of the whole proceedings before him, and immediately transmit a copy thereof to the Governor of this State for such action as he may deem fit therein under the law.

3. Governor to inform Governor of foreign State.

3. The Governor of this State shall immediately inform the Governor of the State in which the crime is alleged to have been committed of the proceedings had in such case.

4. Sheriff and Jailer to surrender fugitive under order of Governor.

4. Every Sheriff or Jailer, in whose custody any person committed under this Section shall be, upon the order of the Governor of this State, shall surrender him to the person named in said order for that purpose.

Arrest of such fugitive without warrant.—State v. Whittle, 59 S. C., 306; 37 S. E., 923.

Such warrant may be issued before demand has been made upon the Governor for such fugitive.—State v. Anderson, 1 Hill, 327.

As to order of Governor to surrender prisoner on requisition from another State.—*Ex parte* Swearingen, 13 S. C., 74.

Technical accuracy of an indictment is not required in a commitment.—State v. Killet, 2 Bail., 289. A warrant must be subscribed by the officer issuing it.—State v. Davis, 40 S. C., 507; 19 S. E., 138. But need not be under seal.—State v. Vaugh, Harp., 313. It need not fully set out the charge.—State v. Hallback, 40 S. C., 298; 18 S. E., 919; State v. Killet, 2 Bail., 289; State v. Rowe, 8 Rich., 17. But the nature of the offense should be stated.—State v. Everett, Dudley, 295. One who appears and submits to trial cannot object to defect in warrant.—State v. Mays, 24 S. C., 190.

Agents to receive $3 a day and expenses.

R. S. 5; 1887, XIX., 850.

Sec. 6. In all cases of requisition for the delivery of fugitives from justice the agents appointed by the Governor to bring such fugitives into this State shall receive in compensation for their services the sum of three dollars per day for the time actually employed and shall be reimbursed their expenses actually and necessarily incurred in the performance of their duties.

Approval of accounts.

Upon presentation to the Governor of the accounts of such agents, itemized and duly verified by their affidavits thereto annexed, the Governor, if he approve the same as correct, shall endorse his approval thereon, and upon presentation of the said accounts, so endorsed, to the Comptroller General, he shall

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How paid.

draw his warrants on the State Treasurer for the amount thereof, payable out of the regular contingent fund of the Governor.

Proceedings for the discharge of the prosecutor on his own recognizance in criminal cases not capital.

G. S. 2625; R. S. 6; 1857, XII., 636, § 1.

Sec. 7. Hereafter, when any prosecutor, resident in the Judicial District where the prosecution is instituted, in criminal cases less than capital, shall have been committed to jail by reason of his or her inability to give surety, on his or her recognizance to prosecute, the Clerk of the Court of Common Pleas and General Sessions of such District shall have power to discharge such prosecutor on his or her own recognizance, upon being satisfied of his or her inability to give such surety.

Witnesses may be discharged in like manner.

G. S. 2626; R. S. 7; *Ib.*, § 2.

Sec. 8. Whenever any witness in a criminal case less than capital shall have been committed to jail by reason of the like inability to give surety on a recognizance to testify, the Clerk of the Court shall have the like power to discharge such witness on his or her own recognizance.

Penalty for failure to appear.

G. S. 2627; R. S. 8; *Ib.*, §3

Sec. 9. Prosecutors or witnesses failing to appear under such recognizance shall be deemed guilty of a misdemeanor, and the Attorney General and Solicitors are hereby authorized to order warrants to issue against such offenders without affidavit or bond to prosecute.

Clerk's costs.

G. S. 2628; R. S. 9; *Ib.*, §4

Sec. 10. The Clerks of the Court shall be entitled to one dollar costs for each recognizance taken under the provisions of Sections 7 and 8 of this Chapter.

CHAPTER II.

Jurisdiction of Magistrates and Their Courts.

SEC.

11. Jurisdiction generally.
12. Jurisdiction where crimes are not subject to a punishment more than one hundred dollars or imprisonment more than thirty days.
13. Of assaults and batteries.
14. May arrest affrayers and others threatening breach of the peace.
15. Jurisdiction in certain cases.
16. Jurisdiction in larceny.
17. Jurisdiction in receiving stolen goods.
18. Jurisdiction in obtaining property by false pretenses.
19. Can arrest persons charged with offenses.
20. All proceedings to be by information.

SEC.

21. All persons entitled to trial by Jury.
22. In Charleston can try offenses against city ordinances.
23. Can appoint Special Constables.
24. Magistrates must hold preliminary examinations on demand of defendant, regulations as to.
25. Can bind over witnesses.
26. May command the peace.
28. May admit to bail except in capital felonies and cases punished by imprisonment for life.
29. Scale by which recognizances shall be regulated.
30. May arrest witnesses and commit to jail, on their refusal to recognize.

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SEC.
31. Return papers to Clerk ten days before Court.
32. Duty of, on information of an impending duel.
33. Change of venue.
34. Constables not to swear out warrants.
35. Prosecutor not to serve warrant.
36. Magistrates may issue search warrants.
37. Warrants to be endorsed in County where served.

Generally.

G. S. 822; R. S. 10; 1870, XIV., 402, § 1.

Section 11. Magistrates shall have and exercise, within their respective Counties, all the powers, authority and jurisdiction in criminal cases hereinafter set forth.

Over offenses in which fine or forfeiture is under $100 and imprisonment less than thirty days.

G. S. 823; R. S. 11; *Ib.*, § 2.

Sec. 12. They shall have jurisdiction of all offences which may be subject to the penalties of either fine or forfeiture not exceeding one hundred dollars, or imprisonment in the jail or workhouse not exceeding thirty days; and may impose any sentence within those limits, singly or in the alternative.

This, construed with Sec. 657, gives power to sentence to imprisonment, at hard labor on chain gang, not exceeding thirty days. The case of State v. Williams, 40 S. C., 373; 19 S. E., 5, decided under the Constitution of 1868, does not apply since the Constitution of 1895.

Magistrates have jurisdiction of an offense only where the punishment is limited to a fine of $100, or to imprisonment for thirty days.—State v. Madden, 28 S. C., 50; 4 S. E., 810.

When the punishment of petit larceny was not so limited, Magistrates had no jurisdiction of it.—State v. Williams, 13 S. C., 546; State v. Jenkins, 26 S. C., 121; 1 S. E., 437. But since Act 1887 (19 Stat., 819,) so limiting the punishment, they have jurisdiction of that offense.—State v. Cooler, 30 S. C., 105; 8 S. E., 692.

They have no jurisdiction of the offense of taking or stealing a boat under the Act of 1695, because the penalty is indefinite.—State v. Weeks, 14 S. C., 402.

Under Art. V., Sec. 18, Constitution of 1895, the Circuit Court has concurrent jurisdiction in all cases where "exclusive" jurisdiction is not given the Magistrates' Court.—State v. Wolfe, 61 S. C., 25; 39 S. E., 179.

Extent to which they may punish breaches of the peace.

G. S. 824; R. S. 12; Const. Art. V., § 21. *Ib.*, § 3.

Sec. 13. They may punish by fine not exceeding one hundred dollars, or imprisonment in the jail or house of correction not exceeding thirty days, all assaults and batteries, and other breach of the peace, when the offense is not of a high and aggravated nature, requiring in their judgment, greater punishment.

Jurisdiction to bind over party to keep the peace, and in default of bond to commit to jail.—State v. Garlington, 56 S. C., 413; 34 S. E., 689.

The determination of the Magistrate that a case is within his jurisdiction, where it is an assault of a high and aggravated nature, as with a pistol, is not binding on the Circuit Court.—State v. Burch, 43 S. C., 3; 20 S. E., 758. Since the Constitution of 1895 the Circuit Court has concurrent jurisdiction. But prior to 1895 it was held that if the indictment in the Court of General Sessions did not show on its face that the assault and battery was of a high and aggravated nature, it was without its jurisdiction and was exclusively within the jurisdiction of the Magistrate's Court.—State v. McKetterick, 14 S. C., 353; State v. Grant, 34 S. C., 109; 12 S. E., 1070.

Where an indictment charged an assault and battery with intent to kill in the first count and carrying concealed weapons in the second, and a true bill was returned only as to the second, the case was properly remanded to a Magistrate for trial.—State v. McClenton, 59 S. C., 226; 37 S. E., 819.

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May arrest all affrayers and others threatening breach of peace

R. S. 13; *Ib.*, § 4.

Sec. 14. They may cause to be arrested all affrayers, rioters, disturbers, and breakers of the peace, and all who go armed offensively, to the terror of the people, and such as utter menaces or threatening speeches, or otherwise dangerous and disorderly persons. Persons arrested for any of said offences shall be examined by the Magistrate before whom they are brought, and may be tried before him, and if found guilty may be required to find sureties of the peace, and be punished within the limits prescribed in Section 13, or, when the offence is of a high and aggravated nature, they may be committed or bound over for trial before the Court of General Sessions.

What is an affray.—State v. Sumner, 5 Strob., 53.

Jurisdiction of Magistrates in certain cases.

R. S. 14; 1892, 1892, XXI., 93; 1893, XXI, 411. 1894, XXI, 824.

Sec. 15. Any person, upon conviction of any one of the following named misdemeanors, shall be subject and liable for each offense to a fine not to exceed one hundred dollars or to imprisonment for a term not exceeding thirty days, to wit: Carrying concealed about the person any deadly weapon, such as are enumerated in Section 130; disturbing a religious meeting in any way, or otherwise violating the provisions of Section 505, when no weapons were actually used and no wounds inflicted; all riots, routs or affrays where no weapons were actually used and no wounds inflicted; malicious mischief and malicious trespass as contemplated in Secs. 170 and 171, when the damage to such property does not exceed twenty dollars; disposing of property under lien, or obtaining property under false pretense, when the value of such property so disposed of, stolen or obtained, respectively, does not exceed twenty dollars.

Jurisdiction in larceny.

G. S. 826; R. S. 15; 1870, XIV., 403; § 5.

Sec. 16. Magistrates shall have jurisdiction of larcenies, by stealing of the property of another, of money, goods or chattels, or any bank note, bond, promissory note, bill of exchange, or other bill, order, or certificate, or any book of accounts for or concerning money or goods due, or to become due, or to be delivered, or any deed or writing containing a conveyance of land, or any other valuable contract in force, or any receipt, release, or defeasance, or any writ, process, or public record, if the property stolen does not exceed twenty dollars in value.

When there was no law limiting punishment of petit larceny to one hundred dollars' fine or thirty days' imprisonment, this Section was unconstitutional, and Magistrates had no jurisdiction of the crime, and the jurisdiction was exclusively in the Court of General Sessions.—State v. Williams, 13 S. C., 546; State v. Jenkins, 26 S. C., 121; 1 S. E., 437. But since Act of 1887, (19 Stat., 819,) so limiting the punishment, Magistrates have jurisdiction of petit larceny.—State v. Cooler, 30 S. C., 105; 8 S. E., 692; 3 L. R. A., 181. Concurrently with the Circuit Court since the Constitution of 1895.

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In receiving stolen goods.

G. S. 827; R. S. 16; Ib., § 6.

Sec. 17. They shall have jurisdiction of the offences of buying, receiving or aiding in the concealment of stolen goods and other property, where they would have jurisdiction of the larceny of the same goods or property.

In obtaining property under false pretenses

G. S. 828; R. S. 17; Ib., § 7.

Sec. 18. They shall have jurisdiction of the offences of obtaining property by any false pretense, or any privy or false token, or by any game, device, sleight of hand, pretensions to fortune-telling, trick or other means, by the use of cards or other implements or instruments, where they would have jurisdiction of a larceny of the same property, and may punish said offenses the same as larceny.

Can arrest persons charged with offenses.

G. S. 829; R. S. 18; Ib., § 8.

Sec. 19. They shall cause to be arrested all persons found within their Counties charged with any offense, and persons who after committing any offense within the County escape out of the same; examine into treasons, felonies, grand larcenies, high crimes and misdemeanors; and commit or bind over for trial those who appear to be guilty of crimes or offenses not within their jurisdiction, and punish those guilty of such offenses within their jurisdiction.

All proceedings to be by information.

G. S. 830; R. S. 19; Ib., § 9.

Sec. 20. All proceedings before Magistrates in criminal cases shall be commenced on information, under oath, plainly and substantially setting forth the offense charged, upon which, and only which, shall a warrant of arrest issue.

The information may be amended at any time before trial.

All proceedings before Magistrates shall be summary, or with only such delay as a fair and just examination of the case requires.

The affidavit may be amended before trial.—State v. Nash, 51 S. C., 321; 28 S. E., 946.

A warrant issued upon a statement of facts not sworn to is unconstitutional, null and void.—State v. Wimbush, 9 S. C., 309.

This Section was only intended to require the sworn information to so set forth the charge "plainly and *substantially*" as that the accused would understand the nature of the offense with which he was charged and might prepare to meet it. It was not designed to require any formality or technical accuracy in stating the offense.—McConnel v. Kennedy, 29 S. C., 180; 7 S. E., 76; Rogers v. Marlboro Co., 32 S. C., 555; 11 S. E., 383.

All persons entitled to trial by jury; appeals from.

G. S. 831; R. S. 20; Ib., § 10.

Sec. 21. Every person arrested and brought before a Magistrate, charged with an offense within his jurisdiction, shall be entitled, on demand, to a trial by jury, which shall be selected as provided in Section 987 of the Civil Code.

Demand for jury made after State has closed its case comes too late.—State v. Mays, 24 S. C., 194.

A prosecutor may demand a jury trial.—State v. Nash, 51 S. C., 321; 28 S. E., 946.

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Magistrates in Charleston can try offenses against city ordinances

Sec. 22. Magistrates residing within the limits of the City of Charleston are vested with jurisdiction to try, determine and impose the penalties authorized by ordinance of the City Council of Charleston.

G. S. 832; R. S. 21; 1870, XIV., 382; § 2.

Can appoint special officers to arrest persons charged with crime above misdemeanor.

G. S. 833; R. S. 22; 1871; XIV., 666, § 1.

Sec. 23. Whenever a Magistrate shall have issued a warrant for the arrest of any person charged with an offense above the grade of a misdemeanor, such Magistrate shall be authorized to select any citizen or citizens of the County to execute the same, upon his endorsement upon the said warrant that, in his judgment, the selection of such person or persons will be conducive to the certain and speedy execution of the said warrant; and the person or persons so selected shall have all the powers now or hereafter conferred by law upon any Constable within this State; and any person or persons selected in the manner provided for in this Section shall be required forthwith to proceed to execute the said warrant; and upon his willfully, negligently or carelessly failing to make the arrest, or permitting the party to escape after arrest, he or they shall be punished, upon conviction, on indictment, by fine and imprisonment, in the County jail, in the discretion of the Judge before whom the indictment may be tried; said imprisonment not to be less than six months.

A Magistrate cannot *verbally* authorize a person not a Constable by legal appointment to convey a prisoner to jail.—State v. Clark, 51 S. C., 265; 28 S. E., 906.

Magistrates must hold preliminary examinations upon demand of defendant; when; rules regulating, &c.

1898, XXII., 698.

Sec. 24. It shall be the duty of any Magistrate who issues a warrant charging a crime beyond his jurisdiction to grant and to hold a preliminary investigation of the same upon demand of the defendant at any time before trial, at which investigation the defendant shall have the right to cross-examine the State's witnesses in person or by counsel, and to have the reply in argument if there be counsel for the State and to be heard in argument in person or by counsel as to whether a probable case has been made out and as to whether the case ought to be dismissed by the Magistrate and the defendant discharged without day. And the defendant when first brought before the Magistrate shall have the right to demand a removal of the hearing to the next Magistrate on the same ground as in cases within the jurisdiction of the Magistrate, and shall be granted two days, if requested, within which to prepare a showing for removal: *Provided,* The defendant be held by recognizance in bailable cases or committed for custody in the meantime.

This Act repeals by implication G. S. 834; R. S. 23.

No formal indictment is required in a Magistrate's Court.—State v. Brown, 14 S. C., 380.

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Magistrates have no authority in cases of felony, except to so examine the prisoner and commit or bind him over for trial in the General Sessions.—Cherry v. McCants, 7 S. C., 224.

It is not the duty of the Magistrates, under this Section, to examine accused persons or to take their statements in writing, unless they are sworn as witnesses on behalf of the State by their own consent; and if he does so, it is not an official act; but he is not prohibited from doing so.—State v. Branham, 13 S. C., 389; State v. Howard, 32 S. C., 91; 10 S. E., 831.

A Magistrate cannot supplement the testimony of a witness as taken, after it is signed by the witness, by appending a statement as to the testimony.—State v. Freeman, 43 S. C., 105; 20 S. E., 974. The Magistrate may discharge absolutely on the preliminary examination.—State v. Jones, 32 S. C., 583; 10 S. E., 577.

Can bind over witnesses.

G. S. 835; R. S. 24; 1830, XI, 22, § 8.

Sec. 25. Upon information made of the materiality of any witness within the State, to support any accusation made, or where the materiality of such witness shall be within the knowledge of any Magistrate he shall issue his warrant, requiring such witness to appear before him or the next Magistrate, to enter into recognizance, with good security, if deemed proper, which warrant shall authorize the arrest and detention of any such witness in any County in the State, and on being brought before such Magistrate, and refusing to enter into recognizance, such witness may be committed by the said Magistrate; and the accused shall, in felonies, and no other case, have the like process to compel the attendance of any witness in his behalf as is granted or permitted on the part of the State: Provided, That no Magistrate shall receive any fees for issuing more than one warrant for witnesses on the part of the State, or upon the part of the accused, in the same case, unless, on the second or other application, oath shall be made that the prosecutor or accused was not aware, at the issuing of the previous warrant, of the materiality of such witness.

May command the peace

G. S. 836; R. S. 25; *Ib.* 21, § 3.

Sec. 26. Any Magistrate shall be authorized and required to command all persons who, in his view, may be engaged in riotous or disorderly conduct, to the disturbance of the peace, to desist therefrom, and to arrest any such person who shall refuse obedience to his command, and to commit to jail any such person who shall fail to enter into sufficient recognizance either to keep the peace or to answer to an indictment, as the Magistrate may determine. In like manner he shall arrest and commit, if necessary, any person who, in his view, shall perpetrate any crime or misdemeanor whatsoever. In making any such arrest, the Magistrate shall have power to command any Constable, bystander, or the *posse comitatus,* as the emergency may require; and any person who shall refuse to aid in such arrest, when required by the Magistrate, shall be liable to indictment as

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for a misdemeanor. Whenever there shall be an indictment for any offense committed in his view, the Magistrate shall be the prosecutor, and he shall bind in recognizance all necessary witnesses.

The authority here given to a Magistrate to arrest and commit for said offenses committed "in his view" extends to such offenses committed in his hearing.—State v. Williams, 36 S. C., 493; 15 S. E., 554.

All persons may be bailed by Magistrates except those charged with offenses punishable with death or imprisonment for life.

G. S. 2621; R. S. 34; 1839, XI., 22; § 6.

Sec. 28. Magistrates may admit to bail any person charged with any offense the punishment of which is other than death or imprisonment for life; and if any person under lawful arrest on a charge regularly made and not bailable, be brought before a Magistrate he shall commit the prisoner to jail; but if the offense charged be bailable, the Magistrate shall take recognizance, with sufficient surety, if the same be offered; in default whereof, such party shall be committed to prison, unless it shall clearly appear, upon examination, that the charge is not founded in probability; in which case the party may be discharged.

Seal not necessary to the recognizance.—State v. Foot, 2 Mill, 123.

Legal obligation of surety is, that principal shall appear and abide by judgment of the Court.—Reynolds v. Harral, 2 Strob., 87.

And sureties are liable notwithstanding discharge of prisoner by U. S. Judge.—State v. Davis, 12 S. C., 528.

In felony, it requires the personal appearance of the principal.—State v. Rowe, 8 Rich., 17.

Even failure to appear and plead will estreat recognizance.—State v. Minton, 19 S. C., 282.

Objections to recognizance come too late after estreat.—Barton v. Keith, 2 Hill, 537.

No objection, that there is a variance between it and warrant.—State v. Rowe, 8 Rich., 17.

It must appear on its face to have been issued by competent authority; otherwise it will be held invalid on objection, *ore tenus*.—State v. Ahrens, 12 S. C., 493.

Surety not estopped from denying validity of recognizance because another made payments thereon.—State v. Bright, 14 S. C., 7.

Court of General Sessions may estreat recognizance by *scire facias*.—State v. Wilder, 13 S. C., 344; State v. Jackson, 13 S. C., 344.

And rule to show cause why not is not appealable.—State v. McNinch, 13 S. C., 452.

Scale by which recognizances shall be regulated; recognizances; of prosecutors and witnesses.

G. S. 2622; R. S. 35; *Ib.*, § 7; 1885, XIX., 349

Sec. 29. Recognizances entered into before a Magistrate shall be according to the following scale:

1. If the offense charged be punishable with fine and imprisonment, or either, the recognizance of the accused shall not be for less than two hundred dollars. In all cases the Magistrate taking the recognizance shall cause the same to be in such large amount as the circumstances may seem to require.

2. The recognizance of any prosecutor or witness, in case of misdemeanor, shall not be for less than one hundred dollars; and in case of capital felony, for not less than five hundred dollars; though in all cases the Magistrate shall cause the same

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to be in such large amount as the circumstances may seem to require.

Magistrates, may arrest witnesses and commit them to jail if they refuse to recognize.

G. S. 2623; R. S. 36; *Ib.*, § 8.

Sec. 30. Upon information made of the materiality of any witness within the State to support any accusation made, or where the materiality of such witness shall be within the knowledge of any Magistrate he shall issue his warrant requiring such witness to appear before him or the next Magistrate to enter into recognizance, with good security, if deemed proper; which warrant shall authorize the arrest and detention of any such witness in any County in the State; and on being brought before such Magistrate, and refusing to enter into recognizance, such witness may be committed by the said Magistrate to the jail of the County, there to remain until he shall be regularly discharged, or shall enter into recognizance as required by this Chapter.

Magistrates to return papers to Clerk ten days before Court.

G. S. 2624; R. S. 37; 1836, VI, 552, § 1; 1839, XI., 23, § 11.

Sec. 31. All Magistrates before whom recognizances of witnesses, defendant, or prosecutor, for their respective appearances at any of the Courts of Sessions for this State shall be taken, or before whom any information or other paper returnable to the same shall be made, shall lodge the said recognizances, information, or other papers, in the respective Clerks' offices of the Courts to which they are returnable, at least ten days before the meeting of the said Courts respectively.

Duty of, on information of an impending duel.

G. S. 838; R. S. 28, 1857, XII, 606.

Sec. 32. Whenever any Magistrate shall receive information in writing, and under oath, that any person or persons are about to leave this State for the purpose of sending or receiving a challenge to fight a duel, or for the purpose of fighting a duel after such challenge shall have been sent or received, it shall be the duty of such Magistrate forthwith to issue his warrant for the arrest of such person or persons, to be carried before some Magistrate who shall require such persons to enter into recognizance in such sum as to such Magistrate may seem meet, conditioned that such person or persons shall keep the peace within this State, and shall not leave the State for the purpose of sending or receiving a challenge to fight a duel, or for the purpose of fighting a duel after such challenge has been sent or received.

Change of venue.

R. S. 29; 1887, XIX., 787; 1896, XXII., 12, § 2.

Sec. 33. Magistrates shall have the power to change the venue in all cases, civil and criminal, pending before them: *Provided,* That in Counties where they have separate and exclusive territorial jurisdiction the change of venue shall be to another Magistrate's district in the same County. Whenever either party in a civil case, or the prosecutor or accused in a

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criminal case, which is to be tried before a Magistrate, shall file with the Magistrate issuing the paper an affidavit to the effect that he does not believe he can obtain a fair trial before the Magistrate, the papers shall be turned over to the nearest Magistrate not disqualified from hearing said cause in the County, who shall proceed to try the case as if he had issued the papers: *Provided,* Such affidavit shall set forth the grounds of such belief, and in civil cases two days' notice of the application for change of venue shall be given to the adverse party. One such transfer only shall be allowed each party in any case.

See McNair v. Tucker, 24 S. C., 107.

Constable not to swear out warrants.

R. S. 30; 1886, XIX., 531.

Sec. 34. No Magistrate shall permit a Constable to swear out a warrant in any criminal case, except where the Constable has been personally affected by the offense with which the party is charged.

Prosecutor not to serve warrant.

R. S. 31, 1886; XIX., 531.

Sec. 35. No Magistrate shall deputize the person swearing out a warrant in any case to serve the same.

Magistrates may issue search warrants.

1885, XIX., 251, R. S. 32.

When and in what cases.

Sec. 36. 1. Magistrates shall have authority to issue warrants to make search or seizure in suspected places, and to arrest suspected persons and to seize their property.

2. Such warrants shall issue only in cases of stolen goods, and must be supported by the oath or affirmation of the party applying for the same, which shall set forth fully and particularly all the facts upon which such application is based, and shall specially designate the suspected place or places, the object or objects of search or seizure, the name or names of the person or persons suspected, and who are to be arrested.

And not otherwise.

3. No such warrant shall issue except in the cases and with the formalities herein prescribed.

Such warrant issued upon a statement of facts not sworn to is unconstitutional, null and void.—State v. Wimbush, 9 S. C., 309.

Warrants to be endorsed in County where served.

R. S. 33; 1891, XX., 1052.

Sec. 37. Magistrates are authorized and empowered to endorse the warrant or warrants issued by Magistrates of other Counties when the person or persons charged with a crime in said warrant or warrants resides, or is, in the County of said Magistrate. When a warrant or warrants is presented to a Magistrate for endorsement, as herein provided, the said Magistrate shall authorize the person presenting the same, or any special Constable, to execute the same within his County.

Appointment of Constable.

CHAPTER III.

Proceedings in Courts of Sessions.

Sec.
38. Grand jurors, how returned, and term of service.
39. Who to be grand jurors and who jurors for trials.
40. Persons indicted for capital offenses to have a copy of the indictment.
41. Persons indicted may have counsel.
42. Court may assign counsel.
43. Traverse of an indictment not a continuance.
44. How juries are empaneled.
45. Accused in felonies may have process to compel attendance of witnesses.
46. Clerks to keep record of persons tried.

Section 38. *a.* During the last term of the Court of General Sessions for each County in the year 1897, six of the grand jurors then in service shall be drawn in the manner now provided by law for the empaneling of petit jurors in criminal cases, who shall serve as grand jurors during the next succeeding year.

Six of grand jurors of 1897 to serve for 1898.

G. S. 2629; R. S. 38; 1897, XXII., 419.

b. The Clerk of the Court of General Sessions in each County in the year 1898, and each succeeding year thereafter, not less than fifteen days before the commencement of the first term of the Court in said year, shall issue writs *venire facias* in each County for twelve grand jurors to be returned to that Court, who, together with the six grand jurors for whose selection provision has hereinbefore been made, shall be held to serve at each term thereof throughout said year, and until another grand jury is selected and empaneled.

How grand juries drawn in 1898 and after.

1871, XIV., 694, § 33; 1897, XXII., 419.

c. At the end of each succeeding year thereafter, during the last term of the Court of General Sessions held in each County for such year, six of the grand jurors then in service shall be drawn as hereinbefore provided, who, together with twelve grand jurors selected in the manner herein prescribed, shall constitute the grand jury for said year: *Provided,* That no person shall serve as a grand juror for more than two consecutive years, and that the provision of this Section shall not apply to the County of Charleston.

Six of the grand jury to be drawn each year for the next year.

Ib.

Proviso.

d. Whenever for any cause, such as the quashing of the array or there being no Court at the Fall Term, there has heretofore been or shall hereafter be a failure to draw the names of six members of any Grand Jury for any County to serve on the Grand Jury for that County for the ensuing year as required by law, there shall be drawn, at the proper time for drawing the Grand Jury, eighteen names from the jury box, instead of

Drawing of Grand Jurors under extraordinary circumstances.

1901, XXIII., 634.

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twelve, and the said eighteen persons, whose names are so drawn, shall be summoned and shall serve as the Grand Jury for the year in question, and shall be the lawful Grand Jury for such County for that year, and until their successors be drawn, summoned and qualified according to law.

e. When the Judge, entitled to preside, fails to attend and to hold the fall or last term of the Court of Common Pleas and General Sessions for any County, the Clerk of the Court shall have the right and is required hereby to make the drawing from the outgoing Grand Jury, that is to say from the Grand Jury for the then current year of the names of the six members who shall serve as a part of the Grand Jury for the then ensuing year, with the same force and effect as if the names of the said six Grand Jurors had been drawn in the presence of the Presiding Judge.

The writ of *venire* must have the seal of the Court or it is invalid.—State v. Dozier, 2 Speer, 216; State v. Williams, 1 Rich., 189. But it is not necessary that the impression of the device should be manifest on the seal.—State v. McElmurray, 3 Strob., 39; State v. Thayer, 4 Strob., 287. It is not necessary that the names of the jurors should be embodied in the writ; it is sufficient if they be arranged in lists below the signature of the Clerk.—State v. McElmurray, 3 Strob., 39.

Grand jury need not consist of more than twelve members.—State v. Clayton, 11 Rich., 581. If grand jury drawn to serve during the year are discharged before they are empaneled, the grand jury of the preceding year may act.—State v. McEvoy, 9 S. C., 208.

Indictment quashed because a paid attorney, representing Solicitor in his absence, advised the grand jury as to their duty.—State v. Addison, 2 S. C., 366.

But no ground to do so, where Solicitor, at foreman's request, went into their room and advised as to how the jury should write their findings, already agreed on.—State v. McNinch, 12 S. C., 89.

Witnesses examined before grand jury must be sworn in open Court.—State v. Kilcrease, 6 S. C., 444. Court will not inquire into testimony that influenced the jury.—State v. Boyd, 2 Hill, 288.

Finding of grand jury in writing, if publicly announced by the Clerk in their presence, is good, though not signed by the foreman.—State v. Creighton, 1 N. & McC., 256.

The Act of 1897, XXII., 419, is directory only, and not mandatory.—State v. Powers, 59 S. C., 201; 37 S. E., 690. So as to time within which venire must issue.—State v. Smith, 38 S. C., 270; 16 S. E., 977.

The presentment of a grand jury as to the management of County affairs is only advisory to the County Commissioners; and if, on being served with the presentment, they make return that they disapprove of the recommendations of the grand jury, and decline to comply, the Court will not order an indictment against them.—State v. Commissioners, 12 Rich., 300.

Who to be grand jurors and who jurors for trials.

G. S. 2630; R. S. 39; 1871, XIV., 694, § 34

Sec. 39. Grand Jurors shall be drawn, summoned, and returned, in the same manner as jurors for trials, and, when drawn at the same time as jurors for trials, the persons whose names are first drawn, to the number required, shall be returned as grand jurors, and those afterwards drawn, to the number required, shall be jurors for trials.

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Deficiency in grand jurors to be supplied as provided in Sec. 2924, Civil Code. The accused not entitled to demand copy of jury list.—State v. Merriman, 34 S. C., 16; 12 S. E., 619.

The fact that the grand jury which found the indictment contained no member of the race to which the defendant belongs is not, of itself, a ground for quashing the indictment.—State v. Brownfield, 60 S. C., 509; 39 S. E., 2. Objection as to qualification of grand juror comes too late after pleading to the indictment.—State v. Boyd, 56 S. C., 382; 34 S. E., 661.

Sec. 2946, Civil Code, does not apply to grand jurors.—*Ib.;* State v. Rafe, 56 S. C., 381; 34 S. E., 660.

Persons indicted for capital offenses to have a copy of their indictment.

G. S. 2632; R. S. 40; 1731, III., 286, § 43.

Sec. 40. Whoever shall be accused and indicted for any capital offense whatsoever, shall have a true copy of the whole indictment, but not the names of the witnesses, delivered to him, three days, at least, before he shall be tried for the same, whereby to enable him to advise with counsel thereupon, his attorney or attorneys, agent or agents, or any of them requiring the same, and paying the officer his usual fees for the copy of every such indictment.

The three days are inclusive of day on which motion is made for copy.—State v. Briggs, 1 Brev., 8.

The demand for the copy should be made at the latest at the arraignment.—State v. Willingham, 10 Rich., 257.

When made after trial had commenced and more than three days after arraignment, it was properly refused.—State v. Briggs, 27 S. C., 80; 2 S. E., 854.

To move for a continuance at arraignment, on the ground that the prisoner was entitled to a copy of the indictment three days before trial, was considered a demand for the copy.—State v. Willingham, 10 Rich., 257.

Arraignment without demand for the copy amounts to a waiver.—*Ib.*

On Monday the prisoner was arraigned and his counsel demanded a copy of indictment, which was furnished same day. The counsel then said they thought they would be ready for trial on Wednesday, but on that day they were not ready, and declined to move for delay. Held that they had waived right to have copy of indictment three days before trial.—State v. Colclough, 31 S. C., 156; 9 S. E., 811.

May have counsel.

G. S. 2633; R. S. 41; *Ib.*

Sec. 41. Every such person so accused and indicted, arraigned or tried, for any capital offense, shall be received and admitted to make his full defence by counsel learned in the law, and to make any proof that he can by lawful witness or witnesses, who shall then be upon oath, for his just defence in that behalf.

Court may assign counsel.

G. S. 2634; R. S. 42; 1731, III., 286, § 43.

Sec. 42. In case any person so accused or indicted shall desire counsel, the Court before whom such person shall be tried is authorized and required, immediately upon his request, to assign to such person such and so many counsel, not exceeding two, as the person shall desire, to whom such counsel shall have free access, at all seasonable times, either before, at, or after the said trial, any law or usage to the contrary notwithstanding.

Traverse of an indictment not a continuance.

G. S. 2635; R. S. 43; 1871, XIV., 534.

Sec. 43. A traverse of an indictment shall not, in any Court of criminal jurisdiction in this State, of itself, operate to continue the case.

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Juries to be empanelled, &c., in each case.

G. S. 2636; R. S. 44; *Ib.*, 692, § 19.

Sec. 44. In empaneling juries in criminal cases, the jurors shall be called, sworn, and empaneled anew for the trial of each case, according to the established practice, and their foreman shall be appointed by the Court or by the jury when they retire to consider their verdict.

As to practice of empaneling juries.—State v. Stack, 1 Bail., 330; State v. Sims, 2 Bail., 29; State v. Crank, 2 Bail., 66; State v. Kleinback, 2 Speer, 421; State v. Brown, 3 Strob., 514.

Pay of defendant's witnesses in crimina cases.

In felonies prisoners may have process to compel attendance of witnesses.

G. S. 2638; R. S. 45; 1896, XXII., 102; 1731, III., 286, §44; 1839, XI., 23, §8.

Sec. 45. In all criminal prosecutions the accused shall have compulsory process for obtaining witnesses in his favor; and in felonies, and no other cases, such witnesses shall receive the same pay as the State's witnesses upon the certificate of the Trial Judge that the testimony of such witness was material to the defence: *Provided,* That the compulsory process hereinabove mentioned shall be in misdemeanors a subpoena under the official signature of the Clerk of the Court, or other judicial officer, which subpoena or copy shall be served upon the witness a reasonable time before such witness is required to attend Court, and for any disobedience to such subpoena the Court may punish for contempt.

No process can be issued to compel attendance of witnesses from another State, nor can their testimony be taken by commission.—State v. Murphy, 48 S. C., 1; 25 S. E., 43.

In cases of misdemeanor defendant cannot have his witnesses bound over.—State v. Thomas, 8 Rich., 295. His witnesses are only to be paid in case of felony. —Whittle v. Saluda Co., 59 S. C., 554; 38 S. E., 168; *ex parte* Henderson *in re.* State v. Evans, 51 S. C., 331; 29 S. E., 5.

In case of a capital offense, the prisoner having been committed a short time before the Court, he was allowed continuance to procure his witnesses.—State v. Lewis, 1 Bay, 1.

Clerk of Court to keep record of all persons tried for crime

1900, XXIII., 442.

Sec. 46. Each Clerk of the Court of General Sessions shall keep a record, and report annually to the Attorney General and the Solicitor of his Circuit, in duplicate, by the 10th day of December, on blank forms to be furnished by the Attorney General, the name, race, sex, age, alleged crime, of every person brought to trial in his Court for the year ending December 1st; and in case of his failure to make said report within the time herein limited, he shall forfeit to the County ten dollars as a penalty for each day's delay in making such report, to be recovered by the Solicitor of the Circuit by an action in any Court of competent jurisdiction.

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CHAPTER IV.

Of the Rights of Persons Accused.

SEC.
47. Persons arrested to be informed of ground of arrest, &c.; penalty for false answering, &c.
48. Offenses to be prosecuted by indictment, except, &c.
49. Persons arrested may have counsel, &c.
50. Persons indicted, how convicted.
51. When no defense.
52. No person to be punished until legally convicted.

Persons rarested to be informed of ground of arrest, &c. Penalty for false answers, &c.

G. S. 2447; R. S. 46.

Section 47. Every person, arrested by virtue of process, or taken into custody by an officer in this State has a right to know, from the officer who arrests or claims to detain him, the true ground on which the arrest is made; and an officer who refuses to answer a question relative to the reason for such arrest, or answers such question untruly, or assigns to the person arrested an untrue reason for the arrest, or neglects, on request, to exhibit to the person arrested, or any other person acting in his behalf, the precept by virtue of which such arrest is made, shall be punished as for a misdemeanor.

Offenses to be prosecuted by indictment, except, &c.

G. S. 2448; R. S. 47; Code of Procedure, § 447.

Sec. 48. No person shall be held to answer in any Court for an alleged crime or offense, unless upon indictment by a grand jury, except in the following cases:

1. When a prosecution by information is expressly authorized by statute.
2. In proceedings before a Police Court or Magistrate; and,
3. In proceedings before Courts-martial.

Party accused may have counsel, &c.

G. S. 2449; R. S. 48.

Sec. 49. The accused shall, at his trial, be allowed to be heard by counsel, may defend himself, and shall have a right to produce witnesses and proofs in his favor, and to meet the witnesses produced against him face to face.

Persons indicted, how convicted.

G. S. 2450; R. S. 49.

Sec. 50. No person indicted for an offense shall be convicted thereof, unless by confession of his guilt in open Court, or by admitting the truth of the charge against him by his plea or demurrer, or by the verdict of a jury accepted and recorded by the Court.

When no defence.

G. S. 2451; R. S. 50.

Sec. 51. If a person, on his trial, be acquitted upon the ground of a variance between the indictment and the proof, or upon an exception to the form or substance of the indictment, he may be arraigned again on a new indictment, and tried and convicted for the same offence, notwithstanding such former acquittal.

State v. Jenkins, 20 S. C., 351; State v. Brown, 33 S. C., 151; 11 S. E., 641.

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No person to be punished until legally convicted

G. S. 2452; R. S. 51.

Sec. 52. No person shall be punished for an offense unless duly and legally convicted thereof in a Court having competent jurisdiction of the cause and of the person.

CHAPTER V.

Of Trials.

SEC.
53. No grand juror to be on trial jury.
54. Payment of taxes not a cause for challenge.
55. Rights of challenge.
56. What indictment shall be sufficient.
57. How defects may be objected to.
58. Amendments of indictments.
59. Plea of *autre fois acquit* or *convict.*
60. Indictments for murder.
61. Averment of instrument of writing.
62. Indictment for perjury.
63. Prisoners' witnesses to be sworn.
64. Defendant may testify.
65. Persons not required to criminate themselves; privilege of husband and wife.

As to *nolle pros.* where both civil and criminal actions are being prosecuted for same assault.—State v. Blyth, 1 Bay, 167; overruled in State v. Frost, 1 Brev., 385. A *nolle pros.* may be entered at any time before the jury is charged.—State v. McKee, 1 Bail., 651.

A motion for severance of trial is addressed to the discretion of the Circuit Judge.—State v. Mitchell, 49 S. C., 410; 27 S. E., 424.

No grand juror to be on trial jury.

G. S. 2639; R. S. 52; 1731, III., 279, § 19.

Section 53. No member of the grand jury which has found an indictment shall be put upon the jury for the trial thereof.

But the objection must be made before the juror is sworn.—State v. O'Driscoll, 2 Bay, 153.

Payment of taxes not a cause of challenge.

G. S. 2640; R. S. 53; 1871, XIV., 693, § 23

Sec. 54. In indictments and penal actions for the recovery of a sum of money, or other thing forfeited, it shall not be a cause of challenge to a juror that he is liable to pay taxes in any County, city, or town, which may be benefitted by such recovery.

Right of challenge.

R. S. 54; 33 Ed., 1; 1712; II., 549; 1841, XI., 154; 1887, XIX., 830; 1892, XXI., 94.

Sec. 55. Any person or persons who shall be arraigned for the crime of murder, manslaughter, burglary, arson, rape, grand larceny or forgery, shall be entitled to peremptory challenges not exceeding ten; and the State in such cases shall be entitled to peremptory challenges not exceeding five; and any person or persons who shall be indicted for any crime or offense other than those enumerated above shall have the right to peremptory challenges not exceeding five, and the State in such cases shall be entitled to peremptory challenges not exceeding two. But no right to stand aside jurors shall be allowed to the State in any case whatsoever: *Provided,* That in no case where there shall be more than one defendant jointly tried shall more than twenty peremptory challenges be allowed in all to the defendants.

Arraignment is only required in the cases here enumerated, and has never been necessary in cases of misdemeanors, where defendants may be tried in their absence.—State v. Brock, 61 S. C., 141; 39 S. E., 59; State v. Tucker, 40 S. C., 549; 18 S. E., 932; State v. Meyers, 40 S. C., 555; 18 S. E., 892.

The right to arraignment in larceny is determined by the value of the property stated in the indictment, whether below the value of twenty dollars.—State v. Moore, 30 S. C., 69; 8 S. E., 437.

The Acts reducing the number of challenges to what is here allowed are not unconstitutional, as they do not prevent the right of trial by jury.—State v. Wyse, 32 S. C., 45; 10 S. E., 612.

The right to challenge is a sacred right.—State v. Briggs, 27 S. C., 80; 2 S. E., 854. But the right to challenge is not a right to *select* a jury, but a right to *reject* certain number of jurors.—State v. Wise, 7 Rich., 412; State v. Coleman, 8 S. C., 237; State v. Gill, 14 S. C., 411; State v. Prater, 26 S. C., 198; 2 S. E., 108. Effect of exhausting jury by challenge.—State v. Burket, 2 M. Con. Rep., 155. Prisoner cannot withdraw a peremptory challenge in order to challenge for cause.—State v. Price, 10 Rich., 351.

Overruling challenges for cause not to be considered as error when jury was completed without exhausting peremptory challenges.—State v. McQuaige, 5 S. C., 420; State v. Dodson, 16 S. C., 453. Defendant on trial for burning stacks of hay and ricks of corn fodder only entitled to five peremptory challenges.—State v. Pope, 9 S. C., 273.

Defendant on trial for burning a frame building is only entitled to five peremptory challenges.—State v. Workman, 15 S. C., 544.

Defendants on trial for receiving stolen goods above $20 are each entitled to only five challenges.—State v. Jacob, 30 S. C., 131; 8 S. E., 698.

Formerly, before the amendatory Act of December 23, 1882, no peremptory challenge, in trials for offenses not described in this Section, could be made to jurors drawn from supernumeraries to fill places of those challenged.—State v. Cardozo, 11 S. C., 197; State v. Smalls, 11 S. C., 262.

Where the panel is exhausted by challenges of four prisoners, it was irregular to postpone trial to another week before another original jury; and it was error to allow the prisoner then only twelve challenges because he had exhausted eight the week before.—State v. Briggs, 27 S. C., 80; 2 S. E., 854.

Where juror's father and grandfather of accused were brothers, the Judge properly excluded the juror on account of consanguinity.—State v. Merriman, 34 S. C., 16; 12 S. E., 619.

In trial on an indictment for larceny of live stock, valued at $15, the State was held entitled to only two peremptory challenges.—State v. Anderson, 59 S. C., 229; 37 S. E., 820.

Arraignments by *de facto* deputy clerk valid.—State v. Hopkins, 15 S. C., 153. Defendant being once arraigned, and a mistrial had, need not be again arraigned on second trial.—State v. Stewart, 26 S. C., 125; 1 S. E., 468.

Peremptory challenge may be interposed at any time by the State before the prisoner has spoken.—State v. Corley, 43 S. C., 127; 20 S. E., 989; State v. Haines, 36 S. C., 504; 15 S. E., 555.

Judge may refuse to have list entirely called over in hearing of the prisoner before the jurors are presented.—State v. Hallback, 40 S. C., 298; 18 S. E., 919.

What indictments shall be sufficient.

R. S. 55; 1887, XIX., 829.

Sec. 56. Every indictment shall be deemed and judged sufficient and good in law which, in addition to allegations as to time and place, as now required by law, charges the crime substantially in the language of the common law or of the statute prohibiting the same, or so plainly that the nature of the offense charged may be easily understood; and if the offense be a statutory offense, that the same be alleged to be contrary to the statute in such case made and provided.

Such indictment for forgery held sufficient, though the word "feloniously" was not used.—State v. Allen, 56 S. C., 499; 35 S. E., 402.

It must not allege the date of the commission of the crime posterior to the finding

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of the indictment.—State v. Ray, Rice, 3. It must set forth the necessary ingredients of the offense charged.—State v. Henderson, 1 Rich., 184. How third persons should be described.—State v. Anderson, 3 Rich., 174; State v. Scurry, 3 Rich., 70. Defendant's name once set out in full need not be constantly repeated.—State v. Anderson, 3 Rich., 176.

It is correct to charge in the indictment that the offense was committed at the court house.—State v. Colclough, 31 S. C., 156; 9 S. E., 811.

Even when the name of the owner of the stolen goods as laid in the indictment for larceny is *idem sonans* with the name proved, and the defendant was not misled, the variance is not fatal.—State v. White, 34 S. C., 59; 12 S. E., 661.

If the offense be statutory, it must be alleged to be contrary to statute in such case made and provided.—State v. Strickland, 10 S. C., 192.

Where several offences grow out of the same transaction, they may be joined in the same indictment and the jury instructed to pass upon the several counts separately.—State v. Sheppard, 54 S. C., 178; 32 S. E., 146. Each count must be complete in its allegations without aid from another.—State v. Johnson, 45 S. C., 483; 23 S. E., 619; State v. Langford, 55 S. C., 327; 33 S. E., 370. If the counts do not grow out of the same transaction the Solicitor may be required to elect upon which count he will proceed.—State v. Sheppard, *supra;* State v. Bouknight, 55 S. C., 354; 34 S. E., 431; State v. Woodward, 38 S. C., 353; 17 S. E., 135. Joinder of counts for robbery and assault with intent to kill.—State v. Smith, 57 S. C., 490; 34 S. E., 657; 35 S. E., 727. Grand larceny and receiving stolen goods joined.—State v. Posey, 7 Rich., 484. Murder and accessory after the fact.—State v. Burbage, 51 S. C., 284; 28 S. E., 937. Dispensary cases.—State v. Beckroge, 49 S. C., 484; 27 S. E., 658.

A general verdict of guilty will be sustained where there is one good count to which the evidence applies.—State v. Henderson, 52 S. C., 470; 30 S. E., 477; State v. Poole, 2 Brev., 490; State v. Smith, 18 S. C., 149; State v. Woodward, 38 S. C., 353; 17 S. E., 135; State v. Burbage, 51 S. C., 288; 28 S. E., 937.

How defects may be objected to.

Ib., R. S. 56.

Sec. 57. Every objection to any indictment for any defect apparent on the face thereof shall be taken by demurrer, or on motion to quash such indictment before the jury shall be sworn, and not afterwards.

A motion to quash indictment on ground of disqualification of grand juror comes too late after pleading thereto.—State v. Boyd, 56 S. C., 382; 34 S. E., 661. See note to Sec. 2946, Civil Code, and Sec. 39, *ante*.

State v. Crank, 2 Bail., 66; State v. Cook, Riley's Coll. of Cases, 1837, p. 235. The Supreme Court will not consider error imputed to trial Judge for refusing to quash indictment, when the "Case" does not show that motion therefor was made.—State v. Atkinson, 33 S. C., 100; 11 S. E., 693.

The fact that the indictment was found on a bill sent to the grand jury by the Solicitor without a preliminary examination before a Magistrate is no objection to it.—State v. Bowman, 43 S. C., 108; 20 S. E., 1010; State v. Bullock, 54 S. C., 313; 32 S. E., 424.

Amendments of indictments

Proviso.

R. S. 57; *Ib.*

Variance.

Proviso.

Sec. 58. That if there be any defect in form in any indictment it shall be competent for the Court before which the case is tried to amend the said indictment: *Provided,* Such amendment does not change the nature of the offense charged; that if on the trial of any case there shall appear to be any variance between the allegations of the indictment and the evidence offered in proof thereof, it shall be competent for the Court before which the trial shall be had to amend the said indictment according to the proof: *Provided,* Such amendment does not change the nature of the offense charged; and after such amendment the trial shall proceed in all respects and with the same

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consequences as if no variance had occurred, unless such amendment shall operate as a surprise to the defendant, in which case the defendant shall be entitled, upon demand, to a continuance of the cause.

Continuance.

While a material change in the body of the indictment cannot be made by amendment by order of Court, such amendment may be made with the defendant's consent in open Cout.—State v. Faile, 43 S. C., 52; 20 S. E., 798.

Indictment amended to insert proper date.—State v. May, 45 S. C., 509; 23 S. E., 513.

The Court may amend caption of indictment at any time.—State v. Williams, 2 McC., 301; Vandyke v. Dare, 1 Bail., 65.

Plea of *autre fois acquit* or convict.

R. S. 58; *Ib.*

Sec. 59. In any plea of *autre fois acquit* or *autre fois convict* it shall be sufficient for any defendant to state that he has been lawfully acquitted or convicted, as the case may be, of the offense charged in the indictment.

Where defendant was convicted on second count, and a new trial granted, the whole case stood as though it had never been tried.—State v. Commissioners of Roads, Riley, 273; State v. McGee, 55 S. C., 254; 33 S. E., 353; State v. Stephens, 13 S. C., 285.

Such defense, under the Cons. of 1868, Art. I., Sec. 18, could not avail except where the defendant had been acquitted or convicted by a jury.—State v. Shirer, 20 S. C., 392; State v. Wyse, 33 S. C., 582; 12 S. E., 556.

An acquittal upon an insufficient indictment is no bar to a second indictment for same offense.—State v. Ray, Rice, 3; State v. Jenkins, 20 S. C., 35; State v. Brown, 33 S. C., 151; 11 S. E., 641.

The acquittal or conviction must be upon charge of same offense to sustain such plea.—State v. Thurston, 2 McM., 396; State v. Casey, 1 Rich., 92; State v. Risher, 1 Rich., 219; State v. Nathan, 5 Rich., 231; State v. Parish, 8 Rich., 322.

The provision of the Constitution of 1895, Art. 1, Sec. 17, differs from the Constitution of 1868; and as to what is "jeopardy" under it, see State v. Stephenson, 54 S. C., 237; 32 S. E., 305; State v. Richardson, 47 S. C., 166; 25 S. E., 220; State v. McKee, 1 Bail., 651; State v. McLemore, 2 Hill, 680; State v. Briggs, 27 S. C., 85; 2 S. E., 854; State v. Syphrett, 27 S. C., 34; 2 S. E., 624.

In arson, the crime being against possession rather than against the ownership, the subject might be alleged as the property of either the owner or the possessor, and an acquittal would bar a new indictment in the name of the other.—State v. Copeland, 46 S. C., 13; 23 S. E., 980. But as an indictment for larceny must allege the true name of the owner, an acquittal for stealing the fowls of A cannot be set up as former jeopardy for stealing the fowls of A's wife.—State v. Council, 58 S. C., 368; 36 S. E., 663.

Indictments for murder.

R. S. 59; *Ib.*

Sec. 60. Every indictment for murder shall be deemed and adjudged sufficient and good in law which, in addition to setting forth the time and place, together with a plain statement, divested of all useless phraseology of the manner in which the death of the deceased was caused, charges that the defendant did feloniously, willfully, and of his malice aforethought kill and murder the deceased.

Principal and accessory may be charged jointly in same count.—State v. Atkinson, 40, S. C., 363; 18 S. E., 1021.

Concluding "against the peace and dignity of the same State aforesaid" instead of "against the peace and dignity of the State" is good.—State v. Robinson, 27 S. C., 615; 4 S. E., 570.

The place of death is an essential allegation which this Section has not dispensed with, and which, under the terms of the Constitution, the Legislature cannot dispense with.—State v. Blakeney, 33 S. C., 111; 11 S. E., 637.

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If the indictment fail to allege the place of death, the omission cannot be supplied by amendment.—*Ib.*

See also note under Sec. 108.

Averment of instrument of writing.

R. S. 60; *Ib.*

Sec. 61. In all cases whatsoever in which it shall be necessary to make any averment in any indictment as to any instrument, whether the same consists wholly or in part of writing, print or figures, it shall be sufficient to describe such instrument by any name or designations by which the same may be usually known, or by the purport thereof, and in such manner as to sufficiently identify such instrument without setting out any copy or *fac simile* of the whole or any part thereof.

Indictments for perjury.

R. S. 61; *Ib.*

Sec. 62. In any indictment for perjury it shall not be necessary to set forth more than the substance of the oath and the fact concerning which the perjury is alleged to have been committed.

Prisoner's witnesses to be sworn, &c.

G. S. 2642; R.S. 62; I Ann St. 2, c. 9; 1712, II., 543, § 3.

Sec. 63. Every person who shall be produced or appear as a witness on the behalf of the prisoner, upon any trial for treason or felony, before he be admitted to depose, or give any manner of evidence, shall first take an oath to depose the truth, the whole truth, and nothing but the truth, in such manner as the witnesses for the State are by law obliged to do; and, if convicted of any wilful perjury in such evidence, shall suffer all the punishments, penalties, forfeitures, and disabilities which, by law, may be inflicted upon persons convicted of wilful perjury.

Defendant may testify in criminal cases.

G. S. 2642; R. S. 63; 1866, XIII., 378; §2.

Sec. 64. In the trial of all criminal cases, the defendant shall be allowed to testify (if he desires to do so, and not otherwise,) as to the facts and circumstances of the case.

A defendant cannot be made to testify against himself and be convicted on his own testimony.—Town Council v. Owens, 61 S. C., 22; 39 S. E., 184.

Defendant taking the stand may be cross-examined as any other witness.—State v. Robertson, 26 S. C., 117; 1 S. E., 443; State v. Wyse, 33 S. C., 582; 12 S. E., 556; State v. Merriman, 34 S. C., 16; 12 S. E., 619. May be examined as to his religious belief.—State v. Turner, 36 S. C., 534; 15 S. E., 602. His veracity may be assailed.—State v. Robertson, 26 S. C., 117; 1 S. E., 443. When two defendants are jointly tried for larceny, the testimony of one already convicted of an infamous crime should go to the jury under instructions that it is incompetent as to the other.—State v. Peterson, 35 S. C., 279; 14 S. E., 617.

It is improper for Solicitor in argument to comment upon defendant's failure to testify; but it is not reversible error if trial Judge corrected the effect intended.—State v. Howard, 35 S. C., 197; 14 S. E., 481.

This Section was intended to render a defendant competent to testify in his own behalf, and does not relieve him from his common law disability to testify in behalf of a co-defendant, when jointly indicted with others.—State v. Franks, 51 S. C., 259; 28 S. E., 908. One defendant may introduce testimony to contradict a co-defendant who testifies against him.—State v. Adams, 49 S. C., 414; 27 S. E., 451.

Sec. 65. No person shall be required to answer any question tending to criminate himself, nor shall husband or wife be re-

quired to disclose any communication made to each other during their coverture; nor shall testimony given under the preceding Section be afterwards used against him in any other criminal case, except upon an indictment for perjury, founded on that testimony.

Persons not required to criminate themselves, &c., privilege of husband and wife.

Construed as "simply intended to preserve the then existing rules of law by which persons could not be required to criminate themselves, and by which confidential communications" between husband and wife were protected; it does not change the rule that a wife is an incompetent witness for or against her husband.—State v. Workman, 15 S. C., 540; State v. Dodson, 16 S. C., 453. Accomplice, by becoming witness, does not waive protection accorded to his communications to his attorney.—State v. James, 34 S. C., 49; 12 S. E., 657.

G. S. 2644; R. S. 65; *Ib.*, § 3.

See Sec. 2264, Civil Code, as to commitment of persons *non compos mentis*, charged with crime, to the State Hospital for the Insane. See Sec. 2735 of Civil Code as to change of venue; when and how made.

CHAPTER VI.

Of Appeals and New Trials.

SEC.
66. Appeals from Magistrates' Courts.
67. Time of appeal.
68. Notice to be filed with Clerk of Court.
69. Defendant entitled to bail.
70. Clerk to enter case on proper docket.

SEC.
71. Appeal heard without examination of witnesses.
72. Circuit Courts may grant new trials.
73. Stay of execution.
74. No bail after conviction for higher crimes.
75. Practice and proceedings on appeal.

Defendant cannot appeal after fine is paid.—Town of Batesburg v. Mitchell, 58 S. C., 564; 37 S. E., 36.

Section 66. Every person convicted before a Magistrate of any offense whatever, and sentenced, may appeal from the sentence to the next term of the Court of General Sessions for the County. All appeals from Magistrates' Courts in criminal causes shall be taken and prosecuted as hereinafter prescribed.

Appeals from Magistrates' Courts.

G. S. 2646; R. S. 66; 1870, XIV., 403, § 12

Sec. 67. The appellant shall, within five days after sentence, serve notice of appeal upon the Magistrate who tries the case, stating the grounds upon which the appeal is founded.

Time of appeal.

G. S. 2647; R. S. 67; 1880, XVII., 493.

Sec. 68. Within ten days after said service the said Magistrate shall file in the office of the Clerk of Court the said notice, together with the record and statement of all the proceedings in the case, and the testimony in writing taken at the trial and signed by the witnesses.

Notice to be filed with Clerk of Court.

G. S. 2648; R. S. 68; 1880, XVII., 493.

Sec. 69. Upon service of the said notice the said Magistrate shall, on demand of the defendant, admit him to bail in such reasonable sum, and with good sureties, as said Magistrate may require, with conditions to appear at the Court appealed to, and

Defendant entitled to bail

G. S. 2649; R. S. 69; *Ib.*

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at any subsequent term to which the case may be continued, if not previously surrendered, and so from term to term until the final decree, sentence, or order of the Court thereon, and to abide such final sentence, order, or decree, and not depart without leave, and in the meantime to keep the peace and be of good behavior.

Clerk to enter case on proper docket.

G. S. 2650; R. S. 70; *Ib.*

Sec. 70. The Clerk of Court, upon receipt of said case, shall place the same upon the proper docket of the Court of General Sessions for trial or other disposition at the next ensuing term of said Court.

Appeal heard without examination of witnesses.

G. S. 2651; R. S. 71; *Ib.*

Sec. 71. The said appeal shall be heard by the Court of General Sessions upon the grounds of exception made, and upon the papers hereinbefore required, and without the examination of witnesses in said Court. And the said Court may either confirm the sentence appealed from, reverse or modify the same, or grant a new trial, as to the said Court may seem meet and conformable to law.

After making order sustaining appeal and dismissing case, the Circuit Judge may amend his order, and remand the case for a new trial.—State v. Fullmore, 47 S. C., 34; 24 S. E., 1026.

But pending such appeal the Court of General Sessions has no authority to order a new trial on the ground of newly-discovered evidence.—Sams v. Hoover, 33 S. C., 401; 12 S. E., 8.

The appeal should be heard on the papers, not *de novo*.—State v. Brown, 14 S. C., 380.

Circuit Courts may grant new trials.

G. S. 2652; R. S. 72.

Sec. 72. All the Circuit Courts of this State shall have power to grant new trials in cases where there has been a trial by jury, for reasons for which new trials have usually been granted in the Courts of law of the United States.

See also Sec. 2734 of Civil Code, and note.

To be liberally construed as to granting new trials.—Elmore v. Scurry, 1 S. C., 139. No time prescribed to move therefor.—Sams v. Hoover, 33 S. C., 401; 12 S. E., 8. Error in amount of verdict should be corrected by new trial.—Wilson v. R. R., 16 S. C., 592; Levi v. Legg, 23 S. C., 282. New trial is the remedy where there is variance between the testimony and material allegation of the indictment.—State v. Hamilton, 17 S. C., 462. New trial should be granted when the jury disregard the Judge's charge.—Dent v. Bryce, 16 S. C., 14; Thompson v. Lee, 19 S. C., 489. Judge's conclusion as to new trial, when founded on the facts at trial, is final.—Brickman v. R. R., 8 S. C., 173; Steele v. R. R., 11 S. C., 589; Warren v. Lagrone, 12 S. C., 45; Steele v. R. R., 14 S. C., 324; Wood v. R. R., 19 S. C., 579; Lanier v. Tolleson, 20 S. C., 57; Blakely v. Frazier, 20 S. C., 144; Finch v. Finch, 21 S. C., 342; Hyrne v. Erwin, 23 S. C., 226; State v. Tarrant, 24 S. C., 593. But not when founded on error of law.—State v. David, 14 S. C., 428; Wood v. R. R., 19 S. C., 579. Judge has discretionary power to grant new trial on after-discovered testimony.—State v. David, 14 S. C., 428; Tarrant v. Gilletson, 14 S. C., 620; State v. Workman, 15 S. C., 540; Durant v. Philpot, 16 S. C., 116; Waring v. R. R., 16 S. C., 416; Sams v Hoover, 33 S. C., 401; 12 S. E., 8. Circuit Court has no power to grant new trials, except in cases tried by a jury.—Meetze v. R. R., 23 S. C., 1. Judge cannot grant at chambers.—State v. Chavis, 34 S. C., 132; 13 S. E., 317.

In absence of facts showing prejudice to appellant, judgment will not be re-

versed because Judge permitted a letter to be handed a juror without examining it or asking consent of counsel.—State v. Wine, 58 S. C., 94; 36 S. E., 439.

Appeal to stay execution of sentence.

1884, XVIII., 737; R. S. 73.

Sec. 73. In criminal cases, service of notice of appeal in accordance with law, shall operate as a stay of the execution of the sentence, until the appeal is finally disposed of.

Defendant may be bailed, except in capital cases.

Pending such appeal the defendant shall still remain in confinement, unless he give bail in such sum and with such sureties as to the Court shall seem proper: *Provided, however,* Bail shall not be allowed in case the defendant has been convicted of a capital crime.

An appeal is finally disposed of when declared abandoned by competent authority.—State v. Johnson, 52 S. C., 507; 30 S. E., 592. The jurisdiction of the Supreme Court to the exclusion of that of the Circuit Court does not attach until the "return" is filed, and the appeal may be declared abandoned by the Circuit Court where the return has not been filed and the appeal perfected in the time prescribed by Sec. 345 of the Code of Civil Procedure.—*Ib.*

Judges shall not grant bail in certain cases

1887, XIX., 786; R. S. 75.

Sec. 74. It shall not be lawful for any Justice of the Supreme Court, or any Circuit Judge of this State, pending an appeal to the Supreme Court, to grant bail to any person who shall have been convicted of any offense the punishment whereof is death, or imprisonment for life, or imprisonment for any term exceeding ten years.

This Section does not limit the power of the Supreme Court.—State v. Farris, 51 S. C., 176, 540; 28 S. E., 308, 370.

Practice and proceedings on appeal.

R. S. 74; 1884, XVIII., 737.

Sec. 75. The practice and proceedings in cases of appeal from the Courts of General Sessions shall conform to the practice and proceedings in cases of appeal from the Courts of Common Pleas.

An appeal from an interlocutory order, in a criminal case, before final judgment, is premature.—State v. Hughes, 56 S. C.; 35 S. E., 214.

CHAPTER VII.

Of Judgment and Execution.

SEC.
76. Punishment for felony where not specially provided.
77. Punishment in cases where imprisonment is provided.
78. Sentence where no punishment is provided.
79. Prisoners to pay their own costs, if able, &c.
80. Courts may order Sheriffs to sell goods of prisoner to pay costs.
81. Appraisement of such goods; how made.
82. Sale of goods, &c., by prisoner void.

SEC.
83. Prisoner acquitted freed from costs.
84. Recognizances to be in the name of the State.
85. Proceedings in cases of forfeiture of recognizance.
86. Execution to issue for sale of estate of offender, &c.
87. If amount not made, offender may be committed to jail, &c.
88. Court may remit forfeiture in certain cases.

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An erroneous sentence only affects the sentence, and will be reversed without granting a new trial.—State v. Trezevant, 20 S. C., 364; State v. Jeffcoat, 20 S. C., 283; State v. Baker, 58 S. C., 111; 36 S. E., 501.

Where an act violated has been repealed before sentence, none can be imposed on a convict.—State v. Mansel, 52 S. C., 468; 30 S. E., 481. See also State v. Cole, 2 McC., 1.

Punishment for felony when not specially provided for.

G. S. 2614; R. S. 76; 1865, XIII., 406, § 9; 1869, XIV, 175, § 4.

Section 76. Where no special punishment is provided for a felony, it shall, at the discretion of the Court, be by one or more of the following modes, to wit: confinement in the Penitentiary, or in a work-house or penal farm (when such institutions shall exist), for a period not less than three months nor more than ten years, with such imposition of hard labor and solitary confinement as may be directed.

A Judge cannot pass an alternative sentence of so many years, and then of so many more, or banishment from the State.—State v. Baker, 58 S. C., 111; 36 S. E., 501.

Punishment in cases where imprisonment is provided.

G. S. 2615; R. S. 77; 1878, XVI., 453; 1893, XXI., 481, §23; 1896, XXII., 244, 1897, XXII., 490; 1890, XXIII., 13.

Sec. 77. In every case in which imprisonment is provided as the punishment, in whole or in part, for any crime, such imprisonment shall be either in the Penitentiary with or without hard labor, or in the County jail with or without hard labor, at the discretion of the Circuit Judge pronouncing the sentence: *Provided,* That all able bodied male convicts, whose sentences shall not be for a longer period than five years, shall be sentenced to hard labor upon the public works of the County in which such convict shall have been convicted, and in the alternative to imprisonment in the County Jail or State Penitentiary at hard labor.

Violations of law in selling liquor without license being then punishable by fine or imprisonment, such imprisonment was properly made in the penitentiary with hard labor.—State v. Boyd, 35 S. C., 269; 14 S. E., 620.

Person convicted of assault and battery with intent to kill may be sentenced to imprisonment at hard labor in the penitentiary.—State v. Welsch, 29 S. C., 4; 6 S. E., 894.

Sentence where no punishment is provided.

G. S. 2653; R. S. 78; (See 1866, XIII., 406. §§ 9, 10.)

Sec. 78. In cases of legal conviction, where no punishment is provided by statute, the Court shall award such sentence as is conformable to the common usage and practice in this State, according to the nature of the offense, and not repugnant to the Constitution.

Prisoners to pay their own costs if able, etc.

G. S. 2654; R. S. 79; 1744, III., 638, §1.

Sec. 79. Every person who shall be committed to any common jail in this State, by any Magistrate for any offense or misdemeanor, having means or ability to do the same, shall bear his own reasonable charges for conveying or sending him to the said jail, and the charges also of such as shall be appointed to, and shall guard him to the said jail.

Sec. 80. The Court of General Sessions before whom any criminal shall be tried, shall, upon conviction of the offender, by order, authorize and direct the Sheriff or any

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Constable or Constables of the County where such person shall be dwelling or inhabit, and from whence he shall be committed as aforesaid, or where he shall have any goods within the County, to sell so much of the goods and chattels of the person so to be committed as shall satisfy and pay the charges of conveying and sending him to the said jail as aforesaid.

Court may order Sheriff, &c., to sell prisoner's goods to pay costs, &c.

G. S. 2655; R. S. 80; *Ib.*

Sec. 81. The appraisement of the goods and chattels of such person so convicted shall be made by three freeholders, inhabitants of the said County where such goods or chattels shall be (the said freeholders being first sworn to make a just and true appraisement of the same); and the Constable shall return the sum so by him levied to the County Treasurer, and the overplus of the money which shall be made on such levy shall be delivered to the party.

Appraisement of such goods, how made, &c.

G. S. 2656; R. S. 81; *Ib.*

Sec. 82. Any sale of the goods and chattels made by the person committed, as provided by Section 79 of this Chapter, between the time of the commitment and the time of conviction, in order to avoid the payment of the aforesaid charges, is hereby declared to be null and void.

Sales of goods, &c., by prisoner, void.

G. S. 2657; R. S. 82; *Ib.*

Sec. 83. When a prisoner shall be discharged, by reason of the non-attendance of the prosecutor, or on account of a bill presented against him being rejected by the grand jury, or by reason of an acquittal by the petit jury, such prisoner shall not be bound or liable to pay any charges which may have been incurred in his apprehension, detention, or prosecution.

Prisoner acquitted, freed from costs.

G. S. 2658; R. S. 83; 1791, VII., 265, § 16.

Sec. 84. In all recognizances by any person for keeping the peace, or good behavior, or for appearing as a party, surety or witness at any Court of criminal jurisdiction within the State, the sum or sums of money in which any such person shall be bound shall be made payable to the State; and every such recognizance shall be good and effectual in law, provided it be signed by every party thereto in the presence of a Judge, Clerk of a Court of Common Pleas, Magistrate or Notary Public, who shall sign the same as a witness.

Recognizances to be in name of the State.

G. S. 2659; R. S. 84; 1787, V., 13, § 1; 1883, XVIII., 450.

Authorizes Clerk to take recognizance under order of the Judge.—State v. Satterwhite, 20 S. C., 540.

Seal not necessary.—State v. Foot, 2 Mill, 123.

Principal's duty to surety.—Reynolds v. Harral, 2 Strob., 87.

Obligation of surety is that principal shall appear and abide judgment.—*Ib.*

In felonies the personal appearance is necessary.—State v. Rowe, 8 Rich., 17.

Not invalid for mere irregularity.—*Ib.*

It cannot be executed by attorney.—State v. Ahrens, 12 Rich., 493.

Sec. 85. Whenever such recognizance shall become forfeited by non-compliance with the condition thereof, the Attorney General, or Solicitor, or other person acting

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Proceedings in case of forfeiture of recognizance.

G. S. 2660; R. S. 85; 1787, V., 13, § 1.

for him, shall, without delay, issue a notice to summon every party bound in such forfeited recognizance to be and appear at the next ensuing Court of Sessions, to show cause, if any he has, why judgment should not be confirmed against him; and if any person so bound fail to appear, or appearing, shall not give such reason for not performing the condition of such recognizance as the Court shall deem sufficient, then the judgment on such recognizance shall be confirmed.

Court of General Sessions may estreat by *scire facias.*—State v. Wilder, 13 S. C., 344. Rule to show cause not appealable.—State v. McNinch, 13 S. C., 452.

No lien on land until estreated.—State v. Morgan, 2 Bail., 601.

Objections to validity of, too late after it has been estreated.—Barton v. Keith, 2 Hill, 537.

Objection that paper, on its face, is not a recognizance, can be made *ore tenus.*—State v. Ahrens, 12 S. C., 493.

Invalid if it does not appear to have been taken by one authorized to take recognizance.—*Ib.*

Sureties liable notwithstanding discharge of prisoner by U. S. Judge.—State v. Davis, 12 S. C., 528.

Surety not estopped from disputing validity because another party has made payment thereon.—State v. Bright, 14 S. C., 7.

May be estreated before trial where defendant fails to appear and plead.—State v. Minton, 19 S. C., 282.

The dismission of a prosecution by a prosecuting officer, or the finding of no bill by a grand jury is not the legal termination of the prosecution. It must be terminated by order of Court discharging the defendant.—Whaley v. Lawton, 57 S. C., 256; 35 S. E., 558; Smith v. Shackleford, 1 N. & McC., 36; O'Driscoll v. McBurney, 2 N. & McC., 54; Thomas v. DeGraffenreid, *Ib.*, 143; Teague v. Wilks, 3 McC., 465; Heyward v. Cuthbert, 4 McC., 354; Tisdale v. Kingman, 34 S. C., 326; 13 S. E., 547.

Execution to issue for sale of estate of offender, &c.

G. S. 2661; R. S. 86; *Ib.*

Sec. 86. In every case where any such recognizance shall be adjudged so forfeited, or where any fine shall be imposed by or recovered for the use of the State, in any Court or before a Magistrate, if the party incurring such fine or forfeiture shall fail to pay down the same, with the costs of prosecution, then a writ, in the nature of an execution, shall issue, by virtue of which the Sheriff, or his deputy, shall sell (in the same manner as property is sold under execution in civil cases) so much of such offender's estate, real or personal, as may be necessary to satisfy the fine or forfeiture, and also the costs of prosecution, and also the reasonable charges of taking, keeping, and selling such property, returning the overplus, if any, to the offender, together with a bill of the fine or forfeiture, with costs and charges, if he requires it.

If amount not made, offender may be committed to jail, &c.

G. S. 2662; R. S. 87; *Ib.*

Sec. 87. If the Sheriff, or his deputy, return on oath that such offender refused to pay, or has not any property, or not sufficient whereon to levy, then a writ of *capias ad satisfaciendum* shall issue, whereby he shall be committed to the

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common jail, until the forfeiture, costs, and charges shall be satisfied—entitled, however, to the privilege of insolvent debtors.

Hursts v. Samuels, 29 S. C., 476; 7 S. E., 822.

Court may remit forfeiture in certain cases.

G. S. 2663; R. S. 89; *Ib.*, 14, § 2.

Sec. 88. If any person shall forfeit a recognizance from ignorance or unavoidable impediment, and not from wilful default, the Court of Sessions may, on affidavit stating the excuse or cause thereof, remit the whole or any part of the forfeiture, as may be deemed reasonable.

CHAPTER VIII.*

Of the Writ of Habeas Corpus.

Sec.
89. Persons entitled to the benefit of this Chapter.
90. Persons indicted for treason or felony shall be indicted the next term or let to bail.
91. If not asked for two terms, &c.
92. Judges to grant writs.
93. Writs to be directed to whom.
94. Service of writ.
95. Prisoners to be brought up on payment of charges, &c.
96. Time within which prisoner must be brought before Court.
97. Proceedings upon hearing of the return.
98. Notice to be given to Attorney General, &c.
99. Granting of writs during sessions of Court.
100. After adjournment.
101. Persons discharged not to be rearrested.
102. Two Magistrates to grant writ.
103. Penalty on officers neglecting their duty.
104. Penalties, how recovered.
105. Persons not removed from one prison to another without cause.
106. Penalty for signing warrants, &c.
107. Appeals allowed.

The protection intended by this Chapter against unlawful confinement goes no farther than the enlargement of the prisoner on bail, if the offense be bailable.—State v. Everett, Dud., 295.

The writ of *habeas corpus* cannot be used as a substitute for a writ of error.—State v. Garlington, 56 S. C., 414; 34 S. E., 689; *ex parte* Bond, 9 S. C., 80; State v. Lunly, 19 S. C., 601; *ex parte* Williams, 32 S. C., 583; 10 S. E., 551.

The prisoner himself can waive his presence at the return of the writ.—State v. Jones, 32 S. C., 583; 10 S. E., 577.

Persons entitled to benefit of this Chapter

G. S. 2322; R. S. 89; 31 Ch. 2, c. 2; I., 118, 123, §§ 3 and 21; 1839, 22, § 6.

Section 89. If any person or persons shall be or stand committed or detained for any crime, unless for felony, (the punishment of which is death,) or treason, plainly expressed in the warrant of commitment, or unless charged as accessory before the fact to treason or felony, (the punishment of which felony is death,) or with suspicion thereof, or unless charged with suspicion of treason or felony, (which felony is punishable with death,) which shall be plainly expressed in the warrant of commitment, they shall be entitled to the writ of *habeas corpus*.

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Persons committed for treason or felony shall be indicted the next term or let to bail, &c.

G. S. 2323; R. S. 90; I., 119, § 7.

Sec. 90. If any person committed for treason or felony, plainly and specially expressed in the warrant of commitment, upon his prayer or petition in open Court, the first week of the term, to be brought to his trial, shall not be indicted some time in the next term after such commitment, it shall and may be lawful to and for the Judge of the Circuit Court, and he is hereby required, upon motion made in open Court the last day of the term, either by the prisoner or any one in his behalf, to set at liberty the prisoner upon bail, unless it appear to him, upon oath made, that the witnesses for the State could not be produced the same term; and if any person committed as aforesaid, upon his prayer or petition in open Court, the first week of the term, to be brought to his trial, shall not be indicted and tried the second term after his commitment, or upon his trial shall be acquitted, he shall be discharged from his imprisonment.

Bail refused while defendant is confined under sentence on plea of guilty of assault and battery.—State v. Jones, 36 S. C., 607; 15 S. E., 544.

Form of order for bail under writ of *habeas corpus.*—*In re* Draher, 16 S. E., 840; 38 S. C., 551.

Prisoner not entitled to be set at liberty on bail when true bill was found against him for murder at the term during which he surrendered and demanded trial.—State v. Holmes, 3 Strob., 272.

Prisoner committed for felony and demanding in open Court, during the first week of the term next succeeding his commitment, that he be brought to trial, has the right to bail if not then indicted.—State v. Williams, 35 S. C., 160; 14 S. E., 309. Such prisoner must be discharged hereunder, if not indicted and tried within two terms after his commitment.—State v. Fasket, 5 Rich., 256; State v. Williams, 35 S. C., 160; 14 S. E., 309. But he is not entitled to such bail, nor such discharge, unless it appear that he is in custody.—State v. Williams, 35 S. C., 160; 14 S. E., 309. And a person accused of forgery, and admitted to bail, is not entitled to his discharge from the prosecution at the second term.—State v. Buyck, 2 Bay, 563. See also Logan Ads. State, 3 Brev., 415; 2 Tr. Const., 493. One discharged under *habeas corpus* act is not thereby protected from further prosecution on same charge.—State v. Fley, 2 Brev., 338. One tried at the first term for horse stealing and mistrial had, was not entitled to discharge upon continuance by State at second term.—State v. Spergin, 1 McC., 563.

The jurisdiction of the Court over a person charged with violation of the law of this State is not affected by his being wrongfully brought into the State.—State v. Smith, 1 Bail., 283; 19 Am. Dec., 679.

Transfer of cases to United States Court.—State v. Smalls, 11 S. C., 262; State v. Davis, 12 S. C., 528. Where day for execution of sentence has elapsed, prisoner is not entitled to discharge.—*Ex parte* Nixon, 2 S. C., 4.

If not asked for two terms, &c.

G. S. 2324; R. S. 91; *Ib.*, § 4.

Sec. 91. If any person shall have wilfully neglected, by the space of two whole terms after his imprisonment, to pray a *habeas corpus* for his enlargement, such person, so wilfully neglecting, shall not have any *habeas corpus* to be granted in vacation time, in pursuance of this Chapter.

Judges to grant writs, &c.

G. S. 2325; R. S. 92; *Ib.*, 118, § 3.

Sec. 92. Any of the Judges of this State, in vacation time and out of term, upon view of the copy or copies of the warrant or warrants of commitment and detainer, or otherwise, upon

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oath made that such copy or copies were denied to be given by the person or persons in whose custody the prisoner or prisoners is or are detained, are hereby authorized and required, upon request, made in writing, by such person or persons as are committed as aforesaid, or any on his, her, or their behalf, attested and subscribed by two witnesses who were present at the delivery of the same, to award and grant a writ of *habeas corpus,* under the seal of such Court, whereof he shall be one of the Judges.

Circuit Judge cannot hear application for writ outside of Circuit.—*Ex parte* Parker, 6 S. C., 472.

Writ to be directed to whom

G. S. 2326; R. S. 93; *Ib.*

Sec. 93. Such writ shall be directed to the officer or officers in whose custody the party so committed or detained shall be, and shall be returned immediately, before the Judge issuing the same.

Service of writ.

G. S. 2327; R. S. 94; *Ib.*, 117, § 2.

Sec. 94. The said writ shall be served upon the said officer, or left at the jail or prison with any of the under-officers, under-keepers, or deputy of the said officers or keepers.

Prisoners to be brought upon payment of charges, &c.; proviso.

G. S. 2328; R. S. 95; *Ib*, 1870, XIV., 400, § 8.

Sec. 95. The said officer or officers, his or their under-officers, under-keepers, or deputies, shall, within three days after the service thereof, upon payment or tender of charges of bringing the said prisoner, (to be ascertained by the Judge or Court that awarded the same, and endorsed upon the said writ,) not exceeding ten cents per mile, and upon security given by his own bond to pay the charges of carrying back the prisoner, if he shall be remanded by the Court or Judge to which he shall be brought, and that he will not make any escape by the way, make return of such writ, and bring, or cause to be brought, the body of the party so committed or restrained, unto or before the Judge or Court from whence the said writ shall issue, or unto and before such other person or persons before whom the said writ is made returnable, according to the command thereof, and shall then certify the true cause of his detainer or imprisonment: *Provided, however,* That if any prisoner be not able to pay the said charges, the same shall be paid by the County wherein he is confined: *Provided, further,* That if such prisoner shall be acquitted of the charge against him, or finally discharged on *habeas corpus* by the Judge or Court hearing the same, the expenses of the proceedings in *habeas corpus* shall be paid by the County in which the case is situated.

Sec. 96. If the place of imprisonment of the said party be beyond the distance of twenty miles from the place where such

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Time within which prisoners must be brought before Court.

G. S. 2329; R. S. 96; I., 117, § 2.

Court is held, and not above one hundred miles, he shall be brought before the Court, or the person or persons before whom the writ is returnable, within the space of ten days, and if beyond the distance of one hundred miles, then within the space of twenty days after the delivery of such writ, and not longer.

Proceedings upon hearing of the return.

G. S. 2330; R. S. 97; *Ib.*, 118, § 3.

Sec. 97. If, upon a hearing, the party shall be entitled to his discharge, then the Judge before whom he is brought shall, within two days after the party shall be brought before him, discharge the said prisoner from his imprisonment, taking his recognizance, with one or more surety or sureties, in any sum according to his discretion, having regard to the nature of the offense, for his appearance in the Court of General Sessions, the term following, for such County where the offense was committed, or in the Court of such other County where the said offense is properly cognizable, as the case shall require, and then shall certify the said writ, with the return thereof, and the said recognizance or recognizances, into the said Court where such appearance is to be made; but if no legal cause be shown for the imprisonment or restraint, the prisoner shall be discharged therefrom.

Under this Chapter the Judge can neither let to bail nor discharge a prisoner committed for an offense not bailable.—*State* v. *Everett,* Dud., 295. The Judge can only discharge on bail, not absolutely.—*State* v. *Jones,* 32 S. C. 583; 10 S. E., 577. But independently of this Chapter the Judge may, at chambers, let to bail for any offense whatever, and in making up his judgment may look beyond the commitment.—*State* v. *Hill,* 3 Brev., 89; *State* v. *Everett,* Dud., 295; *State* v. *Arthur,* 1 McM., 456. But party convicted of infamous crime cannot be bailed.—*State* v. *Connor,* 2 Bay, 34. As to discretionary power to bail.—*State* v. *Hill,* 1 Tr. Con. Rep., 242; *State* v. *Golden,* 2 McC., 524.

Notice to be given to Attorney General, &c.

G. S. 2331; R. S. 98.

Sec. 98. When it appears, from the return of the writ or otherwise, that the party is imprisoned on a criminal accusation, he shall not be discharged until sufficient notice has been given to the Attorney General, or Circuit Solicitor, or other attorney acting for the State, that he may appear and object to such discharge, if he thinks fit.

Granting of writ during session of the Court.

G. S. 2332; R. S. 99; *Ib.*, 122, § 18.

Sec. 99. During the term of the Circuit Court for that County where any prisoner is detained, no person shall be removed from the common jail upon any writ of *habeas corpus* granted in pursuance of this Chapter, but, upon any such writ, shall be brought before the Circuit Judge, in open Court, who is thereupon to do what to justice shall appertain.

After adjournment.

G. S. 2333; R. S. 100; I., 122, § 19.

Sec. 100. After the Circuit Court adjourns, any person or persons detained may have a writ of *habeas corpus,* according to the direction and intention of this Chapter.

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Sec. 101. No person who shall be delivered or set at large upon any writ of *habeas corpus* shall, at any time, be again imprisoned or committed for the same offense by any person or persons whatsover, other than by the legal order and process of such Court wherein he shall be bound by recognizance to appear, or other Court having jurisdiction of the cause; and if any other person or persons shall knowingly, contrary to this Chapter, re-commit or imprison, or knowingly procure or cause to be re-committed or imprisoned for the same offense, or pretended offense, any person delivered or set at large, as aforesaid, or be knowingly aiding or assisting therein, then he or they shall forfeit to the prisoner or party grieved the sum of two thousand five hundred dollars, any colorable pretence or variation in the warrant or warrants of commitment notwithstanding, to be recovered as aforesaid.

Persons discharged not to be re-arrested, &c.

G. S. 2334; R. S. 101; *Ib.*, 119, § 6.

Sec. 102. Any two Magistrates are authorized and required to grant the writ of *habeas corpus* as fully, effectually and lawfully as may any Judge of the Court of Common Pleas and General Sessions or Justice of the Supreme Court of this State, except in cases of felony, the punishment for which is death or imprisonment for life, in which cases Magistrates shall have no jurisdiction in applications of *habeas corpus*.

Two Magistrates to grant writs of *habeas corpus*.

G. S. 2335; R. S. 102; 1712, II, 400, § 1; 1839, XI., 23, § 9.

Two Magistrates cannot admit a person to bail who is charged with murder in the warrant.—State v. Arthur, 1 McM., 456.

May do so on charge of passing counterfeit money.—Bàrton v. Keith, 2 Hill, 537.

Two Magistrates may discharge absolutely hereunder.—State v. Jones, 32 S. C., 583; 10 S. E., 577.

If one of the two Magistrates refuse to sign the writ, he is liable.—Ashe v. O'Driscoll, 2 Tr. Con. Rep., 698.

An appeal from an order made by two Magistrates in *habeas corpus* proceedings must be to the Circuit Court and not directly to the Supreme Court.—State v. Duncan, 22 S. C., 89.

Sec. 103. Every person whatsoever to whom any power is given, either judicial or ministerial, by this Chapter, and which, by virtue hereof, he is required and commanded to do, who shall wilfully neglect, refuse, or omit to do the same, when the same shall be legally requested and demanded, according to the directions herein, and when the person or persons so requesting and demanding the same are legally entitled to request or demand by the provisions of this Chapter, then and in such case such person, whether Magistrate or officer, wilfully so refusing, neglecting, or omitting what this Chapter requires and commands, for each such wilful neglect, refusal, or omission, shall forfeit the sum of five hundred (500) dol-

Penalty on officers neglecting their duty.

G. S. 2336; R. S. 103; *Ib.*, I., 119, § 5; 1712, II., 400, § 3.

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lars, and shall be thereafter incapable of holding or executing his office.

Penalties, how recovered.

G. S. 2337; R. S. 104; I., 119, § 5.

Sec. 104. The said penalties may be recovered by the prisoner or party grieved, his executors and administrators, against such offender, his executors or administrators, by action in any Court of competent jurisdiction, wherein no protection, privilege, injunction, or stay of prosecution, shall be admitted or allowed.

Persons not removed from one prison to another without cause.

G. S. 2338; R. S. 105; I., 120, § 9.

Sec. 105. If any person or persons, citizens of this State, shall be committed to any prison, or in custody of any officer or officers whatsoever, for any criminal or supposed criminal matter, the said person shall not be removed from the said prison and custody, into the custody of any other officer or officers, unless it be by *habeas corpus* or some other legal writ, or where the prisoner is delivered to the Constable or other inferior officer, to carry such prisoner to some common jail, or where any person is sent, according to law, to any common work house of correction, or where the prisoner is removed from one place or prison to another within the said County, in order to his or her trial or discharge in due course of law, or in case of sudden fire or infection, or other necessity, or when brought into Court as a witness in some matter or cause as provided by law.

Penalty for signing warrants, &c.

G. S. 2339; R. S. 106; *Ib.*

Sec. 106. If any person or persons shall, after such commitment aforesaid, make out and sign or countersign any warrant or warrants for such removal aforesaid, contrary to this Chapter, as well he that makes or signs or countersigns such warrant or warrants, as the officer or officers that obey or execute the same, shall suffer and incur the pains and forfeitures mentioned in Sections 101 and 103 of this Chapter.

Appeals allowed.

G. S. 2430, R. S. 107.

Sec. 107. An appeal from all final decisions rendered on applications for writs of *habeas corpus* shall be allowed as is provided by law in civil actions.

TITLE II.

CRIMES AND MISDEMEANORS.

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CHAPTER XXV. *Gambling.*
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CHAPTER XXX. *Cruelty to Animals.*
CHAPTER XXXI. *Felonies, Accessories, Aiders and Abettors.*

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CHAPTER IX.

Offenses Against the Person.

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111. Death from obstructing railroad.
112. Killing by poison.
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117. Injuries beyond limits and death within limits of the State.
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140. Punishment for the use of certain means by women.
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142. Officer permitting prisoner to be lynched.

FELONIES CAPITAL.

Murder.

Murder defined.

G. S. 2453; R. S. 108; 1712, II, 418.

Section 108. Murder is the killing of any person with malice aforethought, either express or implied.

This Section does not make murder a statutory offense; it is still a common law crime.—State v. Coleman, 8 S. C., 237.

Distinction between murder and manslaughter.—State v. Ferguson, 2 Hill, 619.

Upon trial for the greater offense defendant may be found guilty of the less.—State v. Gaffney, Rice, 431.

PRINCIPALS—

All present aiding and abetting are.—State v. Fley, 2 Brev., 338; State v. Crank, 2 Bail., 66: State v. Anthony, 1 McC., 285; State v. Arden, 1 Bay., 487; State v. Cannon, 49 S. C., 550; 27 S. E., 526; State v. Carson, 36 S. C., 524; 15 S. E., 588.

Murder may be committed as the result of some illegal act; a formed design to take life is not necessary.—State v. Alexander, 30 S. C., 74; 8 S. E., 840.

State v. Merriman, 34 S. C., 16; 12 S. E., 619.

In attempting to commit felonious homicide, the killing of another is murder.—State v. Levelle, 34 S. C., 120; 13 S. E., 319.

Malice is a term of art importing wickedness and excluding a just cause or excuse.—State v. Doig, 2 Rich., 179.

State v. Levelle, 34 S. C., 120; 13 S. E., 319.

The fact that the killing was by a crowd engaged in a riot does not affect the degree of the homicide.—State v. Jenkins, 14 Rich., 215.

Mere words can constitute no provocation.—State v. Workman, 39 S. C., 151; 17 S. E., 6.

If the killing is proved and no more, the law implies malice.—State v. Jones, 29 S. C., 201; 7 S. E., 296; State v. Alexander, 30 S. C., 74; 8 S. E., 440; State v. Mason, 54 S. C., 240; 32 S. E., 357; State v. Ariel, 38 S. C., 221; 16 S. E, 799.

But where all the facts are proved the jury must say whether there was malice, and not imply it from the mere fact of killing.—State v. Alexander, 30 S. C., 74; 8 S. E., 440. The State must prove it.—State v. Coleman, 6 S. C., 186; State v. Hopkins, 15 S. C., 157; State v. Jones, 29 S. C., 201; 7 S. E., 296.

It may be presumed.—State v. Smith, 2 Strob., 77.

As from use of deadly weapon.—State v. Sisson, 3 Brev., 59; State v. Ferguson, 2 Hill, 619; State v. Smith, 2 Strob., 77; State v. Levelle, 34 S. C., 120; 13 S. E., 319; State v. Jackson, 36 S. C., 487; 15 S. E., 559; State v. Way, 38 S. C., 333; 17 S. E., 39.

Or from circumstances showing a depraved spirit.—State v. Smith, 2 Strob., 77; State v. Ford, 1 Spears, 146.

Killing another, while attempting to commit suicide.—State v. Levelle, 34 S. C., 120; 13 S. E., 319.

Whipping slave of unknown owner to death, after pursuit and capture.—State v. Motley, 7 Rich., 327.

Where the killing was in a quarrel and encounter, if the facts show that it arose out of his misconduct, malice on the part of the defendant might be inferred.—State v. Hammond, 5 Strob., 101.

Killing of another when shooting at one to make his horse throw him presumes malice and is murder.—State v. Smith, 2 Strob., 77.

Where one interferes in an affray to separate the combatants, and gives notice of his intent; and is slain by one of the combatants, it is murder.—State v. Ferguson, 2 Hill, 619.

Wherever there is a previously formed intention to kill, it cannot be excused by a provocation at time of the homicide.—State v. Sullivan, 43 S. C., 206; 21 S. E., 4.

INDICTMENT—

No trial without sufficient and valid indictment; acquittal upon an invalid one no bar to second.—State v. Ray, Rice, 1.

Surplus words may be rejected.—State v. Fley, 2 Brev., 338; State v. Huggins, 12 Rich., 402; State v. Coleman, 8 S. C., 241.

Not vitiated by concluding "against the peace and dignity of the same State aforesaid," instead of "against the peace and dignity of the State," as prescribed by the Constitution.—State v. Robinson, 27 S. C., 615; 4 S. E., 570; State v. Mason, 54 S. C., 240; 32 S. E., 357.

Party entitled to demand and to have copy of, three days before trial.—State v. Winningham, 10 Rich., 257.

Too late to demand copy three days after arraignment and trial had commenced. —State v. Briggs, 27 S. C., 80; 2 S. E., 854.

Must state:

That offense was committed in County where indictment is found.—State v. Fant, 2 Brev., 487; State v. Blakeney, 33 S. C., 111; 11 S. E., 637.

When deceased died with certainty.—State v. Coleman, 8 S. C., 237.

But it is alleged with sufficient certainty, if it appear by reference back to prior allegations.—State v. Coleman, 8 S. C., 237; State v. Stewart, 26, S. C., 125; 1 S. E., 468.

That death ensued in consequence of the act of prisoner.—State v. Wimberly, 3 McC., 190.

What it is necessary to state in indictment for murder committed by a number of persons engaged in a riot.—State v. Jenkins, 14 Rich., 215.

Counts for murder charging A as principal with pistol and B. as accessory, and charging B as principal with knife and A as accessory, properly joined.—State v. Norton, 28 S. C., 572; 6 S. E., 820.

Must state place of death of deceased, and failure to do so cannot be amended. —State v. Blakeney, 33 S. C., 111; 11 S. E., 637.

But sufficiently stated when, after stating time and place of wounding, it charges that defendant did then and there feloniously, etc., kill and murder de-

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ceased.—State v. Huggins, 12 Rich., 402; State v. Blakeney, 33 S. C., 111; 11 S. E., 637.

Good, if sufficiently certain in all respects.—State v. Turnage, 2 N. & McC., 158; State v. Freeman, 1 Speer, 65; State v. Green, 4 Strob., 133; State v. Huggins, 12 Rich., 402.

It need not charge those present aiding and abetting as being there with malice —State v. Rabon, 4 Rich., 260.

What is sufficient description of wound.—State v. Crank, 2 Bail., 60.

In death from whipping.—State v. Chiles, 44 S. C., 338; 22 S. E., 339.

As against principal and accomplice.—State v. Norton, 28 S. C., 572; 6 S. E., 820.

Not necessary that it should state precise day or year of the alleged crime.—State v. Branham, 13 S. C., 380.

Doubted whether Solicitor's signature to it is necessary.—State v. Coleman, 8 S. C., 287.

VENUE—

Prior to Constitution of 1895 motion for change of, could be made before bill found; but it is better that it should be made after issue joined.—State v. Addison, 2 S. C., 356. The Constitution of 1895 so requires.

Notice thereof should be given to the Solicitor.—*Ib.*

The jury may find the venue from the facts in evidence.—State v. Sweat, 16 S. C., 625; State v. Dent, 6 S. C., 383.

DEFENSE—

Self-defense:

Necessity to kill not a defense when defendant brought such necessity upon himself.—State v. Jacobs, 28 S. C., 29; 4 S. E., 799; State v. Murrell, 33 S. C., 83; 11 S. E., 682; State v. Becham, 24 S. C., 283; State v. Pletsch, 43 S. C., 132; 20 S. E., 993; State v. Trammell, 40 S. C., 331; 18 S. E., 940; State v. Summer, 55 S. C., 32; 32 S. E., 771.

It is made out when jury is satisfied that prisoner really believed, as a man of ordinary reason and firmness, that there was necessity to kill to save himself from death or serious bodily harm; it is not necessary to show that there was no other means of escape.—State v. McGreer, 13 S. C., 464; State v. Turner, 29 S. C., 44; 6 S. E., 891. State v. Jones, 29 S. C., 201; 4 S. E., 799. State v. Jackson, 32 S. C., 27; 10 S. E., 769. State v. Wyse, 33 S. C., 582; 12 S. E., 556. State v. Bodie, 33 S. C., 117; 11 S. E., 624. State v. Littlejohn, 33 S. C., 599; 11 S. E., 638. State v. Merriman, 34 S. C., 16; 12 S. E., 619. State v. Symmes, 40 S. C., 383; 19 S. E., 16. State v. McIntosh, 40 S. C., 349; 18 S. E., 1033. State v. Sullivan, 42 S. C., 205; 21 S. E., 4. State v. Ariel, 38 S. C., 221; 16 S. E., 799. State v. Corley, 43 S. C., 128; 20 S. E., 989.

This may be shown by preponderance of testimony.—State v. Merriman, 34 S. C., 16; 12 S. E., 619. State v. Brown, 34 S. C., 41; 12 S. E., 662. State v. Summers, 36 S. C., 479; 15 S. E., 369.

But a witness testifying as to all the circumstances cannot give his opinion as to whether the prisoner's life was in danger from the deceased.—State v. Summers, 36 S. C., 479; 15 S. E., 369.

But the bare fact that deceased was presenting a gun at defendant when he shot does not necessarily make the killing self-defense.—State v. Bodie, 33 S. C., 117; 11 S. E., 624.

Where deceased had some days before fired at prisoner and then threatened his life, it was not self-defense to kill unless deceased showed an intention to take his life.—State v. Jackson, 32 S. C., 27; 10 S. E., 769.

Seeking or inciting provocation.—State v. Nance, 25 S. C., 168; State v. Richardson, 47, S. C., 18; 24 S. E., 1028.

Necessity of withdrawal.—State v. Jacobs, 28 S. C., 29; 4 S. E., 799.

Defense of habitation.—State v. McIntosh, 40 S. C., 349; 18 S. E., 1033. State v. Cannon, 52 S. C., 453; 30 S. E., 589.

Resisting unlawful arrest.—State v. Davis, 53 S. C., 151; 31 S. E., 62.

Provocation is not an element in self-defense.—State v. Byrd, 52 S. C., 484; 30 S. E., 482.

Insanity:

Moral insanity or acting under mere uncontrollable impulse is no defense.—State v. Alexander, 30 S. C., 74; 8 S. E., 440. State v. Levelle, 34 S. C., 120; 13 S. E., 319.

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To be proved by preponderance of the evidence; not to be disproved beyond a reasonable doubt.—State v. Stark, 1 Strob., 479; State v. Paulk, 18 S. C., 515; State v. Coleman, 20 S. C., 441; State v. Bundy, 24 S. C., 439; State v. Alexander, 30 S. C., 74; 8 S. E., 440.

If there is reasonable doubt as to the capacity to commit the crime, the defendant must be acquitted.—State v. Coleman, 20 S. C., 441; State v. Bundy, 24 S. C., 439.

Voluntary drunkenness, of whatever degree, is no excuse for crime committed under its influence.—State v. Bundy, 24 S. C., 439.

Intoxication no excuse for crime.—State v. Morgan, 40 S. C., 345; 18 S. E., 937; State v. Bundy, 24 S. C., 439: State v. Paulk, 18 S. C., 515.

It must appear that defendant was unable to recognize that the act was either morally or legally wrong.—State v. McIntosh, 39 S. C., 97; 17 S. E., 446.

Rebutal of presumption as to insanity from committal to asylum.—State v. Davis, 4 S. E., 537.

Alibi:

Not necessary that it should be proved beyond all reasonable doubt; clear preponderance of testimony sufficient.—State v. Jackson, 36 S. C., 487; 15 S. E., 559.

Ignorance of Law:

A disturber of the peace cannot excuse himself from the charge of murder by showing ignorance of the authority, under the law, of the officer whom he killed, knowing him to be an officer.—State v. Williams, 36 S. C., 493; 15 S. E., 554.

Accident:

Exercise of care.—State v. Morgan, 40 S. C., 345; 18 S. E., 937.

Duress:

"A mere threat by another to take one's life, with nothing more, does not amount to a sufficient excuse for such an one to commit homicide."—State v. Howard, 35 S. C., 197; 14 S. E., 481.

ARRAIGNMENT—

Not necessary again after mistrial.—State v. Stewart, 26 S. C., 125; 1 S. E., 468.

CHALLENGES—

A right of challenge is a right to reject, and not to select, a jury—State v. Wise, 7 Rich., 412; State v. Prater, 26 S. C., 198; 2 S. E., 108; State v. Jacobs, 30 S. C., 131; 8 S. E., 698; State v. Jackson, 32 S. C., 27; 10 S. E., 769; State v. Campbell, 35 S. C., 28; 14 S. E., 292.

But it is regarded as a sacred right never to be refused.—State v. Briggs, 27 S. C., 80; 2 S. E., 854.

To one jury not to be refused in part because some of the challenges had been made to another jury exhausted by challenges of several prisoners.—State v. Briggs, 27 S. C., 80; 2 S. E., 854.

Reduction of number of peremptory challenges by statute does not affect Constitutional right of trial by jury.—State v. Wyse, 32 S. C., 45; 10 S. E., 612.

A juror rejected because not indifferent to one of the prisoners is no ground for complaint by the others.—State v. Prater, 26 S. C., 198; 2 S. E., 108.

As to challenge to array.—State v. Merriman, 34 S. C., 16; 12 S. E., 619; State v. Toland, 36 S. C., 515; 15 S. E., 599.

EVIDENCE—

As to motive.—State v. Posey, 4 Strob., 142; State v. Coleman, 20 S. C., 441; State v. Aughtry, 49 S. C., 286; 26 S. E., 619.

Motive need not be proved, intent is sufficient.—State v. Workman, 39 S. C., 151; 17 S. E., 694.

Of express malice makes the killing murder.—State v. Sisson, 3 Brev., 59.

Law presumes malice, but where all the facts come out the State must prove it. —State v. Jones, 29 S. C., 202; 7 S. E., 296.

What declarations of deceased are admissible.—State v. Freeman, 1 Speer, 57.

When defendant proves declaration of deceased looking to suicide, the State can prove reasons assigned by him.—State v. Crank, 2 Bail., 66.

Dying declarations are admissible.—State v. Ferguson, 2 Hill, 619; State v. Quick, 15 Rich., 342; State v. McEvoy, 9 S. C., 208; State v. Nance, 25 S. C., 168.

Those of one of two killed by poison admissible against defendant on trial for murder of the other.—State v. Terrill, 12 Rich., 321.

Declarant must have no hope of life, and the circumstances of the death must be the subject of the declaration.—State v. McEvoy, 9 S. C., 212; State v. Washington, 13 S. C., 458; State v. Gill, 14 S. C., 415; State v. Johnson, 26 S. C., 152; 1 S. E., 510; State v. Belton, 24 S. C., 185; State v. Nance, 25 S. C., 168; State v. Wyse, 32 S. C., 45; 10 S. E., 612; State v. Bradley, 34 S. C., 136; 13 S. E., 315; State v. Head, 60 S. C., 516; 39 S. E., 6; State v. Jaggers, 58 S. C., 41; 36 S. E., 434; State v. Lee, 58 S. C., 335; 36 S. E., 706; State v. Faile, 43 S. C., 52; 20 S. E., 798.

Not inadmissible because under oath.—State v. Talbert, 41 S. C., 526; 19 S. E., 852.

The whole declaration admitted.—State v. Petsch, 43 S. C., 132; 20 S. E., 993.

The fact that physician did not think the declarant would die does not affect the testimony.—State v. Johnson, 20 S. C., 155.

Declaration after wound, but not in face of death, not admissible.—State v. Bodie, 33 S. C., 117; 11 S. E., 624.

Of wife, on trial of husband, for murder.—State v. Belcher, 13 S. C., 459.

Dying declaration cannot be impeached by proving other statements of the deceased made not under oath, nor shadow of impending death.—State v. Taylor, 56 S. C., 372; 34 S. E., 939; State v. Bannister, 35 S. C., 290; 14 S. E., 678; State v. Stuckey, 56 S. C., 576; 35 S. E., 263.

Declaration as part of *res gestae*.—State v. Arnold, 47 S. C., 9; 24 S. E., 926.

As to Character—

Good character may be considered by jury.—State v. Barth, 25 S. C., 175; State v. Brown, 34 S. C., 41; 12 S. E., 662.

Not limited in its effect to doubtful cases.—State v. Barth, 25 S. C., 175.

Of general bad character, not admissible.—State v. Smith, 12 Rich., 430; State v. Turner, 29 S. C., 34; 6 S. E., 891.

Violence of character admissible if probably known to prisoner or there were sufficient reasons to suppose that they were known to him.—State v. Smith, 12 Rich., 430; State v. Turner, 29 S. C., 34; 6 S. E., 891.

Even particular acts of violence known to the prisoner and reasonably connected in point of time with the killing may be shown—State v. Smith, 12 Rich., 430.

Reasonable Doubt:

State must prove its case beyond a reasonable doubt.—State v. Senn, 32 S. C., 392; 11 S. E., 292; State v. Bodle, 33 S. C., 117; 11 S. E., 624; State v. Merriman, 34 S. C., 16; 12 S. E., 619.

Defendant entitled to benefit of doubt upon the whole testimony.—State v. Bodie, 33 S. C., 117; 11 S. E., 624.

But it must be a well founded doubt.—State v. Bodie, 33 S. C., 117; 11 S. E., 624.

Special Defense:

Must be proved by preponderance of testimony.—State v. Bodie, 33 S. C., 117; 11 S. E., 624.

Insanity:

Physicians cannot give their opinions as to insanity from the testimony given, but can do so on similar case stated.—State v. Coleman, 20 S. C., 441.

Standard authors on the subject may be read to the jury.—*Ib.*

Judge having fully instructed the jury as to the law of insanity and their duty to acquit the prisoner if insane when he committed the homicide, he did not err in refusing to instruct them that the Court was authorized to send the prisoner to the Asylum if found by them to be *non compos.*—State v. Robinson, 27 S. C., 615; 4 S. E., 570.

Circumstantial Evidence:

Conviction on, is proper. But the circumstances should be proved to entire satisfaction of jury, and when established should point conclusively to the defendant as the guilty party, and must be inconsistent with any other reasonable hypothesis. —State v. Anderson, 20 S. C., 581; State v. Milling, 25 S. C., 16.

Concealment of death of bastard child.—State v. Love, 1 Bay., 167.

Confessions:

Must be voluntary, not induced by fear or hope improperly excited.—State v. Howard, 35 S. C., 197; 14 S. E., 481; State v. Carson, 36 S. C., 524; 15 S. E., 588; State v. Workman, 15 S. C., 540; State v. Moorman, 27 S. C., 22; 2 S. E., 621.

No warning that it would be used against defendant is necessary to render it admissible.—State v. Baker, 58 S. C., 111; 36 S. E., 501.

Corroboration of.—State v. Derrick, 44 S. C., 344; 22 S. E., 337.

Confession of one cannot be used against other defendant.—State v. Anderson, 24 S. C., 109.

Two prisoners being tried for the same murder, their separate written statements so far as charging each the other with the homicide without implicating himself, was improperly received.—State v. Carson, 36 S. C., 524; 15 S. E., 588.

Confessions generally.—State v. Crank, 2 Bail., 66; State v. Kirby, 1 Strob., 155; State v. Clark, 4 Strob., 311; State v. Veigneur, 5 Rich., 391; State v. Motley, 7 Rich., 327; State v. Gossett, 9 Rich., 428; State v. Clayton, 11 Rich., 581; State v. Cook, 15 Rich., 29; State v. Branham, 13 S. C., 369; State v. Dodson, 14 S. C., 628; State v. Workman, 15 S. C., 540; State v. Dodson, 16 S. C., 453.

Confidential Communications:

Where an accomplice testifies as State's witness, his confidential communications made by him to his attorney cannot be disclosed by the attorney as a witness.—State v. James, 34 S. C., 49; 12 S. E., 657.

While husband cannot be compelled to disclose the confidential communications of his wife, yet having voluntarily told part of a communication he must disclose the whole.—State v. Turner, 36 S. C., 534; 15 S. E., 602.

Expert Testimony:

State v. Coleman, 20 S. C., 452; State v. Senn, 32 S. C., 392; 11 S. E., 292; State v. Bradley, 34 S. C., 136; 13 S. E., 315; State v. Milling, 35 S. C., 16; 14 S. E., 284; State v. Foote, 58 S. C., 218; 36 S. E., 551.

Threats:

Threat reasonably connected in point of time with the killing may be received.—State v. Smith, 12 Rich., 430; State v. Jackson, 32 S. C., 27; 10 S. E., 769; State v. Campbell, 35 S. C., 28; 14 S. E., 292.

Uncommunicated threats sometimes competent.—State v. Bodie, 33 S. C., 117; 11 S. E., 624.

One month before killing considered reasonable time.—State v. Campbell, 35 S. C., 29; 14 S. E., 292.

But at the time of the homicide the deceased must have made some demonstration of an intention to execute his threats.—State v. Jackson, 32 S. C., 27; 10 S. E., 769.

Improperly admitted as in reply.—State v. Jaggers, 58 S. C., 41; 36 S. E., 434.

A mere threat no excuse for committing homicide.—State v. Howard, 35 S. C., 197; 14 S. E., 481.

Threats after homicide and bad blood between prisoner and family of deceased may be proved.—State v. Anderson, 26 S. C., 599; 2 S. E., 699.

Prisoner as Witness:

Subject to cross-examination like other witnesses.—State v. Merriman, 34 S. C., 18; 12 S. E., 619; State v. Turner, 36 S. C., 534; 15 S. E., 602.

Effect of good character considered.—State v. Edwards, 13 S. C., 32.

His character may be impeached.—State v. Merriman, 34 S. C., 18; 12 S. E., 619.

His contrary statement to others may be proved.—State v. Merriman, 34 S. C., 18; 12 S. E., 619.

Improper for Solicitor to comment on failure of defendant to testify, but not reviewable; error when Judge corrected the inference suggested.—State v. Howard, 35 S. C., 197; 14 S. E., 481.

Testimony at Coroner's inquest is inadmissible against the witness under a charge afterwards preferred against them of the murder of the deceased person.—State v. Senn, 32 S. C., 392; 11 S. E., 292.

Acts and declarations of conspirators.—State v. James, 34 S. C., 49; 12 S. E., 657.

Where only two of the rioters were indicted, proof that the fatal injury was inflicted by others of the rioters will sustain verdict against the two.—State v. Jenkins, 14 Rich., 215.

Wife of father competent on separate trial to testify against the son indicted with him.—State v. Anthony, 1 McC., 285.

So is wife of one not on trial competent witness against his accomplices.—State v. Drawdy, 14 Rich., 87.

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The *Corpus Delicti* does not embrace the identity of the person charged with agency causing the death.—State v. Taylor, 56 S. C., 376; 34 S. E., 939.

It does embrace the identity of the victim, but this may be shown by circumstantial evidence.—State v. Martin, 47 S. C., 70; 25 S. E., 113.

A conviction may be based on the testimony of an accomplice.—State v. Green. 48 S. C., 136; 26 S. E., 234.

TRIAL—

Judge may permit jury to disperse during trial.—State v. Belcher, 13 S. C., 46.

Conduct of:

Argument of counsel is restricted by general rules under control of the trial Judge, but if improper statements are made by counsel in a law case they can be reviewed in the Supreme Court only by appeal from some ruling of the Judge thereon.—State v. Turner, 36 S. C., 534; 15 S. E., 602.

Postponement:

Irregular to postpone trial to another week before another jury when first jury was exhausted.—State v. Briggs, 27 S. C., 80; 2 S. E., 854.

Charge to Jury:

Judge must not allow his opinion as to the facts of the case, either inadvertently, intentionally or otherwise, to reach the jury.—State v. White, 15 S. C., 381; State v. Jenkins, 21 S. C., 585; State v. Addy, 28 S. C., 4; 4 S. E., 814; State v. Norton, 28 S. C., 572; 6 S. E., 820; State v. James, 31 S. C., 281; 9 S. E., 844; State v. Williams, 31 S. C., 238; 9 S. E., 853; State v. Wyse, 32 S. C., 45; State v. Milling, 35 S. C., 16; 14 S. E., 284.

As to what is a charge upon the facts.—State v. Summers, 19 S. C., 95; State v. Atterberry, 19 S. C., 597; State v. Jenkins, 21 S. C., 596; State v. James, 31 S. C., 218; 9 S. E., 844; State v. Milling, 35 S. C., 16; 14 S. E., 284; State v. Jackson, 36 S. C., 487; 15 S. E., 559; State v. Turner, 36 S. C., 534; 15 S. E., 602.

Generally Erroneous: To exclude from jury all questions of manslaughter.—State v. Kirkland, 14 Rich., 230; State v. Jenkins, 21 S. C., 596; State v. Norton, 28 S. C., 572; 6 S. E., 820; State v. Turner, 29 S. C., 34; 6 S. E., 891; State v. Wyse, 32 S. C., 45; 10 S. E., 612.

But if there be no testimony to raise the question of self-defense or manslaughter the Judge may so charge.—State v. Summers, 19 S. C., 94; State v. Nance, 25 S. C., 168.

But not material when verdict is "guilty of manslaughter."—State v. Jenkins, 21 S. C., 596.

Also erroneous to instruct jury that prisoner was guilty if he knew right from wrong, when insanity was not the only defense.—State v. Leonard, 32 S. C., 201; 10 S. E., 1007.

Also to charge that good character should have great weight.—State v. Brown, 34 S. C., 41; 12 S. E., 622.

An omission to charge any particular proposition of law unless requested is not a reversible error when the principle is otherwise substantially charged.—State v. Anderson, 24 S. C., 113; State v. Prater, 26 S. C., 198; 2 S. E., 108; State v. Turner, 29 S. C., 34; 6. S. E., 891; State v. Murrell, 33 S. C., 83; 11 S. E., 682; State v. Milling, 35 S. C., 16; 14 S. E., 284; State v. Chiles, 58 S. C., 47; 36 S. E., 496; State v. Smith, 57 S. C., 489; 34 S. E., 657; 35 S. E., 727.

Or to instruct the jury in the precise terms in which a request is presented.—State v. Jacobs, 28 S. C., 29; 4 S. E., 799.

No error to tell jury when asked by them that prisoner could be recommended to mercy, or in failing to instruct them that such recommendation could not affect sentence.—State v. Gill, 14 S. C., 415; State v. Murrell, 33 S. C., 83; 11 S. E., 682.

No error to omit to instruct jury that the Court could commit to Asylum after verdict of *non compos mentis*.—State v. Robinson, 27 S. C., 615; 4 S. E., 570.

Nor as to effect of recommendation to mercy where there is no request to do so. —State v. Owens, 44 S. C., 324; 22 S. E., 244.

VERDICT.

May be referred to such of several counts as are supported by the evidence.—State v. Crank, 2 Bail., 66.

Not inconsistent when it finds murder both by drowning and by beating, charged in separate counts.—State v. Posey, 4 Strob., 103.

Some irregularity not sufficient to annul it.—State v. Coleman, 8 S. C., 237.

Verdict against one under indictment against him and another jointly is good.—State v. Bradley, 9 Rich., 169.

Foreman may correct in open Court a mere informality in verdict just rendered.—State v. Anderson, 24 S. C., 114.

Prisoner may waive his right to be present at its rendition.—State v. Haines, 36 S. C., 504; 15 S. E., 555.

New Trial—

Power to grant, on questions of fact, lodged exclusively with the Circuit Judge.—State v. Nance, 25 S. C., 168; State v. Haines, 36 S. C., 504; 15 S. E., 555.

Granted:

For charge of Judge upon the facts.—State v. Norton, 28 S. C., 572; 6 S. E., 820.

Upon sufficient demand of copy of indictment not being complied with.—State v. Winningham, 10 Rich., 257.

Upon refusal to allow prisoner to cross-examine a witness before he leaves the stand.—State v. McNinch, 12 S. C., 89.

Upon newly-discovered testimony.—State v. David, 14 S. C., 432; State v. Nance, 25 S. C., 168.

Supreme Court will not grant, where no errors of law are alleged.—State v. Clark, 15 S. C., 407; State v. Nance, 25 S. C., 168.

Not granted on part of State.—State v. Reilly, 2 Brev., 444; State v. Wright, 3 Brev., 421.

Nor where there appears no reason to question sanity after fair trial.—State v. Stork, 1 Strob., 479.

Refused where jury might well have convicted upon the evidence.—State v. McLendon, 5 Strob., 85; State v. Prater, 26 S. C., 198; 2 S. E., 108.

And where Judge's charge was humane.—State v. Hammond, 5 Strob., 91.

And where guilt is clear, though no motive for the murder appears.—State v. Whitman, 14 Rich., 113.

No necessity for presence of prisoner at hearing of motion for new trial, unless he claims Constitutional right of being heard in person.—State v. Jeffcoat, 20 S. C., 386.

Sentence—

Failure to ask prisoner "if he has anything to say why judgment should not be pronounced on him" is error, and he must be resentenced.—State v. Trezevant, 20 S. C., 363; State v. Jeffcoat, 20 S. C., 383.

Appeal stays sentence.—State v. Prater, 27 S. C., 599; 4 S. E., 562.

Appeal does not operate as supersedeas of; only stays its execution.—State v. Prater, 27 S. C., 599; 4 S. E., 562.

Arrested when conviction of murder is by a jury illegally drawn.—State v. Pratt, 15 Rich., 47; State v. Jennings, 15 Rich., 42.

But the objections to such irregularity must be made before verdict.—State v. Coleman, 8 S. C., 241.

But not because the indictment concludes against the statute.—State v. Coleman, 8 S. C., 237.

Nor when it fails to allege the time of the offense when there is enough in it to notify when the offense was committed.—*Ib.*

Where Supreme Court on motion in arrest of judgment orders a new trial, the second trial is on the same indictment.—State v. Stephens, 13 S. C., 287.

Second Trial—

Defendant properly put on second trial when former conviction was simply reversed by the Supreme Court.—State v. Stephens, 13 S. C., 285; State v. Wyse, 33 S. C., 582; 12 S. E., 556.

Constitution of 1868 exempted from second trial only where there had been an acquittal.—State v. Shirer, 20 S. C., 404; State v. Jenkins, 20 S. C., 353; State v. Briggs, 27 S. C., 80; 2 S. E., 854; State v. Wyse, 33 S. C., 582; 12 S. E., 556; otherwise under Constitution of 1895.

Jeopardy of life defined.—State v. McKee, 1 Bail., 651.

No discharge for, because one panel of jurors was exhausted and trial adjourned over until next week.—State v. Briggs, 27 S. C., 80; 2 S. E., 854.

Assault and battery with intent to kill is a misdemeanor.—State v. Welsh, 29 S. C., 4; 6 S. E., 894.

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Embraces all the elements of murder except the death.—State v. White, 21 S. C., 597.

By attempt to poison.—State v. Glover, 27 S. C., 602; 4 S. E., 564.

Necessity of act, as a defense.—State v. McGreer, 13 S. C., 464; State v. Littlejohn, 33 S. C., 599; 11 S. E., 638.

Charge containing declaration of law as to how far the law permits a husband to go in punishing a man committing adultery with his wife.—State v. Chiles, 58 S. C., 47; 36 S. E., 496.

Where the testimony for the State was such that the defendant relied upon it to show an alibi, and offered no testimony, it was error for the Judge to charge that the burden of proving the alibi was upon defendant.—State v. Atkins, 49 S. C., 481; 27 S. E., 484.

On indictment for assault and battery with intent to kill defendant may be convicted of an assault of a high and aggravated nature.—State v. Robinson, 31 S. C., 453; 10 S. E., 101; State v. Lightsey, 43 S. C., 113; 20 S. E., 975.

What constitutes an assault.—*Ib.*

Punishment for murder.

Proviso.

G. S. 2454; R. S. 109; 1868, XIV, 175, 1894, XXI., 785.

Sec. 109. Whoever is guilty of murder shall suffer the punishment of death: *Provided, however,* That in each case where the prisoner is found guilty of murder, the jury may find a special verdict recommending him or her to the mercy of the Court, whereupon the punishment shall be reduced to imprisonment in the Penitentiary with hard labor during the whole lifetime of the prisoner.

Killing by stabbing, &c.

G. S. 2455; R. S. 110; 1712, II, 507, § 2.

Sec. 110. Whoever shall stab or thrust any person or persons that has not then any weapon drawn, or that has not then first stricken the party which shall so stab or thrust, so as the person or persons so stabbed or thrust shall thereof die within the space of six months then next following, although it cannot be proved that the same was done of malice aforethought, yet the party so offending, and being thereof convicted, shall suffer death as in the case of wilful murder: *Provided,* That nothing herein contained shall extend to any person who shall kill any person or persons in self-defense, or by misfortune, or in any other manner than as aforesaid; nor to any person who, in keeping and preserving the peace, shall chance to commit manslaughter, so as the said manslaughter be not committed wittingly, willingly, and of purpose, under pretext and color of keeping the peace; nor shall extend to any person who, in chastising or correcting his child, shall, besides his or their intent and purpose, chance to commit manslaughter.

Death from obstructing railroad.

G. S. 2456; R. S. 111; 1879, XVII., 101.

Sec. 111. Where the death of any human being results from any obstruction placed upon a railroad, as described in Section 124 of this Chapter, the person placing or causing to be placed such obstruction or impediment on said railroad shall be adjudged guilty of murder, and shall suffer death.

Killing by Poison.

Sec. 112. All wilful killing by poisoning of any person shall be adjudged, taken, and deemed wilful murder, of malice *prepense;* and the offender therein, his aiders, abettors, procurers, and counsellors, shall suffer death, as in other cases of wilful murder.

Killing by poison.

G. S. 2457; R. S. 112; 1712, II., 479.

Killing in a Duel.

Sec. 113. In case any person shall kill another in any duel with a deadly weapon, or shall inflict a wound or wounds upon any person in any duel, so as the person so wounded shall thereof die within the space of six months then next following, such person so killing another, or so wounding any person whereby such person so wounded shall die as aforesaid, being thereof convicted, shall suffer death, as in the case of wilful murder.

Killing in a duel.

G. S. 2458; R. S. 113; 1880, XVII., 501.

Rape.

Sec. 114. Whosoever shall ravish a woman, married, maid, or other, where she did not consent, either before or after, and likewise where a man ravisheth a woman with force, although she consent after, he shall be deemed guilty of rape, and shall, upon conviction, suffer death by hanging, in the same form and manner as is now provided by law for wilful murder: *Provided, however,* That in each case where a prisoner is found guilty, the jury may find a special verdict, recommending him to the mercy of the Court, whereupon the punishment shall be reduced to imprisonment in the Penitentiary with hard labor during the whole life-time of the prisoner.

Rape.

G. S. 2459; R. S. 114; 1712, II, 422; 1869, XIV, 175; 1878, XVI, 631, § 1.

This is a different offense from that in Sec. 115; but under an indictment for rape at common law, it is competent to show the age of the victim on the issue of force or consent.—State v. Haddon, 49 S. C., 308; 27 S. E., 194.

And the Constitution, Art. III., Sec. 33, furnishes the rule of evidence as to want of consent where the victim is under the age of fourteen years.

Verdict of guilty of an assault with intent to ravish sustained on an indictment containing counts under both Sections 114 and 115, where no motion was made to elect.—State v. Gilchrist, 54 S. C., 160; 31 S. E., 866.

Deposition of injured party since deceased, made for warrant and in absence of prisoner, not admissible.—State v. Hill, 2 Hill, 607.

If defendant testifies in his own behalf, his general reputation for veracity may be assailed.—State v. Robertson, 26 S. C., 117; 1 S. E., 443.

Admitting connection while denying the rape is not an affirmative defense, but leaves the burden of proof on the State.—State v. Taylor, 57 S. C., 483; 35 S. E., 729.

Testimony as to condition of victim; force used.—State v. Suddath, 52 S. C., 488; 30 S. E., 488.

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Carnal knowledge of woman child under 14 years a felony.

G. S. 2460; R. S. 115; 1712, II, 498, 1896, XXII., 223; Const. Art. 3, § 33.

Sec. 115. If any person shall unlawfully and carnally know and abuse any woman child under the age of fourteen years, every such unlawful and carnal knowledge shall be felony, and the offender thereof being duly convicted shall suffer as for a rape: *Provided, however,* That in any case where the woman or child is over the age of ten years and the prisoner is found guilty the jury may find a special verdict recommending him to the mercy of the Court, whereupon the punishment shall be reduced to imprisonment in the Penitentiary for a term not exceeding fourteen years at the discretion of the Court.

This is a statutory offense, distinct from rape.—State v. Haddon, 49 S. C., 308; 27 S. E., 194; State v. Coleman, 54 S. C., 162; 31 S. E., 866; and a boy between seven and fourteen years of age may be convicted of it, if the physical capacity be shown.—State v. Coleman, Supra.

As to necessity to show the age of the woman child under this statute, see State v. Haddon, Supra.

By the amendment of 1896, a different punishment is prescribed for this offense, where the jury recommends to mercy, from that provided in Sec. 114 for rape.—*Ib.*

Place of Trial where Death results from certain Injuries.

Injury within limits and death beyond limits of this State.

G. S. 2461; R. S. 116; 1859, XII., 822, § 1.

Sec. 116. When any person shall be struck, wounded, poisoned, or otherwise injured or ill-treated, within the limits of this State, and shall die thereof beyond the limits of this State, whether on the high seas or elsewhere, the person so striking, wounding, poisoning, or otherwise causing death as aforesaid, shall be subject to indictment, trial, and punishment in the County in which said stroke, wound, poisoning, or other injury or ill-treatment was committed, in all respects the same as if the death had occurred in the said County.

Injury beyond limits and death within limits of State.

G. S. 2462; R. S. 117; 1859, XII., 822, § 2.

Sec. 117. Where any person within the limits of this State shall inflict an injury on any person, who, at the time said injury is inflicted, is beyond the limits of this State, or where any person beyond the limits of this State shall inflict an injury on any person at the time within the limits of this State, and such injury shall cause the death of the person injured, in either case, the person causing such death shall be subject to be indicted, tried, and punished; in the first case, in the County of this State where the person inflicting the injury was at the time when the same was inflicted; and, in the second case, in the County in which it was received; and the procedure and punishment shall be in all respects the same as if both parties were within the said County at the time said injury was inflicted, and the homicide had been in all respects completed in said County.

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Sec. 118. Where an injury is inflicted by any person within the bounds of one County of this State on a person within the bounds of another County, and death shall ensue therefrom, and the party dies within this State, indictment, trial, and punishment shall be the same as if the homicide had been committed altogether within the County where the party dies; and where the party dies without the jurisdiction of this State, indictment, trial and punishment shall be the same as if the homicide had been completed in the County where the injury causing death was received.

Where parties are in different Counties.

G. S. 2463; R. S. 118; *Ib.*, 823, § 3.

Sec. 119. When any person shall be struck, wounded, poisoned, or otherwise injured in one County, and die thereof in another, any inquisition or indictment thereon found by jurors of either County shall be as good and effectual in law as if the stroke, wound, poisoning, or other injury had been committed and done in the County where the party shall die. And the person guilty of such striking, wounding, poisoning, or other injury, and every accessory thereto, either before or after the fact, shall be tried in the County where such indictment shall be found, and, if convicted, punished in the same mode, manner, and form, as if the deceased had suffered such striking, wounding, poisoning, or other injury and death, in the County where such indictment shall be found.

Where injury in one County and death in another.

G. S. 2464; R. S. 119; 1880, XVII., 336.

Does not apply to trial for murder from blows inflicted before its enactment.—State v. Sweat, 16 S. C., 624.

Felonies not Capital.

Sec. 120. Manslaughter, or the unlawful killing of another without malice, express or implied, shall be punishable by hard labor in the Penitentiary, not exceeding thirty years nor less than two years.

Manslaughter.

G. S. 2465; R. S. 120; 1869, XIV., 175, § 2.

MANSLAUGHTER—

Defined:

Is the taking the life of another in sudden heat and passion, under reasonable provocation, without premeditation or malice.—State v. Ferguson, 2 Hill, 619; State v. Smith, 10 Rich., 341; State v. Jacobs, 28 S. C., 29; 4 S. E., 799.

The provocation must be such as to provoke a high degree of resentment, and ordinarily induce a great degree of violence when compared with those of a slight and trivial character from which a great degree of violence does not usually follow.—State v. Ferguson, 2 Hill, 619.

No mere words, however, insulting, can excuse the killing and reduce the defense to manslaughter.—State v. Jacobs, 28 S. C., 29; 4 S. E., 799; State v. Levelle, 34 S. C., 120; 13 S. E., 319; State v. Davis, 50 S. C., 424; 27 S. E., 905.

But no provocation, however grievous, will excuse from the crime of murder, where, from the weapons used or the manner of assault, an intention to kill or do some bodily harm is manifest.—State v. Ferguson, 2 Hill, 619; State v. Way, 38 S. C., 333; 17 S. E., 39.

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Whether the killing was under sudden heat and passion, or from a settled, deliberate purpose, must be concluded by the jury upon the facts of the case.—State v. Ford, 1 Speer 154; State v. Wyse, 32 S. C., 45; 10 S. E., 612.

Where the original provocation, given shortly before the killing, was then sufficient to reduce the killing to manslaughter, the jury must inquire, not whether the suspension of reason under such sudden heat and passion continued down to the moment of the killing, but whether the prisoner did cool, or was there time, all circumstances being considered, for a man of ordinary reason to have cooled.—State v. McCants, 1 Speer, 389; State v. Jacobs, 28 S. C., 29; 4 S. E., 799.

Any signs of deliberation or reflection would be evidence of cooling.—State v. McCants, 1 Speer, 389.

Distinction between murder and manslaughter.—State v. Summer, 55 S. C., 34; 32 S. E., 771.

Manslaughter defined in Act of 1821 as the killing of a slave in sudden heat and passion, includes killing by, or under excessive correction.—State v. Fleming, 2 Strob., 464.

CHARGE—

If error to charge that defendants could not under certain circumstances be convicted of manslaughter only, not material when verdict was for manslaughter.—State v. Jenkins, 21 S. C., 596.

Where defendant is convicted of manslaughter, error in charging as to murder is eliminated.—State v. Stuckey, 56 S. C., 586; 35 S. E., 263; State v. Robertson, 54 S. C., 147; 31 S. E., 868; State v. Richardson, 47 S. C., 18; 24 S. E., 1028.

SENTENCE—

If error only in sentence, defendant is not entitled to new trial.—State v. Aultman, 23 S. C., 601.

Persons aiding and abetting in the commission of manslaughter are guilty of the crime.—State v. Putman, 18 S. C., 177.

Sentence postponed to allow application for pardon.—State v. Faink, 1 Bay., 168.

Administering or attempting to administer, poison with intent to kill a felony.

G. S. 2466; R. S. 121; 1859, XII., 832; 1898, XXII., 812.

Sec. 121. Whoever shall unlawfully and maliciously administer to, or attempt to administer to, or in any way aid or assist therein, or cause to be taken by any person, any poison or other destructive thing, with intent to kill such person, every such offender, and every person counselling, aiding or abetting such offender, shall be guilty of felony, and shall be punished by imprisonment in the Penitentiary not exceeding ten years nor less than two.

This Section does not supersede the common law offense of assault and battery with intent to kill; and when a person, with intent to kill, administers to a little child a drug which he believes to be poisonous and of sufficent quantity to destroy life, such common law offense is complete, even though the dose is insufficient for the purpose intended.—State v. Glover, 27 S. C., 602; 4 S. E., 564.

As to means to cause miscarriage, abortion or premature labor.

R. S. 122; 1883, XVIII., 547.

Sec. 122. Any person who shall administer to any woman with child, or prescribe for any such woman, or suggest to or advise or procure her to take, any medicine, substance, drug or thing whatever, or who shall use or employ, or advise the use or employment of, any instrument or other means of force whatever, with intent thereby to cause or procure the miscarriage or abortion or premature labor of any such woman, unless the same shall have been necessary to preserve her life, or the life of such child, shall, in case the death of such child or of such woman results in whole or in part therefrom, be deemed guilty of a felony, and, upon conviction thereof, shall

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be punished by imprisonment in the Penitentiary for a term not more than twenty years nor less than five years. But no conviction shall be had under the provisions of this Section upon the uncorroborated evidence of such woman.

Punishment for using such means.

Administering through innocent agents; sending by mail.—State v. Morrow, 40 S. C., 221; 18 S. E., 453. Sent from another State.—*Ib.*

Punishment for placing obstructions on railroads.

G. S. 1520; R. S. 123; 1882, XVII., 109.

Sec. 123. If any person or persons shall by himself or others place, or cause to be placed, on the track or other part of the passage way of any railroads on which steam engines or hand cars are used, any timber, stone, or other obstruction, with intent to injure or impede the passage of any cars or means of conveyance, or shall in any other manner obstruct any engine or car passing upon such railroad, or endangers the safety of persons conveyed in or upon the same, or aids or assists therein, such person or persons shall be deemed guilty of felony, and, on being thereof convicted by due course of law, shall be punished by imprisonment in the Penitentiary for not exceeding thirty years, and fined in the discretion of the Court, except where the death of some human being results from such impediment, and in that case the offender shall be adjudged guilty of murder and shall suffer death: *Provided,* That nothing herein shall in any manner take away any right of action for damages for injuries to the person or property of any person or body corporate caused by any injury, obstruction, or damage done to any railroad or its buildings, tracks, or constructions.

Obstructing railroad, without death ensuing.

G. S. 2467; R. S. 124.

Sec. 124. Any person who shall wilfully and maliciously place, or cause to be placed, on the track or other part of the passage way of any railroads, on which steam engines or hand cars are used, any timber, stone, or obstruction, with intent to injure or impede the passage of any cars or means of conveyance, shall be deemed guilty of felony, and, on being convicted thereof, shall be punished by imprisonment in the Penitentiary for not less than one nor more than thirty years, and fined in the discretion of the Court.

Misdemeanor.

Sending or accepting challenge to fight.

G. S. 2468; R. S. 125; 1880, XVII., 501, §7.

Sec. 125. Whoever shall challenge another to fight at sword, pistol, rapier, or any other deadly weapon, or who shall accept any such challenge, shall, for every such offense, on conviction thereof, be deprived of the right of suffrage, and be disabled from holding any office of honor or trust whatever in this

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State, and shall be imprisoned in the Penitentiary for a term not exceeding two years, at the discretion of the Court.

INDICTMENT—

Will lie in this State for challenge to fight a duel in Georgia.—State v. Taylor, 3 Brev., 243; State v. Cunningham, 2 Speer, 246.

Or for a verbal challenge.—State v. Strickland, 2 N. & McC., 181.

Or against the principal who sends challenge or fights.—State v. Strickland, 2 N. & McC., 181; State v. Dupont, 2 McC., 334.

Or for any agreement to fight with loaded pistols and actually fighting.—State v. Heriot, 1 McM., 126.

SENTENCE—

The disability to hold office, imposed by the Section, does not constitute a part of the sentence.—State v. Dupont, 2 McC., 334.

Carrying or delivering challenge.

G. S. 2469; R. S. 126; 1880, XVII., 502, § 8

Sec. 126. Whoever shall willingly or knowingly carry or deliver any such challenge in writing, or verbally deliver any message intended as, or purporting to be, such challenge, or who shall be present at the fighting of any duel as a second, or who shall aid or give countenance thereto, shall, for every such offense, on conviction thereof, be forever disabled from holding any office of honor or trust in this State, and shall be imprisoned in the Penitentiary for a term not exceeding two years, at the discretion of the Court, and shall be fined in a sum not less than five hundred dollars nor more than one thousand.

Principal or second compellable to give testimony.

G. S. 2470; R. S. 127; 1823, VI., 208.

Sec. 127. Upon the trial of all indictments for duelling, any person concerned therein, either as principal or second, or as counselling, aiding, and abetting in such duel, shall and may be compelled to give evidence against the person or persons actually indicted, without criminating himself or subjecting or making himself liable to any prosecution, penalty, forfeiture, or punishment, on account of his agency in such duel.

Person challenged may testify as to conversation with bearer of the challenge.—State v. Taylor, 3 Brev., 243. Declaration of second admissible against principal.—State v. Dupont, 2McC., 334.

Person engaged in duel may be used as witness.

G. S. 2471; R. S. 128; *Ib.*

Sec. 128. In every case where two or more persons shall be charged in any indictment for fighting a duel, or being concerned therein, either of such persons may be used as a witness or witnesses in behalf of the State, by having his or their names stricken out of the indictment, or otherwise, at the discretion of the Attorney General or Solicitor, or other attorney acting for the State, conducting such prosecution, of which an entry shall immediately be made on the minutes of the Court; and in case of any such person or persons so used as a witness or witnesses in behalf of the State, in any prosecution for fighting a duel, or for being concerned therein shall afterwards be indicted for the same offense, the fact of his or their

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being used as a witness or witnesses in the former prosecution for the same offense, shall and may be pleaded in bar to such subsequent indictment, and, on proof thereof, by competent evidence, such person or persons shall be thereof acquitted and discharged.

The manufacture, sale and carrying of certain pistols prohibited.

1901, XXIII., 748.

Sec. 129. From and after the first day of July, 1902, it shall be unlawful for anyone to carry about the person, whether concealed or not, any pistol less than 20 inches long and 3 pounds in weight. And it shall be unlawful for any person, firm or corporation to manufacture, sell or offer for sale, or transport for sale or use into this State, any pistol of less length and weight. Any violation of this Section shall be punished by a fine of not more than one hundred dollars, or imprisonment for not more than thirty days and in case of a violation by a firm or corporation it shall forfeit the sum of one hundred dollars to and for the use of the school fund of the County wherein the violation takes place, to be recovered as other fines and forfeitures: *Provided,* This Section shall not apply to peace officers in the actual discharge of their duties, or to persons while on their own premises.

The fines and forfeitures above provided for, when collected, shall go to the school fund of the County where the violation occurred.

In case it shall appear to the satisfaction of the presiding Judge or Magistrate before whom such offender is tried that the defendant had good reason to fear injury to the person or property and carried said weapon to protect himself or property, he may, in his discretion, suspend sentence.

Carrying concealed weapons a misdemeanor.

G. S. 2472; R. S. 129; 1880, XVII., 448; 1894, XXI., 824; 1897, XXII., 423; 1900, XXIII., 446.

Sec. 130. Any person carrying a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon usually used for the infliction of personal injury, concealed about his person, shall be guilty of a misdemeanor, and, upon conviction thereof before a Court of competent jurisdiction, shall forfeit to the County the weapon so carried concealed, and be fined in the sum of not more than one hundred dollars and not less than twenty dollars, or imprisoned not more than thirty nor less than ten days, in the discretion of the Court. Nothing herein contained shall be construed to apply to persons carrying concealed weapons upon their own premises, or peace officers in the actual discharge of their duties as peace officers.

It is necessary to conviction under this Section for carrying a concealed weapon for the State to prove that it was concealed about the person.—State v. Johnson, 16 S. C., 187.

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To prove that it was so concealed as to be generally hidden from ordinary observation completes the offense.—*Ib.*

Special count for in cases for murder, manslaughter, assault and battery, &c.

1897, XXII., 427.

Sec. 131. In every indictment for murder, manslaughter, assault and assault and battery of a high and aggravated nature, assault and assault and battery with intent to kill, and in every case where the crime is charged to have been committed with a deadly weapon of the character specified in Section 130, there shall be a special count in said indictment for carrying concealed weapons, and the jury shall be required to find a verdict on such special count; and all cases embraced in this Section, including the carrying of the weapons, shall be in the exclusive jurisdiction of the Court of General Sessions: *Provided,* That one-half the fine shall go to the free school fund of the County and the other half to the pension fund of said County.

Assault, &c., with concealed weapon.

G. S. 2473; R. S. 130; *Ib.*, § 5.

Sec. 132. If any person be convicted of assault, assault and battery, assault or assault and battery with intent to kill, or of manslaughter, and it shall appear upon the trial that the assault, assault and battery, assault or assault and battery with intent to kill, or manslaughter, shall have been committed with a deadly weapon of the character specified in Section 130, carried concealed upon the person of the defendant so convicted, the presiding Judge shall, in addition to the punishment provided by law for such assault, assault and battery, assault or assault and battery with intent to kill, or manslaughter, inflict further punishment upon the person so convicted, by confinement in the penitentiary for not less than three months, nor more than twelve months, with or without hard labor, or a fine of not less than two hundred dollars, or both fine and imprisonment, at the discretion of the said Judge.

Under indictment for assault with pistol with intent to kill, where jury find a verdict of "guilty of an aggravated assault and battery," the words "and battery" were stricken out as surplusage and the verdict was held good.—State v. Robinson, 31 S. C., 453; 10 S. E., 101.

Kidnapping sailors.

G. S. 2474; R. S. 131; 1855, XII., 402, § 1.

Sec. 133. Any attempt, by fraud or force, to ship, against his will, any person as a seaman, on board any vessel in any port of this State, is hereby declared a misdemeanor, to be punished by fine and imprisonment, at the discretion of the Court.

Kidnapping minors.

G. S. 2475; R. S. 132; 1871, XIV., 546.

Sec. 134. Any person who shall procure and carry without the limits of the State any minor or person under the age of twenty-one years, without the consent of the parent or guardian of such minor, shall, upon conviction thereof, be fined in a sum not less than one hundred nor more than five hundred

dollars, or be imprisoned in the penitentiary of the State for a period of not more than one year.

Ill-treating children, apprentices, &c.

G. S. 2476; R. S. 133; 1874, XV., 704.

Sec. 135. Whoever, being legally liable, either as parent, guardian, master, or mistress, to provide for any child or children, apprentice or servant, idiot or helpless person, necessary food, clothing, or lodging, shall wilfully and without lawful excuse refuse or neglect to provide the same, or shall unlawfully and maliciously do, or cause to be done, any bodily harm to any such child or children, apprentice, servant, idiot, or helpless person, so that the life of such child or children, apprentice, servant, idiot, or helpless person shall be endangered, or the health or comfort of such child or children, apprentice, servant, idiot, or helpless person shall have been, or is likely to be, permanently injured, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be liable to a fine of not less than two hundred dollars nor more than one thousand dollars, or be imprisoned for any term not exceeding two years, with or without hard labor, one or both, at the discretion of the Court.

Cruelty to children.

Sec. 136. Whoever tortures, torments, cruelly ill treats, or whoever deprives of necessary sustenance or shelter, or whoever inflicts unnecessary pain or suffering, upon any child, or whosoever causes the same to be done, whether such person be the parent or guardian of such child, or have charge or custody of the same, shall for every such offense be deemed guilty of a misdemeanor, and be punished by imprisonment in jail not exceeding thirty (30) days, or by fine not exceeding one hundred ($100) dollars.

Punishment.

1892, XXI., 3.

Ch. XXX., made applicable.

All the provisions of Chapter XXX. in reference to the prevention of cruelty to animals shall be extended to the enforcement of this Section.

Unskilful or negligent management of steamboats, &c.

G. S. 2477; R. S. 135; 1837, VI., 571.

Sec. 137. If any person within this State shall suffer injury to life or limb, by the explosion of any boiler of a steamboat, or by reason of the unskilfulness, mismanagement, or negligence of the persons having the charge or command of the said boat, or her engine, or by reason of any defect in the said engine or boat, or by reason of the deficiency or want of any matter or thing necessary and proper for the management or seaworthiness of the said boat, the captain, master, or other person having the command or charge of such boat, shall, for every such injury, be deemed guilty of a misdemeanor, and, on conviction, shall be punished by fine or imprisonment, or both,

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at the discretion of the Court before which such conviction shall be had: *Provided, however,* That nothing contained in this Section shall be so construed as to prevent the defendant from showing, on the trial, that the injury arose from unavoidable accident, or without fault on his part, and that this Section shall not in any manner be construed to restrict the liability of any person to be indicted, tried, and punished under any law existing.

Wilful neglect of railroad employes.

G. S. 2478; R. S. 136; 1857, XII., 634.

Sec. 138. Any engineer or conductor of any railroad company in the State, who shall wilfully neglect to observe, or shall wilfully violate, any rule or regulation of the company to which such engineer or conductor may belong, whereby any person or persons shall sustain, or be in danger of sustaining, any bodily injury, such engineer or conductor shall be liable to be indicted for every such offense, and, upon conviction thereof, shall be fined two hundred dollars, and be imprisoned not exceeding one year, at the discretion of the Judge before whom such case may be tried: *Provided, however,* That nothing herein contained shall be so construed as to relieve such engineer or conductor from responsibility, in cases where the life of any person is destroyed, under the law as it now exists.

Punishment for certain means or advice to women to cause abortion, &c.

1882, XVIII., 547; R. S. 137.

Sec. 139. Any person who shall administer to any woman with child, or prescribe or procure or provide for any such woman, or advise or procure any such woman to take, any medicine, drug, substance or thing whatever, or shall use or employ or advise the use or employment of, any instrument or other means of force whatever, with intent thereby to cause or produce the miscarriage or abortion or premature labor of any such woman, shall, upon conviction thereof, be punished by imprisonment in the penitentiary for a term not more than five years, or by fine not more than five thousand dollars, or by such fine and imprisonment both, at the discretion of the Court; but no conviction shall be had under the provisions of this Section upon the uncorroborated evidence of such woman.

Evidence to convict must be corroborated.

Punishment as to the uses of certain means by women.

R. S. 138; 1882, XVIII., 547.

Sec. 140. Any woman with child who shall apply to or solicit from any physician, druggist or other person whomsoever any medicine, drug, substance or thing whatever, or shall take or administer the same, or shall submit to or perform upon herself any operation of any sort or character whatever, with intent thereby to cause or produce a miscarriage or abortion or premature labor, unless the same shall have been necessary to preserve her life or the life of such child, shall be deemed

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guilty of a misdemeanor, and upon conviction thereof shall be punished by imprisonment in the County jail or State penitentiary for a term not more than two years, or by fine not exceeding one thousand dollars, or by such fine and imprisonment both, at the discretion of the Court.

As to testimony for alleged offenses under Sections 122, 139 and 140.

1882, XVIII., 547.

Sec. 141. In any preliminary examination, and on any inquiry before a grand jury, and on the trial of any indictment for any alleged offense under Sections 122, 139 and 140, no person shall be protected from testifying as a witness for the reason that the testimony of such witness would tend to criminate or disgrace such witness: *Provided, however,* That no testimony so given of a character tending to criminate or disgrace such witness shall ever be used in evidence in any action, prosecution or proceeding, civil or criminal, against such witness, or against his or her representatives.

Proviso as to certain testimony.

When prosecutions shall commence.

All prosecutions under Sections 122, 139 and 140 shall be commenced within two years after the commission of the offense.

Penalty to officer from whom a prisoner is taken.

1896, XXII., 213, § 1.

Sec. 142. In the case of any prisoner lawfully in the charge, custody or control of any officer, State, County or municipal, being seized and taken from said officer through his negligence, permission or connivance, by a mob or other unlawful assemblage of persons, and at their hands suffering bodily violence or death, the said officer shall be deemed guilty of a misdemeanor, and upon true bill found shall be deposed from his office pending his trial, and upon conviction shall forfeit his office, and shall, unless pardoned by the Governor, be ineligible to hold any office of trust or profit within this State. It shall be the duty of the prosecuting attorney within whose Circuit or County the offense may be committed to forthwith institute a prosecution against said officer, who shall be tried in such County in the same Circuit, other than the one in which the offense was committed, as the Attorney General may elect. The fees and mileage of all material witnesses, both for the State and the defense, shall be paid by the State Treasurer on a certificate issued by the Clerk and signed by the presiding Judge, showing the amount of said fee due the witness.

To be prosecuted.

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CHAPTER X.

Offenses Against Property.

SEC.

FELONIES.

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144. Burglary.
145. House breaking in day time, &c.
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147. Stealing bonds, &c.
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MISDEMEANORS.

158. Burning stacks of corn, &c., in the day time.
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SEC.

173. Marking and branding larger animals.
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184. Obstructions of streams in certain Counties.
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191. Penalty for injury to railroad.
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194. Interferance with sewers.
195. Failure to return boat, flat or tool used for mining phosphate.
196. Penalty for taking up and selling drifted lumber without accounting for same.
197. Penalty for stealing crude turpentine.
198. Wilful injury to certain property by officers of corporations, &c.

FELONIES CAPITAL.

Arson.

Arson.

G. S. 2480; R. S. 140; 1869, XIV., 175, § 3; 1873, XVI, 631; 1883, XVIII., 290.

Section 143. The wilful and malicious setting fire to or burning any house, of whatever name or kind, within the curtilage or common inclosure of any house or room wherein persons

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habitually sleep, whereby any such dwelling house or sleeping apartment shall be endangered; also, the wilful and malicious setting fire to or burning any court house or other public building, whether owned by the State or a corporation, or a building owned by an individual or individuals, and kept or let for public meetings or exhibitions, barn, stable, coach house, gin house, store house, warehouse, grist or saw mill, railroad depot, coach or cotton factory, or other house used for manufacturing purposes, of whatever name or kind, or setting fire to or burning any house habitually used for public religious worship, shall be deemed arson, whether the setting fire to or burning be in the day or night-time; and the person setting fire to or burning any such house as aforesaid, and the aiders, abettors, and accessories before the fact, shall, upon conviction, suffer death by hanging in the same form and manner as is now provided by law for wilful murder: *Provided, however,* That in each case where the prisoner is found guilty, the jury may find a special verdict, recommending him to the mercy of the Court, whereupon the punishment shall be reduced to imprisonment in the penitentiary with hard labor, for a term of not less than ten years.

Soliciting another to commit arson, and bribing him and preparing him to do it, is an indictable offense.—State v. Bowers, 35 S. C., 262; 14 S. C., 488.

Acquittal under charge of arson is not a good plea to indictment for statutory offense of burning an untenanted house.—State v. Jenkins, 20 S. C., 352.

It is not arson to burn one's own house.—State v. Sarvis, 45 S. C., 668; 24 S. E., 53.

Arson is an offense against the possession rather than the property.—State v. Copeland, 46 S. C., 13; 23 S. E., 980.

The house may be alleged as the property of either the owner or the occupant.—State v. Carter, 49 S. C., 265; 27 S. E., 106.

It is not arson to burn a corn crib, not within the curtilage of the dwelling.—State v. Jeter, 47 S. C., 2; 24 S. E., 889.

INDICTMENT—

Not fatally defective because it omits to state the Court House or other place where crime was committed, when it names the County.—State v. Moore, 24 S. C., 150.

It is good practice to allege that the crime was committed at Court House.—State v. Colclough, 31 S. C., 156; 9 S. E., 811.

It need not allege location of stable or gin house burned, nor charge that it was within the curtilage.—State v. Gwinn, 24 S. C., 146; State v. Moore, 24 S. C., 150.

Defendant waived his right to copy of, three days before trial, when he had received it two days before, and went to trial without objection.—State v. Colclough, 31 S. C., 156; 9 S. E., 811.

EVIDENCE—

Of pecuniary condition, is irrelevant and incompetent.—State v. Moore, 24 S. C., 150.

Where one is on trial as accessory before the fact; conversations at and after fire inadmissible.—State v. Dukes, 19 S. E., 134; 40 S. C., 174.

Confession of co-conspirator.—State v. Green, 40 S. C., 328; 18 S. E., 933.

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Confessions must be shown to have been voluntary and free from inducement.—State v. Moorman, 27 S. C., 22; 2 S. E., 621.

Charge.—State v. Rhodes, 44 S. C., 325; 22 S. E., 306.

Burglary, punishment for.

G. S. 2481; R. S. 141; 1883, XVIII., 290.

Sec. 144. Any person who shall commit the crime of burglary at common law shall, upon conviction, be imprisoned in the State Penitentiary, with hard labor, during the whole lifetime of the prisoner: *Provided, however,* That in each case where the prisoner is found guilty, the jury may find a special verdict, recommending him to the mercy of the Court, whereupon the punishment shall be reduced to imprisonment in the Penitentiary, with hard labor, for a term of not less than five years.

Burglary defined.—State v. Ginns, 1 N. & McC., 583; State v. Sampson, 12 S. C., 567; State v. Clary, 24 S. C., 116.

Cannot be committed in mill house, which was not a parcel of dwelling house and separated by public road.—State v. Sampson, 12 S. C., 567.

Nor in a house, in which no one slept, near but not appurtenant to the dwelling house, used for storage.—State v. Anderson, 24 S. C., 109.

Breaking into a dwelling house with intent to steal an article of less value than $20, is burglary.—State v. Clary, 24 S. C., 116.

Neither the Act of 1866, enlarging the limits within which burglary may be committed, nor the Act of 1878, increasing its punishment, repealed burglary at common law.—State v. Branham, 13 S. C., 389.

Where party breaks out of a dwelling house at night, having committed a felony, no matter how he entered, it is burglary.—State v. Bee, 29 S. C., 81; 6 S. Ga., 911.

Evidence that out house is separated by public road from the dwelling does not show it could not be appurtenant to the dwelling.—State v. Johnson, 45 S. C., 483; 23 S. E., 619.

INDICTMENT—

May join count for burglary with a count for receiving stolen goods.—State v. Strickland, 10 S. C., 192.

Misnomer not fatal, unless objected to.—State v. Branham, 13 S. C., 389.

Precise day or year need not be alleged, provided day named is anterior to bill.—State v. Branham, 13 S. C., 389; State v. Dawkins, 32 S. C., 17; 10 S. E., 772; State v. Howard, 32 S. C., 91; 10 S. E., 831.

Ownership of house properly laid in wife, who had a separate estate when she leased it, and goods were hers.—State v. Trapp, 17 S. C., 470.

It must allege that offense was committed in night time.—State v. Dawkins, 32 S. C., 17; 10 S. E., 772.

It is not necessary to specify the particular chattels defendant intended to steal.—State v. Langford, 55 S. C., 327; 33 S. E., 370.

Where two are indicted for burglary, if one be convicted only of larceny, the other cannot be convicted of burglary.—State v. Davis, 3 McC., 187.

Allegation that out house was within the curtilage, how to be made.—State v. Evans, 18 S. C., 137.

EVIDENCE—

Confession may be proved, though manner of officer was rude.—State v. Branham, 13 S. C., 389.

The false denial of a party charged, of an important fact, made voluntarily at preliminary hearing, may be proved by parol.—State v. Howard, 32 S. C., 91; 10 S. E., 831.

Prosecutor may testify that house was his.—State v. Brown, 33 S. C., 151; 11 S. E., 641.

Proof of acquittal of burglary in house of one no bar to conviction of burglary in house of another.—State v. Brown, 33 S. C., 151; 11 S. E., 641.

Whether circumstances shown are sufficient to corroborate the testimony of an accomplice, must be left wholly to the jury.—State v. Robinson, 35 S. C., 340; 14 S. E., 766.

CHARGE—

No error to decline to give legal definition of burglary when correct principles of law applicable had already been stated.—State v. Dawkins, 32 S. C., 17; 10 S. E., 772.

There being one count for burglary and another for larceny, upon conviction of burglary, error in charge as to larceny immaterial, and no ground for new trial. —*Ib.*

To effect that prisoner was a thief and was guilty, violates Article 4, Section 26, of Constitution of 1868.—State v. Brown, 33 S. C., 151; 11 S. E., 641.

VERDICT—

General verdict on indictment with three counts, one for burglary, one for another burglary, and third for petit larceny, is good.—State v. Nelson, 14 Rich., 169.

Jury having published their verdict cannot afterwards reassemble and render a second verdict with recommendation to mercy.—State v. Dawkins, 32 S. C., 17; 10 S. E., 772.

NEW TRIAL—

Must be granted if sentence was based upon second verdict, after first had been rendered.—State v. Dawkins, 32 S. C., 17; 10 S. E., 772.

When entire failure of proof as to the breaking, the only remedy is by motion for.—State v. Dawkins, 32 S. C., 17; 10 S. E., 772.

Housebreaking which is not burglary.

G. S. 2482; R. S. 142; XVII, 60; 1887, XIX., 792.

Sec. 145. Every person who shall break and enter, or who shall break with intent to enter, in the day time, any dwelling house or other house, or who shall break and enter, or shall break with intent to enter, in the night time, any house, the breaking and entering of which would not constitute burglary, with intent to commit a felony or other crime of a lesser grade, shall be held guilty of a felony, and punishable at the discretion of the Court by imprisonment in the County Jail or Penitentiary for a term not exceeding one year.

Felony.

Punishment.

This Section creates two distinct offenses; both felonies, but committed at different times, and where both are charged in the same indictment, the Solicitor may be required to elect upon which count he will go to trial.—State v. Bouknight, 55 S. C., 354; 34 S. E., 451. As to form indictment for breaking and entering in the night time.—*Ib.* Allegation as to character of house.—*Ib.*

EVIDENCE—

Letters purporting to be written by defendant.—State v. Head, 38 S. C., 258; 16 S. E., 892; State v. Weldon, 39 S. C., 318; 17 S. E., 688. Prior offenses.—*Ib.* Competency of deaf mute.—*Ib.*

Dwelling house defined in case of burglary and arson.

G. S. 2483; R. S. 143; 1866, XIII., 405, § 3.

Sec. 146. With respect to the crimes of burglary and arson, and to all criminal offenses which are constituted or aggravated by being committed in a dwelling house, any house, out-house, apartment, building, erection, shed, or box, in which there sleeps a proprietor, tenant, watchman, clerk, laborer, or person who lodges there with a view to the protection of property, shall be deemed a dwelling house; and of such a dwelling house, or of any other dwelling house, all houses, out-houses, buildings, sheds, and erections which are within two hundred yards of it, and are appurtenant to it, or to the same establishment of which it is an appurtenance, shall be deemed parcels.

INDICTMENT—

Should have alleged that the house, in which burglary was committed, was within

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two hundred yards of the dwelling house and appurtenant thereto.—State v. Evans, 18 S. C., 139; State v. Langford, 55 S. C., 327; 33 S. E., 370. So as to arson.—State v. Jeter, 47 S. C., 2; 24 S. E., 889.

EVIDENCE—

Whether circumstances corroborate testimony of accomplice is a question for jury; Judge cannot so charge.—State v. Robinson, 35 S. C., 340; 14 S. E., 766.

CHARGE—

No error to refuse to charge a request that has no application, nor to neglect to charge, as requested, in the language of Supreme Court, when Judge has already charged the law correctly.—State v. Robinson, 35 S. C., 340; 14 S. E., 766.

APPEAL—

Held on, that improper conviction under the Section could not be referred to the charge in the indictment of the higher offense of burglary at common law.—State v. Evans, 18 S. C., 139.

Neither alleged error of fact by Judge in refusing motion for new trial, nor testimony received without objection, can be considered by Supreme Court.—State v. Robinson, 35 S. C., 340; 14 S. E., 766.

Construed not to be arson.—State v. Pope, 9 S. C., 273.

TRIAL—

Prisoner only entitled to five peremptory challenges.—State v. Pope, 9 S. C., 273.

As to original Act.—State v. Bosse, 8 Rich., 276; State v. DeBruhl, 10 Rich., 23.

Stealing of bonds, &c.

G. S. 2486; R. S. 144; 1737, III., 470, § 5.

Sec. 147. The stealing, or taking by robbery, of any bond, warrant, bill, or promissory note, for the payment, or securing the payment, of any money, being the property of any other person, or of any corporation, notwithstanding any of the said particulars are termed in law a chose in action, shall be deemed and construed to be felony if of or above the value of twenty dollars, and a misdemeanor if below the value of twenty dollars; and such offender shall suffer such punishment as if he had stolen other goods of the like value with the moneys due on such bond, warrant, bill, or note, respectively, or secured thereby and remaining unsatisfied.

The taking need not be by robbery.—State v. Cassados, 2 N. & McC., 91. Bank bills included in Statute.—*Ib.*

Distinction between bank bills and notes defined.—State v. Wilson, 3 Brev., 243.

At common law choses in action were not the subject of larceny; made so by the Act of 1737.—State v. Tillery, 1 N. & McC., 9.

INDICTMENT.—Sufficient, if it describe the bills as of a certain bank named; general description only required.—State v. Wilson, 3 Brev., 243; State v. Smart, 4 Rich., 356; State v. Evans, 15 Rich., 31.

EVIDENCE.—Some necessary, that the bills were of value and genuine; but not such as would be necessary to recover the money due thereon, in proper action.—State v. Tillery, 1 N. & McC., 9; State v. Smart, 4 Rich., 356.

But it is not necessary to prove a minute description of the bills or to show that the banks were incorporated.—State v. Smart, 4 Rich., 356.

If it show that bills were taken from another source than that alleged in indictment, the variance is fatal.—State v. Waters, 3 Brev., 507.

CHARGE.—Not error to charge that if jury believed the money was taken by surprise and defendant converted it to his own use, it was larceny.—State v. Watson, 7 S. C., 63; *Ib.*, 7 S. C., 67.

VERDICT.—"Guilty of larceny only," sufficient.—State v. Smart, 4 Rich., 356.

NEW TRIAL.—Granted when evidence was suspicious.—State v. Smart, 4 Rich., 356.

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Sec. 148. Whoever shall steal, take away or let loose any boat, periauger or canoe, or steal or take away any grappling, painter, rope, sail or oar from any landing or place whatsoever where the owners or persons in whose service or employ they were last had made fast or laid the same (except all boats or canoes as are let loose from another boat, canoe or vessel), shall be liable to such fine or fines as the Court of Sessions shall impose in its discretion if the matter of fact be felony or larceny, and make good to the person or persons injured all damages they shall sustain; and in case the matter of fact be a trespass only, the person or persons committing such offense shall make good to the person injured all damages that may accrue thereby, and, moreover, forfeit and pay for every time he or they shall be found guilty thereof the sum of twenty dollars, one moiety thereof to be paid to the State Treasurer for the public use, the other moiety to him or them that will sue and prosecute for the same in any Court of competent jurisdiction in this State, beside his charges therein expended: *Provided,* That when the boat, periauger, canoe, grappling, painter, rope, sail or oar, or any or all of them so taken away, stolen or let loose, shall be of the value of twenty dollars or less, the offender, upon conviction before a Magistrate, shall be subject to a fine not to exceed one hundred dollars or imprisonment not exceeding thirty days, in lieu of the penalties prescribed in the foregoing Section.

Stealing boats, &c.

G. S. 2488; R. S. 145; 1695, II., 105, § 1; 1897, XXII., 422.

In a trespass the offenders shall pay damages.

Proviso.

Prior to the addition of the provision in 1897, Magistrates had no jurisdiction of this offense.—State v. Weeks, 14 S. C., 400.

Sec. 149. Any person found guilty of the larceny of any horse, mule, cow, hog, or any other live stock, shall suffer imprisonment in the State Penitentiary at hard labor for a period of not less than one year nor more than ten years, and such fine as the Court, in its discretion, may see fit to impose.

Stealing live stock.

G. S. 2489; R. S. 146; 1878, XVI., 632.

Larceny defined.—State v. Garvin, 48 S. C., 258; 26 S. E., 570.

Construed.—As repealing all former Acts on the subject.—State v. Corley, 13 S. C., 1. It gives jurisdiction to Court of General Sessions for stealing cow below the value of $20.—*Ib.* And provides punishment without regard to value.—State v. Moore, 30 S. C., 69; 8 S. E., 437.

The Act of 1893, 21 Stats., 411, attempting to reduce the punishment where the property did not exceed a certain value, was held unconstitutional in State v. Crosby, 51 S. C., 248; 28 S. E., 529.

Indictment.—For stealing a *colt* cannot be sustained, it seems, as colt is not the term used in the Section.—State v. Major, 14 Rich., 76. The word "mare" is included in the term "horse."—State v. Dunnovant, 3 Brev., 9.

Property may be laid in one who has merely the lawful possession.—State v. Addington, 1 Bail., 310.

Where horse is stolen in one County and carried into and sold in another, the indictment may be in the latter County.—State v. Bryant, 9 Rich., 113.

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An indictment cannot be quashed because the prosecution is barred by lapse of time.—State v. Howard, 15 Rich., 274.

Indictment sufficient under Act of 1789.—State v. Hamlin, 4 S. C., 1.

ARRAIGNMENT.—Is not necessary.—State v. Moore, 30 S. C., 69; 8 S. E., 437.

Where the value of the stock stolen is under twenty dollars, the State is only entitled to two peremptory challenges.—State v. Anderson, 59 S. C., 229; 37 S. E., 820.

EVIDENCE.—Not necessary to prove the time as laid in the indictment.—State v. Porter, 10 Rich., 145. Any time prior to finding of indictment is sufficient.—State v. Anderson, 59 S. C., 229; 37 S. E., 820; State v. Reynolds, 48 S. C., 384; 26 S. E., 679.

Voluntary confession of prisoner in jail to prosecutor in presence of jailer admissible.—State v. Cook, 15 Rich., 29.

The proof must sustain the allegation of ownership.—State v. Thomas, 14 Rich., 163.

CHARGE.—Illustrative of difference between stealing a horse, and riding one off without knowledge or consent of owner.—State v. Sanders, 56 S. C., 415; 35 S. E., 133.

Burden of proof as to alibi is on the defendant.—State v. Anderson, 59 S. C., 229; 37 S. E., 820.

Chasing and shooting hog, without removing it after it is shot, not larceny.—State v. Seagler, 1 Rich., 30. Proof of ownership.—State v. Washington, 15 Rich., 39; State v. London, 3 S. C., 230; State v. Pitts, 12 S. C., 180; State v. Evans, 23 S. C., 209; State v. Garvin, 48 S. C., 258; 26 S. E., 570.

Rebuttal of presumption arising from possession of recently stolen goods.—State v. Garvin, 48 S. C., 258; 26 S. E., 570; State v. Wallace, 44 S. C., 357; 22 S. E., 411.

SENTENCE.—Without notification to counsel is not error of law.—State v. Moore, 30 S. C., 69; 8 S. E., 437.

Larceny of bicycles.

1901, XXIII, 749.

Sec. 150. The larceny of any bicycle shall be punishable as prescribed in the last preceding Section for the larceny of live stock.

Stealing bedding, &c., from lodgings.

G. S. 2490; R. S. 147; 3 & 4 W. & M., c 9; 1712, II., 532, § 5.

Sec. 151. Whoever shall take away, with intent to steal, embezzle, or purloin, any chattel, bedding, or furniture, which by contract or agreement he is to use, or shall be let to him to use, in or with lodging, such taking, embezzling, or purloining, shall be, to all intents and purposes, taken, reputed and adjudged to be larceny and felony, and the offender shall suffer as in case of felony.

Stealing from the person.

G. S. 2491; R. S. 148; 8 Eliz. 2, c. 4; 1712, II., 496; 1858, XII., 706.

Sec. 152. The offense of privily stealing from the person shall, in all cases, be deemed and adjudged grand larceny, and subject to the same punishment.

EVIDENCE.—State not bound to prove that no force was used.—State v. Chavis, 34 S. C., 132; 13 S. E., 317.

CHARGE.—No error to further charge that the State need not show that the property was not taken by force, when Judge had already charged that it must have been secretly and privately taken from the person.—State v. Chavis, 34 S. C., 132; 13 S. E., 317.

Restitution of stolen goods.

G. S. 2492; R. S. 149; 21 H. 8, c. 11; 1712, II., 458.

Sec. 153. Any felon who shall rob, or take away, any money, goods, or chattels, from any person, from their person or otherwise, and be found guilty thereof, the party so robbed, or owner, shall be restored to his said money, goods, and chattels; and

the Judge, before whom any such felon shall be found guilty, shall award, from time to time, writs of restitution for the said money, goods, and chattels.

Breach of trust with fraudulent intent.

G. S. 2493; R. S. 150; 1866, XIII., 406, § 6.

Sec. 154. Any person committing a breach of trust with a fraudulent intention shall be held guilty of larceny; and so shall any person who shall hire or counsel any other person to commit a breach of trust with a fraudulent intention.

Construed.—As applying not only to cases which the common law did not reach, but also to cases where a fraudulent appropriation did constitute larceny at common law.—State v. Shirer, 20 S. C., 392. Merely extends the crime of larceny at common law.—State v. Butler, 21 S. C., 353.

Where an agent receives and retains money which he knows belongs to his principal, with intent to defraud his principal, he is guilty.—State v. Ezzard, 40 S. C., 313; 18 S. E., 1025.

Indictment.—Sufficient, if offense be so described that the defendant may know how to answer it, the Court what judgment to pronounce, and that a conviction or acquittal on it may be pleaded in bar to another indictment for same offense.—State v. Shirer, 20 S. C., 392; State v. Butler, 21 S. C., 353.

Ownership of property must be alleged with the same accuracy and after same rule as in common law larceny.—State v. Shirer, 20 S. C., 392.

Sufficient if it describe the money taken, in an amount of dollars of "lawful currency of the United States, of denomination and issue unknown," although the kind of currency is not charged.—*Ib.*

The motion to quash is not of right, but is addressed to the discretion of the Court, and generally his decision is not appealable.—State v. Shirer, 20 S. C., 392.

Defense.—Not good, by way of plea of former acquittal, where, after mistrial, the first indictment was marked *nolle prosequi,* and a new bill found.—State v. Shirer, 20 S. C., 392.

Evidence.—Where it shows the trust to consist in that which is different from that alleged in the indictment, it is fatal.—State v. Green, 5 S. C., 66.

Charge.—Error in refusing to charge that there must be fraudulent intent, and that the mere fact of not paying over the money was not sufficient in itself to convict.—State v. Butler, 21 S. C., 353.

Firing turpentine farms.

G. S. 2494; R. S. 151; 1876, XVI., 61.

Sec. 155. It shall be unlawful for any person to set fire to any woods so near to any turpentine farm in this State as to injure or burn any such farm; and whoever shall wilfully and maliciously set fire to any woods at any time, whereby such farm or farms are injured and burned, shall be adjudged guilty of a felony, and liable to be punished at hard labor in the Penitentiary for the period of one year, or fined in the sum of five hundred dollars.

Interference with alarm and signal systems made a felony.

R. S. 152; 1888, XX., 8.

Sec. 156. Any person or persons who shall wilfully and maliciously interfere with, cut or injure, or who shall maliciously attempt to interfere with, cut or injure any pole or poles, wire or wires, insulator or insulators, alarm box or alarm boxes, of the police alarm and signal service of any city or other municipal corporation, or any of the appliances or apparatus connected therewith, shall be deemed guilty of a felony, and punished by fine or imprisonment, in the discretion of the Court.

Punishment.

Sec. 157. Whoever shall in the night time maliciously, un-

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lawfully and wilfully burn, or cause to be burned or destroyed, any ricks or stacks of hay, straw or grain, or kilns, shall for every such offense be punished by hard labor in the Penitentiary for life or for a period not less than two years, according to the aggravation of the offense.

Punishment for burning ricks of hay, kilns, &c., in night-time.

G. S. 2494; R. S. 154; 22 and 33 C., 2, c. 7; 1712, II., 521, § 2; 1869, XIV., 175, § 3; 1887, XIX., 793.

Different offense for arson.—State v. Pope, 9 S. C., 273.

Misdemeanors.

Burning stacks of corn, &c., in day time.

G. S. 2495; R. S. 155; 1828, VI., 367, § 1.

Sec. 158. Whoever shall maliciously, unlawfully, and wilfully burn, or cause to be burned or destroyed, any ricks or stacks of corn, or grain, or kilns, in the day-time, shall be adjudged guilty of a misdemeanor, and liable to be fined and imprisoned, in the discretion of the Court, for said offense.

By construction of similar words in Stat. 22 and 23, Charles II., Chapter 7, it seems that the words "burn or caused to be burned or destroyed," in this Section mean that the property must be demolished or unfitted for its purpose, and that by the use of fire.—State v. DeBruhl, 10 Rich., 23.

Burning carts, wood, &c.

G. S. 2496; R. S. 156.

Sec. 159. Whoever shall maliciously, wilfully, and unlawfully burn, or cause to be burned, any wain, cart, laden or to be laden, with coals or any other goods or merchandise, of any other person or persons, or maliciously, wilfully and unlawfully do burn, or cause to be burned, any heap of wood of any other person, prepared, cut, and felled, or to be prepared, cut, or felled, for making of coals, billets, or talwood, shall not only lose and forfeit unto the party grieved treble damages for such offense, to be recovered by action, but also shall be punished by fine and imprisonment, in the discretion of the Court.

Punishment for negligently firing grass, &c

G. S. 2497, R. S. 157; 1787, V, 125; 1857, XII., 617; 1891, XX., 1195.

Sec. 160. Whoever shall wilfully, maliciously or negligently set fire to or burn any grass, brush or other combustible matter, so as thereby any woods, fields, fences or marshes of any other person or persons be set on fire, or cause the same to be done, or be thereunto aiding or assisting, shall, upon conviction thereof, be punished by a fine of not less than five nor more than one hundred dollars, or imprisonment of not more than thirty days in the County jail, and shall moreover be liable to the action of any person or persons who may have sustained damage thereby: *Provided,* That no person or persons shall be prevented from firing woods, fields, lands or marshes within his own bounds, so that he suffer not the fire to get without the bounds of his lands and injure the woods, fences or grass of his neighbor or neighbors.

Proviso as to one's own premises.

Only one who *willfully* sets fire to his neighbor's grass or fence may be indicted under this Section. Prior to the amendment of 1891; it did not apply to cases of negligently suffering fire to so burn.—State v. Lewis, 10 Rich., 20.

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Sec. 161. It shall be unlawful for any person to carry a lighted torch, chunk, or coals of fire, in or under any mill or wooden building, or over and across any of the enclosed or unenclosed lands of another person at any time without the special permit of the owner of such lands, mill or wooden building, whether any damage result therefrom or not.

Carrying fire on lands of another. Without permit.

R. S. 158; 1891, XX, 1045.

Any person, upon conviction of a violation of the provisions of this Section, shall be deemed guilty of a misdemeanor, and shall be subject to imprisonment in the County jail for a term not to exceed thirty days, or to a fine not to exceed one hundred dollars.

Punishment.

Sec. 162. Whoever shall maliciously, unlawfully and wilfully burn or cause to be burned, cut or cause to be cut or destroyed, any untenanted or unfinished house or building of any frame or frames of timber of any other person, made and prepared, or hereafter to be made or prepared, for or towards the making of any house or houses, so that the same shall not be suitable for the purpose for which it was prepared; and any tenant or tenants at will, for years or for life, who shall wilfully and maliciously cut, deface, mutilate, burn, destroy or otherwise injure any dwelling house, outhouse, erection, building or crops then in the possession of such tenant or tenants, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by fine or imprisonment, or both, in the discretion of the Court.

Burning, cutting, &c., untenanted or unfinished buildings.

G. S. 2845; R. S. 159; 27 H., 8 c. 6; 1712, II, 478, § 2; 1887, XIX., 794.

Injury done by tenants.

Punishment.

Challenges.—Defendant only entitled to five peremptory.—State v. Workman, 15 S. C., 540.

Defense.—Not, upon trial for burning an untenanted house, that prisoner had been acquitted on trial for arson for same burning.—State v. Jenkins, 20 S. C., 351.

Plea of *autre fois acquit* was properly overruled upon trial on a second indictment, when the first had been quashed, because it charged the offense to have been committed at a future day.—State v. Jenkins, 20 S. C., 351.

Evidence.—Whether a confession was free and voluntary depends upon circumstances, and is a question for the Circuit Judge in his discretion to decide.—State v. Workman, 15 S. C., 540.

Confession of one not testimony against his co-defendant; but it was not error to allow it in full, without suppression of name of co-defendant, the jury having been instructed that it was testimony only against the party who made it.—State v. Workman, 15 S. C., 540.

Two men being tried jointly for same crime, wife of one not a competent witness for her husband, nor, as to any common ground of defense, for the other.—State v. Workman, 15 S. C., 540.

New Trial.—Motion for, on ground of after-discovered evidence, properly refused, where the affidavits did not show that it could not, by due diligence, have been discovered before trial.—State v. Workman, 15 S. C., 540.

Indictment not sufficient under this Section.—State v. Jeter, 47 S. C., 2; 24 S. E., 889.

Sec. 163. Any person who shall enter, without breaking, or attempt to enter, any house whatsoever, with intent to steal or

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commit any other crime, or shall conceal himself or herself in any house with like intent, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished in the discretion of the Court.

Entering house without breaking, with intent to steal.

R. S. 153; 1887, XIX, 798.

Sec. 164. Any simple larceny of any article of goods, choses in action, bank bills, bills receivable, chattels, or any article of personalty, of which by law larceny may be committed, and of all such fixtures and parts of the soil as were severed from the soil by an unlawful act, below the value of twenty dollars, shall be a misdemeanor and considered a petit larceny, and be punished by imprisonment in the County jail for not more than thirty days, or by a fine of not more than one hundred dollars.

Petit larceny within jurisdiction of Magistrates.

G. S. 2498; R. S. 160; 1866, XIII, 407; 1887, XIX., 820.

On indictment for grand larceny jury may find petit larceny.—State v. Wood, 1 Mills Const., 29. But where two are jointly indicted one cannot be convicted of petit larceny and the other of grand larceny.—State v. Davis, 3 McC., 187. But verdict against only one of the defendants may be rendered.—State v. Lee, 29 S. C., 113; 7 S. E., 44.

This offense being exclusively a statutory one, an indictment at common law will not lie; and the indictment, therefore, must conclude, "contrary to the form of the statute," &c.—State v. Gray, 14 Rich., 174.

If article is of any value, the exact value need not be shown to sustain a conviction for petit larceny.—State v. Stack, 1 Bail., 330. Sufficiency of description of money in indictment.—State v. Evans, 15 Rich., 31. An indictment for stealing chickens of the value of five dollars from fowl house charges only petit larceny.—State v. Johnson, 45 S. C., 483; 23 S. E., 619.

Stealing a dog below the value of twenty dollars is petit larceny.—State v. Wheeler, 15 Rich., 362; State v. Langford, 55 S. C., 324; 33 S. E., 370.

Petit larceny is not a felony, but only a misdemeanor.—Cherry v. McCants, 7 S. C., 224.

Only simple petit larceny is made a misdemeanor by this Section.—State v. Clary, 24 S. C., 116. Variance between proof and allegation as description of property.—State v. Cockfield, 15 Rich., 316.

Prior to its amendment in 1887 (19 Stat., 819) Magistrates did not have jurisdiction of petit larceny under this Section.—State v. Williams, 13 S. C., 546; State v. Jenkins, 26 S. C., 121; 1 S. E., 437.

Since amendment of 1887, Magistrates have jurisdiction of such petit larceny.—State v. Cooler, 30 S. C., 105; 8 S. E., 692. Concurrently with the General Sessions.—State v. Langford, 55 S. C., 326; 33 S. E., 370.

Even where the offense was committed before.—*Ib.*

This Section does not include stealing of live stock.—State v. Moore, 30 S. C., 69; 8 S. E., 437.

Larceny may be committed of goods obtained by delivery from owner, *animo furandi.*—State v. Gorman, 2 N. & McC., 90. So of goods taken and carried away without felonious intent, afterwards feloniously appropriated.—State v. Davenport, 38 S. C., 348; 17 S. E., 37.

Possession of recently stolen goods as evidence of larceny.—State v. Slack, 1 Bail., 330.

Receiver of stolen goods.

G. S. 25, 26a; R. S. 161, 1712, II., 543; 1769, IV., 309; 1887 XIX., 814.

Sec. 165. In all cases whatever, where any goods or chattels or other property, of which larceny may be committed, shall have been feloniously taken or stolen by any person or persons, every person who shall buy or receive any such goods or chattels, or other property, knowing the same to have been stolen, shall be held and deemed guilty of, and may be prosecuted

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for, a misdemeanor, and, upon conviction thereof, shall be punished by imprisonment, although the principal felon or felons be not previously convicted, and whether he, she or they is, or are, amenable to justice or not: *Provided,* That when the chattel or other property stolen shall be of less value than twenty dollars, the punishment shall not exceed imprisonment in the County jail for thirty days or a fine of not more than one hundred dollars.

Guilty of misdemeanor.

Where property is worth less than $20.

At common law, receiver was not an accessory.—State v. Butler, 3 McC., 383; State v. Council, Harp., 53.

In an indictment for receiving stolen goods it is not necessary to state the name of principal felon, or, if stated, to prove it.—State v. Coppenberg, 2 Strob., 277. Nor the place where stolen, &c.—State v. Crawford, 39 S. C., 343; 17 S. E., 799.

An indictment for buying and receiving stolen goods is good.—State v. Posey, 7 Rich., 497.

Where party received goods from servant and concealed them under circumstances sufficient to indicate that servant had stolen them, he was held guilty of receiving stolen goods.—State v. Tiedman, 4 Strob., 303.

One cannot be convicted for this offense under same indictment against him and others for burglary and grand larceny, and against him alone for this offense.—State v. Nelson, 14 Rich., 199.

So receiving stolen goods above the value of twenty dollars, properly held to be a misdemeanor, and the defendants were only entitled to five challenges each.—State v. Jacob, 30 S. C., 131; 8 S. E., 698.

The wife receiving stolen goods, knowing them to be stolen, jointly with her husband and under his coercion, her greater activity in consummating the offense will not, as matter of law, make her guilty.—State v. Houston, 29 S. C., 108; 6 S. E., 943.

When the defense was that the defendant had received the goods in payment of wages, it was error for Judge to charge that the goods were of more value than the services rendered.—*Ib.*

Allowing stolen goods to be shipped as part of one's baggage.—State v. Scovel, 1 Mills Const., 274.

Stealing melons and fruit.

1886, XIX., 522; R. S. 162.

Sec. 166. Whoever shall steal from the premises of another any melons or fruits, whether severed from the freehold or not, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by imprisonment for not more than thirty days, or by fine of not more than fifty dollars.

Punishment.

Obtaining goods under false pretenses.

1894, XXI., 824; 33 H. 8, c. 1; 1712, II, 476, § 2.

Sec. 167. Whoever shall, falsely and deceitfully, obtain or get into his or their hands or possession, any money, goods, chattels, jewels or other things, of any other person or persons, by color and means of any false token or counterfeit letter made in any other man's name, every person or persons so offending, and being thereof lawfully convicted, shall suffer such imprisonment as the Court may adjudge: *Provided,* That when the money, goods, chattels and other things so obtained do not exceed in value twenty dollars, then the such offense shall be punished by a fine not to exceed one hundred dollars, or by imprisonment for a term not exceeding thirty days.

Cheating by false token.—State v. Stroll, 1 Rich., 244.

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Obtaining property by false pretense.

G. S. 2499; R. S. 162; 1876, XVI., 39; 1893, XXI, 507; 1894, *Ib.*, 824.

Sec. 168. Any person who shall, by any false pretence or representation, obtain the signature of any person to any written instrument, or shall obtain from any other person any chattel, money, valuable security, or other property, real or personal, with intent to cheat and defraud any person of the same, shall be guilty of a misdemeanor, and shall, on conviction, be sentenced to pay a fine not exceeding five hundred dollars, and undergo an imprisonment not exceeding three years: *Provided, always,* That if the sum in the written instrument or the value of the property so obtained does not exceed twenty dollars, the punishment shall be by fine not exceeding one hundred dollars or by imprisonment not exceeding thirty days: *And provided, further,* That if, upon the trial of any person indicted for such a misdemeanor, it shall be proved that he obtained the property in such a manner as to amount in law to larceny, he shall not, by reason thereof, be entitled to be acquitted of such misdemeanor; and no person tried for such misdemeanor shall be liable to be afterwards prosecuted for larceny upon the same facts.

Construed.—False pretense is such a fraudulent representation of an existing or past fact, by one who knows it not to be true, as is adapted to induce the person to whom it is made to part with something of value.—A mere promise to do something in the future is not such a pretense.—State v. Haines, 23 S. C., 170.

Obtaining goods by means of false representation as to the balance due on a note.—State v. Freeman, 43 S. C., 105; 20 S. E., 974.

Indictment.—Should charge that the defendant made the false pretenses at the time, knowing them to be false.—*Ib.*

Stealing grain or cotton from the field.

G. S. 2487; R. S. 164; 1826, VI., 284; 1866, XIII., 405, § 4; 1879; XVII., 77; 1885, XIX., 140

Sec. 169. Whosoever shall steal from the field any grain, cotton or vegetables, whether severed from the freehold or not, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by imprisonment for not more than five years or by a fine of not more than five hundred dollars.

Corn growing in the field is included in this Section, though not severed from the soil.—State v. Stephenson, 2 Bail., 334.

Peas are included under grain.—State v. Williams, 2 Strob., 475.

Indictment.—Fatally defective, that charges stealing corn "in the field" instead of "from tbe field."—State v. Shuler, 19 S. C., 142; State v. Nelson, 28 S. C., 16; 4 S. E., 792.

Under indictment for this offense, defendant cannot be found guilty of petit larceny.—State v. Washington, 26 S. C., 604; 2 S. E., 623.

Judgment.—Arrested, because detendant was convicted of petit larceny.—State v. Washington, 26 S. C., 604; 2 S. E., 623.

The Act of 1893, XXI., 411, attempting to give Magistrates jurisdiction where the property did not exceed $20 in value, held unconstitutional in State v. Crosby, 51 S. C., 247; 28 S. E., 529. And the provision as to larceny from the field was left out of the amended Act of 1894, XXI., Stats., 824.

A laborer working under a verbal contract with a farmer for a part of the crop may commit a larceny by taking and carrying away a portion of the crop with intent to steal it.—State v. Sanders, 52 S. C., 582; 30 S. E., 616; State v. Gay, 1 Hill, 364.

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Malicious wounding of horses, &c.

G. S. 2500; R. S. 165; 1894, XXI., 824; 1901, XXIII., 745; 1857, XII., 605, § 1; 1861, XII., 903, § 2; 37 H. 8, c. 6; 1712, II., 478, § 4; 22 and 23 C. 3 c, 7; 1712, II, 521; 1892, XXI, 115.

Sec. 170. Whoever shall wilfully, unlawfully and maliciously cut, shoot, maim, wound or otherwise injure or destroy any horse, mule, neat cattle, hog, sheep, goat, or any other kind, class, article, or description of personal property, the goods and chattels of another, shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined or imprisoned, at the discretion of the Judge before whom the case shall be tried: *Provided*, That when the injury or loss of the property affected by such act or acts does not exceed twenty dollars, the punishment shall be a fine of not more than one hundred dollars, or imprisonment for a period of not more than thirty days.

Act 1857 not repealed by the Act of December 19, 1865.—State v. Alexander, 14 Rich., 247.

Not determined whether a dog is embraced in the term "other personal property." State v. Trapp, 14 Rich., 203.

Unlawfully and maliciously turning oil out of a tank is embraced in the term "any other personal property."—State v. Switzer, 59 S. C., 225; 37 S. E., 818.

Malicious injury to cow.—State v. Howard, 15 Rich., 274.

Indictment.—Is sufficient if it contain a general description of the offense in the words of the Section, although the manner of killing be not described.—State v. Cantrell, 2 Hill, 389.

If it charge that prisoner shot "one sow," it is good.—State v. Shubrick, 2 S. C., 21.

Evidence.—Not necessary to prove malice towards the owner of the property.—State v. Toney, 15 S. C., 409; State v. Doig, 2 Rich., 179.

The capacity of defendant under fourteen years of age to commit the crime may be determined by the facts of the case, without independent evidence thereof.—*Ib.*

Where a defendant admits that he is on bad terms with another, he cannot be asked as to special collateral acts of bad humor.—Cobb v. Cater, 59 S. C., 562; 38 S. E., 114.

If one puts out poison with intent to kill his neighbor's animals, he is liable.—*Ib.*

Malicious injury to trees, houses, &c.

G. S. 2501; R. S. 166; 1892, XXI., 93; 1893, XXI, 411; 1894, XXI, 824; 1857, XII., 605, § 2.

Sec. 171. Whoever shall wilfully, unlawfully, and maliciously cut, mutilate, deface, or otherwise injure, any tree, house, out-house, fence, or fixture of another, or commit any other trespass upon real property in the possession of another, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined and imprisoned at the discretion of the Judge before whom the case shall be tried: *Provided,* That when the damage to such property does not exceed twenty dollars, the punishment shall be a fine of not more than one hundred dollars, or imprisonment for a period of not more than thirty days.

Construed.—A mere license to plant the land in possession of owner does not give such possession of real property required by the Section as would sustain an indictment for malicious trespass for cutting up the crop planted.—State v. Gadsden, 20 S. C., 456.

Magistrates had no jurisdiction of this offense before Act 1892, the punishment being left to the discretion of the trial Judge.—State v. Mays, 24 S. C., 190.

The General Sessions has no jurisdiction where the damage from fire to fodder house and corn crib does not exceed twenty dollars.—State v. Jeter, 47 S. C., 2; 24 S. E., 889.

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Prosecutor cannot have criminal and civil action both.

G. S. 2502; R. S. 167; *Ib.*, §3.

Sec. 172. Whenever any person shall be prosecuted for any of the misdemeanors in the two preceding Sections created, the owner of the property injured shall not have the right to maintain a civil action for the same injury.

Penalty for marking, &c., larger animals of another.

G. S. 2503; R. S. 168; 1789, V, 139; 1892, XXI, 115.

Second offense.

Sec. 173. Whoever shall be lawfully convicted of wilfully and knowingly marking, branding or disfiguring any horse, mare, gelding, filly, ass, mule, bull, cow, steer, ox or calf of, or belonging to, any other person, shall for each and every horse, mare, gelding, colt, filly, ass, mule, bull, cow, steer, ox or calf which he shall or may be convicted of marking, branding or disfiguring as aforesaid, be subject to a penalty of one hundred dollars, or to imprisonment for a term not exceeding six months, or both, in the discretion of the Court; and in case the said offender shall afterwards repeat or commit a like offense, on conviction thereof he shall be liable to a fine of two hundred dollars, or to imprisonment for a term not exceeding one year, or both, in the discretion of the Court, for each and every horse, mare, gelding, colt, filly, ass, mule, bull, cow, steer, ox or calf by him so marked, branded or disfigured.

Construed.—Applies only to such fraudulent marking, &c., as intended to prevent the owner from knowing his property.—Shelton v. Gage, Chev., 108.

Shaving the mane and cropping the hair from the tail of a mare does not constitute the offense of disfiguring.—State v. Smith, Chev., 157.

Indictment.—Is sufficient, it seems, if it charge the offense in the general terms of the Section.—*Ib.*

Penalty for marking smaller animals of another.

G. S. 2504; R. S. 169; 1789, V., 140; 1892, XXI., 115.

Second offense.

Sec. 174. Whoever shall be lawfully convicted of wilfully and knowingly marking, branding or disfiguring any sheep, goat or hog of, or belonging to, any other person, shall, for each and every sheep, goat or hog which he shall or may be convicted of marking, branding or disfiguring, as aforesaid, be subject to a penalty of twenty-five dollars or to imprisonment for a term not exceeding twenty days; and in case the said offender shall afterwards repeat or commit a like offense, on conviction thereof he shall be liable to a fine of fifty dollars or to imprisonment for a term not exceeding thirty days for each and every sheep, goat or hog by him so marked, branded or disfigured.

Indictment for marking a hog.—State v. Nichols, 12 Rich., 672.

Misdemeanor to take and use certain animals without consent of owner. Punishment for.

R. S. 170; 1883, XVIII., 434.

Sec. 175. Whoever knowingly and wilfully shall take and use any horse, mare or mule without the consent of the owner thereof, and without intent to steal the same, shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not more than fifty dollars or by imprisonment for

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a period of not more than six months, or both fine and imprisonment, in the discretion of the Court.

Charge illustrative of distinction between stealing a horse and taking it to use without consent of owner.—State v. Sanders, 56 S. C., 415; 35 S. E., 133.

Removing, destroying, or leaving down fences misdemeanor. Punishment.

G. S. 1190; R. S. 171; 1881, XVII, 593, *Ib.*, § 7.

Sec. 176. Any person, other than owner, who shall remove or destroy, or leave down, any portion of any fence in this State, intended to enclose animals of any kind, or who shall leave open any gate or leave down any bars or other structure intended for a like purpose, shall be deemed guilty of a misdemeanor; and any person who shall wilfully or negligently violate Section 1497 of the Civil Code shall also be guilty of a misdemeanor; and both classes of offenders shall be punishable by a fine of not less than five nor more than thirty dollars, or be imprisoned in the County jail not less than five nor more than thirty days.

Rescuing trespassing stock a misdemeanor.

G S. 1191; R. S. 172; 1881, XVII., 593, § 8

Sec. 177. Whenever any animal shall be taken up under the provisions of this Chapter, it shall be unlawful for any person to rescue the same or deliver it from the custody of the person impounding it; and whoever shall violate this provision shall be deemed guilty of a misdemeanor, and be punished as provided in Section 176.

Travelling outside of road misdemeanor; proviso.

G. S. 1192; R. S. 173; *Ib.*, § 9.

Sec. 178. It shall be a misdemeanor for any person wilfully to walk, drive, ride, or to allow his team to travel outside of the road on the cultivated lands of another, punishable as in the next preceding Section: *Provided,* That in case any person charged with this misdemeanor be brought before, or reported to, a Magistrate, he may discharge himself from any further proceedings therein by paying such fine within the above limits as the Magistrate may impose.

In criminal prosecutions defendant may plead satisfaction.

G. S. 1193; R. S. 173; *Ib.*, 594, § 10.

Sec. 179. In all criminal prosecutions for violations of the provisions of Sections 176, 177 and 178 the defendant may plead, as a matter of defence, the full satisfaction of all reasonable demands of the party or parties aggrieved by such violation; and upon said plea being legally established, and upon payment of all costs accrued up to the time of such plea, he shall be discharged from further penalty.

Penalty for injuring, chasing, &c., stock.

R. S. 174; 1888, XX., 14.

Sec. 180. If any person whose field is not inclosed by a lawful fence, shall kill, wound, maim, chase, worry, or in any manner injure any cattle, horses, mules, hogs, sheep, or goats, which shall be found in such field, whether cultivated or not, or shall cause or procure the same to be done by any other person, such person, so offending, shall be liable to an action, and the plaintiff shall recover full satisfaction for the injury,

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with costs; and in addition thereto, the said offending party shall be deemed guilty of a misdemeanor, and, on conviction thereof, punished by a fine, not exceeding one hundred dollars, or imprisonment in the County jail, not more than thirty days.

To what Counties applicable.

This Section shall not apply to those Counties and parts of Counties where the law commonly known as the Stock Law is now of force.

Cutting or floating trees, logs, &c., in rivers at night without sufficient light or men to prevent damage, a misdemeanor, or timbers may be captured and sold.

G. S. 2505; R. S. 175; 1894, XXI, 715; 1897, XXII., 426.

Sec. 181. Any person who shall be found guilty of cutting any trees or tree tops, brush or logs, or throwing any refuse material whatever into any navigable river or harbor in South Carolina, or who shall float logs singly or in rafts in any manner whatsoever without being properly or plainly lighted at night, and attended by day with sufficient number of men to prevent said rafts and logs from negligently damaging property along the river banks, or from catching on snags, sinking and forming obstructions, or in any manner whatsoever interfering with the navigation or obstructing said rivers or harbors, shall be deemed guilty of a misdemeanor, and punished by fine not exceeding two hundred and fifty dollars or by imprisonment not exceeding two years.

And all such trees, logs, rafts, floating booms or pens of timber dangerous to navigation in said river may be captured and secured and properly rafted to market and sold, one-half of the net proceeds over the expense of capturing and marketing to be paid to the County Treasurer of the County in which such timber may be captured, and the other half to the person or persons capturing the same: *Provided,* This Section shall not apply to logs or timber accidentally drifting loose from a raft or from any stationery boom where timber is kept for proper use or for proper rafting, or to any logs floated off from the owner by a sudden freshet before his having an opportunity to raft the same.

Certain obstructions of streams a misdemeanor in certain Counties.

1899, XXIII., 102; 1900, XXIII., 448.

Sec. 182. The cutting or felling trees across or into any of the running streams of the Counties of Anderson, Cherokee, Chester, Greenville, Oconee, Union, Fairfield, Laurens, Newberry, Abbeville, Pickens, Spartanburg and York, obstructing the same by throwing any timber or other materials therein, or erecting any dam across any such stream whereby the fall in such stream is lessened and the flow of water and sand is obstructed, or the land along said stream above such obstruction is damaged, or the health of the community is endangered, or having erected any such obstruction and refusing to re-

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move the same within eight and forty hours after notice by any one to do so, shall be deemed a misdemeanor, and any person so convicted shall be punished by a fine of not less than five nor more than twenty-five dollars, or imprisonment for not less than ten nor more than thirty days, at the discretion of the Court: *Provided,* That nothing contained in this Section shall apply to the construction of mill dams, or dams for the purpose of generating power for any purpose.

See cases of State v. Tucker, 54 S. C., 251; 32 S. E., 361; 56 S. C., 522; 35 S. E., 215.

Duty of land-owners to clean out their streams.

1900, XXIII., 399.

Sec. 183. It shall be the duty of all land-owners to clean out all streams upon and adjacent to their lands at least twice in each year, at such particular times as said Boards may appoint, and according to the directions of said Boards, and to keep the same clear of all obstructions to a free and uninterrupted flow of sand and water through the channels thereof: *Provided,* That this Section shall not be construed to prevent the erection and maintenance of any dam across any of said streams for any useful purpose: *Provided, further,* That said Boards shall have power and authority to require the owner of any such dam to build and maintain therein suitable and sufficient floodgates and waterways to afford free passage through the same of the sand and water, so that the streams above may be properly cleaned out and the lands adjacent thereto properly drained, for which purpose they may require the owner of any such dam to open the floodgates or waterways therein and keep them open for such reasonable time as they may deem to be necessary. Any person violating any of the provisions of this Section shall be deemed guilty of maintaining a nuisance, and, upon conviction, shall be fined not more than fifty dollars, or imprisoned not more than thirty days: *Provided,* That ten days notice to abate such nuisance shall have been given.

Obstructing stream a misdemeanor.

Ib.

Sec. 184. Any person who shall fell, cut or throw, or cause to be felled, cut or thrown, across or into any of said streams, any tree, log or other timber, or any trash, brush, debris or obstruction of any kind whatsoever, shall be guilty of a misdemeanor, and on conviction shall be punished by a fine of not more than fifty dollars, or imprisonment for not more than thirty days.

Exceptions to §§ 183 and 184.

Ib.

Sec. 185. The provisions of Sections 183 and 184 shall not apply to nor be enforced in the following Counties of Bamberg, Aiken, Greenwood, Colleton, Dorchester, Fairfield, Clar-

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endon, Union, Chesterfield, Sumter, Darlington, Richland, Berkeley, Lancaster, Barnwell, Hampton, Florence, Beaufort, Horry, Kershaw, Lexington, Marlboro, Pickens, York, Abbeville, Georgetown, Williamsburg, Saluda, Anderson, Oconee and Chester.

Entry on lands of another after notice prohibiting the same a misdemeanor.

G. S. 2507; R. S. 176; 1866, XIII., 406 1883, XVIII., 43; 1898, XXII., 811.

Sec. 186. Every entry upon the lands of another, after notice from the owner or tenant prohibiting the same, shall be a misdemeanor, and be punished by fine not to exceed one hundred dollars or imprisonment with hard labor on the public works of the County not exceeding thirty days: *Provided,* That whenever any owner or tenant of any lands shall post a notice in four conspicuous places on the borders of any land prohibiting entry thereon, and shall pulish once a week for four consecutive weeks such notice in any newspaper circulating in the County where such lands are situate a proof of the posting and of publishing of such notice within twelve months prior to the entry, shall be deemed and taken as notice conclusive against the person making entry as aforesaid for hunting and fishing.

Construed.—Its terms must be taken in their ordinary acceptation, and they do not restrict the offense to those only who so enter under claim of title.—State v. Cockfield, 15 Rich., 53.

Nor do they limit the remedy to person holding the legal title, but extend it to the tenant at will.—State v. Green, 35 S. C., 266; 14 S. E., 619.

Such entry is a misdemeanor without regard to intention.—*Ib.*

Warrant.—Affidavit for, must show plainly that the offense charged is entry upon lands with notice, and not mere trespass upon them.—State v. May, 24 S. C., 190.

Affidavit alleging trespass after notice sufficient.—State v. Tenney, 58 S. C., 215; 36 S. E., 555; State v. Hallback, 40 S. C., 298; 18 S. E., 919.

Trespassing on State House grounds forbidden.

R. S. 177; 1889, XX., 317.

Sec. 187. It shall be unlawful for any person or persons to trespass upon the grass plots or flower beds of the State House grounds, to cut down, deface, mutilate or otherwise injure any of the trees, shrubs, grasses or flowers on said grounds, or to commit any other trespass upon any property of the State, real or personal, located thereon.

Watchmen made Constables.

For the purpose of enforcing the provisions of this Section, the Watchmen of the State House, or either of them, shall have power to arrest any person or persons committing said trespass upon said grounds, and to carry any person or persons so arrested before either of the Magistrates of the city of Columbia, to be dealt with as shall be hereinafter directed; and for such purpose the said Watchmen shall have all the powers, privileges and immunities of Constables.

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Any person or persons who shall violate the provisions of this Section shall be guilty of a misdemeanor, and upon conviction thereof before either of the Magistrates of the city of Columbia shall be fined no less than five or more than one hundred dollars, or be imprisoned not less than five or more than thirty days.

Punishment for trespass.

Sec. 188. Any person wilfully embezzling, stealing, defacing, damaging or in any manner mutilating or destroying while in his possession or in the custody of the State Librarian, any book, document, or other property, confided to the safekeeping of the State Librarian, or any person wilfully violating any of the rules and regulations prescribed by the Board of Trustees for the management of the State Library, shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine not exceeding one hundred dollars, or by imprisonment not exceeding thirty days.

Embezzling stealing, defacing or damaging books, &c., a misdemeanor

1898, XXII., 764, §§ 11 and 12.

The said Board of Trustees are hereby charged with the enforcement of this Section. All fines when collected shall be paid into the State Library fund and shall be expended for the increase of the State Library.

Trustees to enforce above section.

Disposition of fine.

Sec. 189. Any person who shall wilfully and unlawfully injure, damage, or destroy any pole or wire of any telegraph, telephone, or electric light company in this State, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by fine not exceeding one hundred dollars, or imprisonment not exceeding thirty days, or both, in the discretion of the Court or a Magistrate.

Injury to telegraph poles, &c.

G. S. 2524; R. S. 178; 1881, XVII., 576.

Sec. 190. Whoever wilfully does or causes to be done anything with intent to obstruct any engine or carriage passing upon a railroad, or with intent to endanger the safety of persons conveyed in or upon the same, or aids or assists therein, shall be punished by imprisonment in the State Penitentiary not more than five years, or by fine not exceeding five hundred dollars and imprisonment in the County jail not more than one year, and shall forfeit to the use of the corporation for each offense treble the amount of damages proved to have been sustained thereby, to be recovered in an action in any Court of competent jurisdiction.

For obstructing engine.

G. S. 1521; R. S. 179; *Ib.*, § 110.

Sec. 191. Whoever wilfully and maliciously injures in any way any railroad or anything appertaining thereto, or any material or instrument for the construction or use thereof, or aids or abets in such trespass, shall be punished by fine not

Penalty for injuring railroads.

G. S. 1518; and 1519; R. S. 180; 1882, XVII., 832.

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exceeding one thousand dollars or imprisonment not exceeding one year.

When life is endangered.

Whoever commits any of the acts mentioned in this Section in such manner as thereby to endanger life shall be punished as herein provided, or by imprisonment in the Penitentiary not exceeding twenty years.

For breaking into cars, etc.

G. S. 1522, R. S. 181; 1882, XVII., 833, § 111.

Sec. 192. Whoever breaks and enters, in the night-time, any railroad car, or enters in the night-time without breaking, or breaks and enters in the day-time, or shoots with any fire-arm, into any railroad car, with intent to commit the crime of larceny, or any other crime, shall, in addition to any other punishment now prescribed by law for such offense, be punished by imprisonment in the State Penitentiary not exceeding ten years, or by a fine not exceeding five hundred dollars.

Indictment for.—State v. Crawford, 38 S. C., 330; 17 S. E., 36.

For injury to electric signals.

G. S. 1523; R. S. 182; *Ib.*, 834, § 112.

Sec. 193. Whoever unlawfully and intentionally injures, molests, or destroys, any of the electric signals of a railroad corporation, or any of the lines, wires, posts, or any other structure or mechanism used in connection with such signals on any railroad, or destroys, or in any way interferes with, the proper working of such signals, shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine not exceeding five hundred dollars, or by imprisonment not exceeding two years, or both.

Interference with sewers prohibited.

1900, XXIII., 446.

Sec. 194. No person shall turn, remove, raise, or in any manner tamper with any cover of any man-hole, filter, bed or other appurtenance of any public sewer, without a written permit from the proper authorities of such works; and no person except those engaged by the proper authorties shall enter any public sewer without special written permit.

Damages to prohibited.

And no person shall, either within or without any city or town, obstruct, damage or injure any pipe, ditch, drain, filter, beds or appurtenance of any waterworks, sewerage or drainage of any such city or town.

Penalty for violation.

Every person violating the provisions of this Section shall, upon conviction, be deemed guilty of a misdemeanor, and be subject to a fine not to exceed one hundred dollars, or imprisonment for thirty days.

Failure to return boat, flat or tool used for mining phosphate, a misdemeanor.

1900, XXIII., 445.

Sec. 195. Any person being entrusted with any boat, flat or tools for gathering phosphate rock, by the owner thereof, for the purpose of mining or gathering phosphate rock, who shall fail to return same to the owner within two days after being

quired by such owner so to do, shall be guilty of a misdemeanor, and, upon conviction thereof before a Court of competent jurisdiction, shall be fined in the sum of not more than fifty dollars, or imprisoned not more than thirty days, in the discretion of the Court: *Provided*, It shall be a complete defense to any indictment or prosecution instituted under this Section, if the defendant shall make it appear that his or her failure to return the said property was due to his or her inability so to return the same, such inability not being the result of the defendant's act, or that the agreed time in which such property was to be returned had not expired at the time of his or her failure to return the same.

Penalty for taking up and selling drifted lumber and timber without accounting for the same.

G. S. 1622; R. S. 183; 1853, XII., 294.

Sec. 196. No person shall take up and sell any drifted boat, flat, or other water craft, lumber or timber not the property of such person without accounting for the same; and if any person shall take up and sell any drifted boat, flat or other water craft, lumber or timber without paying the proceeds to the owner on application, after deducting expenses, such person shall be liable for an indictment as for a misdemeanor, and fined and imprisoned at the discretion of the Court.

Penalty for stealing crude turpentine.

R. S. 184; 1893, XXI., 506.

Sec. 197. Whoever shall steal any crude turpentine of the value of five dollars, whether dipped or scraped from the trees or not, or whether barreled or not, from any place whatsoever, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by imprisonment for not more than one year or by a fine of not more than one hundred dollars or imprisonment not exceeding thirty days.

Wilful injury to property of certain corporation a misdemeanor.

1900, XXIII., 390.

Sec. 198. Any officer, agent or member of any corporation created under Article II of Chapter XLVIII, Sections 1902 to 1911, of the Civil Code, who shall knowingly or wilfully injure or damage any property belonging to the corporation, in violation of the charter or by-laws of said corporation, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine not exceeding one hundred dollars or imprisoned not exceeding thirty days.

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CHAPTER XI.

Offenses Against Public Policy.

SEC.
199. Penalties for setting up lotteries.
200. Penalties for venturing in lotteries.
201. Penalty for selling lottery tickets.
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203. Penalties, how recovered.
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205. Issuing of free passes, &c., prohibited.
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207. Violations of Sections in Civil Code, relating to warehouse men.
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209. Fraudulent misrepresentations of capital, &c.
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SEC.
216. Officers in discharge of duties exempt.
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219. Fraudulent statements by officers or agents of Fraternal Beneficiary Societies.
220. Agents of such association acting in violation of law.
221. Procuring board by false written representation that there is money due.
222. False certificates to jurors, witnesses, &c.
223. Acceptance of rebates by State and County officers.
224. No municipal officer to contract with municipality.
225. Interference with Phosphate Commissioners and mining without license.
226. Obstructing State Bank Examiner.
227 to 229. Protection of aids to navigation.
230. Desecration of grave yards.
231. Season in which ginsing may not be gathered.
232. Digging ginsing on lands of another.

Penalty for setting up lotteries.

G. S. 2596; R. S. 185; 1762, IV., 180, § 1.

Section 199. Whoever shall publicly or privately erect, set up or expose to be played, drawn at, or shall cause or procue to be erected, set up, exposed to be played, drawn, or thrown at, any lottery, under the denomination of sales of houses, lands, plate, jewels, goods, wares, merchandise, or others things whatsoever, or for money, or by any undertaking whatsoever, in the nature of a lottery, by way of chances, either by dice, lots, cards, balls, numbers, figures, or tickets, or who shall make, write, print or publish, or cause to be made, written, or published, any scheme or proposal for any of the purposes aforesaid and shall be convicted of any of the offences aforesaid, on any indictment for the same, at the Court of General Sessions, shall forfeit the sum of one thousand dollars, one-third part thereof to and for the use of this State, one-third part thereof to the

informer, and the other third part thereof to the County where the offense shall be committed; and shall, also, for every such offense, be committed by the said Court to the common jail for the space of twelve months.

Raffling not a lottery.—State v. Pinchback, 2 Mill, 128.

Penalty for adventuring in lotteries.

G. S. 2597; R. S. 186; *Ib.*, § 2.

Sec. 200. Whoever shall be adventurer in, or shall pay any moneys or other consideration or shall any way contribute unto or upon account of, any such sales or lotteries, shall forfeit, for every such offense, the sum of one hundred dollars, to be recovered, with costs of suit, by action or indictment in any Court of competent jurisdiction in this State, one moiety thereof to and for the use of the State, and the other moiety thereof to the person or persons who shall inform and sue for the same.

Penalty for selling lottery tickets.

G. S. 2598; R. S. 187; 1846, XI., 368, § 1.

Sec. 201. It shall be unlawful to offer for sale any lottery tickets, or to open or keep any office for the sale of lottery tickets; and if any person shall offend against any of the provisions of this Section, he shall, on conviction thereof, forfeit and pay to the State a sum not exceeding ten thousand dollars; and it shall be the duty of the County Treasurer of the County to prosecute the offender.

See State v. Allen, 2 McC., 55—prior to amendment of 1846.

Penalty for bringing convicts into the State.

G. S. 2599; R. S. 188; 1788, V, 87, § 1.

Sec. 202. Every master or person having charge of any ship or other vessel who shall bring into this State any convicted malefactor or person ordered for transportation, for any crime whatever, from any foreign county, State, or dominion, the ship or vessel bringing such persons shall be obliged to leave the port in which she shall arrive within ten days after arrival, and shall not be permitted to take or receive on board any lading whatsoever, on pain of forfeiture of such ship or vessel; and if any master shall land, or suffer to be landed, or dispose of the time or service of such person for the payment of his passage or any other claim or demand, such master of vessel, or other person having the charge thereof, shall forfeit and pay for every convicted malefactor or person ordered for transportation, which such master shall bring into this State, and offer to dispose of, on indenture, or other contract for service, the sum of twenty-five hundred dollars.

Penalties how recovered.

G. S. 2600; R. S. 189; 1788, V., 88, § 5.

Sec. 203. The fines and forfeitures inflicted by the preceding Section shall and may be recovered by indictment, to which any person offending shall be compelled to give security to abide the issue of the suit; one-half of which forfeiture shall

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go the prosecutor who shall inform and sue for the same, and the other half for the benefit of the State.

Free passes and franks prohibited.

R. S. 190; 1891, XX., 1047.

Sec. 204. It shall be unlawful for any person while a member of the Senate or of the House of Representatives, State or National, or any State or County official, or any Judge of a Court of Record in this State to use any free pass, express or telegraph frank or complimentary ticket, or to ride without paying the usual fare on any railroad in this State.

Punishment for using.

Any person upon conviction of a violation of the provision of this Section shall be deemed guilty of a misdemeanor and shall be liable to a fine not to exceed five hundred dollars or imprisonment not to exceed six months.

Their issue prohibited.

R. S. 191, *Ib.*

Sec. 205. It shall be unlawful for any transportation or transmitting company, or any person representing same, to issue, or offer to issue, a free pass or any special or reduced rates not common to the public, to any member of the Legislature of this State, or member of Congress from this State, or any State or County official or any Judge of a Court of Record in this State.

Punishment for issuing.

Any company or person upon conviction of a violation of the provisions of this Section, shall be deemed guilty of a misdemeanor, and shall be fined not less than five hundred dollars, or shall be imprisoned not exceeding six months, in each case.

No gift or premium to be offered to the purchaser.

R. S. 192; 1887, XIX., 812.

Sec. 206. No person shall sell, exchange or dispose of any article of food, or attempt to do so, upon any representation, advertisement, notice or inducement that anything other than what is specially stated to be the subject of the sale or exchange is or is to be delivered or received, or in any way connected with or a part of the transaction as a gift, prize, premium, or reward to the purchaser. Any person violating any of the provisions of this Section shall be deemed guilty of a misdemeanor, and, upon conviction thereof shall be punished by a fine not exceeding one hundred dollars, or by imprisonment not exceeding thirty days.

Penalty for violation.

Warehousemen violating regulations of Civil Code.

1887, XIX., 853.

Sec. 207. Any warehouseman, wharfinger, inspector, custodian or other person who shall wilfully violate any of the foregoing provisions of Sections 1716 to 1721 of the Civil Code shall be deemed guilty of a misdemeanor, and, upon indictment and conviction, shall be fined in any sum not exceeding five hundred dollars or be imprisoned for a term not exceeding one year, or both.

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Sec. 208. Any director who shall knowingly and willingly make, or cause to be made, any fraudulent misrepresentation in any certificate required by Sections 1851 and 1852 of the Civil Code, as to the increase and decrease of capital stock, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than two thousand dollars or by imprisonment for not more than two years, or both, in the discretion of the Court.

Fraudulent misrepresentation by Directors.

1899, XXIII., 58.

Sec. 209. Any officer or stockholder of any corporation who shall knowingly and wilfully make, or cause to be made, any fraudulent misrepresentation as to either capital, property or resources of the corporation, shall be held guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than $2,000 or by imprisonment for not longer than two years, or both, at the discretion of the Court.

Fraud by officer or stockholder a misdemeanor.

R. S. 195; 1896, XXII, 101; 1886, XIX, 546; Civil Code § 1843.

Sec. 210. Any person who shall discount, shave, or in any manner speculate in, the claim or application of any soldier, sailor, or widow, made under the pension laws of this State shall be guilty of a misdemeanor, and upon conviction shall be fined not exceeding one thousand dollars, or imprisonment not exceeding thirty days, or both, at the discretion of the Court.

Penalty for discounting, &c., pension claims.

R. S. 196; 1897, XIX., 828.

Sec. 211. Any person who shall fraudulently personate any soldier, sailor, or widow, for the purpose of obtaining the benefit of the pension laws of this State, or who shall knowingly make or cause to be made any false application or statement, or by any false or fraudulent statement procure such statement to be made, approved or paid, shall be guilty of a misdemeanor, and upon conviction shall be punished by fine not exceeding two hundred dollars, or imprisonment not exceeding six months, or both, at the discretion of the Court.

Penalty for making fraudulent claims.

R. S. 197; *Ib.*

Sec. 212. All arrangements, contracts, agreements, trusts or combinations between two or more persons as individuals, firms or corporation made with a view to lessen, or which tend to lessen, full and free competition in the importation or sale of articles imported into this State, or in the manufacture or sale of articles of domestic growth, or of domestic raw material, and all arrangements, contracts, agreements, trusts or combinations between persons or corporations, designed or which tend to advance, reduce or control the price or the cost to the producer or to the consumer of any such product or article, and all arrangements, contracts, trusts, syndicates, associations or com-

Trusts and combinations affecting competition in trade prohibited.

1897, XXII., 434, §§ 1 and 3; 1898, XXII., 782.

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binations between two or more persons as individuals, firms, corporations, syndicates or associations, that may lessen or affect in any manner the full and free competition in any tariff, rates, tolls, premiums or prices, or seeks to control in any way or manner such tariffs, rates, tolls, premiums or prices in any branch of trade, business or commerce, are hereby declared to be against public policy, unlawful and void; and any violation of the provision hereof shall be deemed, and is hereby declared to be, destructive of full and free competition and a conspiracy against trade, and any person or persons who may engage in any such conspiracy, or who shall, as principal, manager, director or agent, or in any other capacity, knowingly carry out any of the stipulations, purposes, prices, rates or orders made in furtherance of such conspiracy, shall, on conviction, be punished by a fine of not less than one hundred dollars or more than five thousand dollars, and by imprisonment in the Penitentiary not less than six months, or more than ten years, or, in the judgment of the Court, by either such fine or such imprisonment.

Violations punished.

Attorney General to bring action to forfeit charter; when.

Ib., § 2.

Sec. 213. Whenever complaint is made upon affidavit or affidavits showing a *prima facie* case of violation of the provisions of the preceding Section by any corporation, domestic or foreign, it shall be the duty of the Attorney General to bring action against such domestic corporation to forfeit its charter, and for the purpose of such forfeiture he shall apply to any Court of competent jurisdiction for an order restraining such offending corporation, and in cases where, in his discretion, it is necessary, for the immediate appointment of a receiver for such offending corporation, where such forfeiture affects a creditor or creditors of such offending corporation, and in case such violation shall be established the Court shall adjudge the charter of such corporation to be forfeited, and such corporation shall be dissolved and its charter shall cease and determine; and in the case of such showing as to a foreign corporation an action shall be begun by the Attorney General in said Court to determine the truth of such charge, and in case such charge shall be considered established the effect of the judgment of the Court shall be to deny such corporation the recognition of its corporate existence in any Court of law or equity in this State. But nothing in this Section shall be construed to affect any right of action then existing against such corporation.

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Sec. 214. Any person or persons or corporation that may be injured or damaged by any such arrangement, contract, agreement, trust or combination described in Section 212 may sue for and recover, in any Court of competent jurisdiction in this State, of any person, persons or corporation operating such trust or combination, the full consideration or sum paid by him or them for any goods, wares, merchandise or articles the sale of which is controlled by such combination or trust.

Injured party may recover damages.

1897, XXII., 434, § 4.

Sec. 215. Any and all persons may be compelled to testify in any action or prosecution under the three preceding Sections: *Provided,* That such testimony shall not be used in any other action or prosecution against such witness or witnesses, any such witness or witnesses shall forever be exempt from any prosecution for the act or acts concerning which he or they testify.

All persons compelled to testify.

Ib., § 5.

Sec. 216. Nothing contained in the four preceding Sections shall be taken or construed to apply to any person or persons acting in the discharge of official duties under the laws of this State.

Officers in discharge of duties exempt.

Ib., § 6.

Note: The Act of 1897, embracing the last five Sections, is also embraced in Sec. 2845-2847 of the Civil Code; but the amending Act of 1898 was omitted through mistake.

Sec. 217. Any attempt to evade the provisions of Sections 1819, 1820 of the Civil Code, prohibiting combinations to control rates of insurance, shall be punished by a fine of five hundred dollars, and any false statement in the affidavit required in Section 1820, of the Civil Code, shall be deemed perjury, and punished by a fine of not less than one hundred dollars nor more than one thousand dollars, and by confinement in the penitentiary for one year, or, in the discretion of the Court, by confinement in jail for a period of not less than thirty days nor more than twelve months.

Punishment for acts in violation of Act prohibiting to control rates of insurance.

1899, XXIII., 59.

Sec. 218. If any director or other officer of any bank incorporated under the Statutes of the State providing for "Banking Companies" shall be convicted upon indictment of directly or indirectly borrowing therefrom, except on good security, approved in writing by two-thirds of the whole Board of Directors of such bank; or shall become an endorser or surety upon any loan or credit made or extended to any other director or officer of such bank; or shall borrow from such bank, or lend to any of its directors, or any firm of which such director is a member, or any company or corporation of which such director is an officer, an amount or amounts exceeding at any one

Violation of laws governing banking companies by the directors or officers thereof punished.

1897, XXI., 463.

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time one-tenth part of the capital stock of such bank actually paid in,in violation of Sections 1776 and 1777, of the Civil Code, he shall be punished by fine or imprisonment, or by both fine and imprisonment, at the discretion of the Court.

Penalties for fraudulent statements by officer, agent, &c., of fraternal beneficiary associations.

1896, XXII., 103, § 10.

Sec. 219. Any person, officer, member or examining physician who shall knowingly or willfully make any false or fraudulent statement or representation in or with reference to any application for membership, or for the purpose of obtaining any money or benefit in any association transacting business under the Act regulating Fraternal Beneficiary Societies, orders and associations of this State, embraced in Chapter XLVI., Sections 1830 to 1841, of the Civil Code, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or imprisonment in the County jail for not less than thirty days nor more than one year, or both, in the discretion of the Court; and any person who shall willfully make a false statement of any material fact or thing in a sworn statement as to the death or disability of a certificate holder in any such association for the purpose of procuring payment of a benefit named in the certificate of such holder, and any person who shall wilfully make any false statement in any verified report of declaration under oath required or authorized by said Act, shall be guilty of perjury, and shall be proceeded against and punished as provided by the Statutes of this State in relation to the crime of perjury

Agents of fraternal beneficiary associations doing business in violation of law.

1896, XXII., 103.

Sec. 220. Any officer, agent, or person acting for any Fraternal Beneficiary association, while such association is enjoined from doing business, pursuant to Chapter XLVI. of the Civil Code, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be punished by a fine of not less than twenty five or more than one hundred dollars.

Procuring board by falsely making written representation that there is money due a misdemeanor.

1898, XXII., 792.

Sec. 221. Any person who procures board and lodging or board from any boarding-house or inn-keeper in this State upon the representation in writing that there is money due or to become due to him, to be paid on a future day, out of which he promises to pay for such board and lodging or board, and fails or refuses to so apply such money when collected by him, shall be guilty of a misdemeanor, and on conviction shall pay a fine not exceeding fifty dollars or be imprisoned not more than thirty days: *Provided,* That if such person shall pay the amount due by him for such board and lodging or board and the costs of

the prosecution, the case may be discontinued, in the discretion of the Magistrate issuing the warrant.

A misdemeanor for any officer to give a false certificate to any witness or juror of mileage travelled.

1897, XXII., 732.

Sec. 222. Any officer whose duty it is to certify to the mileage of any juror, witness or other person required to attend Court or to travel to perform any legal duty, who shall knowingly allow any claim for mileage otherwise than is herein prescribed shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by fine or imprisonment, or both, in the discretion of the Court, and shall, whether indicted criminally or not, be liable in a civil action to pay as a penalty for the benefit of the County, a sum equal to ten times the amount which the County may lose by reason of any payment for mileage in excess of that allowed by law.

Rebates collected and retained by a public officer a misdemeanor.

1897, XXII., 519.

Sec. 223. Any State or County officer in this State who shall receive or collect any rebate, commission or discount from any person, persons or corporations upon the purchase of any books, or any other property, or supplies, or from printing or advertising, whether for use of State or County, and shall fail or refuse to pay the same to the proper State or County authorities at the time of receiving the same, shall be deemed guilty of a misdedemeanor, and upon conviction shall be punished by a fine or imprisonment, in the discretion of the Court, and shall also forfeit his said office.

See also Sec. 382, Act of 1899, XXIII., 96, as to acceptance of rebates.

No municipal officer may contract with municipality.

1900, XXIII., 455.

Sec. 224. No municipal officer shall take a contract to perform work or furnish material for the municipal corporation of which he is an officer, and no such officer shall receive any compensation on any contract for said purpose: *Provided,* That in cities of over thirty thousand inhabitants, such contracts may be allowed by the unanimous vote of City Council upon each specific contract, such vote to be taken by yeas and nays, and entered upon Council's journal.

Violations a misdemeanor.

Any person violating the provisions of this Section shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by fine or imprisonment, in the discretion of the Court before whom such conviction is had.

Penalty for interference with Phosphate Commissioners or mining without license.

R. S. 515; 1900, XX., 694.

Sec. 225. Any person or persons wilfully interfering with, molesting, or obstructing, or attempting to interfere with, molest, or obstruct, the State or the said Board of Phosphate Commissioners, or any one by them authorized or licensed, in the peaceable possession and occupation of any of the marshes and navigable streams and waters of the State, including the

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Coosaw River phosphate territory, or who shall dig or mine, or attempt to dig or mine, any of the phosphate rock or phosphate deposits of this State, without a license so to do by the Board of Phosphate Commissioners, shall be punished for each offense by a fine of not less than one hundred dollars or more than five hundred dollars, or imprisonment for not less than one or more than twelve months, or both, at the discretion of the Court.

Obstruction of State Bank Examiner a misdemeanor.

1896, XXII., 113.

Sec. 226. Any officer of a Banking corporation or any employe thereof who shall obstruct the State Bank Examiner in the discharge of his duties shall on conviction be deemed guilty of a misdemeanor, and any person convicted of wilfully swearing falsely on any such examination shall be deemed guilty of perjury.

Protection of the aids of navigation.

R. S. 518; 1893, XXI., 396, § 1.

Sec. 227. Any person or persons who shall moor any vessel or vessels of any kind or name whatsoever, or any raft or any part of a raft, to any buoy, beacon or day mark placed in the waters of South Carolina by the authority of the United States Light House Board, or shall in any manner hang on with any vessel or raft, or part of a raft, to any such buoy, beacon or day mark, or shall wilfully remove, damage or destroy any beacon or beacons erected on lands in this State by the authority of the said United States Light House Board, or having through unavoidable accident run down, dragged from its position, or in any way injured any buoy, beacon or day mark as aforesaid, and shall fail to give notice as soon as practicable of having done so to the Light House Inspector of the district in which said buoy, beacon or day mark may be located, or to the Board of Wardens for the Port of South Carolina, shall, for every

Penalty and punishment.

such offense, be deemed guilty of a misdemeanor, and upon conviction thereof before any Court of competent jurisdiction shall be punished by a fine not to exceed two hundred dollars or imprisonment not to exceed three months, or both, at the

Appropriation of fine.

discretion of the Court; one-third of the fine in each case shall be paid to the informer and two-thirds thereof to the Light House Board, to be used in repairing the said buoys or beacons.

Anchorage of vessels; penalty

R. S. 519; *Ib*., § 2.

Sec. 228. It shall be unlawful for any vessel to anchor on the range line of any range lights established by the United States Light House Board in this State, and the master of any vessel so anchoring shall be deemed guilty of a misdemeanor, and upon conviction thereof before any Court of competent jurisdiction shall be punished by a fine not to exceed fifty dollars, one-

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half of the fine in each case to be paid to the informer and one-half to the State.

Cost of repairs to be a lien.

R. S. 520; *Ib.*, § 3.

Sec. 229. The cost of repairing or replacing any such buoy, beacon or day mark which may have been misplaced, damaged or destroyed by any vessel or raft whatsoever having been made fast to any such buoy, beacon or day mark shall, when the same shall be legally ascertained, be a lien upon such vessel or raft, and may be recovered against said vessel or raft and the owner or owners thereof in an action of debt in any Court of competent jurisdiction in this State.

Destruction of graves and grave-yards a misdemeanor.

1899, XXIII., 98.

Sec. 230. Any person or persons who shall wilfully obliterate or desecrate any grave, or shall wilfully destroy any plants, trees, decorations, shrubbery, or deface or remove any grave-stone, or shall wilfully destroy, tear down or injure any fence or other enclosure of any graveyard, shall be guilty of a misdemeanor, and upon conviction shall pay a fine of not more than one hundred nor less than twenty-five dollars, or be confined in the County chain gang not more than thirty days nor less than ten days.

Digging or pulling up ginsing a misdemeanor; when.

1899, XXIII., 92.

Sec. 231. If any person shall dig in this State any ginsing, pull up the roots or in any manner injure them, from the 15th day of March till the 15th day of September in any year, such person shall be guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not more than one hundred dollars, or imprisonment for not more than thirty days.

Digging on land of another, when planted, prohibited.

Ib.

Sec. 232. Where any person in this State shall plant ginsing upon any lands belonging to such person or persons, whether the same be enclosed or not, then it shall be unlawful for any person to dig said ginsing at any time of the year without the permission of the person so planting the same; and any person convicted of a violation of the provision of this Section shall be fined for each and every such offense not exceeding one hundred dollars, or imprisonment for a term not exceeding thirty days.

CHAPTER XII.

Offenses Against the Public Peace.

SEC.
233. Conspiracy against persons.
234. If other crimes committed, how punished.
235. Sheriffs, &c., to execute warrants. May call out *posse comitatus.*
236. Penalty for hindering officers or rescuing prisoners.
237. Persons injured may prosecute County for damages.

MOBS AND RIOTS.

238. Owners of buildings destroyed by, indemnified.
239. When damages cannot be recovered.
240. Persons injured may sue participants.
241. County Commissioners may prosecute offenders.
242. Sheriffs, &c., to enforce preceding provisions.

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243. Jurisdiction of Circuit Courts.

OF INSURRECTION OR REBELLION.

244. Governor to call out militia; when.
245. Proclamation to disperse.
246. Militia subject to Articles of War.
247. Penalty for disobedience of orders.
248. Governor to take possession of telegraph; when.
249. Governor to employ sufficient force to suppress insurrection, &c.
250. Governor may suspend *habeas corpus.*
251. Prize fighting prohibited.
252. Shooting or boisterous conduct on highway.

Of Conspiracy.

Conspiracy against persons

G. S. 2567; R. S. 198; 1871, XIV., 560, § 2.

Section 233. If any two or more persons shall band or conspire together, or go in disguise upon the public highway, or upon the premises of another, with intent to injure, oppress, or violate the person or property of any citizen, because of his political opinion or his expression or exercise of the same, or shall attempt, by any means, measures, or acts, to hinder, prevent, or obstruct any citizen in the free exercise and enjoyment of any right or privilege secured to him by the Constitution and laws of the United States, or by the Constitution and laws of this State, such persons shall be deemed guilty of a felony, and, on conviction, thereof, be fined not less than one hundred or more than two thousand dollars, or be imprisoned not less than six months or more than three years, or both, at the discretion of the Court; and shall thereafter be ineligible to, and disabled from, holding any office of honor, trust, or profit in this State.

If other crime committed, how punished.

G. S. 2563; R. S. 199; *Ib.*, § 3.

Sec. 234. If in violating any of the provisions of Sections 233 and 236 of this Chapter, any other crime, misdemeanor, or felony shall be committed, the offender or offenders shall, on convicted thereof, be subjected to such punishment for the same as is attached to such crime, misdemeanor, and felony, by the existing laws of this State.

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Sec. 235. It shall be the duty of all Sheriffs, Constables, and other officers who may be specially empowered, to obey and execute all warrants and other processes issued under the provisions of Sections 233 to 239, inclusive, of this Chapter, to them directed; and should any Sheriff, Constable, or other officer specially empowered, refuse to receive such warrant or other process, when tendered to him, or neglect or refuse to execute the same, he shall, on conviction thereof, be fined in the sum of five hundred dollars, to the use of the citizens deprived of the rights secured by the provisions of this Chapter, or be imprisoned in the County jail, in the discretion of the Court. And the better to enable the Sheriffs, Constables, and other officers specially empowered, to execute all such warrants and other processes as may be directed to them, they shall have authority to summon and call to their aid the bystanders or *posse comitatus* of the proper County; and all persons refusing to obey the summons or call of the officers thus empowered shall be deemed guilty of a misdemeanor, and, on conviction thereof, be punished. And such warrants and other processes shall run and be executed by said officers anywhere within the Circuit or County in which they are issued.

Sheriffs, &c., to execute warrants, may call out *posse comitatus*.

G. S. 2569; R. S. 200; *Ib.*, § 6.

Sec. 236. Any person who shall hinder, prevent, or obstruct any officer or other person charged with the execution of any warrant or other process issued under the provisions of Sections 233 to 242, inclusive, of this Chapter, in arresting any person for whose apprehension such warrant or other process may have been issued, or shall rescue, or attempt to rescue, such person from the custody of the officer or person or persons lawfully assisting him, as aforesaid, or shall aid, abet, or assist any person so arrested, as aforesaid, directly or indirectly, to escape from the custody of the officer or person or persons assisting him, as aforesaid, or shall harbor or conceal any person for whose arrest a warrant or other process shall have been issued, so as to prevent his discovery and arrest, after notice or knowledge of the fact of the issuing of such warrant or other process, shall, on conviction for either of said offences, be subject to a fine of not less than fifty nor more than one thousand dollars, or imprisonment of not less than three months nor more than one year, or both, at the discretion of the Court having jurisdiction.

Penalty for hindering officers or rescuing prisoners.

G. S. 2570; R. S. 201; *Ib.*, 561, § 7.

Sec. 237. Any citizen who shall be hindered, prevented, or obstructed in the exercise of the rights and privileges secured

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Persons injured may prosecute County for damages.

G. S. 2571; R. S. 202; 1871, XIV., 561, § 8.

to him by the Constitution and laws of the United States, or by the Constitution and laws of this State, or shall be injured in his person or property because of his exercise of the same, may claim and prosecute the County in which the offence shall be committed for any damages he shall sustain thereby; and the said County shall be responsible for the payment of such damages as the Court may award, which shall be paid by the County Treasurer of such County on a warrant drawn by the County Commissioners thereof; which warrant shall be drawn by the County Commissioners as soon as a certified copy of the judgment roll is delivered to them for file in their office.

Of Mobs and Riots.

Owners of buildings, destroyed by, indemnified.

G. S. 2572; R. S. 203; *Ib.*, § 9.

Sec. 238. In all cases where any dwelling house, building, or any property, real or personal, shall be destroyed in consequence of any mob or riot, it shall be lawful for the person or persons owning or interested in such property to bring suits against the County in which such property was situated and being, for the recovery of such damages as he or they may have sustained by reason of the destruction thereof; and the amount which shall be recovered in said action shall be paid in the manner provided by Section 237 of this Chapter.

When damages cannot be recovered.

G. S. 2573; R. S. 204; *Ib.*, § 10

Sec. 239. No person or persons shall be entitled to the recovery of such damages if it shall appear that the destruction of his or their property was caused by his or their illegal conduct, nor unless it shall appear that he or they, upon knowledge had of the intention or attempt to destroy his or their property, or to collect a mob for that purpose, and sufficient time intervening, gave notice thereof to a Constable, Sheriff, or Magistrate of the County in which such property was situated and being; and it shall be the duty of such Constable, Sheriff, or Magistrate, upon receipt of such notice, to take all legal means necessary for the protection of such property as is attacked, or threatened to be attacked; and if such Constable, Sheriff, or Magistrate, upon receipt of such notice, or upon knowledge of such intention or attempt to destroy such property, in any wise received, shall neglect or refuse to perform his duty in the premises, he or they so neglecting or refusing shall be liable for the damages done to such property, to be recovered by action, and shall also be deemed guilty of a misdemeanor in office, and, on conviction thereof, shall forfeit his commission.

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Sec. 240. Nothing in the foregoing Sections of this Chapter shall be construed to prevent the person or persons whose property is so injured or destroyed from having and maintaining his or their action against all and every person and persons engaged or participating in said mob or riot, to recover full damages for any injury sustained: *Provided, however,* That no damages shall be recovered by the party against any of said rioters for the same injury for which compensation shall be made by the County.

Persons injured may sue participants.

G. S. 2574; R. S. 205; 1871, XIV., 562, § 11

Sec. 241. It shall be lawful for the County Commissioners of the County against which damages shall be recovered under the provisions of this Chapter to bring suit, or suits, in the name of the County, against any and all persons engaged or in any manner participating in said mob or riot, and against any Constable, Sheriff, Magistrate, or other officer charged with the maintenance of the public peace, who may be liable, by neglect of duty, to the provisions of this Chapter, for the recovery of all damages, costs, and expenses incurred by said County; and such suits shall not abate or fail by reason of too many or too few parties defendant being named therein.

County Commissioners may prosecute offenders.

G. S. 2575; R. S. 206; *Ib.*, § 12.

Sec. 242. Sheriffs, Constables, and other officers in the several Circuits or Counties vested with powers of arresting, imprisoning, and bailing offenders against the laws of this State, are hereby specially authorized and required to institute proceedings against all and every person and persons who shall violate the provisions of the preceding Sections of this Chapter, and cause him and them to be arrested, imprisoned, or bailed, as the case may require, for a trial before such Court as shall have jurisdiction of the offence.

Sheriffs, &c., to enforce preceding provisions.

G. S. 2576; R. S. 207; *Ib.*, 566, § 4.

Sec. 243. The Circuit Courts of this State, within their respective Circuits, in the Counties of which the Circuits are respectively composed, shall have cognizance of all offences committed against the provisions of Sections 233 to 241, inclusive, of this Chapter.

Jurisdiction of Circuit Courts.

G. S. 2577; R. S. 208; *Ib.*, § 5.

Of Insurrection or Rebellion.

Sec. 244. Whenever, by reason of unlawful obstructions, combinations, or assemblages of persons, or rebellion against the authority of the government of this State, it shall become impracticable, in the judgment of the Governor of the State, to enforce, by the ordinary course of judicial proceedings, the laws of the State within any County or Counties of the State,

Governor to call out militia, when.

G. S. 2578; R. S. 209; 1868, XIV., 85, § 1.

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it shall be lawful for the Governor of the State to call forth the militia of any or all the Counties in the State, and employ such parts thereof as he may deem necessary to enforce the faithful execution of the laws, or to suppress such rebellion.

Proclamation to disperse.

G. S. 2579; R. S. 210; *Ib.*, 86, § 2.

Sec. 245. Whenever, in the judgment of the Governor, it may be necessary to use the military force hereby directed to be employed and called forth, the Governor shall forthwith, by proclamation, command such insurgents to disperse and retire peaceably to their respective abodes within a limited time.

Militia subject to articles of war.

G. S. 2580; R. S. 211; *Ib.*, § 3.

Sec. 246. The militia so called into the service of the State shall be subject to the same rules and articles of war as troops of the United States, and be continued in the service of the State until discharged by proclamation by the Governor: *Provided,* That such continuance in service shall not extend beyond sixty days after the commencement of the regular session of the General Assembly, unless the General Assembly shall expressly provide therefor: *Provided, further,* That the militia so called into the service of the State shall, during their term of service, be entitled to the same pay, rations, and allowances for clothing, as are or may be established by law for the army of the United States.

Penalties for disobedience of orders.

G. S. 2581; R. S. 212; *Ib.*, § 4.

Sec. 247. Every officer, non-commissioned officer, or private of the militia, who shall fail to obey the orders of the Governor of the State in any of the cases before recited, shall forfeit a sum not exceeding one year's pay, and not less than one month's pay, to be determined by a court-martial; and such officer shall be liable to be cashiered by sentence of court-martial, and be incapacitated from holding a commission in the militia, for a term not exceeding twelve months, at the discretion of the Court; and such non-commissioned officer and private shall be liable to imprisonment by a like sentence, on failure of the payment of the fines adjudged against them, for one calendar month for every twenty-five dollars of such fine.

Governor to take possession of telegraphs, &c., when.

G. S. 2582; R. S. 213; *Ib.*, § 5.

Sec. 248. The Governor of the State, when, in his judgment, the public safety may require it, is hereby authorized to take possession of any or all of the telegraph lines in the State, their offices and appurtenances; to take possession of any or all railroad lines in the State, their rolling stock, their offices, shops, buildings, and all their appendages and appurtenances; to prescribe rules and regulations for the holding, using, and maintaining of the aforesaid telegraph and railroad lines in the manner most conducive to the interest and safety of the govern-

ment; to place under military control all the officers, agents, and employes belonging to the telegraph and railroad lines thus taken possession of, so that they shall be considered a part of the military establishment of the State, subject to all the restrictions imposed by the rules and articles of war.

Governor to employ sufficient force.

G. S. 2583; R. S. 214; 1868, XIV., 86, § 6.

Sec. 249. The Governor is authorized to employ as many persons as he may deem necessary and proper for the suppression of such insurrection, rebellion, or resistance to the laws; and for this purpose he may organize and use them in such manner as he may judge best for the public welfare.

Governor may suspend *habcas corpus*, when.

G. S. 2584; R. S. 215; *Ib.*, § 7.

Sec. 250. If, during any insurrection, rebellion, or any unlawful obstruction of the laws, as set forth in Section 244 of this Chapter, the Governor of the State, in his judgment, shall deem the public safety requires it, he is authorized to suspend the privilege of the writ of *habeas corpus* in any case throughout the State or any part thereof; and whenever the said privilege shall be suspended, as aforesaid, no military or other officer shall be compelled, in answer to any writ of *habeas corpus,* to return the body of any person or persons detained by him by authority of the Governor; but upon the certificate, under oath, of the officer having charge of any one so detained, that such person is detained by him as a prisoner under the authority of the Governor, further proceedings under the writ of *habeas corpus* shall be suspended by the Judge or Court having issued the said writ, so long as said suspension by the Governor shall remain in force and said rebellion continue.

Prize fighting prohibited.

R. S. 216; 1893, XXI, 397; 1896, XXII., 224.

Sec. 251. It shall be unlawful for any person or persons to engage in prize fighting, or to be a second in a prize fight, within the limits of this State; and any person violating the provisions of this Section shall be punished by a fine of not exceeding one thousand dollars or imprisonment not exceeding three years, or both fine and imprisonment, in the discretion of the Court. Any person or persons, either upon their responsibility or as officers or agents of any club or association, who shall aid or abet by offer of a purse or money or other valuable inducement, or by letting or giving the use of a house or grounds, or who shall in any way whatsoever effect or cause a violation of this Section, shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by imprisonment not exceeding six months or by a fine not exceeding two hundred dollars.

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Shooting or boisterous conduct on public highway a misdemeanor.

1899, XXIII., 97; 1900, XXIII., 449.

Sec. 252. Any person who shall, without just cause or excuse, or while under the influence, or feigning to be under the influence, of intoxicating liquors, engaged in any boisterous conduct, or who shall, without just cause or excuse, discharge any gun, pistol or other firearm while upon or within fifty yards of any public road or highway, except upon his own premises, shall be guilty of a misdemeanor, and, upon conviction thereof, shall pay a fine of not more than one hundred dollars, or be imprisoned for not more than thirty days.

CHAPTER XIII.

Offenses Against Public Justice.

SEC.

253. Perjury.
254. Procuring witness to commit perjury.
255. Disposition of forfeiture.
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257. Additional punishment for perjury.
258. Perjury for President or Cashier to make false returns.
259. Felony to receive deposits after knowledge of insolvency.
260. False swearing before Courts for the arbitration of mercantile disputes in the city of Charleston.

BRIBERY.

261. Giving or offering bribes to officers.
262. Acceptance of bribes by officers.
263. Corrupting jurors, &c.
264. Accepting bribes by jurors, &c.
265. Bribery to procure office.
266. Penalty for accepting bribes.
267. Informer free from arrest.

OF AIDING ESCAPES AND PRISONERS.

268. Of aiding escapes from prisons and rescuing prisoners.
269. Aiding escapes from an officer.
270. Jailor or other officer wilfully suffering escapes.

SEC.

CONCERNING ELECTIONS.

271. Betting on elections.
272. Voting more than once.
273. Bribery at election.
274. Offering to procure votes by bribery.
275. Abusing voters, &c.
276. Place of trial; informer's share, &c.
277. Assault, &c., on account of political opinion.
278. Perjury to swear falsely by voters.
279. Punishment of Managers at primary election for violating, &c.
280. Punishment of officers for neglect or corrupt conduct.
281. Penalty for messengers and others defeating due delivery of certificates.
282. Punishment for neglect or corrupt conduct on part of officer or messenger.
283. Punishment for violation of election laws.
284. Wilful neglect of duty by Commissioner or Manager of Election.
285. Improperly furnishing registration certificates.
286. Receiving fraudulent certificate of registration.

Of Perjury.

Section 253. Whoever, either by the subornation, unlawful procurement, sinister persuasion or means, of any other per-

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son, or by his own act, consent or agreement, shall wilfully and corruptly commit any manner of wilful perjury, by his deposition in any of the Courts of this State, or being examined *ad perpetuam rei memoriam,* and being thereof duly convicted, shall be fined in the sum of one hundred dollars, and shall suffer imprisonment by the space of six months, and the oath of such person shall not be received in any Court of record within this State.

Perjury and subornation of perjury.

G. S. 2531; R. S. 217; 5 Eliz., c. 9; 1712, II., 487, § 6.

Perjury consists in false swearing without any regard to the form of the oath.—Patrick v. Smoke, 3 Strob., 152.

The false swearing must be wilful and corrupt.—State v. Cockran, 1 Bail., 50.

It must relate to some fact material to the issue.—State v. Hattaway, 2 N. & McC., 118; State v. Kennerty, 10 Rich., 152.

If done to mitigate sentence, it is perjury.—State v. Keenan, 8 Rich., 456.

Perjury cannot be committed in giving evidence in a cause of which Court had no jurisdiction.—State v. Jenkins, 26 S. C., 121; 1 S. E., 437.

Nor before arbitrators not having power to administer an oath.—State v. McCroskey, 3 McC., 308. But it was assigned on oath before a Justice of the Peace, on investigation before arbitrators.—State v. Stephenson, 4 McC., 165.

Not on oath for naturalization.—State v. Helle, 2 Hill, 290.

Defendant's mental condition a material fact.—State v. Gaymon, 44 S. C., 333; 22 S. E., 305.

Indictment—Which charges that the oath was taken on the Gospels will not be sustained by proof that the oath was taken with uplifted hand.—State v. Porter, 2 Hill, 611.

Where it sufficiently charges a common law perjury, its conclusion against the statute, &c., may be regarded as surplusage.—State v. Kennedy, 10 Rich., 152.

Sufficient to allege that defendant was duly sworn.—State v. Farrow, 10 Rich., 165.

Not defective in failing to allege that the proceeding before Magistrate was commenced by information under oath.—State v. Byrd, 28 S. C., 18; 4 S. E., 793.

It need not allege that the matter sworn to was material to the issue.—*Ib.*

Evidence.—Testimony showing location of defendant, when it affects the issue, is material.—State v. Byrd, 28 S. C., 18; 4 S. E., 793.

Two witnesses not necessary to disprove facts sworn to; but where there is only one, independent evidence ought to be adduced.—State v. Heyward, 1 N. & McC., 546.

Same amount of testimony required to prove the facts sworn to as the falsity of the oath.—State v. Howard, 4 McC., 159.

One who has been charged with crime by the oath of defendant is a competent witness.—State v. McKennan, Harp., 302.

Prosecutor was a competent witness unless he had immediate interest in the record.—State v. Farrow, 10 Rich., 165.

Verdict.—Where it finds guilty of perjury before two persons, and the indictment charges it before one of them, the variance is fatal.—State v. Mayson, 3 Brev., 284.

Judgment—Will be arrested when the words stated do not from the face of the indictment appear to be material.—State v. Heyward, 1 N. & McC., 546.

Sec. 254. Whoever shall unlawfully and corruptly procure any witness or witnesses by letters, rewards, promises, or by any other sinister and unlawful means whatsoever, to commit any wilful and corrupt perjury, in any matter or cause whatsoever, in suit and variance, by any writ, action, complaint, or information, in any wise touching or concerning any lands,

Procuring witness to commit perjury. Penalty. Person incompetent to testify thereafter.

G. S. 2532; R. S. 218; *Ib.*, § 3.

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tenements, or hereditaments, goods, chattels, debts, or damages, in any of the Courts of this State, or shall unlawfully and corruptly procure or suborn any witness or witnesses, which shall be sworn to testify *in perpetuam rei memoriam,* shall be fined in the sum of two hundred dollars, and shall be imprisoned for the space of six months, unless such fine shall be sooner paid, and thenceforth shall not be received as a witness in any Court of record within this State.

Attorney at law disbarred for subornation of perjury.—State v. Holding, 1 McC., 379.

Disposition of forfeiture.

G. S. 2533; R. S. 219; 5 Eliz., c. 9; 1712, II., 488, § 8.

Sec. 255. The one moiety of the fine imposed by the preceding Sections of this Chapter shall be for the State, and the other moiety to such person as shall be grieved, hindered, or molested by reason of the offence or offences before mentioned, that will sue for the same by action in any Court of competent jurisdiction.

False swearing before persons authorized to administer oaths.

G. S. 2534; R. S. 220; 1833, VI., 485.

Sec. 256. Whoever shall, wilfully and knowingly, swear falsely in taking any oath required by law, and administered by any person directed or permitted by law to administer such oath, shall be deemed guilty of perjury, and, on conviction, incur the pains and penalties of that offence.

Such offense may be assigned for making false affidavit before one officer, charging another with a misdemeanor.—State v. Cockran, 1 Bail., 501.

One cannot be tried for perjury for taking an oath falsely before an officer not qualified to administer it.—State v. Heyward, 1 N. & McC., 546.

It cannot be assigned as perjury to make a false affidavit on application for naturalization, as to previous residence.—State v. Helle, 2 Hill, 290.

It is not necessary to constitute the crime of perjury under this Section that the matter falsely sworn to should be material to the issue. It is sufficient if the oath was required by law, was administered by one authorized to do so, and was willfully and knowingly false.—State v. Byrd, 28 S. C., 18; 4 S. E., 793.

Indictment.—Need not charge that the Court at which the oath was taken had jurisdiction of the subject matter.—State v. Byrd, 28 S. C., 18; 4 S. E., 793.

Additional punishment for perjury.

G. S. 2535; R. S. 221; 1736-7, III., 470, § 4

Sec. 257. Besides the punishment already to be inflicted by law for so great crimes, it shall and may be lawful for the Court or Judge before whom any person shall be convicted of wilful and corrupt perjury, or subornation of perjury, to order and send such person to the State Penitentiary, there to be kept to hard labor for any term or time not exceeding the term of seven years.

Perjury for President or Cashier to make false return.

G. S. 1346; R. S. 222; 1855, XII., 699.

Sec. 258. Any President or Cashier of any bank of issue swearing falsely to any account required by the provisions of Section 1760 of the Civil Code, shall be deemed guilty of perjury, and shall be subject to the pains and penalties thereof.

Sec. 259. It shall be felony for any President, Director, Manager, or Cashier, or other officer, of any banking institu-

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tion, to receive any deposits or trusts, or to create any debts for such corporation, after he shall become aware that such corporation is insolvent; and every officer of such failing corporation shall become personally liable to the amount of such deposits or trusts received by him, or with his knowledge or assent, in any such case, to the person thereby damaged, whether criminal prosecution be made or not. And all persons convicted for felony, as herein provided, shall be punished by imprisonment for a term of not less than one year and by a fine of not less than one thousand dollars.

Felony to receive deposits after knowledge of insolvency.

G. S. 1348; R. S. 223; 1877, XVI., 232.

Sec. 260. All wilful false swearing in any proceeding under the provisions of Chapter XC. of the Civil Code, shall be deemed and held to be wilful perjury, and indictable and punishable as such.

False swearing before the Court for the arbitration of mercantile disputes in the city of Charleston.

R. S. 224; 1876, XVI., 46.

Sec. 261. Whoever corruptly gives, offers, or promises to any executive, legislative, or judicial officer, after his election or appointment, either before or after he is qualified or has taken his seat, any gift or gratuity whatever, with intent to influence his act, vote, opinion, decision, or judgment on any matter, question, cause, or proceeding, which may be pending or may by law come or be brought before him in his official capacity, shall be punished by imprisonment in the State Penitentiary at hard labor, not exceeding five years, or by fine not exceeding three thousand dollars, and imprisonment in jail not exceeding one year.

Giving or offering bribes to officers.

G. S. 2536; R. S. 225; 1869, XIV., 308, § 1.

Sec. 262. Every executive, legislative, or judicial officer, who corruptly accepts a gift of gratuity, or a promise to make a gift or to do an act beneficial to such an officer, under an agreement, or with an understanding that his vote, opinion, or judgment shall be given in any particular manner, or on any particular side of any question, cause, or proceeding, which is or may be by law brought before him in his official capacity, or that, in such capacity, he shall make any particular nomination or appointment, shall forfeit his office, be forever disqualified to hold any public office, trust, or appointment under the laws of this State, and be punished by imprisonment in the State Penitentiary at hard labor, not exceeding ten years, or by fine, not exceeding five thousand dollars, and by imprisonment in jail not exceeding two years.

Acceptance of bribes by officers.

G. S. 2537; R. S. 226; *Ib.*, § 2.

INDICTMENT.—Against a member of Congress is not arrested by the privileges secured to Representatives by the Constitution of the United States.—State v. Smalls, 11 S. C., 262.

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No duplicity in charging in a count the corrupt acceptance of a gift and of the promise to make one.—*Ib*

Not defective for repugnancy, because it charges the corrupt acceptance of a bribe to vote for a question which was, and might be, by law, brought before the defendant as State Senator.—*Ib.*

When charging a bribe to vote for a certain resolution, it is sufficient to designate it by its title only.—*Ib.*

EVIDENCE.—Journals of the Senate are the highest legal proof of the pendency of a matter before that body at a particular time.—State v. Smalls, 11 S. C., 262.

Where accomplice testified that the bribe was by bank check, it is competent to prove by the books of the same bank a credit to defendant for like amount two days after the bribery.—*Ib.*

Corrupting juror, &c.

G. S. 2538; R. S. 227; 1869, XIV., 309, § 3.

Sec. 263. Whoever corrupts, or attempts to corrupt, any juror, arbitrator, umpire, or referee, by giving, offering, or promising any gift or gratuity whatever, with intent to bias the opinion or influence the decision of such juror, arbitrator, umpire, or referee, in relation to any cause or matter pending in the Court, or before an inquest, or for the decision of which such arbitrator, umpire, or referee has been chosen or appointed, shall be punished by imprisonment in the State Penitentiary at hard labor, not exceeding five years, or by fine not exceeding one thousand dollars, and imprisonment in jail not exceeding one year.

Party charged with this offense cannot be punished by rule to show cause, as for contempt, but only by indictment.—State v. Blackwell, 10 S. C., 35.

Acceptance of bribes by jurors, &c.

G. S. 2539; R. S. 228; *Ib.*, § 4.

Sec. 264. If any person summoned as a juror, or chosen or appointed as an arbitrator, umpire, or referee, corruptly receives any gift or gratuity whatever from a party to a suit, cause, or proceeding, for the trial or decision of which such juror has been summoned, or for the hearing or determination of which such arbitrator, umpire, or referee has been chosen or appointed, he shall be punished by imprisonment in the State Penitentiary at hard labor not exceeding five years, or by fine not exceeding one thousand dollars, and imprisonment in jail not exceeding one year.

Bribery to procure office.

G. S. 2540; R. S. 229; 1824, VI., 244, § 2.

Sec. 265. If any person shall, directly or indirectly, offer, give, or engage to pay any sum of money or other valuable consideration to another, in order to induce such other person to procure for him, by his interest, influence, or any other means whatsoever, any office or place of trust within this State, or shall offer, give, promise, or bestow any reward by meat, drink, or otherwise, for the aforesaid purpose, and be thereof convicted, he shall forfeit the sum of not less than one nor more than five hundred dollars, and suffer imprisonment for a term of not exceeding six months.

Sec. 266. If any person shall receive of another any sum of

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money, or reward of meat, drink, or otherwise valuable consideration, for procuring or assisting to procure any office or place of trust in this State, for any other person whatever, and be thereof convicted, he shall forfeit the sum of not more than one hundred dollars, and suffer imprisonment at the discretion of the Court having cognizance of the same; and if such offender be in any office, he shall, on the conviction, be disabled from holding the same.

Penalty for accepting bribes.

G. S. 2541; R. S. 230; *Ib.*, § 3.

Sec. 267. If either of the parties offending as aforesaid shall give information, upon oath, against the other offending party, and shall duly prosecute such information, such informer shall be free from the penalties aforesaid.

Informer free free from arrest.

G. S. 2542; R. S. 231; *Ib.*, § 4

Of Aiding Escapes and Prisoners.

Sec. 268. Whoever conveys into a jail, house of correction, State Penitentiary, house of reformation, or other like place of confinement, any disguise, instrument, tool, weapon, or other thing adapted or useful to aid a prisoner in making his escape, with intent to facilitate the escape of any prisoner there lawfully committed or detained, or by any means whatever aids or assists such prisoner in his endeavor to escape therefrom, whether such escape is effected or attempted or not, and whoever forcibly rescues any prisoner held in custody upon any conviction or charge of offense, shall be punished by imprisonment in the State Penitentiary, at hard labor, not exceeding seven years; or, if the person whose escape or rescue was effected or intended was charged with an offense not capital, nor punishable by imprisonment, then by imprisonment in the State Penitentiary, at hard labor, not exceeding two years, or by fine not exceeding five hundred dollars.

Aiding escapes from prison and rescuing prisoners.

G. S. 2543; R. S. 232; 1824, VI., 244, § 5.

Sec. 269. Whoever aids or assists a prisoner in escaping, or attempting to escape, from an officer or person who has the lawful custody of such prisoner, shall be punished by imprisonment in the State Penitentiary, at hard labor, not exceeding two years, or by fine not exceeding five hundred dollars.

Aiding escapes from an officer.

G. S. 2544; R. S. 233; *Ib.*, § 6.

Sec. 270. If a jailer or other officer wilfully suffers a prisoner in his custody, upon conviction or on any criminal charge, to escape, he shall suffer the like punishment and penalties as the prisoner suffered to escape was sentenced to, or would be liable to suffer upon conviction of the crime or offense wherein he stood charged.

Jailer or other officer wilfully suffering escapes.

G. S. 2545; R. S. 234; *Ib.*, §3.

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INDICTMENT.—Lay against two Magistrates, who admitted to bail one who was charged with murder.—State v. Arthur, 1 McM., 456.

Sufficient to set out that prisoner did escape in any words that express it.—State v. Mayberry, 3 Strob., 144.

Not objectionable, because the Constable, who had not been formally appointed and qualified, was charged with negligence as a lawful Constable.—*Ib.*

Concerning Elections.

Betting on elections.

G. S. 2546; R. S. 235; 1850, XII., 72, § 1.

Sec. 271. Whoever shall make any bet or wager of money, or wager of any other thing of value, or shall have any share or part in any bet or wager of money, or wager of any other thing of value, upon any election in this State, shall be deemed guilty of a misdemeanor, and, upon conviction in any Court of Sessions in this State, shall be fined in a sum not exceeding five hundred dollars, and be imprisoned not exceeding one month; one-half of the fine to go to the informer, and the other half to the use of the State.

Voting more than once at elections.

G. S. 2547; R. S. 236; 1858, XII., 731, § 2.

Sec. 272. If any person qualified by the Constitution and laws of this State to vote at any election for members of the Congress of the United States, members of the Legislature of this State, Sheriff, Clerk, Judge of Probate, or other County officer, Mayor and Aldermen of any city, Intendant and Wardens of any incorporated town, officers of the militia or volunteer organizations of the State, or at any other election, now required, or that shall hereafter be required, by law, to be held within this State, shall vote more than once at such election for the same office, such person so voting more than once shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined and imprisoned at the discretion of the Judge before whom the case shall be tried.

Bribery at elections.

G. S. 2548; R. S. 237; 1858, XII., 731, § 3.

Sec. 273. If at any election hereafter held within this State for members of the Congress of the United States, members of the Legislature of this State, Sheriff, Clerk, Judge of Probate, or other County officer, Mayor and Aldermen of any city, Intendant and Wardens of any incorporated town, officers of the militia or volunteer organizations of the State, or at any other election now required, or that shall hereafter be required by law, to be held within this State, any person shall, by the payment, delivery, or promise of money, or other article of value, procure another to vote for or against any particular candidate or measure, the person so promising, and the person so voting, shall each be guilty of a misdemeanor, and, upon conviction thereof, shall, for the first offense, be fined in any sum not less

than one hundred dollars nor more than five hundred dollars, and imprisoned for any term of time not less than one month nor more than six months; and, for the second offense, shall be fined in any sum not less than five hundred dollars, nor more than five thousand dollars, and imprisoned for any period of time not less than three months nor more than twelve months.

Offering to procure voters by bribery.

G. S. 2549; *Ib.*, § 4.

Sec. 274. If at any election, as in Section 272 of this Chapter is mentioned, any person shall offer or propose to procure another, by the payment, delivery, or promise of money, or other article of value, to vote for or against any particular candidate or measure, or shall offer or propose, for the consideration of money or other article of value paid, delivered, or promised, to vote for or against any particular candidate or measure, such person so offering to procure or vote shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined and imprisoned at the discretion of the Court.

Abusing voters, &c.

G. S. 2550; R. S. 239; *Ib.*, § 5.

Sec. 275. If any person shall, at any of the elections in any city, town, ward, or polling precinct, threaten, maltreat, or abuse any voter, with a view to control or intimidate him in the free exercise of his right of suffrage, such offender shall suffer fine and imprisonment at the discretion of the Court.

Place of trial; informer's share, &c.

G. S. 2551; R. S. 240; *Ib.*, § 6.

Sec. 276. All offenses against the provisions of Sections 265, 266, 267, and 275 of this Chapter, shall be heard, tried, and determined before the Court of General Sessions, and the pecuniary penalties accruing thereby shall go, one-third to the informer, and the remainder to the State.

Assault, &c., on account of political opinions.

G. S. 2552; R. S. 241; 1871, XIV., 560, § 1.

Sec. 277. Whoever shall assault or intimidate any citizen because of political opinions or the exercise of political rights and privileges guaranteed to every citizen of the United States by the Constitution and laws thereof, or by the Constitution and laws of this State, or, for such reason, discharge such citizen from employment or occupation, or eject such citizen from rented house or land or other property, such person shall be deemed guilty of a misdemeanor, and, on conviction thereof, be fined not less than fifty or more than one thousand dollars, or be imprisoned not less than three months or more than one year, or both, at the discretion of the Court.

Perjury to swear falsely, &c., by voters.

R. S. 242; 1888, XX., 10; § 5.

Sec. 278. Any voter who shall swear falsely at any primary election, in taking the prescribed oath, or shall personate another person and take the oath in his name, in order to vote, shall be guilty of perjury, and be punished, upon conviction, as for perjury.

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Punishment of Manager at primary election for violating, &c.

R. S. 243; Ib., § 4.

Sec. 279. Any Manager at any primary election in this State who shall be guilty of wilfully violating any of the duties devolved upon such position shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by fine not to exceed one hundred dollars or imprisonment not to exceed six months; and any Manager who shall be guilty of fraud or corruption in the management of such election shall be guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not to exceed five hundred dollars, or imprisonment for a term not to exceed twelve months, or both, in the discretion of the Court.

Punishment of officers guilty of neglect or corrupt conduct.

G. S. 140; R. S. 244; Ib.

Sec. 280. If any officer on whom any duty is enjoined in Chapters 10, 11 and 12 of Title 2, Part I, of the Civil Code, shall be guilty of any wilful neglect of such duty, or of any corrupt conduct in the execution of the same, and be thereof convicted, he shall be deemed guilty of a misdemeanor, punishable by fine not exceeding five hundred dollars, or imprisonment not exceeding one year.

Penalty on messengers and others for defeating due delivery of certificates.

G. S. 150; R. S. 245; Ib.

Sec. 281. If any of the messengers shall be guilty of destroying the certificates entrusted to their care, or wilfully doing any act that shall defeat the due delivery, of them, as directed by this Chapter, he shall be punished by imprisonment in the Penitentiary, at hard labor, for a term not less than two, nor exceeding four years; and if any person shall be found guilty of taking away from any of the said messengers, either by force or in any other manner, any such certificates entrusted to his care, or wilfully doing any act that shall defeat the due delivery thereof, as directed by this Chapter, he shall be punished by imprisonment in the Penitentiary, at hard labor, for not less than two, nor exceeding four years.

Punishment for neglect or corrupt conduct on part of officers or messengers.

G. S. 151; R. S. 246; Ib. 1124

Sec. 282. If any officer or messenger, on whom any duty is enjoined in this Chapter, shall be guilty of any wilful neglect of such duty, or of any corrupt conduct in the execution of the same, and be thereof convicted, he shall be deemed guilty of a misdemeanor, punishable by fine not exceeding five hundred dollars, or imprisonment not exceeding one year.

Punishment for violating Election Laws.

G. S. 162; R. S. 247; Ib.

Sec. 283. Every person who shall vote at any general, special, or municipal election, who is not entitled to vote, and every person who shall, by force, intimidation, deception, fraud, bribery, or undue influence, obtain, procure, or control the vote of any elector to be cast for any candidate or measure other than as intended or desired by such elector, or who shall violate any

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of the foregoing provisions in regard to elections, shall be punished by a fine of not less than one hundred nor more than one thousand dollars, or by imprisonment in jail not less than three months nor more than twelve months, or both, within the discretion of the Court.

Wilful neglect of duty or corrupt conduct a misdemeanor.

1896, XXII., 223, § 2.

Sec. 284. If any of the Commissioners or Managers of Election, or any member of the State or County Board of Canvassers, or any member of the Board of Registration, or Supervisor of Registration, or any officers on whom any duty is imposed by the election or registration laws, shall be guilty of any wilful neglect of the same, or of any corrupt conduct in executing the same, and be thereof convicted, he shall be deemed guilty of a misdemeanor, punishable by fine not exceeding five hundred dollars or imprisonment at hard labor not exceeding one year.

Improperly furnishing registration certificates a misdemeanor.

Ib., § 3.

Sec. 285. Any member of the Boards of Registration, or any Supervisor of Registration, who shall prepare and furnish to voters, or permit to be prepared and furnished to voters, registration certificates at other times than the times at which the books of registration are to be opened according to law for that purpose, and shall be convicted thereof, shall be deemed guilty of a misdemeanor and fined not more than five hundred dollars or imprisonment at hard labor not more than one year.

Receiving a fraudulent certificate a misdemeanor.

Ib., § 4.

Sec. 286. Any elector knowingly receiving a registration certificate issued in violation of the Registration Law of this State, or making use of the same, on conviction thereof shall be deemed guilty of a misdemeanor and fined not exceeding the sum of two hundred dollars or imprisoned at hard labor not more than three months.

CHAPTER XIV.

Offenses Against Chastity, Morality, Decency, &c.

SEC.
287. Abducting a maid under sixteen years of age.
288. Abducting, deflowering or contracting matrimony with a woman under sixteen years of age.
289. Bigamy.
290. Adultery.
291. Adultery defined.
292. Fornication defined.
293. Miscegenation.
294. Buggery.
295. Incest.
296. Penalty for publishing obscene books, &c.
297. Punishment for exhibiting indecent pictures.
298. Cock fighting declared a misdemeanor.
299. Use of obscene or profane language on public highway, &c.

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Abducting a maid under 16 years of age.

G. S. 2585; R. S. 248; 4 & 5 P. & M., c. 8; 1712, II., 485, § 3.

Section 287. Whoever, above the age of fourteen years, shall unlawfully take or convey, or cause to be taken or conveyed, any maid or woman-child unmarried, being within the age of sixteen years, out of or from the possession and against the will of the father or mother of such child, or out of or from the possession and against the will of such person or persons as then shall happen to have, by any lawful ways or means, the order, keeping, education, or governance of any such maiden or woman-child, shall, on conviction, suffer imprisonment for the space of two years, or else shall pay such fine as shall be adjudged by the Court.

Indictment.—Must state that the defendant was above the age of fourteen years and that the person taken away was a maid or woman-child.—State v. O'Bannon, 1 Bail., 144.

The defendant must be brought within all the material words of the Section.—*Ib.*

Bad, if it charge disjunctively, that defendant "did take and convey away *or* caused to be taken and carried away."—*Ib.*

It may join two counts, one under this Section, and one under the following Section.—State v. Tidwell, 5 Strob., 1.

Abducting deflowering, or contracting matrimony with a woman under 16 years of age

G. S. 2586; R. S. 249; 4 & 5 P. & M., c 8; 1712, II., 485, § 4.

Sec. 288. Whoever shall so take away, or cause to be taken away, as aforesaid, and deflower any such maid or woman-child, as aforesaid, or shall, against the will or unknowing of or to the father of any such maid or woman-child, if the father be in life, or against the will or unknowing of the mother of any such maid or woman-child, (having the custody or governance, of such child, if the father be dead,) by secret letters, messages, or otherwise, contract matrimony with any such maid or woman-child, shall, on conviction, suffer imprisonment for five years, or else shall pay such fine as shall be adjudged by the Court; one moiety of which fine shall be for the State, and the other moiety to the parties grieved.

Applied, as a wise and salutary law for the protection of inexperienced females of all conditions.—State v. Findlay, 2 Bay, 418.

Indictment.—May join count under this Section with a count under the preceding Section.—State v. Tidwell, 5 Strob., 1.

Verdict.—If general under such indictment of two counts, fixes the greater degree of guilt in this Section, as well upon him who marries the woman-child, as upon him who aided.—State v. Tidwell, 5 Strob., 1.

Bigamy.

G. S. 2587; R. S. 250; 1 J. 1, c. 11; 1712, II., 508; 1874, XV., 603.

Sec. 289. Whoever, being married, and whose husband or wife has not remained continually for seven years beyond the sea, or continually absented himself or herself, the one from the other, for the space of seven years together, the one of them not knowing the other to be living within that time, or who were not married before the age of consent, or where neither husband nor wife is under sentence of imprisonment for life, or whose marriage has not been annulled by decree of a compe-

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tent tribunal having jurisdiction both of the cause and the parties, shall marry another person, the former husband or wife being alive, shall, on conviction, be punished by imprisonment in the Penitentiary for not more than five years, nor less than six months, or by imprisonment in the jail for six months, and by a fine of not less than five hundred dollars.

Applied against a nephew who had lawfully married his aunt and while she was alive married again.—State v. Barefoot, 2 Rich., 209.

EVIDENCE.—Declarations of the prisoner that he had married the first wife, and proof of long cohabitation, sufficient to prove the first marriage.—State v. Britton, 4 McC., 256; State v. Hilton, 3 Rich., 434.

Marriage of slaves prior to emancipation living together in 1865.—10 S. C., 500. Confession of paramour inadmissible.—State v. Mims, 39 S. C., 557; 17 S. E., 850. Variance in name of paramour.—*Ib.*

Adultery.

G. S. 2588; R. S. 251; 1880, XVII., 328.

Sec. 290. Any man and woman who shall be guilty of the crime of adultery or fornication, shall be liable to indictment, and, on conviction, shall be severally punished by a fine of not less than one hundred dollars, nor more than five hundred dollars, or imprisonment for not less than six months nor more than one year, or by both fine and imprisonment, at the discretion of the Court.

Adultery not indictable at common law, and was not an indictable offense in this State in 1831.—State v. Brunson, 2 Bail., 149.

Defined.

G. S. 2589; R. S. 252; *Ib.*

Sec. 291. Adultery is the living together and carnal intercourse with each other, or habitual carnal intercourse with each other without living together, of a man and woman, when either is lawfully married to some other person.

Fornication.

G. S. 2590; R. S. 253; *Ib.*

Sec. 292. Fornication is the living together and carnal intercourse with each other, or habitual carnal intercourse with each other without living together, of a man and woman, both being unmarried.

"Habitual carnal intercourse" means more than occasional intercourse, but it is for the jury to say how frequent it must be to make it "habitual."—State v. Carroll, 30 S. C., 85; 8 S. E., 433.

The words "without living together" are not elements in the offense of adultery, and may be omitted from indictment.—*Ib.*

Miscegenation; punishment for.

R. S. 517; G. S. 2032, 2033 and 2034; 1879, XVII., 3; § 2; Const. Art. 2, § 6.

Sec. 293. It shall be unlawful for any white man to intermarry with any woman of either the Indian or negro races, or any mulatto, mestizo, or half-breed, or for any white woman to intermarry with any person other than a white man, or for any mulatto, half-breed, Indian, negro or mestizo to intermarry with a white woman; and any such marriage, or attempted marriage, shall be utterly null and void and of none effect; and any person who shall violate this Section, or any one of the provisions thereof, shall be guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than

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five hundred dollars or imprisonment for not less than twelve months, or both, in the discretion of the Court. Any clergyman, minister of the gospel, Magistrate, or other person authorized by law to perform the marriage ceremony, who shall knowingly and wilfully unite in the bonds of matrimony any persons of different races, as above prohibited, shall be guilty of a misdemeanor, and upon conviction thereof shall be liable to the same penalty or penalties as provided in this Section.

Penalty for performing ceremony.

Ib., § 3.

Buggery.

G. S. 2591; R. S. 254; 25 H. 8, c. 1; II., 465.

Sec. 294. Whoever shall commit the abominable crime of buggery, whether with mankind or with beast, shall, on conviction, be deemed guilty of felony, and shall be imprisoned in the penitentiary for five years, and shall pay a fine of not less than five hundred dollars, or both, at the discretion of the Court.

Incest. Prohibited degrees

R. S. 255; 1884, XIX, 801.

Sec. 295. Any persons who shall have carnal intercourse with each other within the following degrees of relationship, to wit: A man with his mother, grandmother, daughter, granddaughter, stepmother, sister, grandfather's wife, son's wife, grandson's wife, wife's mother, wife's grandmother, wife's daughter, wife's granddaughter, brother's daughter, sister's daughter, father's sister, or mother's sister; a woman with her father, grandfather, son, grandson, stepfather, brother, grandmother's husband, daughter's husband, granddaughter's husband, husband's father, husband's grandfather, husband's son, husband's grandson, brother's son, sister's son, father's brother, or mother's brother, shall be deemed guilty of incest, and shall be punished by a fine of not less than five hundred dollars, or imprisonment not less than one year in the Penitentiary, or both such fine and imprisonment.

Punishment.

State may show crime was committed seven years before date alleged in the indictment.—State v. Reynolds, 48 S. C., 384; 26 S. E., 769.—Wife may testify against husband.—*Ib.*

Penalty for publishing obscene books, papers, &c.

R. S. 255; 1885, XIX., 334

Sec. 296. Whoever knowingly imports, prints, publishes, sells or distributes any book, pamphlet, ballad, printed paper or other thing containing obscene, indecent or improper print, picture, figure or description manifestly tending to the corruption of the morals of youth, or introduces into a family, school or place of education, or brings, procures, receives or has in his possession any such book, pamphlet, printed paper, picture or ballad, or other thing, either for the purpose of sale, exhibition, to aid in a circulation, or with intent to introduce the same into a family, school or place of education, shall be

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punished by imprisonment not exceeding two years or by a fine not exceeding one thousand ($1,000) dollars, or both, at the discretion of the Court.

Punishment.

Exhibiting indecent pictures a misdemeanor.

R. S. 256; *Ib.*

Sec. 297. Whoever posts or exhibits in any public place any advertisement, show bill or other printed or written picture of an indecent or obscene character shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by imprisonment not exceeding two years or by a fine not exceeding one thousand dollars, or both, in the discretion of the Court.

Punishment.

Cock-fighting in certain places declared a misdemeanor

R. S. 257; 1887, XIX., 801

Sec. 298. It shall be a misdemeanor for any person to engage in or be present at cock-fighting within three (3) miles of any chartered institution of learning in this State, and any person found guilty shall be fined not exceeding one hundred dollars, or imprisonment not exceeding thirty days.

Disorderly conduct, obscene or profane language in public.

1894, XXI., 720.

Sec. 299. Any person or persons who shall be found on any highway or at any public place or public gathering in a grossly intoxicated condition and conducting himself or herself in a disorderly manner, who shall use obscene or profane language, accompanied with disorderly conduct, on any highway or at any public place or gathering, shall be deemed guilty of a misdemeanor, and upon conviction of either of said offenses shall be fined not less than five dollars, nor more than fifty dollars, or imprisoned not less than five days nor more than thirty days.

Misdemeanor

Punishment.

Fines to go to public schools.

All fines collected for any and all of the offenses enumerated in this Section shall be paid to the County Treasurer and become a part of the public school fund of such County.

CHAPTER XV.

Offenses Against the Public Health.

SEC.

300. Penalties for practicing medicine without the proper qualifications.
301. Penalty for practicing dentistry without proper qualifications.
302. Pharmaceutists and druggists must have license.
303. Unlawful for one not licensed to make up prescriptions.
304. State Association to prosecute.
305. Selling diseased or injured meats.
306. Adulteration of food or drink, or selling or offering for sale.
307. Adulteration of candy.

SEC.

308. Adulteration of milk.
309. Coloring matter in butter and cheese.
310. Combinations of certain ingredients prohibited.
311. Imitation butter or cheese.
312. Substitute for butter or cheese to be so marked.
313. Possession of unmarked imitations.
314. Sale of imitations as genuine prohibited.
315. Hotels and restaurants using imitations to advertise the same.

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SEC.
316. Violations of any of the seven preceding Sections a misdemeanor.
317. Certificate of chemist *prima facie* evidence.
318. Adulteration, or selling adulterated food, drugs, &c., a misdemeanor.
319. Interfering with Inspector of food, drugs, &c., in the performance of duty.
320. Punishment for supplying minor with tobacco or cigarettes.
321. Limitation of work hours in manufacturing establishments.
322. Limitations of work hours by street railway companies.
323. Violation of quarantine regulations.
324. Masters of vessels neglecting or refusing to obey certain regulations.
325. Masters of vessels giving false information as to pilots, &c.
326. Penalty for landing vessel or unloading, &c.
327. Penalty for violating quarantine laws or disobeying Health Officer.
328. Penalty for pilot or other person for violating law.
329. Fine and forfeitures, how recovered.
330. Township Assessors to report infectious or contagious diseases.
331. Infants born with diseased eyes to be reported, &c.
332. Swine dying from natural causes to be buried.
333. Women in mercantile establishments to be provided with seats.
334. Obstruction of drains in Charleston County.

Practicing medicine without authority a misdemeanor.

R. S. 259, 260; G. S. 919; 1881, XVII., 571; 1887, XIX, 820; 1888, XX, 54; 1890, XX., 690. 1893, XXI., 498, § 4.

Penalty.

Section 300. It shall be unlawful for any person or persons to practice medicine in this State who has failed to comply with the provisions of Section 1112 of the Civil Code, and any one violating the provisions of this Act shall be deemed guilty of a misdemeanor, and for each offense, upon conviction by any Court of competent jurisdiction, shall be fined in any sum not exceeding three hundred dollars, or imprisonment in the County jail for any period not longer than three months, or both, at the discretion of the Court. One-half of said fine to go to the informant and the other half to the State: *Provided,* That dentists and midwives shall not be subject to the provisions of this Section.

Penalty for practicing dentistry without proper qualifications.

G. S. 943; R. S. 261; 1875, XVI., 856; 1887, XIX., 788; 1899, XXIII., 97.

Sec. 301. Any person who, for fee or reward, shall practice dentistry in violation of the laws of this State regulating the practice thereof, shall be liable to indictment, and on conviction shall be fined not less than fifty nor more than three hundred dollars, or be imprisoned at hard labor on the County chain gang for a period of not less than one month nor more than twelve months: *Provided,* That nothing in this Section shall be construed as to prevent any person from extracting teeth. All fines collected shall enure to the educational fund of the County where the offender resides.

Apothecary must have license.

1876, XVI., 116; 1893, XIX, 518.

Sec. 302. Every pharmacist, apothecary or retail druggist who has not been previously licensed according to law who carries on and conducts the business of such occupation in this

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State must have a license therefor from the Board of Pharmaceutical Association of South Carolina; and any person who shall carry on and conduct the business of said occupations, or any of them, without such license shall be liable to indictment as for a misdemeanor, and on conviction subject to a fine not exceeding five hundred ($500) dollars or imprisonment not exceeding six months.

Penalty for acting without.

G. S. 925; R. S. 262.

Sec. 303. It shall not be lawful for the proprietor of any pharmaceutical shop to allow any person not qualified in accordance with the laws of this State regulating the licensing of apothecaries and the sale of drugs and medicines to dispense poison or compound the prescriptions of physicians; and any person who upon indictment for violation of this Section shall be convicted of the same shall pay a fine not exceeding five hundred dollars or suffer imprisonment for a period not more than six months.

Unlawful for one not licensed to make up prescriptions.

G. S. 934; R. S. 263; 1876, XVI., 116.

Penalty.

Sec. 304. The Pharmaceutical Association of the State of South Carolina is hereby authorized and directed to prosecute all persons violating the provisions of the two preceding Sections or any of them. In case any person convicted of violating any of the provisions of the same be punished by fine, one-half of said fine to be paid to the informer through whose agency such conviction shall be had.

Association to prosecute offenders; informer to get one-half of fine.

G. S. 935; R. S. 264; *Ib.*

Sec. 305. Any person who shall knowingly sell or expose for sale the flesh of any animal which was diseased or seriously injured at the time of slaughtering, or which died a natural death, shall be guilty of a misdemeanor, and, on conviction, shall be fined not less than five dollars, nor more than one hundred dollars, or imprisoned not less than ten nor more than thirty days: *Provided,* That this Section shall not apply to the sale of the flesh of any animal which is accidentally killed, when the same is immediately prepared for market, and the seller informs the buyer of the time, place and nature of the death of such animal.

Selling flesh diseased or injured at the time of death a misdemeanor.

R. S. 265; 1883, XIX., 385.

Punishment for. Proviso.

Sec. 306. Whoever shall knowingly sell or expose, or offer for sale, or have in his possession with intent to sell, or offer for sale, any kind of meat or vegetables, or fruits or other articles of provisions, whether for food or drink, that are diseased, corrupted or unwholesome for food or drink, or shall fraudulently adulterate or cause to be adulterated for the purpose of sale, or have in his possession with intent to sell or offer for sale, any article or kind of food or drink so adulterated, shall

Adulteration of foods or drinks, or selling or offering them for sale.

R. S. 266, 1885, XIX., 85.

Penalty.

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be guilty of a misdemeanor, and, upon conviction thereof, in a Court of competent jurisdiction, shall be punished by fine or imprisonment, not exceeding one hundred dollars' fine or thirty days' imprisonment. And the articles so adulterated shall be forfeited and destroyed.

Adulteration of candy prohibited.

1896, XXII., 214.

Sec. 307. No person or corporation shall by himself, his servant or agent, or as the servant or agent of any other person or corporation, manufacture for sale, knowingly sell or offer to sell, any candy adulterated by the admixture of terra alba, barytes, talc or any other mineral substance, or by poisonous colors or flavors or other ingredients deleterious or detrimental to health.

Any person or corporation convicted of violating any of the provisions of this Section shall be punished by a fine not exceeding one hundred dollars nor less than fifty dollars. The candy so adulterated shall be forfeited and destroyed under direction of the Court.

Sale of milk, butter and cheese regulated.

1896, XXII., 215.

Sec. 308. It shall not be lawful for any person or corporation or agent knowingly to sell or expose for sale, or deliver for domestic use, or to be converted into any product of human food whatsoever, any unclean, impure, unwholesome, adulterated or skimmed milk, or milk from which has been held back what is known as strippings, or milk taken from an animal having disease, sickness, ulcers or abscesses: *Provided,* That this Section shall not prohibit the sale of buttermilk or of skimmed milk when sold as such.

What is skimmed milk.

For the purposes of this Section, milk which is proven by any reliable test or analysis to contain less than three per centum of butter-fat and eight and one-half per cent. of solids other than butter-fat shall be regarded as skimmed milk.

What is imitation butter or cheese.

For the purposes of this Section, every article, substance, or compound, other than produced wholly from pure whole milk, or cream from the same, made in semblance of butter or of cheese, and designed to be used as a substitute for butter or cheese made from pure milk or cream from the same, is hereby declared to be imitation butter or imitation cheese, as the case may be: *Provided,* The use of salt, rennet and harmless coloring matter for coloring the product of pure milk or cream shall not be construed to render such product an imitation.

Coloring matter in substitutes for butter or cheese prohibited.

Ib.

Sec. 309. No person shall coat, powder or color with annatto or any coloring matter whatever any substance designed to be used as a substitute for butter or for cheese whereby such sub-

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stance or product shall be caused to resemble butter or cheese the product of pure milk or cream.

Combinations of certain ingredients prohibited.

Ib.

Sec. 310. No person shall combine any animal fat or vegetable oil or other substance with butter or cheese, or combine with butter or cheese, or with animal fat or vegetable oil or combination of the two, or any other substance or substances whatever, any annatto or any other coloring matter for the purpose or with the effect of imparting thereto a yellow color, or any shade of yellow, so that such substance shall resemble genuine yellow butter or cheese, nor introduce any such coloring matter or any such substance into any of the ingredients of which such substitute may be composed: *Provided,* That nothing in this or the three preceding Sections shall be construed to prohibit the use of salt, rennet or harmless coloring matter for coloring the products of pure milk or cream from the same.

Manufacture and sale of imitation butter or cheese prohibited, when.

Ib., § 6.

Sec. 311. No person shall by himself, or employe, or agent produce or manufacture, or sell, or keep for sale, or offer for sale, any imitation butter or imitation cheese made or compounded in violation of this or the four preceding Sections, whether such imitation shall have been made or produced in this State or elsewhere: *Provided,* That said Sections shall not be construed to prohibit the manufacture and sale of imitation butter or imitation cheese, under the regulations hereinafter provided, not manufactured or colored as herein prohibited.

Substitutes to be so marked.

Ib., § 7.

Sec. 312. Every person who lawfully manufactures any substance designed to be used as a substitute for butter or for cheese shall mark by branding, stamping or stenciling upon the top and side of each tub, box or other vessel in which such substitute shall be kept, or in which it shall be removed from the place where produced, in a clear and durable manner, in the English language, the words "substitute for butter," or "substitute for cheese," as the case may be, in printed letters in plain Roman type, each of which shall be not less than one inch in height and one-half inch in breadth.

Possession of unmarked imitations prohibited.

Ib., § 8.

Sec. 313. No person shall have in his possession or control any substance designed to be used as a substitute for butter or for cheese unless the tub, box or other vessel containing the same shall be clearly and durably marked as provided in Section 303: *Provided,* That this Section shall not apply to a person who has such imitation butter or imitation cheese in his possession for the actual consumption of himself or family.

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Sale of, prohibited.

Ib., § 9.

Sec. 314. No person, by himself or agent or employe, shall sell or offer for sale any imitation butter or imitation cheese under the pretense that the same is genuine butter or genuine cheese.

Hotels and restaurants using imitations to advertise the same.

Ib., § 10.

Sec. 315. No keeper or proprietor of any hotel or restaurant or other person having charge thereof, shall knowingly use, or serve therein, either as food or for cooking purposes, any imitation butter or cheese, as defined in Section 308, unless such keeper, proprietor or other person in charge of such place of entertainment shall keep constantly posted in a conspicuous place in the room or rooms, or other place or places where such imitations shall be served, so that the same may be easily seen and read by any person in such room or place, a white card, not less than ten by fourteen inches in size, on which shall be printed in the English language, in plain black Roman letters, not smaller than one inch in height and one-half inch in width, the words "imitation butter used here," or "imitation cheese used here," as the case may be, and the cards shall not contain any other impressions than the words above prescribed.

Violations a misdemeanor.

Ib.

Sec. 316. That any person violating any provisions of Sections 308 to 315 shall be guilty of a misdemeanor and may be proceeded against by any of the processes provided for misdemeanors, and may be tried by any Court having jurisdiction of misdemeanors in this State, and upon conviction shall be punished by a fine not to exceed one hundred dollars and not less than ten dollars. One-half of said fine to go to the informer through whose agency such conviction shall be had.

Evidence of chemist of Clemson College.

Ib.

Sec. 317. The sworn certificate of "the Chemist of the Clemson Agricultural College of South Carolina" of analysis of a suspected sample shall be recognized in any and all Courts of this State as prima facie evidence of such analysis and of the composition and character of such sample.

Adulteration, or selling certain adulterated articles, a misdemeanor.

1898, XXII., 803, § 1.

Sec. 318. No person shall within this State manufacture, brew, distill, have, offer for sale, or sell, any articles of food, drugs, spirituous, fermented or malt liquors which are adulterated within the meaning of Section 1582 of the Civil Code, and any person violating this provision shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding fifty dollars, or by imprisonment not exceeding fifteen days, for the first offense, and not exceeding one hundred dollars or imprisonment for thirty days, or both, for each subsequent offense.

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Penalty for obstructing Inspector of Food

Ib., § 2.

Sec. 319. Whoever hinders, obstructs or in any way interferes with any inspector, analyst, or other officer appointed under the provisions of Section 1578 of the Civil Code, in the performance of his duty, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not exceeding one hundred dollars or imprisonment not exceeding sixty days.

Supplying minors with tobacco or cigarettes forbidden

R. S. 267; 1889, XX., 321.

Sec. 320. It shall not be lawful for any person or persons, either by himself or themselves, to sell, furnish, give, or provide any minor or minors, under the age of eighteen years with cigarettes, tobacco, or cigarette paper, or any substitute therefor.

Punishment.

Any person or persons violating the provisions of the preceding Section, either in person, by agent, or in any other way, shall be held and deemed guilty of a misdemeanor, and upon indictment and conviction therefor shall be punished by a fine not exceeding one hundred dollars, nor less than twenty-five dollars, or by imprisonment for a term of not more than one year, nor less than two months, or both, in the discretion of the Court; one-half of the fine imposed to be paid to the informer of the offense, and the other half to be paid to the Treasurer of the County in which such conviction shall be had.

Half of fine to informer and half to County.

Limitation of work hours in factories. Exceptions.

R. S. 268; 1892, XXI., 91.

Sec. 321. Eleven hours shall constitute a day's work or sixty-six hours a week's work in all cotton and woolen manufacturing establishments in the State of South Carolina for all operatives and employes except engineers, firemen, watchmen, mechanics, teamsters, yard employes and clerical force: *Provided,* That nothing herein contained shall be construed to prevent any of the employes in the aforesaid manufacturing establishments from engaging to work, or working, such time in addition, not to exceed seventy hours per annum, as may be necessary to make up for lost time caused by accident or other unavoidable circumstances; or to prevent all such employees working such additional time as may be necessary to clean up and make necessary repairs of or changes in the machinery.

Extra work in certain contingencies.

Manufacturing establishments defined.

The words "manufacturing establishments" where occurring in this Section shall be construed to mean any buildings in which labor is employed to fabricate or produce goods, including yarns, cloth, hosiery and other merchandise.

Void contracts.

All contracts made for a longer day's work than eleven hours or week's work longer than sixty-six hours in said manu-

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facturing establishments shall be, and the same are hereby declared to be, absolutely null and void and contrary to law, and any person making and enforcing such contracts with an employe in said establishments shall be deemed to be guilty of a misdemeanor, and on conviction in a Court of competent jurisdiction shall be fined in each case a sum of money not less than fifty nor more than one hundred dollars, together with the costs of the proceedings.

Penalties.

Street railway companies, &c., shall not require their conductors, motormen, &c., to work more than 12 hours each day.

1897, XXII., 469.

Sec. 322. No incorporated horse railway company, electric railway company, or other street railway company, and no officer, agent or servant of such corporation, and no person or persons or firm or joint stock company owning or operating any line or lines of horse railways, electric railways or other street railways within the limits of this State , and no agent or servant of such firm, joint stock company, person or persons, shall require, permit or suffer its, his or their conductors, motormen or drivers or other such employes, or any of them, in its, his or their service, or under his, its or their control, to work more than twelve hours during each or any day of twenty-four hours, and shall make no contract or agreement with such employes, or any of them, providing that they or he shall work for more than twelve hours during each day or any day of twenty-four hours.

Violations a misdemeanor.

If any corporation, or any officer, agent or servant of such corporation, or any person or persons, or any firm or joint stock company, managing or conducting any horse railway, electric railway or other street railway in this State, or any agent or servant of such person or persons, firm or joint stock company, shall do any act in violation of the provisions of this Section, it, he or they shall be deemed to have been guilty of a misdemeanor, and shall on conviction thereof in a Court of competent jurisdiction be fined one hundred dollars for each offense so committed: *Provided, however,* That in cases of accident or unavoidable delay extra labor may be permitted for extra compensation: *Provided,* The employes of the said corporations of the city of Columbia, if they so desire, to work more than twelve hours daily, conditioned that they receive extra compensation for all work done over eleven hours.

Exception.

Misdemeanor to violate quarantine regulations.

G. S. 969; R. S. 269; 1881, XVII., 597.

Sec. 323. All masters of vessels, or other persons, violating the provisions of the quarantine laws of this State, or disobeying any of the published regulations of the health authorities of any port, and all persons whosoever who shall, without per-

mission of said authorities, invade the quarantine grounds or station of such port, or who shall hold any communication, or attempt to hold any communication, with any vessel, or any officer, or any passenger, or member of the crew, of any vessel lying at the quarantine, or under control of the said authorities, shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine not exceeding two thousand dollars or by imprisonment not exceeding twelve months, or both, in the discretion of the Court.

Masters of vessels neglecting or refusing to obey certain regulations.

G. S. 974; R. S. 270; 1868, XIV., 116.

Sec. 324. Every master of a vessel subject to quarantine or visitation of the Health Officer, arriving in any of the ports of this State, who shall refuse or neglect to proceed with and anchor his vessel at the place assigned for quarantine; or to submit his vessel, cargo and passengers to the examination of the Health Officer, and to furnish all necessary information to enable that officer to determine to what length of quarantine and other regulations they ought, respectively, to be subject; or to remain with his vessel at quarantine during the period assigned for the quarantine, and while at quarantine to comply with the directions and regulations prescribed by law, shall be guilty of a misdemeanor, and be punished by fine not exceeding two thousand dollars, or by imprisonment not exceeding twelve months, or by both such fine and imprisonment.

Penalty.

Masters of vessels giving false information to pilots, &c.

G. S. 975; R. S. 271; *Ib.*, 117.

Sec. 325. If a master of any vessel hailed by a pilot shall give false information to such pilot relative to the condition of his vessel, crew, or passengers, or of the health of the places from whence he came, or refuse to give such information as shall be lawfully required; or land any person from his vessel, or permit any person except a pilot to come on board of his vessel; or unlade or tranship any portion of his cargo before his vessel shall have been visited and examined by the Health Officer; or shall approach with his vessel nearer to the wharves of any port in this State than to the place of quarantine to which they may be directed, shall be guilty of a like offense, and subject to the like punishment, as in the preceding Section.

Penalty.

Penalty for landing vessel or unloading, &c.

G. S. 975; R. S. 272; *Ib.*

Sec. 326. Any person who shall land from any vessel, or unload or tranship any portion of her cargo, under the circumstances of the preceding Section shall be guilty of a like offense and subject to a like punishment.

Penalty for violating quarantine laws or disobeying the Health Officers

G. S. 976; R. S. 273; *Ib.*

Sec. 327. Any person who shall violate the provisions of the quarantine laws of this State, or neglect or refuse to comply with the directions or regulations which any of the Health Of-

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ficers may prescribe, shall be guilty of the like offense, and be subject for each offense to the like punishment.

Penalty for pilot or other person for violating the law.

G. S. 979; R. S. 274; 1784, IV., 615; 1809, V., 598; 1832, VI., 473.

Sec. 328. Every pilot or other person who shall bring, or attempt to bring, or cause to be brought, into any port of this State any vessel, or the whole or any part of the crew, passengers or cargo, beyond the places appointed for her examination, without such vessel being examined according to law, shall forfeit and pay, the one-half to the use of the State and the other half to use of such person as shall sue for the same, the sum of five hundred dollars; and the pilot shall, moreover, be deprived of his branch as a pilot: *Provided,* That nothing herein contained shall apply to persons who may be shipwrecked.

Fines and forfeitures, how recovered.

G. S. 983; R. S. 275; 1832, VI., 473.

Sec. 329. All fines and forfeitures and penalties provided by the laws of the State for the violation of the quarantine laws, or disobedience of the orders of the Governor establishing quarantine regulations, shall be recovered by indictment in a Court of General Sessions; and all persons offending against the same, upon conviction, shall be liable to imprisonment not exceeding twelve months, in addition to such fines, forfeitures and penalties.

Township Assessors to report infectious and contagious diseases.

1900, XXIII., 444.

Sec. 330. It shall be the duty of the Township Board of Assessors, immediately upon their knowledge of the presence of any infectious or contagious disease within their township, to report the same to the Secretary of the State Board of Health, giving all information with regard to the nature of the disease that they are able to procure; and any Township Assessor refusing or neglecting to comply with the requirements of this Section shall be fined not less than ten dollars nor more than twenty-five dollars, to be recovered in any Court of competent jurisdiction.

Infants with diseased eyes to be reported.

1896, XXII., 225.

Sec. 331. Should one or both eyes of an infant become reddened or inflamed at any time after birth, it shall be the duty of the midwife or nurse or person having charge of said infant to report the condition of the eyes at once to the local Board of Health of the city or town in which the parents of the infant reside.

Punishment for violations.

Any failure to comply with the provisions of this Section shall be punishable by a fine not to exceed twenty-five dollars or imprisonment not to exceed one month, or both.

Not to apply to towns of less than 1000.

This Section shall not apply to towns or cities of less than one thousand inhabitants.

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Swine dying from natural causes to be buried.

1900, XXII., 447.

Sec. 332. Whenever any swine shall die from any natural cause whatever, the owner or owners of such dead swine, upon notice thereof, shall immediately burn or bury, or cause to be burned or buried, such dead swine, and when buried it shall be put not less than three feet under the ground.

Punishment for violations of.

The owner or owners of any dead swine, who shall violate the provisions of this Section, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum of not more than ten dollars nor less than five dollars, or be imprisoned for a period of not more than thirty days.

Women in mercantile establishments to be provided with seats.

1899, XXIII., 100.

Sec. 333. It shall be the duty of all employers of females in any mercantile establishment, or any place where goods or wares or merchandise are offered for sale, to provide and maintain chairs or stools, or other suitable seats, for the use of such female employes, to the number of one seat for every three females employed, and to permit the use of such seats by such employes, at reasonable times, to such an extent as may be requisite for the preservation of their health. And such employes shall be permitted to use same, as above set forth, in front of the counter, table, desk or any fixture when the female employe for the use of whom said seat shall be kept and maintained is principally engaged in front of said counter, table, desk or fixture; and behind such counter, table, desk or fixture when the female employe for the use of whom said seat shall be kept and maintained is principally engaged behind said counter, table, desk or fixture.

Any person who violates or omits to comply with any of the foregoing provisions of this Section, or who suffers or permits any woman to stand, in violation of its provisions, shall be guilty of a misdemeanor, and, on conviction, shall be punished by a fine of not less than twenty dollars nor more than one hundred dollars for each offense.

Obstruction of, or injury to drains in Charleston Co.

1901, XXIII, 809.

Sec. 334. Any and all persons who shall injure, obstruct or otherwise interfere with any of the drainage canals, public drains or ditches, opened or maintained by the Sanitary and Drainage Commission of Charleston County, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than one hundred dollars, or be sentenced to work at hard labor on the chain gang of said County for not more than thirty days.

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CHAPTER XVI.

Offenses of Selling Property Under Lien, Violation of Contracts, Regulation of Trade in Certain Cases, &c.

SEC.

336. Selling property on which lien exists without notice to pur chaser.
337. Selling property under mortgage, or lien, without paying debt.
338. Contractors for erection of buildings to pay for labor and materials. Using money received for other purposes.
339. Fraudulent removal of property levied by Sheriff.
340. False packing of cotton.
341. Selling seed cotton between certain hours.
342. Traders in seed cotton to keep a book, &c.
343. Charge of breakage in weighing cotton prohibited.
344. Making way with produce before paid for, fraud.
345. Factors failing to account for produce guilty of fraud.
346. Not guilty if produce destroyed by accident.
347-348. Traffic in seed cotton in certain Counties regulated.
349. Record book to be kept open; what to contain.
350. Traffic in long cotton, without a license, prohibited.
351. Refusal of buyer to accept cotton bales on account of weight, if weight over 300 pounds.
352. Cotton buyers required to keep a book; what to contain.
353. Weighing cotton regulated; violations.

SEC.

354. Selling corn meal for less than legal weight.
355. Violations of contracts between landlord and laborer.
356. Penalty for Magistrate refusing to act.
357. Violation of contract after receiving supplies.
358. Unlawful to offer checks to employees; when.
359. Enticing or employing laborers under contract.
360. Fraud in guanos.
361. Selling or offering for sale fertilizers without complying with law.
362. Fraudulent use and forgery of inspection tags.
363. Selling or offering for sale goods marked "Sterling" or "Sterling Silver," without goods come up to standard.
364. Penalty for hawking or peddling without a license.
365. Failure to properly treat infected trees.
366. Sale of diseased plants, &c.
367. Obstructing State Entomologist.
368. Certificate of inspection to accompany shipment of plants.
369. Sale of diseased live stock.
370. Importation of stock affected with glanders.
371. Obstruction of State Veterinarian.
372. Sale of goods near Camp Ground.

Selling property on which lien exists.

G. S. 2514; R. S. 276; 1872, XV., 332; 1892, XXI., 93; 1893, XXI, 411; 1894, XXI, 824.

Section 336. Any person or persons who shall wilfully and knowingly sell and convey any real or personal property on which any lien exists without first giving notice of such lien to the purchaser or purchasers of such real or personal property, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be imprisoned for a term not less than ten days nor more than three years, and be fined not less than ten dollars nor more than five thousand dollars, or either or both, in the discretion of the Court: *Provided,* That the penalties enumerated in this Section shall not apply to public officers in

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the discharge of their official duties: *Provided, further,* When the value of such property does not exceed twenty dollars, the punishment shall not exceed a fine of one hundred dollars or imprisonment not exceeding thirty days.

CONSTRUED.—The lien of a judgment is as much within the meaning of the Section as any other lien.—State v. Johnson, 20 S. C., 387.

A sale without giving notice of lien of which the vendor was ignorant is no offense.—*Ib.*

Notice sufficient to lead to knowledge of the liens is all required.—*Ib.*

TRIAL.—The offense of selling is but one offense, no matter how many liens then existing, and the Solicitor cannot be required to indicate which one of the liens he relies upon.—*Ib.*

JUDGMENT.—Motion for arrest of, on refusal of Judge to require such election, was properly refused.—*Ib.*

Selling personal property under mortgage.

G. S. 2515, R. S. 277; 1881, XVII, 560; 1892, XXI., 93; 1893, XXI., 411; 1894, XXI., 824.

Sec. 337. Any person or persons who shall sell or dispose of any personal property on which any mortgage or other lien exists, without the written consent of the mortgagee or lienee, or the owner or holder of such mortgage or lien, and shall fail to pay the debt secured by the same within ten days after such sale or disposal, or shall fail in such time to deposit the amount of the said debt with the Clerk of the Court of Common Pleas for the County in which the mortgage or lien debtor resides, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be imprisoned for a term not more than two years or be fined not more than five hundred dollars, or both, in the discretion of the Court: *Provided,* That the provisions of this Section shall not apply in cases of sales made without knowledge or notice of such mortgage or lien by the person so selling such property: *Provided, further,* That when the value of such property does not exceed twenty dollars, the punishment shall not exceed a fine of one hundred dollars, or imprisonment not exceeding thirty days.

This Section applies to all persons making such sales, and not to the lienor alone, and applies to all sales made under junior liens.—State v. Reeder, 36 S. C., 497; 15 S. E., 544.

And to cases where prior lien arose under statutes subsequently enacted.—*Ib.*

The motive or intent of the seller is immaterial.—*Ib.*

Erroneous advice of counsel does not excuse the offense.—*Ib.*

INDICTMENT.—Motion to quash it is proper mode of objection when it is found by an illegal grand jury.—State v. Williams, 35 S. C., 344; 14 S. E., 819.

JURORS.—Are not required to be freeholders or taxpayers, and need not possess any other qualifications than those prescribed for electors or legislators.—*Ib.*

Twelve constitute a legal grand jury.—*Ib.*

Constitutional rights of trial by jury not violated as long as such trial by twelve jurors is prescribed.—*Ib.*

EVIDENCE.—Not necessary for State to prove, as alleged in indictment, that lienor had not written consent of lienee to sell.—*Ib.*

Action for malicious prosecution under this Section.—Stoddard v. Roland, 31 S. C., 342; 9 S. E., 1027.

Mere removal of property subject to lien for rent does not constitute a violation of this Section.—Whaley v. Lawton, 57 S. C., 265; 35 S. E., 558. Nor does the sale of property of the defendant lienor, against his will, under judicial process,

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render him liable to conviction.—State v. Johnson, 51 S. C., 268; 28 S. E., 905. A person selling property under lien for advances with knowledge of prior lien for rent.—State v. Reeder, 36 S. C., 497; 15 S. E., 544. Error in admitting absolute bill of sale as a mortgage.—State v. Rice, 43 S. C., 200; 20 S. E., 986. Disposition when complete.—*Ib.*

This is not a felony; conviction does not render incompetent as witness.—State v. Green, 48 S. C., 136; 26 S. E., 234.

Contractors to pay all laborers employed; using money received for contract for other purposes than for work or materials a misdemeanor.

1896, XXII., 198; 1897, XXII, 487.

Sec. 338. It shall be the duty of any contractor or contractors, in the erection, alteration or repairing of buildings in the State of South Carolina, to pay all laborers, sub-contractors and material men for their lawful services and material furnished out of the money received for the erection, alteration or repairs of buildings upon which said laborers, sub-contractors and material men are employed or interested, and said laborers, as well as all sub-contractors and persons who shall furnish material for said building, shall have a first lien on the money received by said contractor or contractors for the erection, alteration or repair of said buildings in proportion to the amount of their respective claims. Nothing herein contained shall make the owner of the building responsible in any way: *Provided,* That nothing contained in this Section shall be construed to prevent any contractor or contractors or sub-contractors from borrowing money on such contract.

Any contractor or contractors or sub-contractors who shall for other purposes than paying the money loaned upon said contract expend and on that account fail to pay to any or all laborers, sub-contractors and material men out of the money received as provided in this Section and as admitted by such contractor or contractors, or as may be adjudged by any Court of competent jurisdiction, shall be deemed guilty of a misdemeanor, and upon conviction, when the consideration for such work and material shall exceed the value of one hundred dollars, shall be fined not less than one hundred dollars nor more than five hundred dollars, or imprisonment not less than three months nor more than twelve months; and when such consideration shall not exceed the value of one hundred dollars, shall be fined not more than one hundred dollars or imprisoned not longer than thirty days: *Provided,* Said contractor or contractors or sub-contractors may have the right of arbitration by agreement with said laborers, sub-contractors and material men.

Sec. 339. Whoever, with intent to defraud, removes or secrets personal property which has been attached or levied on by the Sheriff, or any other officer authorized by law to make such

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attachment or levy, shall be held guilty of a misdemeanor, and upon conviction shall be punished by imprisonment in the County jail for a period not less than sixty days nor more than one year or by fine of not less than one hundred dollars nor more than two hundred.

Fraudulent removal of property levied by Sheriff.

G. S. 2516; R. S. 278; 1873, XV., 448; 1879, XVII, 2.

Sec. 340. Any person or persons convicted of knowingly and wilfully packing into any bag or bale of cotton any stone, wood, trash cotton, cotton seed, water, or any matter or thing whatsoever, or causing the same to be done, with the intent and purpose of cheating or defrauding any person or persons whomsoever in the sale of such cotton, or who shall exhibit or offer for sale any bag or bale of cotton so fraudulently packed, at the time of the said exhibit or offer for sale knowing the same to be so fraudulently packed, shall, on conviction thereof, as aforesaid, be sentenced to pay a fine of not more than five hundred dollars nor less than twenty dollars, and to be imprisoned for a term of not more than six months nor less than one month.

False packing of cotton.

G. S. 2517; R. S. 279; 1875, XV., 976.

Construed.—To embrace false packing with water.—State v. Holman, 3 McC., 306.

Evidence.—Must show that defendant had knowledge of the false packing.—State v. Pitts, 13 Rich., 27.

Sec. 341. It shall not be lawful for any person to buy or sell, or receive by way of barter, exchange, or traffic of any sort, any seed cotton between the hours of sundown and sunrise.

Selling seed cotton between certain hours.

G. S. 2518; R. S. 280; 1877; XVI., 266; 1880, XVII., 475.

Any person convicted of a violation of the provisions of this Section shall be fined the sum of fifty dollars, or imprisoned in the County jail for a period of thirty days, or both in the discretion of the Court.

The Court of General Sessions has concurrent jurisdiction of this offense.—State v. Padgett, 18 S. C., 317.

Indictment.—Sufficiently charged the offense when it alleged a sale "at nine o'clock in the night of the same day."—*Ib.*

Sec. 342. All persons who now are or may hereafter become engaged in the traffic in seed cotton and unpacked lint cotton are hereby required to keep legibly written in a book, which shall be open to public inspection, the name and place of residence of the person or persons from whom they purchase or receive by way of barter, exchange, or traffic of any sort, any seed cotton or unpacked lint cotton, with the number of pounds and date of purchase.

Traders in seed cotton to keep book; penalty.

G. S. 2519; R. S. 281, 1882, XVII., 746.

Any person who shall fail or refuse to keep the book in the form and manner prescribed in this Section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not less than ten dollars nor more than one hun-

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dred dollars, or by imprisonment for not less than five nor more than thirty days.

Charge of breakage.

G. S. 2520; R. S. 282; 1878, XVI., 713.

Sec. 343. Any person who shall put and make the charge known as "breakage" upon the weighing of cotton shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not more than twenty-five dollars or be imprisoned not more than thirty days, or both, in the discretion of the Court.

Making way with produce before paid for, fraud.

G. S. 2521; R. S. 283; 1877, XVI., 250.

Sec. 344. Any person engaged in the business of buying cotton, corn, rice, or such commodities, either on his own account or for others, who shall buy such on sale from a planter, commission merchant, or any other person or persons, for cash, and shall fail or refuse to pay for the same, and shall make way with or dispose of the same before he shall have paid therefor, shall be deemed guilty of fraud and embezzlement, and shall be liable, on conviction, to be imprisoned in the Penitentiary for a term not less than one year nor more than five years, at the discretion of the Court.

Factors failing to account for produce guilty of fraud

G. S. 2522; R. S. 284; *Ib.*

Sec. 345. Any factor or commission merchant who shall receive from any planter any cotton, rice, or other agricultural produce, for sale, and shall sell the same and fail to pay over the net proceeds thereof to the planter on demand, or apply the same to his own use and benefit, or shall fail to account for the same in a satisfactory manner if unsold, shall be guilty of fraud and embezzlement, and on conviction thereof shall be imprisoned in the Penitentiary not less than one year nor more than five years, at the discretion of the Court.

Not guilty if products destroyed by accident.

G. S. 2523; R. S. 285; *Ib.*

Sec. 346. No person shall be convicted under the provisions of the two preceding Sections if he can show that the cotton, corn, rice or other products received by him was destroyed by accident, after due diligence on his part, or that he was forcibly deprived of the possession thereof.

Traffic in seed cotton in certain Counties prohibited without a license.

R. S. 286; 1887, XIX., 795; 1888, XX., 117; 1892, XXI, 224; 1896, XXII, 363; 1897, XXII., 614; 1898, XXII, 813; 1899, XXIII, 89; 1900, XXIII., 454; 1901, *Ib.*, 728 and other citations in side note to § 1549, Civil Code.

Sec. 347. Any person who shall traffic in seed cotton, by purchase, barter or exchange, in the Counties of Abbeville, Aiken, Sumter, York, Edgefield, Berkeley, Kershaw, Richland, Orangeburg, Charleston, Chester, Cherokee, Clarendon, Fairfield, Lancaster, Lexington, Darlington, Marlboro, and in Broxton Township, in Colleton County, and that portion of Marion County lying north of a line parallel to and exactly one mile north of the Wilmington, Columbia and Augusta railroad, and Union, between the 15th day of August and the 15th day of December of any year, and in theCounties of Anderson, Bamberg, Barnwell and Dorchester, between the 15th day of August

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and the 1st day of December of any year, without first having obtained a license from the Clerk of the Court of Common Pleas for the County in which said traffic is to be carried on, under the provisions of Sec. 1550 of the Civil Code, shall be guilty of a misdemeanor and, on conviction, shall be punished for each offense by a fine of not less than one hundred dollars or by imprisonment of not less than one year, or by both fine and imprisonment, within the discretion of the Court.

Violation of regulations as to sale of seed cotton in portion of Marion County.

1884, XXI., 944; 1901, XXIII., 728.

Sec. 348. If any person residing in that portion of Marion County south of a line parallel to and exactly one mile north of the Wilmington, Columbia and Augusta Railroad engaged in purchase, barter or exchange in seed cotton shall fail on any Saturday night to post up in front of the place of business where seed cotton is purchased, bartered or exchanged the amount of cotton purchased, bartered or exchanged during the week and the name or names of parties from whom the purchase or purchases were made, and the amount purchased and to keep said record posted for three months, or shall purchase any seed cotton within the limits above described after the hour of five o'clock in the afternoon and before eight o'clock in the forenoon, as required by Sec. 1551 of the Civil Code, he shall, upon conviction, be punishable by a fine of not less than twenty-five dollars nor more than fifty dollars, or imprisonment for not less than fifteen days nor more than thirty days, one-half of which fine when collected shall be paid to the informer.

Licensee must keep book; what must be entered.

R. S. 287; 1887, XIX., 794, *Ib.*

Sec. 349. Any person to whom license to traffic in seed cotton may be granted shall keep at place of business a book in which shall be entered the date of every purchase, from whom purchased, and the quantity purchased, which book shall always be opened to inspection of persons applying therefor. Any person to whom license may be granted failing to comply with the requirements of this Section shall upon conviction be liable to the penalties specified in the preceding Section.

Traffic in sea island cotton without license.

1899, XXIII, 90; 1901; *Ib.*, 732.

Sec. 350. Traffic in long cotton, known as sea island cotton, in the seed, by purchase, barter or exchange, without license, as provided in Sec. 1548 of the Civil Code, is absolutely prohibited; and any person who shall so traffic or attempt to traffic without such a license shall be guilty of a misdemeanor, and on conviction shall be punished for each offense by a fine of not more than one hundred dollars or by imprisonment not exceeding thirty days: *Provided,* That one-half of any such fine when collected shall go to the informer: *Provided,* The provisions of this

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Section do not apply to the Counties of Colleton and Beaufort, nor to Charleston County except within the Township of James Island.

Cotton bales weighing not less than 300 pounds made merchantable; violation of.

1899, XXIII., 90; Civil Code, § 1547.

Sec. 351. It shall be unlawful for any cotton buyer to refuse to accept any bale of cotton, after he has bought the same by sample thereof, weighing over three hundred pounds, provided same corresponds in quality with sample bought by; and any such buyer who docks or deducts any amount from the purchase price of any such bale of cotton, or attempts to dock or deduct any amount from the purchase price of such bale of cotton, shall be deemed guilty of a misdemeanor, and upon conviction before any Court of competent jurisdiction shall be fined in the sum of not more than one hundred dollars nor less than twenty dollars.

Cotton buyers required to keep a book.

1894, XXI., 793.

Misdemeanor Punishment.

Sec. 352. Any person who shall fail to keep a book, or record of the number of the bales of cotton and furnish the seller a bill thereof, as required by Sec. 1546 of the Civil Code, shall, on conviction, be fined in a sum not exceeding one hundred dollars, or imprisoned not exceeding thirty days.

Weighing cotton regulated; violation.

1894, XXI., 793; 1896, XXII, 58, § 4.

Sec. 353. Any person, persons or agents of any corporation weighing cotton in any cotton market or markets where a Public Weigher has been elected, except as prescribed in Article 2, Chapter XXXIV of the Civil Code, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than five nor more than ten dollars for each offense.

Weight of bushel of bolted corn meal; selling bushel for lesser weight a misdemeanor.

1900, XXIII., 434.

Sec. 354. It shall be unlawful for any person, firm, company or corporation to sell or offer for sale within the limits of the State of South Carolina, unbolted corn meal of less weight than at the rate of forty-eight pounds per bushel and bolted corn meal at the rate of forty-six pounds per bushel. Any person violating this law shall be fined fifty dollars, or be imprisoned for the term of thirty days. The weight of bushel of bolted corn meal shall be forty-six pounds.

Contracts to be read and witnessed.

G. S. 2081; 2084; R. S. 288; 1869, XIV., 227; 1897, XXII., 457.

Sec. 355. All contracts made between owners of lands, their agents, administrators or executors, and laborers shall be witnessed by one or more disinterested persons, and excepting the verbal contracts provided for in Section 357, at the request of either party be duly executed before a Magistrate, whose duty it shall be to read and explain the same to the parties. Such contract shall clearly set forth the conditions upon which the laborer or laborers engage to work, embracing the length of time, the amount of money to be paid, and when; if it be on shares of crops, what portion or portions thereof.

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Whenever such contract is violated, or attempted to be violated, or broken, or whenever fraud is practiced or attempted to be practiced, by either party to such contract or contracts, at any time before the conditions of the same are fulfilled and the parties released therefrom, complaint may be made before a Magistrate. If the offending party be the land owner or owners, his, her or their agent or agents, and fraud has been practiced or attempted to be practiced, either in keeping in any account or accounts between him, her and them or the other party or parties to such contract or contracts, or in the division of the crop or crops, or the payment of money or other valuable consideration, upon conviction such offender or offenders shall be fined in a sum of not less than five dollars nor more than one hundred ($100) dollars, or be imprisoned not less than ten days nor more than thirty days; or if it be a disinterested party chosen to make a division or divisions of crops as provided in Section 2716 of the Civil Code, he, she or they shall be liable for prosecution as for a misdemeanor, and on conviction shall be fined in a sum of not less than five nor more than one hundred dollars, or be imprisoned for a period not less than ten days nor more than thirty days.

Violation of contracts.

Ib.; 1889, XX, 381.

Violation by land-owner.

Penalty.

Violation by arbitrator.

Ib.

Penalty.

If the offending party be a laborer, or laborers, and the offense consists either in failing wilfully and without just cause to give the labor reasonably required of him, her or them by the terms of such contract, or in other respects shall refuse to comply with the conditions of such contract or contracts, or shall fraudulently make use of or carry away from the place where the crop or crops he, she or they may be working or planted any portion of said crop or crops, or anything connected therewith or belonging thereto, such person so offending shall be liable to prosecution, and on conviction before any Magistrate be fined in a sum of not less than five dollars nor more than one hundred dollars, or be imprisoned for a period of not less than ten days or more than thirty days.

Violation by laborer.

Ib.

Penalty.

The indictments for this violation of contract must show that the written contract sets forth the time when the wages are to be paid the laborer and is such a contract as the Section provides.—State v. Williams, 32 S. C., 123; 10 S. E., 876.

Sec. 356. Any Magistrate, or other officer before whom complaint is made, and whose duty it is to try such cases as provided in the preceding Section, who shall offend against the true intent and meaning of Section 2716 of the Civil Code or shall refuse to hear and determine impartially all cases that may be brought before him under the pro-

Penalty for Magistrate refusing to act.

G. S. 2085; R. S. 289; 1869, XIV., 229.

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visions of said Section of the Civil Code, and all peace officers whose duty it is to apprehend all offenders against the laws of the State who shall refuse to perform their duty in bringing to justice any and all offenders against the preceding Section and the above mentioned Section of the Civil Code, shall be liable to a charge of malfeasance in office, and upon proof to convict, shall be forthwith removed from office and fined a sum not less than fifty nor more than one hundred dollars.

Violation of contract after receiving supplies a misdemeanor.

1897, XXII., 457.

Sec. 357. Any laborer working on shares of crop or for wages in money or other valuable consideration under a verbal or written contract to labor on farm lands who shall receive advances either in money or supplies and thereafter wilfully and without just cause fail to perform the reasonable service required of him by the terms of the said contract shall be liable to prosecution for a misdemeanor, and on conviction shall be punished by imprisonment for not less than twenty days nor more than thirty days, or to be fined in the sum of not less than twenty-five dollars nor more than one hundred dollars, in the discretion of the Court: *Provided,* The verbal contract herein referred to shall be witnessed by at least two disinterested witnesses.

Proviso.

This Act held constitutional.—State v. Chapman, 56 S. C., 420; 34 S. E., 961; State v. Easterlin, 61 S. C., 74; 39 S. E., 250. Either party may testify as to the terms of the contract. The brother of the prosecutor may be a disinterested witness.—State v. Easterlin, 61 S. C., 74; 39 S. E., 250.

A verbal contract for labor is good at common law; and a laborer making a crop on the premises of a farmer under a verbal contract, under his direction, for a part of the crop raised, is a laborer, and not a partner, of the farmer, and commits larceny when he takes and carries away a portion of the crop with intent to steal it.—State v. Sanders, 52 S. C., 580; 30 S. E., 616.

Unlawful to offer checks.

G. S. 2086; R. S. 290; 1872, XV., 216; 1875, XV., 899; 1879, XVII., 7.

Sec. 358. Any person or persons who shall offer to any laborer or employe, at the time when the wages of such laborer or employe are due and payable by agreement, unless otherwise provided for by special contract, as compensation for labor, or services performed, checks, or scrips of any description, known as plantation checks, payable at some future time, or in the shops or stores of employers, in lieu of lawful money, shall be liable to indictment and punishment, by a fine not exceeding two hundred dollars, or by imprisonment not exceeding one year, or both, according to the discretion of the Court: *Provided,* The word "checks" herein shall not be construed so as to prohibit the giving of checks upon any of the authorized banks of deposit or issue in this State.

Penalty.

Not applicable to bank checks.

Sec. 359. Any person who shall entice or persuade by any means whatsoever, any tenant, servant, or laborer, under con-

tract with another, duly entered into between the parties before one or more witnesses, whether such contract be verbal or in writing, to violate such contract, or shall employ any laborer knowing such laborer to be under contract with another, shall be deemed guilty of a misdemeanor, and upon conviction shall be fined not less than twenty-five nor more than one hundred dollars, or be imprisoned in the County jail not less than ten nor more than thirty days.

Enticing laborers under contract.

G. S. 2479; R. S. 291; 1880, XVII., 423.

Sec. 360. Any person or corporation in this State who shall be guilty of short weight or fraud in the manufacture, preparation, analysis or sale of guanos, fertilizers or commercial manures in this State, or who shall make any wilful misrepresentation as to the manufacture, preparation, analysis or quality of such guanos, fertilizers, or commercial manures, or who shall wilfully fail to attach the tags, labels or stamps as now required by the Statutes of this State, or who shall wilfully violate any of the provisions of Sections 1535 and 1537 of the Civil Code, relating to commercial fertilizers, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not exceeding one thousand dollars or imprisoned for a term not exceeding one year, or both such fine and imprisonment, in the discretion of the Court.

Fraud in guanos.

R. S. 292; 1890, XX., 709.

Sec. 361. Any person or corporation who shall sell or offer for sale any brand of fertilizer or commercial manure in this State which contains ammonia derived from horns, hoofs, or leather, or which shall, upon analysis, fall three per cent. below the commercial value of said fertilizer or commercial manure certified to the Board of Trustees of "The Clemson Agricultural College of South Carolina," as provided by Section 1538, Civil Code, or violate any of the provisions of said Section, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, be fined in a sum not exceeding one thousand dollars, or imprisoned for a time not exceeding one year, or both fine and imprisonment, in the discretion of the Court.

Penalties prescribed for selling or offering for sale commercial manure without complying with the law.

R. S. 293; 1893, XXI., 505, § 11.

Sec. 362. Any person or persons, company or corporation, who shall make use, or who shall attempt to make, print, sell, use or offer for sale, any counterfeit or any imitation whatever of the inspection tax tags or stamps issued by the Board of Trustees of Clemson College, or their authorized agent, for the purpose of evading or assisting in evading the payment of the inspection tax on fertilizers or commercial manures, shall be fined in a sum not less than two hundred and not more than five

Fraudulent use, and forgery of inspection tags.

1899, XXIII., 93; § 6.

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hundred dollars for each and every offense, and on failure to pay such fine shall be imprisoned at hard labor for a period of not less than one and not more than five years for each offense.

Fraud in selling or offering for sale goods marked "Sterling" or "Sterling Silver" punished.

1894, XXI., 797.

Sec. 363. A person who makes or sells, or offers to sell or dispose of, or has in his possession with intent to sell or dispose of, any article of merchandise marked, stamped or branded with the words "sterling" or "sterling silver," or encased or enclosed in any box, package, cover or wrapper, or other thing in or by which the said article is packed, enclosed or otherwise prepared for sale or disposition, having thereon any engraving or printed label, stamp, imprint, mark or trade mark indicating or denoting by such marking, stamping, branding, engraving or printing that such article is silver, sterling silver or solid silver, unless nine hundred and twenty-five one-thousandths of the component parts of the metal of which the said article is manufactured are pure silver, shall be deemed guilty of a misdemeanor.

A person who makes or sells, or offers to sell or dispose of, or has in his possession with intent to sell or dispose of, any article of merchandise marked, stamped or branded with the words "coin" or "coin silver," or enclosed in any box, package, cover or wrapper, or other thing in or by which the said article is packed, enclosed or otherwise prepared for sale or disposition, having thereon any engraving or printed label, stamp,, imprint, "mark" or "trade mark" indicating or denoting by such marking, stamping, branding, engraving or printing that such article is "coin" or "coin silver," unless nine hundred and twenty-five one-thousandths of the component parts of the metal of which the said article is manufactured are pure silver, shall be deemed guilty of a misdemeanor.

Whoever violates the provisions of this Section shall, upon conviction, be subject to a fine not exceeding one hundred dollars for each offense or be imprisoned in the County jail not more than thirty days.

Penalty for hawking and peddling without a license.

G. S. 1341; R. S. 294; 1876, XVI., 64; 1893, XXI., 408.

Sec. 364. If any hawker or peddler sell or expose for sale any goods, wares or merchandise in any County in this State without having obtained a license for that purpose from the Clerk of Court of Common Pleas of the County within which he is exposing for sale or selling such goods, wares and merchandise, as required by law, he shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not more

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than fifty dollars or imprisoned in the County jail not more than thirty days.

State v. Belcher, 1 McM., 42; State v. Powell, 10 Rich., 373; State v. Morehead, 42 S. C., 211; 20 S. E., 544; Alexander v. Greenville, 49 S. C., 527; 27 S. E., 479; State v. Coop, 52 S. C., 508; 30 S. E., 609.

City ordinance held in violation of interstate commerce provisions of U. S. Constitution.—City of Laurens v. Elmore, 55 S. C., 477; 33 S. E., 560.

Failure to properly treat infected trees.

1900, XXIII, 703.

Sec. 365. The failure or refusal on the part of the owner of the premises, where any infested trees, plants or vineyards are situate, to execute the treatment prescribed by the State Entomologist, under Section 745 of the Civil Code, or to destroy trees, plants or vineyards as directed by him, shall be deemed a misdemeanor, and upon conviction thereof such owner shall be punished by a fine not exceeding one hundred dollars or imprisonment in the County jail not exceeding thirty days: *And Provided, however,* That the provision in reference to destroying plants shall not refer to cotton, corn, grain or such other field plants as are not subject to sale and transportation.

Sale of diseased plants a misdemeanor.

Ib.

Sec. 366. It shall be unlawful to sell, or offer for sale, or transport plants, buds, trees, shrubs, vines, tubers, bulbs, roots or cuttings, known to be infested with dangerous or injurious insects or plant diseases; and any person or persons violating the provisions of this Section shall be deemed guilty of a misdemanor, and upon conviction shall be fined in a sum not exceeding one hundred dollars, or imprisonment in the County jail not exceeding thirty days.

Obstruction of Entomologist a misdemeanor.

Ib.

Sec. 367. That the said Entomologist or his assistant, is hereby authorized and empowered to enter upon any premises in this State for the discharge of the duties hereby prescribed, or that may be prescribed by said Board; and any person or persons who shall pester or hinder him in the discharge of such duties shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine not exceeding one hundred dollars, or by imprisonment in the County jail not exceeding thirty days.

Certificate of inspection to accompany shipment of trees.

Ib.

Sec. 368. It shall be unlawful for any grower of fruit trees, nurserymen, or corporations to ship within this State any trees, shrubs, cuttings, vines, bulbs or roots without having the same previously examined by said Entomologist, or by his assistant within six months next preceding date of such shipment, a certificate of such inspection in such form as may be adopted by said Board to accompany each box or package.

Any person or corporation violating the provisions of this Section shall be deemed guilty of a misdemeanor, and upon

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conviction thereof shall be punished by a fine not exceeding one hundred dollars, or be imprisoned in the County jail not exceeding thirty days.

Sale of diseased stock a misdemeanor.

1901, XXIII, 738.

Sec. 369. It shall be unlawful to sell or offer for sale, in this State, any horse, mule, cattle, hog, or any other live stock, that is known to be affected with any contagious disease the tendency of which is to cause the death of any such live stock; and any person or persons violating the provisions of this Section, shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in a sum, not exceeding one hundred dollars, or be imprisoned in the County jail not exceding thirty days.

Importation of stock infected with glanders forbidden.

R. S. 516, 1890, XX., 709.

Sec. 370. It shall be unlawful for any person or persons to transport within the borders of this State any horse, mule or ass infected with glanders. Any person or persons violating the provisions of this Section, unless he can produce a clean bill of health from some veterinary surgeon that the said stock was not infected with said disease when transported within the borders of this State, shall be liable for all damages attending the introduction of said disease, to be recovered by any person so damaged, and shall also be deemed guilty of a misdemeanor, and on conviction shall be fined in a sum not exceeding five hundred dollars or be imprisoned not exceeding twelve months.

Penalty.

Obstruction of State Veterinarian.

1901, XXIII., 737.

Sec. 371. It shall not be lawful for any person or persons to hinder or obstruct said Veterinarian appointed under the provisions of Section 1313 of the Civil Code, or his assistant, in the enjoyment of the rights given by Section 1317 of the Civil Code, in the discharge of the duties prescribed by the next succeeding Section 1318 of said Code; and any person or persons violating the provisions of this Section, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine not exceeding one hundred dollars or be imprisoned in the County jail not exceeding thirty days.

Sale of goods etc., prohibited within one-half mile of camp ground.

1901, XXIII, 750.

Sec. 372. It shall be unlawful for any itinerant trader or tradesman or other than established dealer of the community to offer for sale any goods, wares or merchandise within one-half of a mile of any camp ground or other place of religious meeting while meetings are in progress outside an incorporated town or city, except with the permission of the trustees or other board of management of such meeting: *Provided,* This Section shall not apply to vendors of fresh fruit or vegetables or any farm product.

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Any person violating the provisions of this Section shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined in a sum not exceeding fifty dollars, or be imprisoned not exceeding twenty days.

Penalty.

CHAPTER XVII.

Forgery and Offenses Against the Currency.

SEC.
373. Forgery.
374. Counterfeiting.
375. Issuing paper resembling bank notes.
376. On trials for counterfeiting notes of a bank, the bank to furnish witnesses.

Forgery.

G. S. 2527; R. S. 295; 1845, XI, 341; 1736-7,-III, 470-1, §§ 3-7; 1783, IV., 543; 1801, V., 397, § 6.

Section 373. Whoever shall be convicted of falsely making, forging, or counterfeiting, or causing or procuring to be falsely made, forged, or counterfeited, or of willingly acting or assisting in the false making, forging, or counterfeiting, of any writing or instrument of writing, or of uttering or publishing as true any false, forged, or counterfeited writing or instrument of writing, or of falsely making, forging, counterfeiting, altering, changing, defacing, or erasing, or causing or procuring to be falsely made, forged, counterfeited, altered, changed, defaced, or erased, any record or plat of land, or of willingly acting or assisting in any of the premises, with an intention to defraud any person, shall be guilty of forgery, and shall be sentenced to be imprisoned not less than one year nor more than seven years, and also to pay such fine as may be judged expedient, at the discretion of the Judge who may try the case.

The "three essential elements in the crime of forgery" are: "1. A writing apparently valid. 2. A fraudulent intent on the part of the accused. 3. The falsity of writing, or the fact that the name signed thereon is fictitious." All of which elements must be alleged and proved.—State v. Bullock, 54 S. C., 310; 32 S. E., 424. It is a felony.—State v. Allen, 56 S. C., 497; 35 S. E., 204; State v. Rowe, 8 Rich., 17. But where the indictment follows the language of the statute defining the crime, it is not defective for failure to charge that the act was done "feloniously."—State v. Allen, 56 S. C., 499; 35 S. E., 204.

Held to embrace forgery of school claims issued by County Superintendent of Education.—State v. Allen, 56 S. C., 499; 35 S. E., 204; State v. Morton, 51 S. C., 323; 28 S.. E., 945. Of a witness pay certificate issued by a Clerk of Court.—State v. Bullock, 54 S. C., 300; 32 S. E., 424.

To embrace the forgery of a receipt on the back of an indent, with fraudulent intent.—State v. Washington, 1 Bay, 120.

And the forgery of an order for the delivery of goods.—State v. Holly, 2 Bay, 262; State v. Holly, 1 Brev., 35.

And the altering the words and figures of a bank bill.—State v. Waters, 3 Brev., 507.

Also, the alteration of a receipt.—State v. Floyd, 5 Strob., 58.

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Notwithstanding the Act of 1845, forgery was still considered a felony.—State v. Rowe, 8 Rich., 17.

If a clerk, keeping the books of a merchant, made false entries therein with fraudulent intent to injure him, and did injure him, the clerk committed forgery.—McConnell v. Kennedy, 29 S. C., 180; 7 S. E., 76.

INDICTMENT.—Is good, though it describe the instrument as "a warrant or order."—State v. Holley, 1 Brev., 35.

For "counterfeiting a note of hand, commonly called a promissory note, for the payment of money," is good if the note be set forth in *haec verba*.—State v. Houseal, 2 Brev., 219. So as to an order.—State v. Jones, 1 McM., 236.

It must state all the circumstances which constitute the offense.—State v. Foster, 3 McC., 442.

It is proper to charge the offense of an alteration as a forgery, in the words of the statute.—State v. Floyd, 5 Strob., 58; State v. Allen, 56 S. C., 499; 35 S. E., 204.

EVIDENCE.—A fraud committed on the Cashier is a fraud committed on the bank he represents.—State v. Jones, 1 McM., 236.

The utterance of other forged instruments of like nature may be shown.—State v. Allen, 56 S. C., 495; 35 S. E., 204.

It must be admitted or acknowledged or established by affirmative testimony that papers are in the handwriting of defendant before they can be received in evidence for the purpose of comparison with the forged paper.—State v. Ezekiel, 33 S. C., 115; 11 S. E., 635.

On indictment for forgery of one bank bill, it is admissible to prove that the prisoner had passed other forged bills for which indictments were pending.—State v. Williams, 2 Rich., 420.

Where the paper was issued in duplicate; a duplicate is not a mere copy of the original, but is equally evidence with the first copy issued.—State v. Allen, 56 S. C., 499; 35 S. E., 204.

JUDGMENT—Is warranted upon a verdict which finds the passing of a forged note with knowledge of the forgery.—State v. Fuller, 1 Bay, 245.

Counterfeiting.

G. S. 2528; R. S. 296.

Sec. 374. Whoever shall be convicted of counterfeiting, or uttering, or attempting to pass, knowing it to be counterfeit, any of the following gold or silver coin, to wit: a Spanish milled dollar, Johannes, half ditto, quarter ditto, eighth ditto, Moidore, half ditto, quarter ditto, eighth ditto, French Crown of four to the Louis d'or, English Crown, Pistareen, Spanish Doubloon, Double Pistole, Pistole, half ditto, English Guinea, half ditto, quarter ditto, French Guinea, German Piece, half ditto, Ducat; or of making or keeping in possession any stamp or mould for coining, shall suffer the punishment imposed in the preceding Section for the offense of forgery.

Staking counterfeit coin at gaming table is an attempt to utter and pass it.—State v. Beeler, 1 Brev., 482.

INDICTMENT.—Must charge attempt to defraud some particular person.—State v. Odell, 3 Brev., 552.

Though it may state ingredients of which coin is made, it need not be proved in this particular.—State v. Beeler, 1 Brev., 482.

EVIDENCE.—To show defendant had counterfeited other dollars than silver dollars as alleged in indictment was held inadmissible.—State v. Odell, 3 Brev., 552. But this case was overruled in State v. Allen, 56 S. C., 503; 35 S. E., 204. See also State v. Antonio, 3 Brev., 562; State v. Houston, 1 Bail., 300; State v. Williams, 2 Rich., 418; State v. Hooper, 2 Bailey, 37; State v. Tutt, 2 Bailey, 44.

Possession of coining instruments may be given in evidence to prove defendants scienter.—State v. Antonio, 3 Brev., 562.

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Issue paper resembling bank notes.

G. S., 2529; R. S. 297; 1856, XII., 538.

Sec. 375. It shall be unlawful for any person to issue, utter, or publish any printed or engraved paper bearing a resemblance to a bank note; and any person who shall violate the provisions of this Section shall, upon indictment and conviction thereof, be fined or imprisoned at the discretion of the Court.

The Section embraces uttering and publishing counterfeits of notes of United States Bank.—State v. Tutt, 2 Bail., 44. Or of its branches.—State v. Pitman, 1 Brev., 32. Or of Bank of the State.—State v. Billis, 2 McC., 12.

INDICTMENT.—Should describe the offense in the words of the Section.—State v. Petty, Harp., 59.

In charging the uttering of a forged bill of exchange, payable to A B, it need not allege the endorsement of A. B.—State v. Tutt, 2 Bail., 44.

EVIDENCE.—Witness acquainted with handwriting of President of bank permitted to prove falsity of signature.—State v. Stalmaker, 2 Brev., 1.

Testimony to show that prisoner had in his possession other notes supposed to be forged, admissible to show his knowledge of the counterfeit.—State v. Petty, Harp., 59.

Or to show that another note passed by him was forged.—State v. Houston, 1 Bail., 300; State v. Hooper, 2 Bail., 37; State v. Williams, 2 Rich., 418.

An officer of the bank is in no case the *only* competent witness to prove a note counterfeit.—State v. Hooper, 2 Bail., 37; State v. Anderson, 2 Bail., 565. The former case overruling State v. Petty, Harp., 59, on this point.

The person whose name is alleged to have been forged was not a competent witness to prove the forgery.—State v. Whitten, 1 Hill, 100. Overruling State v. Foster, 3 McC., 442.

JUDGMENT.—Arrested where indictment omitted the word "did," before the words "utter and publish, &c.,"—State v. Halder, 2 McC., 377.

Where pending appeal the punishment had been reduced, sentence should be for lesser punishment.—State v. Williams, 2 Rich., 418.

On trials for counterfeiting notes of a bank, the bank to furnish witnesses.

G. S. 2530; R. S. 298; 1828, VIII., 57; 1832, VIII., 66; 1833, VIII., 67.

Sec. 376. When information shall be given to the President of any bank in South Carolina, by the Attorney General, or by any of the Solicitors of this State, that any person has been apprehended, and is to be tried in any County in this State for counterfeiting any of the notes of the said bank, or for passing such counterfeit note, knowing it to be false, or for stealing any note of said bank, it shall be the duty of the said bank to cause its cashier, or some competent witness, to attend in person and give evidence on such trial, on pain of the forfeiture of one thousand dollars, for the use of the State, to be recovered by indictment.

CHAPTER XVIII.

Offenses by Certain Officers.

Sec.
377. Public officers not to contract in excess of sum limited nor to divest public funds.
378. Embezzlement of public funds, Misdemeanors.
379. Assumption of office without giving bond.
380. Failure to keep itemized statement of costs and fees received.
381. Misconduct by certain officers.
382. Acceptance of rebates prohibited.
383. Failure of Clerk of Court or Magistrate to pay over fines or penalties.
384. Clerk of Court responsible for books, papers, &c., in his office: penalty for not transferring to successor.
385. Failure of Clerk to report to Auditor and Treasurer, fines, licenses, &c.
386. Sheriff, or other officer, taking reward, &c.
387. Public officers to turn over money to their successors; Probate Judge to turn over books, &c.
388. Public officers guilty of misconduct to be indicted.
389. Office, when declared vacant.
390. Allowing records to be taken.
391. Neglect of duty by Clerk of Circuit Court.
392. Officers reported by Solicitor to be indicted.
393. Solicitors disabled by intoxication.
394. Failure of disbursing officers to publish monthly statements.

Sheriffs.

395. Official misconduct.
396. Refusing to execute writs of *habeas corpus*.
397. Permitting criminals to escape.
398. Purchasing at their own sales.
399. Failing to turn over books, &c., to their successors.
400. Default, &c., in returning warrants of Magistrates.
401. Retiring Sheriff to turn over to his successor.

Sec.
402. Monthly statements to be made to Auditor and Treasurer.
403. For violating homestead law.
404. Duty of Sheriff to arrest escaped convicts.
405. Failing to enter tax executions on Execution Book, &c.

Coroner.

406. To report to the Governor in certain capital cases.
407. Coroner of Charleston County; neglect of duty.

Magistrates.

408. To return papers to Court of Sessions ten days before the term.
409. Neglect to pay over fines.
410. Failure to make monthly reports.
411. Books held as public property; disposition of moneys.
412. Not to receive fees in criminal cases where paid a salary, nor take the Constable's pay.
413. Magistrates and Constables failing to enforce the vagrant laws.

Constables.

414. Failing to execute process.
415. Oppression, &c.
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417. Default in returning warrants, &c.

County Auditors, County Treasurers, County Commissioners and School Commissioners.

418. Not to buy teachers' certificates.
419. School officers prohibited from being agent for school books.
420. Failure of County Superintendent of Education to apportion school funds or of Treasurer to enter same on his books, &c.
421. Treasurer not to demand commissions on school funds.
422. Accepting or exercising the office without authority, and for not turning over books, papers, &c., to successor.
423. Keep account of poll tax.
424. To report to County Superintendent of Education.

Sec.
425. Neglecting to report school funds to Superintendent of Education.
426. Auditor to report polls, &c.
427. County officers not to issue certificates of debt.
428. Exercising office of Examiner or Trustee after removal.
429. Penalty for failure of County Superintendent of Education or County Treasurer to keep a book known as General Cash Account.
430. To remove certain patients from the State Hospital for the Insane.

Sec.
431. Penalty for committing persons to the State Hospital for the Insane without physician's certificate.
432. Physicians not to recommend the commitment of idiots, &c., to the State Hospital for the Insane unless violent.
433. Jury Commissioners guilty of fraud; penalty.
434. Oppression and abuse of office by municipal officers.

Felonies.

Public officers must enter into no contract in excess of sum limited; nor divert public funds.

G. S. 458, 459, 460; R. S. 299; 1874, XV., 692.

Section 377. It shall be unlawful for any public officer, State or County, authorized to so contract, to enter into or contract, for any purpose whatsoever, in a sum in excess of the tax levied, or the amount appropriated, for the accomplishment of such purpose; or to divert or appropriate the funds arising from any tax levied and collected for any one fiscal year to the payment of any indebtedness contracted or incurred for any previous year; and on violating the provisions of this Section, he shall be deemed guilty of a felony, and upon conviction thereof shall be punished by a fine not exceeding five thousand dollars and not less than five hundred dollars, and by imprisonment at hard labor in the State Penitentiary for a period not exceeding five years nor less than one year, or either or both, in the discretion of the Court.

Penalty.

Embezzlement of public funds a felony; punishment.

1898, XXII., 810.

Sec. 378. All officers and other persons charged with the safe keeping, transfer and disbursement of any public funds, who shall embezzle the same, shall be deemed guilty of felony, and upon conviction thereof shall be punished by fine and imprisonment in the discretion of the Court; said fine and imprisonment to be proportioned to the amount of the embezzlement; and the party convicted of such felony shall be disqualified from ever holding any office of honor or emolument in this State: *Provided, however,* That the General Assembly, by a two-thirds vote, may remove the disability upon payment in full of the principal and interest of the sum embezzled.

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Misdemeanors.

Assumption of office before giving bond.

1901, XXIII., 750.

Sec. 379. It shall be unlawful for any person to assume or attempt to assume the duties of any office of which a bond is required, without having given the bond required; and any person assuming or attempting to assume the duties of any office as aforesaid, shall be guilty of a misdemeanor, and shall be subject to a fine of five hundred dollars or imprisonment for not less than three months in the discretion of the Court.

Non-compliance with Civil Code, § 611, as to keeping itemized statement of costs and fees.

1897, XXII., 458; 1898, Ib., 742.

Counties excepted from this section.

Sec. 380. Any County officer neglecting or refusing to comply with any of the provisions of Section 611 of the Civil Code, requiring officers to keep an itemized statement of fees and costs received, shall be deemed guilty of a misdemeanor, and upon conviction shall be fined not less than fifty nor more than two hundred dollars or imprisoned in the County jail not less than two nor more than six months, either or both, at the discretion of the Court: *Provided,* That the provisions of this Section shall not apply to the Counties of Sumter, Lexington, Berkeley and Newberry.

The provision of Sec. 4 in the Act of 1900, XXIII., 293, as to the collection of costs and fees by County officers is omitted, as the Act of which it is a part was held unconstitutional in Nance v. Anderson Co., 60 S. C., 501; 39 S. E., 5.

County officers guilty of misconduct, &c, how removed.

1897, XXII., 423.

Sec. 381. Any County officer who is guilty of misconduct or persistent neglect of duty in office, or any person who persists in holding any County office to which he has been appointed or elected the duties of which he has not the capacity to properly discharge, shall, upon indictment and true bill after warrant, or after presentment of a grand jury and indictment and true bill thereon, be tried as for misdemeanor in office, and upon conviction the office shall be declared vacant and the sentence shall be removal of defendant from office, and the vacancy shall be filled as when a vacancy occurs by death or resignation.

Acceptance of rebates prohibited.

1899, XXIII., 96.

Sec. 382. No person holding an office or position of trust or profit in this State, or in the public institutions thereof, shall accept rebates or extra compensation, in addition to that provided by law.

Punishment for.

Any person violating the provisions of this Section shall be fined in a sum not less than one hundred dollars nor more than five hundred dollars, or be imprisoned for not less than three months nor more than five years.

Exception.

This Section shall not apply to officers accepting rebates, not for their individual use, but for the benefit and in behalf of the State.

See also Sec. 223, *ante,* Act of 1897, XXII., 519, as to the collection and retention of rebates by public officers.

Sec. 383. Any Clerk of the Circuit Court of General Sessions, County Sheriff, or Magistrate, who shall neglect or refuse to immediately pay over, as required, any and all fines and penalties collected by them in any criminal cause or proceeding, shall, on conviction thereof, be subject to a fine of not less than one hundred, nor more than one thousand dollars, and imprisonment not less than three, nor more than six months, and shall be dismissed from office, and disqualified from holding any office of trust and profit under this State.

Clerk of Court or Magistrate failing to pay over funds, how punished.

G. S. 2553; R. S. 300; 1871, XIV., 656, § 3.

Sec. 384. Every Clerk shall be held responsible for the books, papers and furniture in his office; and upon his retiring from office, or death, he or his representative shall be bound to transfer the same to his successor, immediately after such successor has entered upon the duties of his office, under a penalty of one thousand dollars and imprisonment not exceeding one year.

Clerks responsible for books, papers, &c., in his office.

G. S. 757; R. S. 301; 1839, XI., 114.

Penalty for not transferring to his successor.

Sec. 385. Every Clerk of the Court is required, on the first Wednesday in each month, or within ten days thereafter, to make, in writing, to the Auditor and Treasurer of his County, a full and accurate statement of all moneys collected on account of licenses, fines, penalties and forfeitures during the past month, on pain of indictment, and, in case of conviction, of being fined not more than one hundred dollars or imprisoned not more than two months, or both, at the discretion of the Court.

Clerk to report to Auditor and Treasurer.

R. S. 302; G. S. 759; 1878, XVI., 763.

Penalty.

Sec. 386. If a Sheriff, Deputy Sheriff, Constable, or other officer authorized to serve legal process, receives from the defendant, or any other person, any money or other valuable thing as a consideration, reward or inducement for omitting or delaying to arrest a defendant, or to carry him before a Magistrate, or for delaying to take a person to prison, or for postponing the sale of property under an execution, or for omitting or delaying to perform any duty pertaining to his office, he shall be punished by a fine not exceeding three hundred dollars.

Sheriff or other officer taking reward, &c., promised.

G. S. 2554; R. S. 303; 683; 1869, XIV., 308

Sec. 387. It shall be the duty of every Sheriff, Judge of Probate, Clerk of the Court of Common Pleas, County Treasurer, and any other State or County officer entrusted with funds by virtue of his office, upon retiring from office, to turn over to his successor all moneys received by him as such officer, and remaining in his hands as such officer, within thirty days from the time when his successor shall have entered upon the duties of

Public officers must turn over moneys in their hands to their successors.

G. S. 457, 779; R. S. 304; 1874, XV., 674; 1885, XIX., 158.

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his office, in the same manner as he is required by law to turn over the furniture, books and papers; and the successor shall receive and be responsible for the moneys so turned over to him, in the same manner as he is liable for other moneys received by him officially; and any public officer neglecting or refusing obedience to the requisition herein contained shall be held guilty of a misdemeanor, and upon conviction shall be liable to a fine of one thousand dollars and imprisonment not exceeding twelve months, besides his liability on his official bond, at the suit of any person aggrieved by such neglect.

Penalty.

Judge of Probate responsible for books, &c.; penalty for not transferring to his successor.

1839, XI., 70.

Every Judge of Probate shall be responsible for the books and papers, and also for the furniture, in his office, and upon his retiring from office, or upon his death, he or his representatives shall be bound to transfer the same to his successor immediately after such successor shall have entered upon the duties of his office, under a penalty of one thousand dollars, to be recovered by indictment, and of imprisonment not exceeding one year.

Embraces Superintendent of Penitentiary.—State v. Neal, 59 S. C., 259; 37 S. E., 826. Clerk of Court.—State v. Assman, 46 S. C., 555; 24 S. E., 673.

Certain officers guilty of misconduct to be indicted.

R. S. 305; 1829, VI., 391, § 1.

Sec. 388. Any public officer hereafter to be elected or appointed, whose authority is limited to a single election or judicial district, who shall be guilty of any official misconduct, habitual negligence, habitual drunkenness, corruption, fraud, or oppression, shall be liable to indictment, and upon conviction thereof shall be fined not exceeding one thousand dollars and imprisoned not exceeding one year.

This Section covers violations of law principally of an active nature.—State v. Green, 52 S. C., 524; 30 S. E., 683; State v. Tarrant, 24 S. C., 593.

An officer whose term has expired or who has resigned or been removed may be indicted under this Section.—State v. Sellers, 7 Rich., 370.

General official misconduct is punishable only under this Section.—State v. Hall, 5 S. C., 120.

Furnishing prisoners with spirituous liquors by jailer is official misconduct.—State v. Sellers, 7 Rich., 368.

False voucher of Treasurer is an official fraud.—State v. Cardozo, 11 S. C., 232.

INDICTMENT.—That joins a charge of general misconduct under this Section with a charge of particular neglect of official duty is defective.—State v. Hall, 5 S. C., 120.

DEFENSE.—None by jailer that his appointment was not in writing.—State v. Sellers, 7 Rich., 368.

Duty of presiding Judge, when officer is indicted, &c.

G. S. 2556; R. S. 306; 1896, XXII., 212, *Ib.*

Sec. 389. It shall be the duty of the presiding Judge before whom such officer shall be tried to cause a certified copy of the indictment to be immediately transmitted to the Governor, who shall upon receipt thereof declare by proclamation his office vacant, and the same shall be filled as in the case of death or resignation of the incumbent. And whenever it shall be brought

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to the notice of the Governor by affidavit that any officer who has the custody of public or trust funds is probably guilty of embezzlement, or the appropriation of public or trust funds to private use, then the Governor shall direct his immediate prosecution by the proper officer, and upon true bill found the Governor shall suspend such officer and appoint one in his stead until he shall have been acquitted by the verdict of a jury. In case of conviction the office shall be declared vacant and the vacancy filled as may be provided by law.

Misdemeanor to allow records to be taken, &c.

G. S. 2557; R. S. 307; 1882, XVII., 871; 1885, XIX., 415

Sec. 390. If any Clerk of any Court of Record, Judge of Probate, Master, Register of Mesne Conveyances, or Sheriff, shall allow any record, or any part thereof, to be taken or removed from their respective offices by any person or persons whomsoever, he shall be deemed guilty of a misdemeanor, and upon conviction thereof he shall be punished by a fine of fifty dollars for the first offense, and for the second and any subsequent offense by a fine of one hundred dollars: *Provided,* That nothing herein contained shall be held to apply to the attendance of any of the said officers with any of the records of their respective offices in any Court or Courts when the actual production of such record is required by the proper process of such Court for the purpose of evidence in any trial or trials then proceeding therein: *Provided, also,* That the provisions of this Section shall not apply to the taking or removal of any books or records where the same is done under any order of a Circuit Judge for the better preservation or protection of the same.

Any person who shall take any record from the office of the Clerk of the Court, Judge of Probate, or Master in Equity, without the consent of the officer having control of the same shall be guilty of a misdemeanor, and liable to the same penalty as is provided in this Section.

Neglect of duty by Clerk, &c., how punished.

G. S. 2558; R. S. 308; 1837, VI., 577, § 1.

Sec. 391. Any Clerk of the Court of Common Pleas and General Sessions, or Sheriff, or Judge of Probate, or Register of Mesne Conveyances, in this State, who shall wilfully fail or neglect to discharge all the duties and perform all the services which are required of him by law, in addition to his liability to the party aggrieved, shall be liable to be indicted as for a misdemeanor, and, upon conviction thereof, shall be fined at the discretion of the Court, not exceeding five hundred dollars.

Construed with Sec. 388, and held to apply to wilful neglect or failure, passive in its nature.—State v. Green, 52 S. C., 524; 30 S. E., 683.

Construed with Section 387.—State v. Hall, 5 S. C., 120.

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INDICTMENT—Which in effect and substance charges neglect of any official duty imposed by law on the officers named is founded upon this Section, and not upon Section 387.—State v. Hall, 5 S. C., 120.

It must specify the particular duty neglected.—*Ib.*

It will not lie against a Probate Judge for neglecting to pay out money arising from partition sale until an order for distribution has been obtained.—*Ib.*

Officers reported by Circuit Solicitor, to be indicted.

G. S. 2559; R. S. 309; *Ib.*, 3.

Sec. 392. If any of the said officers shall be reported by a Circuit Solicitor as having wilfully failed or neglected to discharge any of the duties, or to perform any of the services, appertaining to his office, which are required of him by law, it shall be the duty of the Court to order a bill of indictment to be preferred against such delinquent officer.

Circuit Solicitors, if disabled by intoxication, how punished.

G. S. 2560; R. S. 310; 1873, XV., 486.

Sec. 393. Any Circuit Solicitor who shall, while in the public discharge of the duties of his office, be drunk or intoxicated, or in any extent disabled, by reason of the use of intoxicating liquors, from the proper discharge of his duties, shall be held guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than one hundred or more than one thousand dollars, and imprisoned not less than one month or more than one year, in the discretion of the Court, and be dismissed from his office. And whenever it shall be brought to the attention of the Attorney General that any Circuit Solicitor has been charged with the offense mentioned in this Section, it shall be his duty to prepare a bill of indictment against such officer, and prosecute the same in the County where the offense was committed; and if said officer is duly convicted, he shall cause to be forwarded to the Governor of the State a record of such conviction, upon the receipt of which the Governor shall forthwith declare the said office to be vacant, and order an election to fill the same.

Failure of disbursing officers to publish monthly statements punished.

G. S. 2563; R. S. 311; XVI., 167.

Sec. 394. All persons who are now, or who may hereafter become, authorized to disburse any funds of the State, shall be required to publish in some newspaper of general circulation in the County where such disbursement is made or authorized to be made, a monthly statement of all funds received and the date thereof, and of all funds paid out; when, to whom, and on what account; and any person failing to do shall, upon conviction thereof, be liable to punishment therefor as for a misdemeanor in a fine not less than fifty nor more than one thousand dollars, or by imprisonment of not less than thirty days nor more than one year, or both. The expense of such publication to be paid out of the State funds in the hands of such persons, or funds appropriated for State purposes.

Sheriffs.

Sec. 395. If any Sheriff shall be attached for contempt for failing to execute or to return final process in any civil suit, or for not paying over to the party entitled money which has come into his hands as Sheriff, and shall remain in contempt for the space of thirty days after such attachment ordered, every such Sheriff shall be deemed guilty of official misconduct, and shall be liable to be proceeded against by indictment, and, on conviction, be liable to fine of not exceeding one thousand dollars, and imprisonment not exceeding one year, and be removed from office: *Provided,* That nothing herein contained shall be construed to deprive any such Sheriff of his right to appeal from any order against him for a contempt, nor shall the provisions of this Section be taken to apply during the pendency of such appeal, nor until the same has been finally dismissed.

To be deemed guilty of official misconduct—when; punishable on conviction; proviso.

G. S. 674; R. S. 312; 1844, XI., 296.

Sec. 396. Every Sheriff, Deputy Sheriff, or Jailer, shall have power, and he is authorized, required, and commanded, to give due obedience to the execution of every writ of *habeas corpus,* made or signed by any person or persons by law empowered to grant the same, and shall do and perform any matter or thing which by the same he may be required to do; and if he shall wilfully neglect, refuse, or omit to obey or perform the same, when legally requested and demanded in such case, for each such neglect, refusal, or omission, he shall forfeit the sum of five hundred dollars, to be recovered by indictment.

To execute writs of *habeas corpus.*

G. S. 680; R. S. 313; 1839, XI., 48, § 43.

Sec. 397. If any Sheriff, Deputy Sheriff, Jailer, or other officer, wilfully suffer a prisoner in his custody, under conviction or under any criminal charge not capital, to escape, he shall suffer the like punishment and penalties as the prisoner suffered to escape was sentenced to, or would be liable to suffer, upon conviction of the crime or offense wherewith he stood charged.

Punishable as for escape of criminal.

G. S. 682; R. S. 314; 1869, XIV., 309, § 7; 1839, XI., 46, § 35.

Sec. 398. No Sheriff or Deputy Sheriff shall be concerned or interested, directly or indirectly, in the purchase of any property sold by either of them officially; and if any such Sheriff or Deputy Sheriff shall be concerned or interested in any such purchase at any such sale, made by either of them, he shall, on conviction thereof, be deprived of his office, and shall be liable to be fined and imprisoned at the discretion of the Court; and such purchase shall be null and void.

Penalties for purchasing at their own sales.

G. S. 684; R. S. 315; 1839, XI., 55, § 59; 1823, VI., 213; 1791, VII., 263, § 8.

Sec. 399. It shall be the duty of every Sheriff to turn over to his successor all the furniture appertaining to his office, the

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To turn over books, papers, &c., to his successor.

G. S. 657; R. S. 316; 1839, XI, 40, § 7; 1791, VII., 263, § 7; 1859, XII., 788, § 1.

original Writ Book, and Sale Book, and also the original Execution Book, or a correct certified copy thereof, and also all original bonds officially taken by him, all mesne processes not served, and all final processes partially or wholly unexecuted; and if any Sheriff be dead, his personal representatives shall so turn over the matters aforesaid; and the successor shall be bound to execute a receipt and duplicate, to be lodged in the Clerk's office, specifying the matters and things so received by him, and he shall be responsible for them. The retiring Sheriff, or his successor, neglecting or refusing obedience to the requisitions herein, shall, respectively, upon conviction by indictment, be liable to a fine of one thousand dollars, or an action may be instituted upon the official bond of any defaulting Sheriff in this behalf, for the penalty aforesaid, and it shall be the duty of such predecessor, who has levied upon personal property and not sold it, to deliver it to his successor at the time of turning over such books, bonds, and processes, taking his receipt for the same, who is authorized to sell such property.

Shall forfeit fees and be subject to fine of five dollars for default in returning warrants, &c., of Magistrate.

G. S. 693; R. S. 317; 1836, VI., 552.

Sec. 400. If the Sheriff shall neglect or delay to return any warrant or other process pertaining to the Court of General Sessions, issued by a Magistrate, ten days before the meeting of the Court, he shall forfeit his fees, and be subject to a fine of five dollars, for every such default, if, upon a rule to show cause, he shall fail to excuse himself to the satisfaction of the Court.

Sheriff to pay over money to his successor within one month.

G. S. 694, 695 and 696; R. S. 318, 1859, XII., 788, § 1.

Sec. 401. It shall be the duty of every Sheriff, on the expiration of his term of office, to turn over to his successor all money remaining in his hands as Sheriff, within one month from the time his successor shall have entered on the duties of his office, in the same manner as he is required to turn over to his successor the furniture, books, bonds, processes, and other papers; and his successor shall receive and be responsible for the money so turned over to him, in the same manner as he is liable for other money received by him as Sheriff.

Retiring Sheriff entitled to half commissions.

Ib.

The retiring Sheriff shall be entitled to retain only one-half of the commissions allowed by law on moneys collected and so turned over, and his successor the other half, for paying out the same.

Liabilities to fine and imprisonment.

Ib.

The retiring Sheriff, or his successor, neglecting or refusing obedience to the requisitions herein contained, shall, respectively, upon conviction by indictment, be liable to a fine of one

thousand dollars and imprisonment not exceeding twelve months.

Must furnish statement monthly to Auditor and Treasurer.

G. S. 700; R. S. 319; 1878, XVI., 753.

Sec. 402. All Sheriffs are required, on the first Tuesday in every month, or within ten days afterward, to make in writing to the Auditor and Treasurer of the several Counties a full and accurate statement of all moneys collected by them on account of licenses, fines, penalties, or forfeitures during the past month; and in default thereof, upon conviction, shall be liable to a fine not exceeding one hundred dollars, or imprisonment in the County jail not exceeding two months, or both at the discretion of the Court.

Penalty for violating homestead law by officers.

G. S. 2003; R. S. 320; 1880, XVII., 516.

Sec. 403. No Sheriff, Constable, or other officer whose duty it is to enforce execution, shall proceed in any other manner than is prescribed in the homestead laws of this State to enforce any execution in his hands; and should any officer sell any real estate, or sell or remove any personal property, in violation of the homestead laws of this State, and of the Constitution of the State of South Carolina, he shall be deemed guilty of a misdemeanor, and on conviction thereof shall for the first offense be fined in a sum not less than five hundred dollars nor more than one thousand dollars, and upon conviction of the second offense his office shall be deemed vacant.

Duty of Sheriffs to arrest escaped convicts.

Sec. 404. It shall be the duty of the Sheriffs of this State, and they are hereby required, under the penalty hereinafter provided, to arrest in their respective Counties, with or without a warrant, all escaped convicts from the penitentiary or from the chain gang or jails found in their said Counties; and upon said arrest it shall be the duty of said Sheriffs to immediately notify the proper authorities from whose care said convicts escaped.

Neglect a misdemeanor.

1900, XXIII, 305.

Upon any wilful neglect or failure on the part of any such Sheriff to comply with the provisions of this Section, he shall be deemed guilty of a misdemeanor, and upon conviction be fined in a sum of not more than five hundred dollars nor less than one hundred dollars, or be imprisoned for not more than six months, or be both fined and imprisoned, at the discretion of the Court.

Failing to enter tax execution on execution book a misdemeanor.

1900, XXIII., 306, §§ 7 and 8.

Sec. 405. Any Sheriff failing to enter tax executions upon his execution book, or to take receipts thereon, as herein required, shall, upon conviction thereof, be punished as for a misdemeanor.

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Nothing herein contained shall be construed to relieve the Sheriff from any of the penalties, civil or criminal, now provided by law for his failure to comply with the law prescribing his duties in relation to tax executions.

Coroners.

To report to the Governor in certain capital cases.

G. S. 721; R. S. 321; XV., 439, 440.

Sec. 406. It shall be the duty of each County Coroner, whenever a homicide has been committed in his County, and the party committing such homicide has not been arrested, or, having been arrested, has escaped custody before bill found, to forward a report to the Governor within three days after the holding an inquest by him, or, in cases of escape, within three days after notice of such escape, which report shall embrace the name of the person killed, and the name of the person, if known, charged with committing such homicide, together with a copy of the evidence taken before the jury of inquest, and the verdict rendered thereupon: *Provided,* That, in case of escape, it shall be the duty of the Sheriff, or other officer having custody of the party, to notify such Coroner of the escape promptly. Any Coroner who shall wilfully neglect to make the report, as hereinbefore provided, shall be liable to indictment as for a misdemeanor, and, upon conviction, shall be fined not less than fifty nor more than five hundred dollars, or imprisoned not less than thirty days nor more than six months, or both, at the discretion of the Court.

Coroner of Charleston Co.; neglect of duty a misdemeanor

R. S. 322; 1885, XIX., 426.

Penalty.

Sec. 407. For any neglect of the duties of the office of Coroner for Charleston County, or for any malfeasance therein, the Coroner, Deputy Coroner, or the Magistrate authorized by law to act as Coroner, so neglecting such duty, or so committing malfeasance therein, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than fifty dollars and not more than one thousand dollars, or be imprisoned at the discretion of the Court, or be both fined and imprisoned, as the Court may direct; one-half of such fine shall be paid to the person informing upon such neglect or malfeasance.

Magistrates.

Magistrates must return papers to Court of Sessions ten days before the term.

G. S. 855, 856; R. S. 323; 1839, XI., 23.

Sec. 408. All papers pertaining the Court of General Sessions shall be returned by each Magistrate to the Clerk at least ten days before the ensuing term of said Court except such as may have been issued or received by him subsequent to that

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time, which shall be returned on the first day of said term; and if any Magistrate fail to return such papers to the Clerk, as directed in this Section, he shall not receive any fee or compensation for issuing or taking the same unless it shall appear that the offense was committed or information made subsequent to such day, or by return of the Sheriff or Constable or other officer issuing such warrant or other process, to be made on oath, that the same could not be executed by him in time therefor; and he shall be subject to the payment of a fine of five dollars for every such default, within the discretion of the Court to which a rule thereof shall be made returnable.

Penalty.

1836, VI., 552.

Sec. 409. Every Magistrate shall on the first Wednesday of each month, or within ten days thereafter, make, in writing to the Auditor and Treasurer of his County a full and accurate statement of all moneys collected by him on account of licenses, fines, penalties or forfeitures during the past month. In default thereof, he shall on conviction be liable to a fine not exceeding one hundred dollars or imprisonment in the County jail not exceding two months, or both, at the discretion of the Court.

Penalty for failing to make monthly reports.

G. S. 802; R. S. 324; 1878, XVI., 753.

Sec. 410. If any Magistrate shall neglect or refuse to immediately pay over all fines and penalties collected by him in any criminal cause or proceeding, he shall on conviction thereof be subject to a fine of not less than one hundred or more than one thousand dollars and imprisonment not less than three nor more than six months, and shall be dismissed from office.

Penalty for neglect to pay over fines.

G. S. 858; R. S. 325; 1871, XIV., 656;,XV, 420.

Sec. 411. Upon the expiration of the term of office of any Magistrate, it shall be the duty of such Magistrate to return to the Clerk of the Court of his County, within thirty days, all books received by him from said Clerk, under the law regulating the distribution of books among Magistrates, in good condition; and any Magistrate neglecting or refusing to return such books to the said Clerk, received by him under and by the terms of this Section, or pay for the same or damage thereto, shall be deemed guilty of a misdemeanor, and upon conviction thereof in any Court of competent jurisdiction shall be fined in the sum of not less than ten dollars nor more than twenty-five dollars, or be imprisoned not less than ten days nor more than thirty days, at the discretion of the Court.

Regulations as to books held by Magistrates as public property.

G. S. 862; R. S. 326; 1871, XVII., 872.

Penalty.

The fines imposed or money received under this Section shall be paid over to the Clerk of the Court when collected, to be expended in replacing such books as are not returned or are too

Disposition of moneys.

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much damaged to be reissued, and to be used for no other purpose.

Not to receive fees in criminal causes; nor to take Constables' pay.

R. S. 327; 1887, XIX., 800

Sec. 412. It shall be unlawful for any salaried Magistrate in this State to receive any compensation for his services in criminal causes other than his salary, or to receive for his own use any portion of his Constable's fees or salary in any criminal causes whatsoever, whether said causes are actually tried, compromised or transferred for investigation to the Court of General Sessions.

Penalty.

Any Magistrate who shall violate the provisions of this Section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than fifty dollars and not more than two hundred dollars, or imprisoned not less than thirty days and not more than six months, or both fine and imprisonment, at the discretion of the Court.

Penalty for Magistrate or Constable neglecting to enforce vagrant laws.

G. S. 1608; R. S. 328; 1787, V, 43.

Sec. 413. If any Magistrate shall fail or neglect to execute any of the duties required of him by the vagrant laws of the State, he shall be liable to pay a penalty of fifty dollars; and any Constable neglecting or failing in his duty aforesaid shall be liable to pay twenty-five dollars, to be recovered by information before any Court of competent jurisdiction; one moiety to go to the informer and the other to the use of the County.

Constables.

Penalty for failing to execute process of Magistrate's Court.

G. S. 868; R. S. 329; 1835, XI., 81.

Sec. 414. Every Constable appointed by a Magistrate shall be bound to execute, when required, every lawful order, judgment and determination of the Magistrate and of any Magistrate's Court; and for disobedience herein he shall be liable to be indicted and punished as for a high misdemeanor.

Punishment for oppression, &c.

G. S. 869; R. S. 330; *Ib.*

Sec. 415. For oppression in office, whether by undue personal violence, cruelty, taking an amount of property in unreasonable proportion to the sum to be collected, or for any wilful official misconduct, habitual negligence, habitual drunkenness, or fraud, when established to the satisfaction of a jury, upon indictment, a Constable shall be punished by imprisonment not exceeding one year and fined not exceeding one thousand dollars, at the discretion of the Court.

May be removed from office on conviction.

G. S. 870; R. S. 331; *Ib.*

Sec. 416. Upon the conviction of any Constable by indictment, the Judge before whom the case may be tried shall have power, by order, to declare the convict to be removed from office, whereupon his office shall be deemed vacant.

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Sec. 417. In all cases in which Magistrates shall fail to lodge in the offices of the Clerks of the Court of their respective Counties recognizances taken before them for the appearance of witnesses, defendants, or prosecutors, before the Court of General Sessions for such County, or information or other papers made before them, and returnable to such Court, at least ten days before the meeting of said Court, and such default shall arise from the neglect or improper delay of the Constable or other officer charged with the execution of any warrant or other process pertaining to the Court of General Sessions, such Constable shall forfeit his fee and be subject to a fine of five dollars for every such default, if, upon a rule to show cause, he shall fail to excuse himself to the satisfaction of the Court.

Default in returning warrants, &c.

G. S. 876; R. S. 332; 1836, VI., 562.

Penalty.

County Auditors, County Treasurers, County Superintendents of Education and School Trustees, and Other Officers.

Sec. 418. It shall be unlawful for any County Treasurer, County Auditor, member of County Board of Education, or School Trustee, to buy, discount or share, directly or indirectly, or be in any way interested, in any teachers' pay certificate, or other order on school fund, except such as are payable to him for his own services, or for any School Trustee to make any contract, or be pecuniarily interested, directly or indirectly, in any contract with any school district of which he is Trustee. If any of the officers aforesaid shall violate the provisions of this Section, he shall be deemed guilty of a misdemeanor, and on conviction thereof shall pay a fine of not less than one hundred dollars nor more than five hundred dollars, to be used for school purposes in his County, and shall be imprisoned not less than three months nor more than twelve months, or either or both, and shall forfeit the amount of such claim or of his interest in such claim.

A misdemeanor for certain officers to discount teachers' pay certificates

R. S. 333; G. S. 2561; 1900, XXIII., 366; Civil Code, 1227; 1896, XXII., 150, § 53.

Sec. 419. That it shall be unlawful for any teacher of a school supported in whole or in part from the public school funds of this State, or any Trustee of any such school, or any other school officer, to become an active or silent agent of any school book publisher, or be in any wise pecuniarily interested in the introduction of any school book or books into any school in this State. Any person violating any of the provisions hereof shall,

School officers prohibited from being agent for school books.

1896, XXII., 170, § 57.

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upon conviction thereof, be deemed guilty of a misdemeanor, and be subject to a fine of not less than one hundred dollars or imprisonment in the County jail for a period of not less than thirty days, or both, at the discretion of the Circuit Judge.

County Superintendents of Education to apportion school funds monthly among the school districts.

1898, XXII., 761.

Sec. 420. Within ten days after the County Treasurer makes his monthly report to the County Superintendent of Education, showing the amount of money collected by him since his last monthly report, it shall be the duty of the County Superintendent of Education to apportion the money arising from a tax on property as shown by the Treasurer's report among the school districts of his County and to certify such apportionment to the County Treasurer, together with the poll tax belonging to each district as shown by said report; and it shall be the duty of the County Treasurer to enter upon his book to the credit of each school district the amount due each district according to such certificate of apportionment, and the County Treasurer shall pay out the money belonging to the respective districts, upon the school warrants of such districts, duly signed and countersigned by the school authorities, for that scholastic year in the order of their presentation, provided that there be no outstanding claims of the previous scholastic year; and the Comptroller General shall receive the warrants thus paid as proper vouchers in the hands of the County Treasurer.

The failure or refusal of a County Superintendent of Education or a County Treasurer to comply with the foregoing provisions, or any of them, shall constitute a misdemeanor, and upon conviction thereof he shall be subject to a fine of not more than one hundred dollars, or imprisonment in the County jail for not more than thirty days.

Treasurer not to demand commission on school funds.

G. S. 2563; R. S. 334; 1876, XVI., 165.

Sec. 421. Any County Treasurer who shall demand or receive any commissions for paying out the school funds paid out by him from the person charged with receiving them, or shall charge any person commission on the same, shall be deemed guilty of a misdemeanor, and on conviction shall be fined not less than fifty dollars for each such offense or be imprisoned for a period not less than three months.

Penalty for accepting or exercising the office without authority, and for not turning over books, papers and property of to successor.

G. S. 223; R. S. 335; 1882, XVII., 1008.

Sec. 422. If any person shall, contrary to the statutes of this State regulating the appointment of County Auditor and County Treasurer, accept the offices of County Auditor or Treasurer, or shall hold or exercise, or attempt to hold or exercise, any such office, or fail, when application is made to him by his successor, to turn over all the books, papers and property of all kinds

whatsoever pertaining to said office; or if any County Treasurer, County Auditor, or member of any County Board of Equalization, shall neglect, refuse or evade the performance of the duties imposed upon him by law regulating the assessment and collection of taxes; or if any County Auditor shall neglect or refuse to comply with the requirements of law in the making up of his duplicate, or shall fail to file with the Comptroller-General the abstracts, vouchers and settlement sheets within the time required by law; or if any County Treasurer, after being notified of his removal or suspension from office, shall fail to settle with the County Auditor and the Comptroller-General, and pay over all State and County moneys in his hands to the officers entitled by law to receive the same, within ten days after being so notified, he shall be deemed, and he is hereby declared to be, guilty of a misdemeanor, and upon trial and conviction thereof he shall be punished therefor by fine not exceeding five thousand dollars or by imprisonment not exceeding five years, or both said punishments, in the discretion of the Court.

Treasurer to keep amount of poll tax.

G. S. 1021; R. S. 336; 1878, XVI., 582.

Sec. 423. The several County Treasurers shall retain all the poll tax collected in their respective Counties; and it is hereby made the duty of the said County Treasurer, in collecting the poll tax, to keep an account of the exact amount of said tax collected in each school district in his County; and the city of Charleston, for the purpose of this Section, shall be deemed a school district, and the County Treasurer shall pay over to the City Board of School Commissioners the amount of poll tax collected in said city; and the poll tax collected therein shall be expended for school purposes in the school district from which it was collected; and any violation of this Section by the County Treasurer shall constitute, and is hereby declared, a misdemeanor, and on conviction thereof the said County Treasurer shall pay a fine of not less than five hundred dollars nor more than five thousand dollars, to be used for school purposes in the County suffering from such violation, or imprisonment, in the discretion of the Court.

Penalty.

Treasurer to report to the School Commissioner.

G. S. 1022; R. S. 337; 1878, XVI., 584.

Sec. 424. He shall, on the fifteenth day of each month, report to the School Commissioner of his County the amount of collections and disbursements made by him for the month on account of poll tax and all other school funds; and it shall be a misdemeanor on the part of any County Treasurer to neglect, fail or refuse to make such report, and on conviction thereof

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he shall pay a fine of not less than five hundred dollars, the same to be used for school purposes in the County.

Penalty for neglecting to report school funds to Superintendent of Education.

G. S. 1023; R. S. 338; *Ib.*

Sec. 425. He shall make out and forward annually to the Superintendent of Education, on the first day of November, a certified statement showing, by school districts, the amount of poll and other school taxes collected by him for the fiscal year ending on the 31st day of October next preceding; and on failing, neglecting or refusing to make and forward such statement the State Superintendent of Education shall make a written complaint to the Circuit Solicitor for the County in which the said County Treasurer resides, who shall prosecute the said County Treasurer for the same; and on conviction thereof he shall be subject to a fine of five hundred dollars, the same to be used for free public school purposes in his County.

Auditor to report polls, &c.

R. S. 339; 1890, XX., 718; 1891, XX, 1049; 1892, XXI., 18.

Sec. 426. It shall be the duty of each Auditor to state, in a separate column, the school district in which the taxpayer resides. At the expiration of the time prescribed by law to receive returns he shall make out and forward to the Board of Trustees of each school district within his County a correct list of the polls returned from their respective districts. When the School Trustees have reported to him the names of all persons who have failed or neglected to make returns, it shall be his duty to enter upon his books the names of all persons thus reported to him, and he shall enter the names of said persons upon the tax duplicate furnished the County Treasurer. And any Auditor failing to comply with either or all of the provisions of this Section shall be deemed guilty of a misdemeanor, and upon conviction before a Court of competent jurisdiction shall be fined in a sum of not more than one hundred dollars or be imprisoned for a term not exceeding thirty days.

Penalty.

County officers not to issue certificate of debt.

G. S. 2565; R. S. 340; *Ib.*

Sec. 427. It shall not be lawful for any State or County officer to issue any certificate of indebtedness: *Provided,* That this shall not apply to issuing of tickets to jurors or witnesses for their attendance upon the Circuit Courts.

Exercising office of Examiner or Trustee after removal.

G. S. 1024; R. S. 341; 1878, XVI., 584.

Sec. 428. If a member of any County Board of Examiners in any County of this State, or a Trustee of any school district, shall attempt to act or discharge the duties of either of said offices after he has been removed, or after his successor shall have qualified, he shall be deemed guilty of a misdemeanor, and after conviction be punished by a fine of not less than one hundred and one dollars or imprisonment for not less than thirty days, or both, at the discretion of the Court.

Penalty.

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Sec. 429. The failure of any County School Commissioner or any County Treasurer of this State to keep a book of entry, in which shall be kept an account known as "general cash account," as required by law, shall be deemed a misdemeanor, and on conviction thereof he shall be subject to a fine of not less than two hundred dollars or imprisonment in the County jail for a period not less than six months.

Penalty for failure of School Commissioner or County Treasurer to keep a book known as "General Cash Account."

G. S. 342; 1892, XXI., 81.

Sec. 430. County Boards of Commissioners, or the municipal authorities of the city of Charleston, failing or refusing to remove from the State Hospital for the Insane, after thirty days' due notice from the Superintendent thereof, a patient, a beneficiary from their County or their city, as the case may be, who is simply physically or mentally infirm, or is a harmless imbecile, idiot or epileptic, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in the discretion of the Court, and the bond of such County Board of Commissioners shall be liable for the fine.

To remove certain patients from the State Hospital for the Insane.

R. S. 343; 1884, XVIII., 828.

Sec. 431. Any Probate Judge committing to the State Hospital for the Insane a person without a medical certificate conforming to the requirements of the law, or a pauper lunatic not a *bona fide* resident of this State, shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in the discretion of the Court.

Penalty for committing persons to the State Hospital for the Insane without physician's certificate.

Ib., 827; 1893, XXI., 481, 509.

Sec. 432. Physicians giving a certificate recommending the commitment to the State Hospital for the Insane of a person who is simply idiotic, epileptic, physically infirm, or mentally imbecile, unless such person is violent or dangerous, shall be guilty of a misdemanor, and upon conviction thereof shall be fined in the discretion of the Court.

Physicians not to recommend the commitment of idiots, &c., to the State Hospital for the Insane unless violent.

R. S. 345; 1884, XVIII., 827.

Sec. 433. If any member of the Board of Jury Commissioners shall be guilty of fraud, either by practicing on the jury box previously to a draft, or in drawing a juror, or in returning into the jury box the name of any juror which had been lawfully drawn out, and drawing or substituting another in his stead, or in any other way in the drawing of jurors, he shall be punished by a fine not exceeding five hundred dollars or be imprisoned not exceeding two years in the State Penitentiary.

Jury Commissioners guilty of fraud punishable by fine or imprisonment.

G. S. 2238; R. S. 346; 1871, XIV., 694, § 31.

Sec. 434. For any wilful violation or neglect of duty, malpractice, abuse or oppression, the Mayor or Aldermen in cities of over five thousand inhabitants so offending shall be liable to punishment by fine not exceeding one hundred dollars or imprisonment not exceeding thirty days, besides being liable

Municipal officers in certain cities, abuse of office, &c.

1901, XXIII., 657.

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for damages to any person injured by such neglect, malpractice, abuse or oppression.

CHAPTER XIX.

Violation of the Provisions Regulating the Establishing and Repairing of Highways.

SEC.
435. Neglect to work highway suddenly obstructed.
436. Neglecting to put highway in repair.
437. Not furnishing toll bridges with lights.
438. Driving fast over bridges.
439. Careless riding and driving on public roads.
440. Transporting passengers within a mile of an established ferry; proviso.
441. Penalty for injuring; for obstructing.
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443. Proprietors to keep up works; how penalties applied.
444. Neglect to post rate of charges.
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449. Gates on private roads may be erected; when and how.
450. Interfering with gates.
451. Erection of gates on highways.
452. Regulations as to such gates.
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SEC.
454. Injury to bridges, &c.; malicious, &c., injury to bridges on public roads; obstructing ditches, &c.
455. Leaving open certain gates.
456. Failing to apportion special road tax and to disburse the same as required by Act of 1897.
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458. For obstructing roads.
459. Employers to furnish names of employes to road overseers.
460. Neglect of road duty.
461. Interference with road surveyors.
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463. Overseers failing to obey orders of County Boards of Commissioners.
464. Refusal to work under road contractor.
465-468. Provisions as to working roads in Colleton County.
469. Negligence of road officers in Newberry.
470. Barbed wire fences near roads.
471. Destroying, defacing, &c., monuments of U. S. Coast Survey.

Highway suddenly obstructed.

G. S. 1086; R. S. 347.

Section 435. When any highway shall be suddenly obstructed by storm or otherwise, so as to require immediate labor to remove said obstruction, if any person liable to work on highways, after being summoned for the purpose of removing such obstruction by the order of the overseer, shall neglect to turn out and assist in opening and repairing such highway, he shall be deemed guilty of a misdemeanor, and upon conviction thereof in any Magistrate's Court shall be fined three dollars per day, said fine to be collected and expended in the repair of highways where and when necessary in his district.

Penalty for neglect to work

1874, XV,, 784.

Sec. 436. If the Commissioners of any County neglect to have repaired any of the highways and bridges which by law

are required to be kept in repair, they shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum of not less than one hundred or more than five hundred dollars, in the discretion of the Court.

Penalty for neglect to put highway in repair.

G. S. 1088; R. S. 348; 1874, Ib.

State v. Chappell, 2 Hill, 391.

The Commissioners are not liable to private action for neglect of duty; the remedy for injury is by indictment.—Young v. Commissioners, 2 N. & McC., 537.

Sec. 437. Every toll bridge within this State shall be furnished at night, by the owners of the franchise or the keepers of the said bridges, respectively, with sufficient light or lights to enable persons traveling over the same to see their way and to avoid danger.

Penalty for not furnishing toll bridges with lights.

G. S. 1111; R. S. 349; 1881, XVII., 579.

Any person violating the provisions of this Section shall be deemed guilty of a misdemeanor.

Sec. 438. No person shall drive, lead, or, having charge thereof, shall permit any carriage, animal or other thing to travel over or on any bridge more than ten feet long, now constructed, or hereafter to be constructed by the authority of the Legislature, in a gait faster than a walk, nor shall any person having charge of any carriage, animal or thing cause or permit it to stop on any such bridge, and every person so offending against this provision shall, on conviction thereof before any Magistrate of the County, pay a fine not exceeding ten dollars nor less than five dollars.

Penalty for driving fast, &c., over bridges.

G. S. 1112; R. S. 350; 1827, VI., 314.

Sec. 439. It shall be unlawful for any person to ride or drive any horse or mule or bicycle, automobile and locomobile, upon any street or ally in any city or town or any public highway of this State, in a wilfully careless or reckless manner.

Careless riding and driving on public roads.

1901, XXIII., 747.

Any person convicted of violation of this Section shall be punished by a fine not exceeding one hundred dollars, or by imprisonment not exceeding thirty days.

Sec. 440. If any person or persons living within the space of one mile of any established ferry in any part of this State shall for any fee, toll or reward whatsoever transport any person, goods or cattle from one side only to the other of that river where any such established ferry shall be kept, the person taking any such fee, toll or reward shall forfeit and pay to the proprietor of the ferry next adjacent to the place where such fare was taken up treble the value of the fee, toll or reward given, paid or promised, to be recovered by warrant, under the hand and seal of one Magistrate, or be imprisoned in the County jail for a period of not exceeding thirty days, any law, usage or custom to the contrary notwithstanding: *Provided, always,*

Persons not to transport passengers within a mile of an established ferry; proviso.

G. S. 1124; R. S. 351; 1741, XI., 123; 1875, XV., 898.

Penalty for violation.

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That in case any passenger shall be detained more than half an hour at any such ferry, then any persons living near such ferries may be at liberty to transport them, anything herein to the contrary notwithstanding.

Penalty for injuring.

G. S. 1128, 1129; R. S. 352; 1827, VI., 313, ¶1; 1788, IX., 311, § 11.

Sec. 441. If any person shall wilfully or maliciously destroy, or in any manner hurt, damage, injure or obstruct, or shall wilfully and maliciously cause, or aid and assist, or counsel and advise, any other person to destroy, or in any manner to hurt, damage, injure or obstruct, any turnpike road or bridge now or hereafter to be constructed by the authority of the Legislature, or any causeway, culvert, drain, ditch, wall, embankment, toll house, or toll gate, of any such turnpike road or bridge, the person so offending, on conviction thereof, shall be imprisoned not more than three nor less than one month, and pay a fine not exceeding five hundred dollars nor less than twenty dollars, at the discretion of the Court before which such conviction shall take place, and shall be further liable to pay all expenses of repairing the same. If any person shall cause any obstruction to be placed on any turnpike road, causeway or bridge now constructed, or hereafter to be constructed by the authority of the Legislature, so as to obstruct, or render dangerous or difficult, the passage of carriages or other traveling thereon, or shall obstruct or in part or in whole fill up any drain, ditch or culvert made for the purpose of conveying water over, under, from or alongside of any such turnpike road, causeway or bridge, and shall not immediately remove such obstruction, when required so to do, he or she shall be deemed guilty of a nuisance, and on conviction thereof before a Court of competent jurisdiction shall pay a fine not exceeding ten dollars nor less than two dollars, or in default of the payment thereof be imprisoned not more than ten days nor less than one day, and shall be further liable to pay the expenses of removing the said nuisance.

Penalty for obstructing.

1827, VI., 313, ¶ 2.

All traveling to be on the right of the centre.

G. S. 1130; R. S. 353; 1899, XXIII., 101, *Ib.*

Sec. 442. Every person, carriage, animal, or other thing, traveling, or passing on or over, any turnpike road, public highway, causeway or bridge, now constructed, or hereafter to be constructed, laid out or opened according to law, shall keep entirely on the right of the centre of the said road, public highway, causeway, or bridge, so as not to obstruct the passage of any other person, carriage, animal, or thing, on the other side of the centre thereof. And every person who shall drive, lead, or, having charge thereof, shall permit any carriage, animal or other thing to travel on such road, public highway, causeway

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or bridge contrary to this provision, shall on conviction thereof before any Court of competent jurisdiction pay a fine not exceeding ten dollars nor less than two dollars, or in default of the payment thereof be imprisoned not more than ten days nor less than one day, and be further liable for all damages occasioned thereby.

Proprietors liable to indictment for not keeping up their works.

G. S. 1131-1132; R. S. 354; 1827, VI., 315.

Sec. 443. The proprietor or proprietors of every bridge or turnpike road now constructed, or hereafter to be constructed by the authority of the Legislature, shall be liable to indictment at common law for not keeping their respective works in such condition as to answer the ends of their creation.

Penalties recovered, how to be applied.

Ib.

All the penalties which may be recovered for offenses against owners of bridges or turnpikes shall be paid one-half to the informer and the other half to the corporation or individual or individuals owning the works respecting which the said offenses shall have been committed.

Fine for neglect of posting rates of charges, &c.

G. S. 1136; R. S. 355; 1783, IX., 274; 1814, IX., 478; 1822, IX., 520; 1823, IX., 528; 1869, XIV, 206.

Sec. 444. Managers and attendants of all public ferries and bridges having the privilege by law to charge toll for the passage of persons, animals, vehicles or other goods shall cause the rates chargeable for such passage to be posted in legible letters or characters in some conspicuous place, stating the amount to be paid, so as to be read for information without inconvenience, at the approach to such ferry or bridge. Any neglect of the duties prescribed in this Section, or any toll exacted at higher rates than may be allowed by law, shall upon conviction of the parties so neglecting before any Magistrate be punishable by a fine of not less than ten nor more than fifty dollars, which fine shall be paid to the Treasurer of the County for the use of the County where such ferry or bridge may be situated.

Fords not to be obstructed.

G. S. 1138; R. S. 356; 1791, IX., 336.

Sec. 445. No keeper of any ferry or toll bridge, or other person, shall, upon any pretense whatsoever, stop up or obstruct any fording or crossing place on any river or creek within this State with a view to compel any person or persons to cross over any ferry or toll bridge, under the penalty of two dollars and fifty cents, to be recovered before the nearest Magistrate, or in default of the payment thereof to be imprisoned not more than ten days nor less than one day for every person or persons so prevented from passing over such fording or crossing place.

Sec. 446. Any person or persons who shall cut down, burn or deface any mile post or stone, erected by the County Com-

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missioners or County Supervisor of any County, he, she or they upon conviction thereof shall forfeit and pay the sum of ten dollars, to be recovered by indictment or information before any Court of competent jurisdiction.

Penalty for injuring mile post.

G. S. 1065; R. S. 357; 1871, XIV., 666.

Wilfully demolishing or altering guide posts.

1896, XXII., 233.

Sec. 447. If any person shall wilfully demolish, throw down, alter, or deface any guide-board, every person so offending shall, upon conviction thereof before any Magistrate of the proper County, be fined in a sum not exceeding ten dollars and the cost of suit, or be sentenced to labor on the public works of the County for a term of not more than thirty days, and the money, when collected, shall be by the Magistrate collecting the same paid over to the County Treasurer.

Penalty for neglect of posting and numbering roads.

G. S. 1066; R. S. 358; 1840, 1871, XIV., 666.

Sec. 448. The County Board of Commissioners of any County neglecting to cause the public highways in their County to be posted and numbered and to have pointers erected at each fork of said highways declaring the direction of such highways shall be liable to pay the sum of ten dollars for each and every said neglect, to be recovered by indictment in the Court of General Sessions of the County wherein the same occurs, to be collected and paid to the Treasurer of such County for the use of the County: *Provided,* That no County Commissioner shall be liable to said penalty who shall put said pointer at such times as he shall have his division of roads worked.

Gates on public road; nuisance.

G. S. 1067; R. S. 359; 1855; 1885, XIX., 59.

Requisite width; condition.

Ib.

Hitching post

Ib.

Punishment.

Ib.

Sec. 449. It shall be lawful for any citizen of this State over whose land any road may pass, other than a public highway, to erect gates thereon, and the person owning or erecting such gates shall be liable to be indicted for a nuisance if they fail to keep them as herein provided; that is to say, the owner or keeper of any gate which obstructs a highway, either public or private, shall have such gate constructed so as to afford a roadway between the posts of at least nine feet, and shall keep the said gate in such repair and condition as to be easily opened and shut, and that the latch or fastening will adjust itself on being closed; and, further, that the said keeper shall erect or cause to be erected, at convenient distance from such gate, a suitable hitching post for the convenience of those traveling in vehicles. That the owner or keeper of such gate who shall fail to comply with the requirements of this Section shall, upon conviction, for each offense, pay a fine of not less than twenty-five dollars, or be imprisoned in the County jail for a term not exceeding thirty days.

A neighborhood road or private path is within the provisions of this Section.—State v. Jeffcoat, 11 Rich., 529.

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Sec. 450. In case any person or persons shall interfere with, injure, destroy or wilfully leave open any such gates, such person or persons shall be liable to indictment as for a misdemeanor.

Penalty for interfering with gates.

G. S. 1068; R. S. 360; 1855, XII., 408.

Sec. 451. County Boards of Commissioners of the several Counties in this State are hereby authorized, on application to them for the purpose, to allow the erection of gates upon the highways of the State, wherever in their judgment the same may be expedient and not detrimental to the public interest, subjecting the person or persons owning or erecting such gate, nevertheless, to the pain and penalties prescribed in Section 449.

Erection of gates on highways.

G. S. 1072; R. S. 361; 1878, XVI., 361; 1893, XXI., 481, § 1.

Sec. 452. If any person shall wilfully cut or destroy any gate which may be put up by the authority of the Commissioners in pursuance of the last preceeding Section whilst the same is kept in good order, such person shall pay a penalty of twenty dollars, to be recovered by an action at the suit of the County before a Magistrate. And if any person shall wilfully leave open any gate as aforesaid, such person shall be liable to pay a like penalty, to be recovered as aforesaid.

Regulation respecting gates.

G. S. 1073; 1821, IX., 509.

Sec. 453. If any person shall wilfully destroy, injure, or in any manner hurt, damage, impair or obstruct any of the public highways, or any part thereof, or any bridge, culvert, drain, ditch, causeway, embankment, wall toll-gate toll-house or other erection belonging thereto, or any part thereof, the person so offending shall upon conviction thereof be imprisoned not more than six months or pay a fine not exceeding five hundred dollars, or both, at the discretion of the Court, and shall be further liable to pay all the expenses of repairing the same.

Penalty for damaging roads.

G. S. 1074; R. S. 362; 1788, IX., 311; 1824, IX., 545; 1885, XIX., 307.

See Sec. 458, and note as to temporary obstructions. This section may refer to permanent obstructions.

Sec. 454. Whoever shall wantonly or wilfully injure or destroy any bridge or bridges built by authority of the Commissioners of any two Counties over any river or creek lying between such Counties, on indictment and conviction of the same at the Court of General Sessions in the County where the offense was committed, shall be subject to such fine and imprisonment as the said Court shall direct: *Provided,* That nothing herein contained shall extend, or be construed to extend, to any of the toll bridges already established by law or that may be hereafter established.

Injury to bridges, &c.

G. S. 2509, 2510, 2511; R. S. 363; 1825, IX., 570, § 28.

Any person or persons who shall wilfully or maliciously

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Malicious or wilful injury to bridges on public roads.

1881, XVII., 570.

injure or destroy, by floating rafts or in any manner, any bridge on any public roads in this State shall be guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not less than fifty nor more than five hundred dollars or be imprisoned not less than thirty nor more than ninety days in the discretion of the Court: *Provided,* That nothing herein contained shall affect the right of action for damages in a civil suit against the person or persons so injuring or destroying any such bridge.

Obstructing ditches and drains.

1826, IX., 570, § 28.

Whoever shall obstruct, or cause to be obstructed, any ditch or drain on the side of any road which has been, or may hereafter be, constructed under the authority and at the expense of the State, or any ditch or drain made as aforesaid, to drain water from any part of the said roads, or any of them, by throwing into the said ditches or drains any earth, logs, trees, brushes or other things whatsoever, and shall not immediately remove the same when required, shall be deemed guilty of a nuisance, and on conviction thereof shall be fined in a sum not exceeding ten dollars nor less than two dollars, and shall be further liable for the expense of removing the same.

Gates to be erected on public highways in fences erected to exclude exempted territory from the Stock Law.

Sec. 455. The Township Board of Commissioners, for any township in this State exempted from the operation of the General Stock Law shall erect and maintain across all public highways suitable and durable gates at the points where said public highways may be intersected by fences constructed for the purpose of making said exemption effective.

Leaving open such gates a misdemeanor.

1898, XXII., 816.

Any person who may open any of such gates and shall fail or refuse to close the same shall be punished by a fine of not exceeding one hundred dollars or imprisonment not exceeding thirty days.

Failure to apportion and properly disburse road tax.

1897, XXII., 421; 1898, XXII., 739.

Sec. 456. Any person who shall violate the provisions of Sections 1389, 1390 and 1391 of the Civil Code, in reference to the apointment and disbursement of special road taxes, shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than five dollars nor more than thirty dollars, or by imprisonment for not less than ten days nor more than thirty days for each and every offense, either or both at the discretion of the Court.

Cutting down shade trees on public roads.

G. S. 2512; R. S. 364; 1788, IX., 312, § 14.

Sec. 457. Whoever shall wilfully or wantonly cut down or kill any tree growing within ten feet of any road which shall be laid out, altered or mended by authority of the County Board of Commissioners or the County Supervisor of any

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County, and which shall, by direction of the Highway Surveyor in charge of such road, have been left standing as convenient for shade to the said road, for each tree so cut down or killed shall be fined twenty-five dollars by any Court of competent jurisdiction.

Penalty for obstructing roads.

G. S. 1075; R. S. 365; 1824, IX., 545.

Sec. 458. If any person shall cause any obstruction to be placed in any part of the said highways or on any bridge or causeway thereof, so as to obstruct or render dangerous or difficult the passage of carriages, or other traveling thereon, and shall not immediately remove the same when required, he shall be deemed guilty of a nuisance, and on conviction thereof before a Magistrate shall be fined in a sum not exceeding ten dollars nor less than two dollars, and shall be further liable for the expense of removing the said nuisance.

This Section applies to temporary, not permanent, obstructions, and the Circuit Court has concurrent jurisdiction, under the Constitution of 1895, Art. V., Sec. 18, to try cases arising under it.—State v. Wolfe, 61 S. C., 25; 39 S. E., 179.

The mere obstructing of a highway is in itself a public nuisance.—State v. Harden, 11 S. C., 366.

As to what roads the Section applies.—State v. Gregg, 2 Hill, 387; State v. Mobley, 1 McM., 47; State v. Caldwell, 2 Speer, 163; State v. Randall, 1 Strob., 110; State v. Thompson, 2 Strob., 16; State v. Sartor, 2 Strob., 64; State v. Huffman, 2 Rich., 619; State v. Lythgoe, 6 Rich., 112; State v. Pettis, 7 Rich., 392; State v. Duncan, 1 McC., 404.

It does not apply to neighborhood roads.—State v. Harden, 11 S. C., 360.

Indictment—Is the proper remedy for obstructing highways.—Commissioners v. Taylor, 2 Bay., 282.

It applies to neighborhood roads, which the public have acquired the right to use by prescription.—State v. Tyler, 54 S. C., 294; 32 S. E., 422; State v. Floyd, 39 S. C., 25; 17 S. E., 505; State v. Sartor, 2 Strob., 60.

The actual opening of road by the County Commissioners may be shown by any witness who knows the fact.—State v. Kendall, 32 S. E., 300; 54 S. C., 192.

The proceedings of the Commissioners in opening the road may be collaterally attacked for jurisdictional defects, but not for mere irregularities.—State v. Kendall, 54 S. C., 192; 32 S. E., 300.

Testimony to plat showing survey of road.—State v. Crocker, 49 S. C., 243; 27 S. E., 49.

Employers to furnish overseers with the names of employes.

1896, XXII., 231; 1899, XXIII., 7.

Sec. 459. Each road overseer is hereby authorized to demand of any person or corporation the name of any and all hands in his, her or its employ; and any person or corporation receiving of such overseer, or warner by him appointed, such demand, failing or refusing to furnish a list containing the names of all male employes, shall be guilty of a misdemeanor, and for every such offense shall be subject to a fine of not less than ten dollars nor more than thirty dollars, or imprisonment in the County jail for not less than ten or more than thirty days.

See Civil Code, Sec. 1363.

Sec. 460. If any person, being warned by such overseer to perform road duty as provided in Section 1364 of the Civil

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Neglect of road duty.

G. S. 1085; R. S. 366; 1879, XVII., 144; 1880, XVII., 524; 1896, XXII, 231; 1899, XXIII., 7.

Code, shall refuse or neglect, having had at least twelve hours' notice, to attend by himself or substitute to the acceptance of the overseer, or, having attended, shall refuse to obey the direction of the overseer, or shall spend the time in idleness or any inattention to the duties assigned him, shall be guilty of a misdemeanor, and on conviction thereof shall be fined not more than ten dollars nor less than five dollars, and costs, or be sentenced to County chain gang not more than thirty days nor less than five days.

See note to Sec. 1355 of Civil Code.

The notice must be personal.—Commissioners v. Kleckley, 4 McC., 463.

Party refusing to obey summons to open a new road, punishable under this Section.—State v. Brown, 14 S. C., 380. No formal indictment necessary before Magistrate Court.—*Ib.* Appeal therefrom to be heard *de novo*.—*Ib.* Justifiable excuse not defined.—State v. Hathcock, 20 S. C., 422.

Interference with Surveyor laying out public roads.

1900, XXIII, 286.

Sec. 461. It shall be a misdemeanor to interfere with the surveyor employed by the County Board of Commissioners to assist them in laying out or changing the location of public roads, under Section 1395 of the Civil Code, or his assistants, or with the marks set up by him, or by his orders, punishable by a fine of not more than ten dollars or imprisonment for not more than twenty days for each offense.

Obstructing drains made by road overseer, &c.

1900, XXIII, 289.

Sec. 462. The drains and ditches made by any road overseer under the provisions of Section 1367 of the Civil Code, shall be kept open by such overseer, and shall not be obstructed by the owner or occupant of such lands, or any other person or persons having the same in charge, under the penalty of forfeiting a sum not exceeding ten dollars or imprisonment for not more than thirty days for each and every offense. Any person interfering with any road overseer or his assistants in the performance of their duty, shall be guilty of a misdemeanor, and punished, on conviction, by fine of five dollars or imprisonment for ten days for each offense.

Penalties for neglect or refusal to perform duty by Overseers.

1896, XXII., 234.

Sec. 463. That each and every overseer who shall neglect or refuse to perform the several duties enjoined on him by law, or who shall, under any pretense whatever, give or sign any receipt or certificate purporting to be a receipt or certificate for labor in work performed or money paid unless the labor shall have been performed, or money paid prior to the giving or signing of such receipt or certificate, shall forfeit for every such offense not less than ten dollars nor more than fifty dollars, to be recovered by an action before any Magistrate of the County; and it is hereby made the duty of the Township Board

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of Commissioners to prosecute all offenses against the provisions of this Section: *Provided,* That if any overseer conceives himself aggrieved by the judgment of such Magistrate, he may, on giving sufficient security, in double the sum of the judgment found against the party offending, to said Magistrate for the payment of the cost, appeal to the Court of Common Pleas, which shall make such order therein as to it may appear just and reasonable.

Refusal to work roads under contractor.

1896, XXII., 237.

Sec. 464. Any person assigned to work under a contractor as provided in Section 1383 of the Civil Code, and refusing or failing to do so shall be guilty of a misdemeanor, and fined in a sum not less than five nor more than twenty dollars, or be imprisoned in the County jail for a period of not less than ten nor more than thirty days, or sentenced for the same period on chain gang.

County Commissioners neglecting to order roads worked.

1901, XXIII., 642.

Sec. 465. In the event the Board of County Commissioners of Colleton County shall fail and neglect to so order and direct any overseer of the County, as required by Section 1358 of the Civil Code, to summons the persons liable to work the roads, each of the members of the said Board so failing and neglecting shall be guilty of a misdemeanor and upon conviction thereof shall pay a fine of fifty dollars or be imprisoned on the County chain gang for a period of twenty days.

Overseers in Colleton County neglecting duty.

Ib.

Sec. 466. Any overseer in Colleton County who shall fail or neglect to summon the hands liable to road duty and require of them to labor upon the highways as aforesaid, when ordered and directed so to do by the County Board of Commissioners, shall be guilty of a misdemeanor, and upon conviction thereof shall pay a fine of twenty-five dollars, or be imprisoned on the County chain gang for a period of twenty days.

County Commissioners in Colleton County neglecting to prosecute overseers.

Ib.

Sec. 467. It shall be the duty of the said County Board of Commissioners in Colleton County to prosecute each of the said overseers failing and neglecting to carry out the order and direction of the said Board as aforesaid. In the event of the failure of the said County Board of Commissioners to so prosecute each of the overseers failing and neglecting to carry out the order of the said Board within thirty days after being informed of the failure and neglect of such overseer, each of the said Board so failing and neglecting to so prosecute such delinquent overseer within the time aforesaid shall be guilty of a misdemeanor, and upon conviction thereof subject to pay

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a fine of fifty dollars, or be imprisoned on the County chain gang for a period of twenty days.

Expending more than appropriation on roads.

Ib.

Sec. 468. The entire amount of money expended by the County Board of Commissioners in Colleton County for the repair of the highways and causeways and the repair and building of bridges shall not exceed in any one year, exclusive of the support of the County chain gang, the sum of twelve hundred dollars. That any member of the said Board who votes for the approval of or pays any claim against the County, out of the funds of the County, by check upon the County Treasurer, or otherwise, in excess of the said sum, shall be guilty of a misdemeanor, and upon conviction thereof shall be sentenced to pay a fine of one hundred dollars or be imprisoned on the County chain gang for a period of thirty days for each and every offense.

Neglect of duty by road officers in Newberry County.

1901, XXIII., 643.

Sec. 469. In the County of Newberry any overseer who shall fail or neglect to summon the hands liable to road duty and require of them to labor upon the highways as aforesaid, when ordered and directed so to do by the County Board of Commissioners, shall be guilty of a misdemeanor, and upon conviction thereof shall pay a fine of twenty-five dollars, or be imprisoned on the County chain gang for a period of twenty days. It shall be the duty of the said County Board of Commissioners to prosecute each of the said overseers failing and neglecting to carry out the order and direction of the said Board as aforesaid. In the event of the failure of the said County Board of Commissioners to so prosecute each of the overseers failing and neglecting to carry out the order of the said Board within thirty days after being informed of the failure and neglect of such overseer, each of the said Board so failing and neglecting to so prosecute such delinquent overseer within the time aforesaid shall be guilty of a misdemeanor, and upon conviction thereof subject to pay a fine of fifty dollars, or be imprisoned on the County chain gang for a period of twenty days.

Regulations for use of barbed and edged wire fences.

1894, XXI., 747; 1898, XXII., 807; 1900, XXIII., 455.

Sec. 470. All persons or corporations building or using a barbed or edged wire fence within fifty feet of any public highway, shall nail or place a plank or pole on or near the top of said fence: *Provided,* That the said plank or pole be not required, when there is such an embankment at the side of the road as shall, in the judgment of the road overseer of such

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road, render it safe from injury to stock traveling said road, without such plank or pole being on said fence.

Violations a misdemeanor.

All persons violating the provisions of this Section shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not exceeding one hundred dollars, or imprisonment not exceeding thirty days.

Destroying, defacing, &c., monuments of U. S. coast surveys.

G. S. 2513; R. S. 368; 1847, XI., 444, § 4; St. at Large U. S., Vol. II., 413.

Sec. 471. If any person shall wilfully and maliciously destroy, or in any manner hurt, damage, or obstruct, or shall wilfully and maliciously cause, or aid, or assist, or counsel, or advise, any other person or persons to destroy, or in any manner to hurt, damage, injure, or obstruct, any signal, monument, building, or any appendage thereto, used or constructed under and by virtue of the Act of Congress of the United States, passed the tenth day of February, 1807, entitled "An Act to provide for surveying the coast of the United States," and the supplements thereto, he shall be liable to be indicted therefor, and, on conviction, shall be imprisoned not less than one month, or pay a fine not exceeding fifty dollars, or both, at the discretion of the Court before which such conviction shall take place, and shall be further liable to pay all expenses of repairing the same; and it shall not be competent for any person so offending to defend himself by pleading, or giving in evidence, that he was the owner, or agent, or servant of the owner, of the land where such damage was done, or caused, at the time the same was caused or done.

CHAPTER XX.

Offenses by Railroad Companies, Their Agents and Employes, and Offenses Committed Against Rights of Railroad Companies.

Sec.
472. Injury by negligence or carelessness.
473. Gross carelessness and negligence.
474. Negligence by employes.
475. Injury to baggage.
476. Unreasonable charges.
477. Unjust discrimination.
478. Regulation of movement of cars, of freights, &c.; penalty for violation of.
479. Penalty for officer or employe for violating separate coach law.
480. Penalty for passenger refusing to obey law.
481. Penalty for loitering in station houses.
482. Penalty for fraudulently avoiding toll or fare.
483. Shooting at trains.
484. Police powers of conductors and station agents.
485. Violation of interstate commerce law.
486. Participation in any violation of above Section.
487. Each act a separate offense.
488. Command of a superior officer no defense.

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Injury by negligence or carelessness. Penalty for.

G. S. 1526; R. S. 369; 1882, XVII., 834, § 115.

Section 472. When an engineman, fireman, or other agent or officer of a railroad corporation, is guilty of negligence or carelessness whereby an injury is done to any person or corporation, he shall be punished by imprisonment not exceeding twelve months, or by a fine not exceeding one thousand dollars.

Penalty for gross carelessness or negligence.

G. S. 1527; R. S. 370; *Ib.*, 835, § 116.

Sec. 473. Whoever, having management of, or control over, a railroad train while being used for the common carriage of persons, is guilty of gross carelessness or neglect in or in relation to the management or control thereof, shall forfeit a sum not exceeding five thousand dollars, or be imprisoned not more than three years.

Negligence by employes.

R. S. 371.

Sec. 474. Any engineer, conductor, or other agent or employe of any railroad company in this State, who shall wilfully neglect to observe, or shall wilfully violate, any rule or regulation of the company to which such engineer or conductor may belong, whereby any person or persons shall sustain, or be in danger of sustaining, any bodily injury, such engineer or conductor, or other agent or employe, shall be liable to be indicted for every such offense, and upon conviction thereof be fined two hundred dollars and imprisonment not exceeding one year, at the discretion of the Judge before whom such case may be tried: *Provided, however,* That nothing herein contained shall be so construed as to relieve such engineer or conductor from responsibility, in cases where the life of any person is destroyed under the law as it now exists.

Baggage, injury to; penalty.

G. S. 1450; R. S. 372; *Ib.*, § 38.

Sec. 475. Any baggage master, or other person, whose duty it is to handle, remove, or take care of the baggage of passengers, who shall wilfully or recklessly injure or destroy any trunk, valise, box, package, or parcel, while loading, transporting, unloading, delivering, or storing the same, shall be punished by a fine not exceeding fifty dollars, or imprisonment not exceeding thirty days.

Penalty for charge of unreasonable rates.

G. S. 373; 1892, XXI., 10.

Sec. 476. If any railroad corporation organized or doing business in this State under the Act of corporation, or general law of this State now of force, or which may hereafter be enacted, or any railroad corporation organized or which may hereafter be organized under the laws of any other State, and doing business in this State, shall charge, collect, demand or receive more than a fair and reasonable rate of toll or compensation for transportation of passengers or freight of any description, or for the use and transportation of any railroad car upon its track, or any of its branches, or upon any railroad

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within this State which it has the right, license or permission to use, operate or control, the same shall be deemed guilty of extortion, and upon conviction thereof shall be fined in a sum of not less than one hundred nor more than one thousand dollars.

Unjust discrimination prohibited.

R. S. 374; *Ib.*, 11.

Sec. 477. If any railroad corporation, aforesaid, shall make any unjust discrimination in its rates of charges of toll as compensation for transportation of passengers or freight of any description, or for the use and transportation of any railroad car upon its said road or any branches thereof, or upon any railroads connecting therewith which it has the right, license or permission to operate or control within this State, the same shall be deemed guilty of having violated the provisions of the law for the regulation of railroad freight and passenger traffic in this State, and upon conviction thereof shall be fined in a sum not less than one hundred nor more than one thousand dollars.

Penalty.

Violation of regulations as to through freight.

1896, XXII., 121, § 7.

Sec. 478. Any person who shall wilfully violate or aid in violating, or direct or order any one to violate Sections 2102, 2103, 2104 and 2105 of the Civil Code, as to the transportation of through freight, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than fifty dollars nor more than five hundred dollars, or by imprisonment not less than three months nor more than twelve months, or both in the discretion of the Court.

Penalty for officer or employe violating law as to separate cars for each race.

1898, XXII., 777; 1900, XXIII., 457.

Sec. 479. It shall be unlawful for the officers or employes having charge of such railroad cars as are provided for by Sections 2158 to 2162, inclusive, of the Civil Code, to allow or permit white and colored passengers to occupy the same car except as herein permitted and allowed; and for a violation of this Section any such officer or employe shall be guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than twenty-five nor more than one hundred dollars.

Penalty for passenger refusing to obey the law as to separate cars.

Ib.

Sec. 480. Any passenger remaining in a car other than that provided for him, after request by the officer or employe in charge of said car to remove into the car provided for him, shall be guilty of a misdemeanor, and on conviction thereof shall be fined not less than twenty-five dollars nor more than one hundred dollars. Jurisdiction of such offenses shall be in the County in which the same occurs. The conductor and any and all employes on such cars are hereby clothed with

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power to eject from the train or car any passenger who refuses to remain in such car as may be assigned and provided for him, or to remove from a car not so assigned and provided.

See Section 2162, Civil Code, as to penal action against railroad company.

Penalty for loitering in station houses, &c.

G. S. 1515; R. S. 1731; 1898, XXII., 776; 1882, XVIII., 832.

Sec. 481. Whoever, without right, loiters or remains within any station house of a railroad corporation, or upon the platform or grounds adjacent to such station, after being requested to leave the same by any authorized railroad officer or employe, shall be guilty of a misdemeanor, and on conviction thereof shall pay a fine of not more than fifty dollars, or be confined in the County jail or be required to work on the chain gang for not more than thirty days.

Police powers of conductors and station agents.

G. S. 1516; R. S. 1717; 1898, XXII., 776.

Sec. 482. Conductors of railroad trains and station or depot agents are hereby declared to be conservators of the peace, and they and each of them shall have the common law power of constables to make arrests, except that the conductors shall only have such power on board of their respective trains and the agents at their respective places of business; and said conductors and agents may cause any person or persons so arrested by them to be detained and delivered to the proper authorities for trial as soon as practicable.

Penalty for fraudulently evading toll or fare.

G. S. 1517; R. S. 1732; 1898, XXII., 776.

Sec. 483. Whoever fraudulently evades or attempts to evade the payment of any toll or fare, lawfully established, for the carrying of passengers, by giving a false answer to the collector of the fare, by traveling beyond the point to which fare has been paid, or otherwise attempting to ride without paying said toll or fare, or by riding without permission on trains that do not carry passengers, or by concealing themselves upon or about any train, with intent to evade the payment of lawful toll or fare, shall be guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not more than fifty dollars or be sentenced to imprisonment or labor on the chain gang for not more than thirty days.

Shooting at trains a misdemeanor.

R. S. 1734a; 1898, XXII., 776.

Sec. 484. Whoever wilfully discharges any kind of firearms or throws any kind of missile at or into the engine or any car of a train shall be guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not more than five hundred dollars or imprisonment for not more than five years.

Circumstantial evidence; Judge's charge.—State v. Godfrey, 60 S. C., 498; 39 S. E., 1.

Unlawful for railroads to violate Act of Congress to regulate commerce.

1897, XXII., 448.

Sec. 485. It shall be unlawful for any railroad corporation doing business in this State, or any officer, agent or employe

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thereof, to do herein any act which constitutes a violation of the Act of Congress entitled "An Act to regulate commerce," or the Act amendatory thereof, or any order of the Inter-State Commerce Commission issued thereunder.

Violation a misdemeanor.

Any corporation aforesaid violating this Section shall be guilty of a high misdemeanor and liable to indictment therefor in any County where said offense is committed, and on conviction shall be fined not less than $1,000.00 (one thousand dollars) or more than $5,000.00 (five thousand dollars) for each such offense. And the doing of such act or acts in addition shall constitute a ground for the forfeiture of the charter and franchise of any such corporation in this State and for the withdrawal and forfeiture of any franchise or license or right to operate railroads herein enjoyed or exercised herein by grant, contract, statue or comity by any such corporation chartered elsewhere; and any person or corporation, public or private, injured by any such act of such railroad company may maintain *quo warranto* in the Circuit Court of the residence, or, if non-resident, of the principal office of such corporation, to enforce such forfeiture, which said Court is hereby given jurisdiction so to decree. Conviction and punishment for a misdemeanor under this Section shall not prevent proceedings also for forfeiture and judgment.

Violation by agent, &c., a misdemeanor.

Any officer, agent or employe doing or engaged in any such act shall be also guilty of a misdemeanor, and on conviction shall be punished by a fine not to exceed $1,000.00 (one thousand dollars) and imprisonment not to exceed twelve months, or either or both of these penalties.

Unlawful to take part in any violation of Act.

Ib.

Sec. 486. That every person taking part in the said violation in any way, even in carrying out the orders of superior officers, or in collecting the proceeds of any illegal charge, shall be equally guilty of a violation of Section 485; and the offense shall be equally held to have been committed in the County where said act is finally carried out, or where any illegal charge is collected, as well as where the act or charge is ordered or agreed upon, or any step taken in execution thereof.

Each act a separate offense.

Ib.

Sec. 487. That each act done in violation of said Section 485 to regulate commerce, its amendments, or of any orders of said Commission, or of each separate failure to obey the same, or discrimination, or preference, or overcharge to each separate person or corporation, shall constitute, both as to the railroad company offending or said officers, agents or employes, separate offenses hereunder, and render the corporation or person

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offending liable to successive indictment and punishment therefor.

Command of superior officer no defense.

Ib.

Sec. 488. That no command of a superior officer shall constitute any defense or excuse for a violation of Section 485 by any inferior.

TITLE XXI.

Violation of the Laws Regulating the Assessment and Collection of Taxes.

Sec.
489. Disclosing assessments for income tax.
490. Auditor may compel oath.
491. Refusing to appear before the Auditor.
492. Non-payment of poll tax.
493. Officer or agent refusing to answer question by Comptroller General.

County Auditor or officer forbidden to disclose the returns for the assessment of taxes on incomes.

1897, XXII., 529.

Section 489. It shall be unlawful for any County Auditor or other officer charged with any duty in carrying out the provisions of Sections 325 to 331, Articles IX of Chapter XIV of the Civil Code, as to the assessment of taxes on incomes, to divulge or in any manner whatever make known the amount or source of income, profits, or expenditures, or any particular thereof, set forth or disclosed in any income returns by any person or corporation, or to permit any income return or copy thereof in any book containing any abstract or particulars thereof to be seen or examined by any person, except as provided by law; and it shall be unlawful for any person to print or publish in any manner whatever not provided by law any income return or any part thereof, or the amount or source of income, profits or expenditures, appearing in any income return; and any offense against the foregoing provisions shall be a misdemeanor, and be punished by a fine not exceeding five hundred dolllars or imprisonment not exceeding six months; and if the offender be an officer of the State or any County thereof, or deputy or employe, he shall on conviction be removed from office by the Governor.

Auditor may compel oath.

G. S. 212; R. S. 375; 1882, XVII., 1004.

Sec. 490. Any person claiming not to have any property shall, upon the demand of the Auditor, make oath to the fact that he has no property; and if he refuse to make such oath he shall be deemed guilty of a misdemeanor, and upon complaint of such Auditor to the Court of General Sessions of the County, and upon conviction thereof, shall be arrested and confined in the jail of the County until he answers such questions, under oath,

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as may be propounded to him by such Auditor, and pay the costs of the proceedings.

Penalty for refusing to appear before the Auditor.

G. S. 240; R. S. 376; *Ib.*

Sec. 491. If any person notified, either as a party or witness, to appear before the County Auditor at a time fixed in said notice to be examined by said Auditor, under oath, touching the personal property and the value of such property, and everything which may tend to evince the true amount of such property returned for taxation, shall refuse or neglect to appear as notified, or shall refuse to be sworn, or refuse to answer any question put to him by said Auditor touching the matter under examination as aforesaid, he shall be deemed guilty of a misdemeanor and be liable to indictment therefor in the Court of General Sessions. Upon conviction thereof, or of any said refusals, or of such neglect, he shall be fined in any sum not exceeding one hundred dollars and costs of prosecution and be confined in County jail of said County until answer shall be made to all questions which may be propounded to him by said Auditor and such fine and costs paid; and when such fine it collected it shall be paid into the County treasury to the credit of the County. In every such case the County Auditor shall report the facts to the Solicitor of the Circuit, who shall forthwith prepare an indictment thereon and submit the same to the grand jury.

Non-payment of poll tax.

R. S. 377; 1892, XXI., 43; 1899, XXIII., 120; 1901; *Ib.*, 780.

Sec. 492. Any person failing or refusing to pay his poll tax within the time prescribed by law, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by fine not exceeding ten dollars, together with costs of said suit, or by imprisonment at hard labor on the public works of the County not more than twenty days: *Provided,* That the County shall not pay the costs or fees of any Constable or Sheriff for the execution of any warrant or other process issued in any case by virtue of the provisions of this Section, unless the defendant in such case shall be arrested and convicted.

Where the affidavit and warrant only alleged a neglect to pay, and not in the language of the Section a failure and refusal to pay, that is sufficient.—Rogers v. Marlborough Co., 32 S. C., 555; 11 S. E., 383.

Railroad officer, agent or receiver refusing to answer question by Comptroller-General.

1882, XVII., 902, § 170; R. S. 378.

Sec. 493. If any officer, receiver or agent of any railroad company having any portion of its tracks in this State shall refuse or neglect to appear before the Comptroller-General, or the person appointed by him, or to answer any question put to him or them, as provided for in Section 358 of the Civil Code, or submit the books and papers aforesaid for examination, in manner provided in said Section, he shall be deemed guilty of a mis-

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demeanor, and, upon indictment and conviction therefor in the Court of General Sessions for any County, (which Court shall have complete and full jurisdiction in all such cases,) shall be fined in any sum not exceeding five thousand dollars and costs of prosecution and confined in the jail of said County until he answers all questions which may be put to him by the Comptroller General until said fine and costs be paid.

CHAPTER XXII.

Bastardy.

SEC.
494. Reputed father of bastard to maintain it, &c.
495. Women who refuse to declare the father of bastard to be committed to jail or give security.
496. If warrant is resisted, Constable to make return to Clerk, and party may be indicted, &c.
497. In case of denial by reputed father, the jury to try the question. If convicted, to give security, &c.
498. In case of twins, recognizance to be for support of both.

The reputed father of a bastard to maintain it; to give bond, &c.

G. S. 1579; R. S. 379; 1795, V., 270, § 1; 1839, XI., 24, § 12.

Section 494. If any woman be delivered of a bastard child or children, and shall, at any time after the birth thereof, give information to some Magistrate of the County in which she resides, or may be so delivered, and will declare, on oath, who is the father of her child or children, it shall be the duty of such Magistrate to issue a warrant to apprehend and bring before him, or some other Magistrate the person so accused, who shall be obliged to enter into a recognizance, with two good and sufficient sureties, in the penal sum of three hundred dollars, conditioned for the annual payment of twenty-five dollars for the maintenance of the child until the age of twelve years, and so to save harmless the said County.

Conviction may be had on uncorroborated testimony of the mother.—State v. Meares, 60 S. C., 527; 39 S. E., 245.

Such recognizance is the judgment of the Court, and while unreversed cannot be questioned.—State v. Harman, 3 Hill, 275.

A voluntary bond for maintenance of bastard is good at common law.—Commissioner v. Gilbert, 2 Strob., 154.

The child of a married woman may be a bastard.—State v. Schumpert, 1 S. C. 87.

Where the proceeding began before the child attained the age of twelve years, the father, upon conviction, may be required to enter recognizance to pay twenty-five dollars a year, commencing from the birth of the child, until that age.—State v. Sarratt, 14 Rich., 29.

The annual installments to be paid do not bear interest in default of payment.—*Ib.*

A prosecution for bastardy is a criminal proceeding; the money to be paid is not a debt, and the defendant may be confined on execution.—State v. Brewer, 38 S. C., 263; 16 S. E., 1001.

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Original jurisdiction is in the General Sessions.—State v. Glenn, 14 S. C., 118.
Indictment; the question to be tried is whether defendant is the father of the child, or not.—State v. Adams, 1 Brev., 279. Not necessary to allege child is likely to be a burden on the County.—State v. McDonald, 2 McC., 299. Insufficient indictment.—State v. Caspary, 11 Rich., 356.

Women who refuse to declare who is father of a bastard to be committed to jail or give security.

G. S. 1580; R. S. 380; 1839, XI, 24, § 12.

Sec. 495. When any woman, who is charged with having had a bastard child or children, shall be brought before a Magistrate and shall not voluntarily give such information, such Magistrate may, on information thereof, and that such child is likely to become a burden to the County, issue his warrant against such mother, requiring her to be brought before him, or the next Magistrate, and declare who is the father, and, on her refusal so to declare, the Magistrate aforesaid shall commit her to jail until she shall declare the same, or shall give security that the said bastard child shall not become chargeable to the County wherein she resides.

It is not necessary to a conviction for bastardy where the information is given, not by the mother, but by a third person, that the child is likely to become a burden to the County.—State v. Crawford, 10 Rich., 361.

If warrant is resisted, Constable to make return to Clerk of Court, and party may be indicted, &c.

G. S. 1581; R. S. 381; *Ib.*

Sec 496. Should the person accused evade or resist the warrant so issued, it shall be the duty of the Constable to return the same to the Clerk of the Court as other Sessions papers, with a special note thereof, by way of return, on oath, whereupon a bill of indictment may be given out, and, if found, a bench warrant may issue, and, in case the accused shall be arrested on any warrant issued and shall refuse to enter into such recognizance, he shall be committed to prison, there to remain until he shall enter into such recognizance.

In case of denial by reputed father, jury to try the question. If he be convicted, he shall give security, &c.

G. S. 1582; R. S. 382; 1847, XI., 436; *Ib.*

Sec 497. Should such person be unable to comply with the requisitions hereinbefore mentioned, or should he deny that he is the father of the said child or children, a jury shall be charged, in the Court of Sessions, to try the question whether the accused is or is not the father of such child or children; and on his acquittal he shall be discharged; or, if convicted, he shall be required to give the security or recognizance hereinbefore required; and in default thereof, shall be liable to execution, as are defendants convicted of misdemeanors: *Provided,* That on the annual payment of the sum of twenty-five dollars, the execution, except as to costs, shall be stayed until another instalment falls due.

Indictment for twin bastards should describe each child by name and complexions, hair and sex, or by some means of separate identity.—State v. Derrick, 1 McM., 339.
There is no law authorizing the Court to imprison a person convicted of bastardy. —State v. Glenn, 14 S. C., 134; State v. Quick, 25 S. C., 110.
But defendant may be confined in jail on execution.—State v. Brewer, 38 S. C., 263; 16 S. E., 1001.

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In case of twins, recognizance to be for support of both, &c.

Sec. 498. If the birth be of twins, the recognizance or judgment shall be conditioned for the support of both the bastards, and for the payment of double the amounts required in the case of a single child.

G. S. 1583; R. S. 383; 1795, V., 270, § 1.

Such recognizance must identify each child separately.—State v. Derrick, 1 McM., 339.

CHAPTER XXIII.

Vagrancy.

Sec. 499. Who to be deemed vagrants. Penalty for.

Who to be deemed vagrants.

G. S. 1604; R. S. 384; 1787, V., 41, § 1; 1839, XI., 24, § 13; 1893, XXI., 521.

Section 499. All persons wandering from place to place, without any known residence, or residing in any city, County or town, who have no visible or known means of gaining a fair, honest and reputable livelihood; all suspicious persons going about the country swapping and bartering horses, (without producing a certificate of his or their good character signed by a Magistrate of the County from which said person last came); likewise all persons who acquire a livelihood by gambling or horse racing, without any other visible means of gaining a livelihood; all keepers of gaming tables, faro banks, or other banks whatsoever used for gaming known under and other denomination; also, all persons who lead idle and disorderly lives; all who knowingly harbor horse thieves and felons, and those who are known to be of that character and description; likewise all persons not following some handicraft, trade or profession, or not having some known or visible means of livelihood, who shall be able to work, and occupying or being in possession of some piece of land shall not cultivate such a quantity thereof as shall be deemed by the Magistrate to be necessary for the maintenance of himself and his family; also, all persons representing publicly for gain or reward, without being fully licensed, any play, comedy, tragedy, interlude or farce, or other entertainment of the stage, or any part thereof; all fortune tellers for fee or reward, and all sturdy beggars, are, and shall be, deemed vagrants, and upon conviction thereof before a Court of Magistrate shall be fined in a sum not exceeding one hundred dollars or thirty days' imprisonment.

Punishment.

State v. Maxey, 1 McM., 501.

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CHAPTER XXIV.

Non-Observance of the Lord's Day, and Disturbing Religious Worship.

SEC.
500. Working on Sunday.
501. Selling goods on Sunday.
502. No sports or pastimes.
503. Certain labor on Sunday prohibited.
504. Penalty for violation of this Chapter.
505. Disturbing religious meeting.

Section 500. No tradesman, artificer, workman, laborer, or other person whatsoever, shall do or exercise any worldly labor, business, or work of their ordinary callings upon the Lord's Day, (commonly called the Sabbath,) or any part thereof, (work of necessity or charity only excepted;) and every person being of the age of fifteen years or upwards, offending in the premises, shall, for every such offense, forfeit the sum of one dollar.

Penalty for working on Sunday.

G. S. 1631; R. S. 385; 1691, II, 69; 1712, II., 396, § 2.

The violation of this Section does not render the required publication of a legal notice made in a newspaper issued on the Sabbath illegal and invalid.—Eason v. Witcofsky, 29 S. C., 239; 7 S. E., 291.

Sec. 501. No person or persons whatsoever shall publicly cry, show forth, or expose to sale, any wares, merchandise, fruit, herbs, goods, or chattels whatsoever, upon the Lord's Day, or any part thereof, upon pain that every person so offending shall forfeit the same goods so cried, or showed forth, or exposed to sale.

Penalty for selling goods on Sunday.

G. S. 1632; R. S. 386; *Ib.*, § 3.

Sec. 502. No public sports or pastimes, as bear-baiting, bull-baiting, foot-ball playing, horse-racing, interludes or common plays, or other games, exercises, sports or pastimes, such as hunting, shooting, chasing game, or fishing, shall be used on the Lord's Day by any person or persons whatsoever; and every person or persons offending in any of the premises shall upon conviction be deemed guilty of a misdemeanor, and be subject to fine not to exceed fifty dollars or imprisonment not to exceed thirty days.

Public sports prohibited on the Lord's day.

G. S. 1633; R. S. 387; 1896, XXII., 221.

Sec. 503. In addition to the penalties prescribed against tradesmen, artificers, workmen and laborers who shall do or exercise any worldly labor, business or work of their ordinary calling upon the Lord's Day (commonly called the Sabbath) or Sunday, or any part thereof, any corporation, company, firm or person who shall order, require or direct any work to be done in any machine shop or shops on Sunday, except in cases of

Certain labor on Sunday prohibited.

1899, XXIII, 100.

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emergency, shall, upon conviction, be deemed guilty of a misdemeanor, and shall be fined in a sum not less than one hundred dollars and not more than five hundred dollars for each offense.

Penalty for offenses against this Chapter.

G. S. 1634; R. S. 388; *Ib.*, §9.

Sec. 504. For the better execution of all and every the foregoing provisions, every Magistrate within his County shall have power and authority to summon before him any person or persons whatsoever who shall offend in any of the particulars before mentioned, and upon his own view, or confession of the party, or proof of any one or more witnesses, upon oath, the said Magistrate shall give a warrant, under his seal, to seize the said goods cried, showed forth, or put on sale as aforesaid, and to sell the same; and as to the other penalties and forfeitures, to impose the fine and penalty for the same, and to levy the said forfeitures and penalties by way of distress and sale of the goods of every such offender, returning the overplus, if any be, after charges allowed for the distress and sale. All forfeitures and penalties recovered under this Chapter to be paid over to County Treasurer for the use of the County.

Disturbance of religious worship, &c., a misdemeanor.

G. S. 1635 R. S. 390; 1897, XXII., 409; 1873, XV., 352; 1894, XXI., 824.

Sec. 505. Any person who shall wilfully and maliciously disturb or interrupt any meeting, society, assembly or congregation convened for the purpose of religious worship, or shall enter such meeting while in a state of intoxication, or shall use or sell spirituous liquors, or use blasphemous, profane or obscene language at or near the place of meeting, shall be deemed guilty of a misdemeanor, and shall, on conviction, be sentenced to pay a fine of not less than twenty or more than one hundred dollars, or be imprisoned for a term not exceeding one year or less than thirty days, or both or either, at the discretion of the Court.

Graham v. Bell, I N. & McC., 278. Embraces disturbing religious assemblage of Jews, even by one of the members of their Church.—State v. Carvallo, MS. Dec., 1819.

A camp meeting of a denomination of Christians is such religious meeting; and one who sells liquor at or near them is subject to the punishment prescribed herein.—State v. Hall, 2 Bail., 151.

CHAPTER XXV.

Gambling.

SEC.
506. Playing at certain games.
507. Keeping gaming tables.
508. Betting on elections.
509. Wager to be forfeited.
510. Rooms where offenses committed may be broken open in the City of Charleston.
511. Gamblers to give security for good behavior or be committed.

SEC.
512. Wager of five dollars to forfeit recognizance.
513. Imprisonment; proviso.
514. Challenge or fight on account of wagers.
515. Swindling.
516. Keeping gaming table open on Sabbath.

Penalty for playing at certain games, or betting on the sides of those who do play.

G. S. 1715; R. S. 391; 1816, VI., 27, § 1; 1802, V., 432, § 1.

Section 506. If any person or persons shall play, at any tavern, inn, store for the retailing of spirituous liquors, or in any house used as a place of gaming, or in any barn, kitchen, stable, or other out-house, or in any street, highway, open wood, race field, or open place, at any game or games with cards or dice, or at any gaming table commonly called A B C, or E O, or any gaming table known or distinguished by any other letters, or by any figures, or roley poley table, or at *rouge* and *noir,* or at any faro bank, or at any other table or bank of the same or the like kind, under any denomination whatsoever (except the game of billiards, bowls, backgammon, chess, draughts, or whist, when there is no betting on the said game of billiards, bowls, chess, backgammon, or whist), or shall bet on the sides of hands of such as do game—any Magistrate may, upon view or information upon oath before him, bind over, to appear at the next Court of Sessions for the County in which such play shall be carried on, all and singular the said person or persons, who shall so play or bet, and shall require him or them to give good and sufficient security for his or their appearance thereat; and on his or their failure to give such security, shall commit him or them to the common jail of the said County; and shall also bind over the keeper or keepers of taverns, inns, stores for the retailing of spirituous liquors, public places, or houses used as a place of gaming, or other public house, to appear at the ensuing Court of Sessions; and every person or persons so playing, or betting on the sides or hands of such as do game, upon being convicted thereof, upon indictment, shall be imprisoned for a period not exceeding twelve months, and shall forfeit a sum not exceeding five hundred dollars, one-half to the use of the State, and the other half to the use of the informer,

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upon the conviction of such offender; and every person so keeping such tavern, inn, retail store, public place, or house used as a place for gaming, or such other public house, shall, upon being convicted thereof, upon indictment, be imprisoned for a period not exceeding twelve months, and forfeit a sum not exceeding two thousand dollars, for each and every offense, one-half thereof to the use of the State, and the other half to the use of the informer.

Game called "Thimble" or "Thimble and Balls" within statute 1816.—State v. Red, 7 Rich., 8.

A distillery is such an out-house.—State v. Faulkner, 2 McC., 438.

Gambling in dwelling.—State v. Brice, 2 Brev., 66. Betting on dice.—State v. Robinson, 40 S. C., 553; 18 S. E., 891.

Betting on horse racing is embraced in such games.—Atcheson v. Gee, 4 McC., 211.

Doubtful whether this is confined to gambling in a public place.—Greenville v. Kemmis, 58 S. C., 431; 36 S. E., 727. This Statute making gambling an offense against the State does not prevent a municipality from making further regulations against it.—*Ib.*

INDICTMENT.—Bad, which charges gaming and keeping public place and house used as a place for gaming.—State v. Howe, 1 Rich., 260.

EVIDENCE.—What should at that time be proved to subject party to pecuniary penalty under statute.—State v. Dent, 1 Rich., 469; State v. Waters, 1 Strob., 59.

Witness unable to testify otherwise to the facts may testify to them as he sees them made in an affidavit by him at the time of the gaming.—State v. Rawls, 2 N. & McC., 331.

Must conform to the allegation.—State v. Rushing, 2 N. & McC., 560.

Penalty for keeping, &c., gaming tables, &c.

G. S. 1716; R. S. 392; 1816, VI., 27, § 2.

Sec. 507. Any person or persons who shall set up, keep, or use, any gaming table commonly called A B C, or E O, or any gaming table known or distinguished by any other letters, or by any figures, or roley poley table, or table to play at *rouge* and *noir,* or any faro bank, or any other gaming table or bank of the like kind, or of any other kind, for the purpose of gaming, (except the games of billiards, bowls, chess, draughts, and backgammon,) upon being convicted thereof, upon indictment, shall forfeit a sum not exceeding five hundred dollars, and not less than two hundred dollars.

This is not confined to acts done in a public place.—Greenville v. Kemmis, 58 S. C., 431; 36 S. E., 727.

An indictment which in one count charges the offense of gaming under the preceding Section and for the offense stated in this Section, is bad; they are two separate and distinct offenses.—State v. Howe, 1 Rich., 260.

Penalty for betting on elections.

G. S. 1717; R. S. 393; 1850, XII., 72, § 1.

Sec. 508. Any person who shall make any bet or wager of money, or wager of any other thing of value, or shall have any share or part in any bet or wager of money, or wager of any other thing of value, upon any election in this State, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined in a sum not exceeding five hundred dollars, and be imprisoned not exceeding one month, one half of the fine to go to the informer, and the other half to the use of the State.

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Sec. 509. All and every sum or sums of money staked, betted, or pending on the event of any such game or games, as aforesaid, are hereby declared to be forfeited, one-half thereof to the State, and the other half to the informer or person seizing the same.

Wagers to be forfeited.

G. S. 1718; R. S. 394; 1816, VI., 28, § 6.

Sec. 510. Any Judge or Magistrate, the Mayor or any of the Aldermen or the Sheriff of the City of Charleston, on information, by oath of any credible witness of such offense existing, is authorized to grant his warrant, under his hand and seal, to break open and enter any closed door or rooms, whenever the said offenses are alleged to prevail.

Rooms where offenses are committed may be broken open.

G. S. 1719; R. S. 395; *Ib.*, §7.

Sec. 511. It shall and may be lawful for any two or more Magistrates in any County or city whatsoever, to cause to come or to be brought before them every person within their respective limits, whom they shall have just cause to suspect to have no visible estate, profession, or calling to maintain themselves by, but do, for the most part, support themselves by gaming; and if such person or persons shall not make it appear to such magistrates that the principal part of his or their expenses is not maintained by gaming, then such Magistrates shall require of him or them sufficient securities for his or their good behavior for the space of twelve months, and, in default of his or their finding such securities, shall commit him or them to the common jail, there to remain until he or they shall find such securities, as aforesaid.

Gamblers to give security for good behavior, or be committed.

G. S. 1720; R. S. 396; 9 Ann., c. 14; 1712, II., 567, § 6.

Sec. 512. If such person or persons so finding securities as aforesaid, shall, during the time for which he or they shall be so bound to good behavior, at any one time or sitting, play or bet for any sum or sums of money, or other thing, exceeding in the whole the sum or value of five dollars, such playing shall be deemed and taken to be a breach of his or their behavior, and a forfeiture of the recognizance given for the same.

A wager of five dollars to forfeit recognizance.

G. S. 1726; R. S. 397; *Ib.*, § 7.

Sec. 513. Upon conviction of every person under the provisions of any of the foregoing Sections of this Chapter, the Court before whom such convictions shall take place is hereby required to commit such offender to the common jail of the County where such conviction shall happen, for a period not exceeding twelve months, unless such offender shall sooner pay the fine or fines herein imposed, together with the cost of prosecution: *Provided, however,* That all persons who might be subject or liable to the fines and penalties imposed herein, either for gaming at or keeping a gaming table or tables, shall,

Imprisonment; proviso.

G. S. 1727; R. S. 398; 1816, VI., 28, § 4.

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upon being permitted by the Circuit Solicitor to become evidence in behalf of the State, be freed and exonerated from the same; and shall, besides, be entitled to one-half of the fines recovered from any individual upon his or their information.

Criminal to challenge or fight on account of wagers.

G. S. 1729; R. S. 390; 9 Ann, c. 14; II., 567, § 8.

Sec. 514. In case any person or persons whatsoever shall assault and beat, or shall challenge or provoke to fight, any other person or persons whatsoever upon account of any money won by gaming, playing or betting at any of the games aforesaid, such person or persons assaulting and beating, or challenging or provoking to fight, such other person or persons upon the account aforesaid shall, being thereof convicted, upon an indictment or information, to be exhibited against him or them for that purpose, suffer imprisonment in the common jail of the County where such conviction shall be had, for the term of two years.

Swindling.

G. S. 2508; R. S. 400; 1791, V, 177, § 1.

Sec. 515. Whoever shall inveigle or entice, by any arts or devices, any person to play at cards, dice, or any other game, or bear a share or part in the stakes, wagers, or adventures, or bet on the sides or hands of such as do or shall play as aforesaid, or shall sell, barter, or expose to sale any kind of property which has been before sold, bartered, or exchanged by the person so selling, bartering, or exchanging, or by any one for the benefit or advantage of the person so selling, bartering, or exchanging, in any house or other place within this State, or shall be a party thereto, or shall overreach, cheat, or defraud by any other cunning, swindling arts and devices, so that the ignorant and unwary, who are deluded thereby, lose their money or other property, every such person exercising such infamous practices shall, on conviction thereof in any Court of competent jurisdiction, be deemed guilty of a misdemeanor, and shall be fined at the discretion of the Court, and, besides, shall refund to the party aggrieved double the sum he was so defrauded of; and if the same be not immediately paid, with costs, every such person shall be committed to the common jail or house of correction, if there be any, of the County where such person shall be convicted, there to continue for any time not exceeding six months, unless such fine, with costs, be sooner paid and discharged.

State v. Wilson, 2 M. Con. Rep., 135.

Selling a blind horse as a sound horse is not indictable under this Section.—State v. DeLyon, 1 Bay, 353.

Nor is selling a promissory note, knowing it to have been paid, but representing it was still due.—State v. Middleton, Dud., 283.

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Obtaining property from ignorant person under threat of prosecution.—State v. Vaughan, 1 Bay, 283. By using paper as bank bill.—State v. Grooms, 5 Strob., 158.

Fine for keeping gaming tables open on the Sabbath.

G. S. 2592; R. S. 402; 1799, V., 350, § 3.

Sec. 516. Whoever shall keep, or suffer to be kept, any gaming table, or permit any game or games to be played in his, her, or their house, on the Sabbath day, such person or persons, on conviction thereof before any Court having jurisdiction, shall be fined in the sum of fifty dollars, to be sued for on behalf of, and to be recovered for, the use of the State.

CHAPTER XXVI.

Protection of Fish, Oysters, Game, Animals, Etc.

Sec.

Fish, Oysters, &c.

517. Obstructions in streams; close time.
518. Fish ways to be constructed.
519. Impurities not to be cast in streams.
520. Fish sluices to be designated.
521. No fish traps to be kept up near tne dams on any navigable stream.
522. Obstructing navigation by fish traps.
523. Stealing from fish trap.
524. Unlawful to fish with nets, hooks or lines in certain seasons in certain Counties.
525. Penalty.
526. Catching terrapins prohibited in certain Counties.
527. Killing fish by dynamite, &c.
528. Catching sturgeon and shad regulated; violations of.
529. Stealing oysters from oyster beds.
530. Using nets, dredges, &c.; not to apply to fishing.
531. Unlawful to gather oysters, clams and terrapins, except on one's own land, without license.
532. Unlawful to obstruct passage of fish in certain Counties at certain seasons.
533. Catching oysters and terrapins regulated.
534. Fishing or trespassing in any manner.
535. Poisoning waters of streams.
536. Obstructing passage of fish in Savannah River, near Augusta.
537. Restriction as to fishing on South Carolina side.
538. Placing traps on South Carolina side.
539. Punishment for violation.

Deer.

540. Close season for deer; penalty for violation.
541. Persons having in possession liable as above.
542. Hunting on lands of others prohibited.
543. Hunting with fire in night time.
544. Fines and forfeitures, how recovered and disposed of.
545. If fines not paid, offenders to be imprisoned.

Insectivorous and Other Birds.

546. Shooting or entrapping certain birds unlawful.
547. Killing certain birds.
548. Robbing nests.
549. Penalties to be recovered before Magistrates.
550. To be committed in default of payment.
551. Not applicable to persons killing for scientific purposes.
552. Netting or trapping partridges on others' lands.
553. Protection of game in certain seasons.
554. Unlawful to kill Mongolian Pheasant.

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Obstructions in streams; close time; penalty.

G. S. 1669; R. S. 403; 1870, XIV., 338; 1871, XIV., 660, § 1; 1872, XV., 191; 1878, XVI., 539; 1885, XIX., 58; 1889, XX., 379.

Seines and nets prohibited in certain places.

Close time every week.

Dams excepted.

Penalties.

Half to informer and half to Court.

Section 517. At no time during the year shall there be any permanent obstructions of any kind or nature whatever in any of the inland creeks, streams or waters of the State to the free migration of fish; nor shall any seine, net or any plan or device for the stoppage or collecting of fish which obstructs any portion of any creek, stream or inland waters of the State be set or used in any manner whatever in any such creek, stream or inland water within three miles of the ocean, nor within one mile of the mouth of Waccamaw, Great Pee Dee and Bull Creek River, and not below a line from where Mosquito Creek empties into Winyah Bay, across said bay in an easterly direction to the opposite shore of said bay; and there shall be a close time in all the creeks, streams and inland waters of the State, from the setting of the sun each Thursday until the rising of the sun on each Monday, during which time all seins, nets or any plan or device for the stoppage or collecting of fish which obstructs any portion of any creek, stream or inland waters, other than a dam for manufacturing purposes, shall be removed from said creeks, streams or inland waters; and any person or persons using any such seine, net, plan or device in violation of the provisions of this Section shall be deemed guilty of a misdemeanor, and upon conviction thereof before any court of competent jurisdiction shall be fined in the sum of two hundred dollars, one-half of which shall go to the informer, and the other half to the Courts in which the case shall be tried, or be imprisoned for a period of not less than three nor more than six months, or both, in the discretion of the Court trying the case.

Nothing herein contained shall apply to fishing with dip nets used by hand.

Fishways to be constructed.

G. S. 1670; R. S. 404; 1871, XIV., 661, § 2.

Sec. 518. All manufacturing companies or persons who have erected, or may erect, artificial dams across the inland creeks, streams, or waters of this State, which prevent the migratory fish from ascending the same shall construct proper fishways over the same; and should such manufacturing companies or persons refuse or fail so to do, they shall be liable to a fine of five thousand dollars, recoverable by the County in which such dam has been or may be erected, in a Court of competent jurisdiction.

Impurities not to be cast in fish streams.

G. S. 1671; R. S. 405; 1726, III., 270, § 2; *Ib.*, § 3.

Sec. 519. Should any person or persons cause to flow into or be cast into any of the creeks, streams, or inland waters of this State, any impurities that are poisonous to fish or destruc-

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tive to their spawn, such person or persons shall, upon conviction thereof, be punishable with a fine of not less than five hundred dollars, or imprisonment of not less than six months in the County jail; the fine to go one-half to the informer, and the other half to the County.

Fish sluices to be designated.

G. S. 1672; R. S. 406; 1827, VI., 340; 1837, VI., 569, § 2; 1879, XVII., 74, § 14; Civil Code, § 2348.

Sec. 520. It shall be the duty of the County Commissioners to designate the fish sluices on the several rivers, so as to leave one or more passages for fish up the said river, which sluices shall be sixty feet wide, or, where there are two or more such sluices, they shall be, together, sixty feet wide; and when they shall be so designated, it shall be lawful for any person to open such sluices; and if any person shall obstruct any such sluice, when once opened, so as to prevent the free passage of fish up the same, and every part thereof, he shall be deemed guilty of a public nuisance, and, on conviction thereof in the Court of General Sessions, shall be fined one hundred dollars, and shall stand committed until such fine be paid, for a time not exceeding ten days, at the discretion of the Court before which such conviction may take place. One-half of the fine shall be paid to the informer, and the other half into the Treasury of the State. Whenever a fish sluice in any of the rivers aforesaid shall have been designated as aforesaid, any stoppage of the same shall be regarded as a public nuisance, and may be abated as such.

No fish traps to be kept up near the dams on any navigable streams.

G. S. 1675; R. S. 407; *Ib.* 340; 1822, IX., 521; § 29.

Sec. 521. It shall not be lawful for any person whomsoever, at any time, to erect or keep up any fish trap or other device for catching fish, or to fish with any net or seine, within eighty yards of any dam erected by the order or at the expense of the State across any stream intended thereby to be made navigable, in which dams there shall be left or constructed any sluice for the passage of fish; and all and every person or persons offending shall for each and every offense pay the sum of twelve dollars, to be recovered before the Court of General Sessions of the County where the offense may have been committed, one-half of which penalty shall go to the informer and the other half to the support of the work to which the dam is attached; and all traps and other devices for catching fish erected or kept up in violation of this Section are hereby declared public nuisances and may be abated as such.

The right to take fish in a navigable river is common to all, and any party has the right to construct fish traps beyond the prescribed distance from the dam.—Boatwright v. Bookman, 2 Rice, 447; Jackson v. Lewis, Chev., 259.

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Penalty for obstructing navigation by fish traps.

G. S. 1676; R. S. 408; 1829, VI., 393, § 2.

Sec. 522. If any person shall keep, put, or cause to be kept, put or placed by him, her or them, any fish trap in or near any boat sluice in any of the rivers within this State so as thereby to injure or in the least obstruct the free navigation of said rivers, every such person or persons so offending shall forfeit for each and every such offense the sum of one hundred dollars, for the use of the State.

Boatwright v. Bookman, 2 Rice, 447; Jackson v. Lewis, Chev., 259.

Stealing from a fish trap; penalty.

G. S. 1677; R. S. 409; *Ib.*, § 1.

Sec. 523. Any person who shall take and carry away from any fish trap in the waters of this State any fish caught and being in said trap with intent to defraud and deprive the owner or owners of said trap of the said fish shall be deemed guilty of a misdemeanor, and on conviction thereof by indictment shall be punished for said offense by fine not exceeding two hundred dollars and imprisonment not exceeding six months.

Boatwright v. Bookman, 2 Rice, 447.

Unlawful to fish with nets at certain seasons in certain Counties.

G. S. 1678; R. S. 410; 1878, XVI., 392, 718, 724; 1879, XVI., 84; 1883, XVIII, 408; 1898, XXII, 819.

Sec. 524. It shall not be lawful for any person in the Counties of Horry, Marion, Darlington, Clarendon, Chesterfield, Georgetown, Marlboro, Williamsburg, Florence and Richland to fish with nets or gigs, or set traps, or shoot fish with any kind of gun in any of the fresh waters, rivers, creeks, lakes or other streams in said Counties between the first day of May and the first day of September in any year hereafter. And it shall not be lawful for any person to fish with hook and line or otherwise in the waters of Black River, in Williamsburg County, in this State, between the fifteenth day of June and the fifteenth day of August in any year hereafter. One-half of all fines collected for violation of this Section shall be paid to the informer by the Magistrate collecting the same, and the other half shall be paid into the County Treasury.

Penalty for violating foregoing Section.

G. S. 1679; R. S. 411; 1878, XVI., 393.

Sec. 525. Any person violating the provisions of the foregoing Section shall be deemed guilty of a misdemeanor, and upon conviction thereof by a Court of competent jurisdiction shall be fined in a sum of twenty dollars or imprisonment in the County jail for a period of thirty days.

Catching and keeping terrapins at certain seasons.

Sec. 526. It shall be unlawful for any person to catch, trap, purchase, sell or (except as otherwise provided in Chapter LX of the Civil Code) to have in his possession terrapins between the first days of April and August in any year, within the limits of Horry, Georgetown, Charleston, Beaufort, Colleton and Berkeley Counties.

It shall be unlawful for any person or persons to retain or remove any female terrapin which shall measure less than five and one-half inches along the shortest longitudinum measurement on the bottom shell, that is, along the medial line thereof, but all such terrapin if caught or trapped, or wherever found, shall be immediately returned to the water; and all violations of this Section shall be punished by a fine not less than twenty dollars or more than fifty dollars, or by imprisonment of not less than five days or more than ten days, for the first seizure, and by a fine of not less than seventy-five dollars or more than one hundred dollars, or by imprisonment of not less than twenty days or more than thirty days, for each subsequent offense: *Provided,* That nothing in said Section or any amendment thereof shall be construed to appiy to fresh water terrapins.

Misdemeanor.

Punishment.

1893, XXI., 553; 1894, XXI., 1056.

Sec. 527. It shall be unlawful for any person to kill, injure or destroy any fish in the fresh waters of this State by the use of dynamite, giant powder, or other explosive material, and any person violating this Section shall be deemed guilty of a misdemeanor and be imprisoned for not more than six months or be fined not more than one hundred dollars, or both fine and imprisonment at the discretion of the Court: *Provided,* That nothing herein contained shall be construed to forbid the use of explosive material by the officers of the State or United States Government in the discharge of their official duties: *Provided, further,* That nothing herein contained shall be construed to prevent the use of any such explosive material by any person or corporation mining phosphate rocks in any of the navigable streams of this State under license from the State.

Killing fish by dynamite, &c.

R. S. 413; 1889, XX., 354.

Penalty.

Sec. 528. It shall be lawful for any person to catch, trap, purchase or sell sturgeon above tide water from the 1st day of April to the 1st day of August of every year, and in tide water between the first day of February and the first day of June, and during the months of September and October; and shad from the 1st day of January to the 15th day of March of each year, with gill nets, and until the 30th day of April with dip nets and seines.

Catching sturgeon and shad regulated.

1896, XXI., 221; 1897, XXII., 430.

It shall be unlawful at any time during the year to stretch any staked nets, seines, wire fences or traps more than half way across the river or streams, or to use any seines in any of the lakes of this State except where such basins or lakes lie wholly within limits of private property of this State.

Staked nets, seines, &c., not to extend more than half way across stream.

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Violations a misdemeanor.

Any person who shall catch or trap any sturgeon or shad at any other time during any year than is set out in this Section shall be deemed guilty of a misdemeanor and on conviction shall be punished by a fine of not more than one hundred dollars or less than thirty ($30.00) dollars or imprisonment for not more than thirty days or less than ten days. It shall be the duty of the Terrapin Commissioner to enforce the provisions of this Section, and he is authorized and empowered to appoint deputies to assist in the enforcement thereof, and he shall receive for such services the additional salary of $500, to be paid out of the funds in the hands of the Treasurer collected from parties violating this Section.

The Act of 1896, XXII., 218, prohibiting fishing in Colleton and Berkeley by citizens of other Counties having been held unconstitutional in State v. Higgins, 51 S. C., 51; 28 S. E., 15, is omitted.

Penalty for stealing oysters from oyster beds.

G. S. 1712; R. S. 434; 1848, XI., 443.

Sec. 529. Any person or persons who shall feloniously gather, remove, take or steal from any oyster bed, laying or fishery any oysters or oyster brood there growing, lying or being, such oyster bed, laying or fishery being the property of any other person or persons, and cultivated and used by the proprietor or proprietors thereof for the production, growing and improvement of oysters, and being sufficiently marked out, shall be deemed and held guilty of larceny, and he, she or they, his, or her or their aiders, helpers, abettors or accessories, being thereof convicted by due course of law, shall be punished as in cases of larceny.

Penalty for using nets, dredges, &c.

G. S. 1713; R. S. 435; *Ib.*

Sec. 530. If any person or persons shall unlawfully and wilfully use any dredge, or any net, instrument or engine whatsoever, within the limits of any such oyster bed, laying or fishery, as aforesaid, for the purpose of taking oysters or oyster brood, although none be actually taken, or shall with any net, instrument or engine drag upon the ground or soil of any such oyster bed, laying or fishery, every person or persons so offending shall be held and deemed guilty of a misdemeanor, and upon being convicted thereof shall be punished by fine or imprisonment, or both, as the Court may award, such fine not to exceed one hundred dollars and such imprisonment not to exceed six months.

Not to apply to fishing.

G. S. 1714; R. S. 436; *Ib.*

Sec. 531. Nothing contained in the two preceding Sections shall be so construed as to prevent any person or persons from catching, or fishing for, any swimming or floating fish within the limits of any oyster bed, laying or fishery with any net, instrument or engine adapted for taking swimming or floating fish.

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Fishing in certain counties regulated.

1894, XXI., 884; 1896, XXII., 366; 1898, Ib., 817; 1899, XXIII., 103.

Sec. 532. From the first day of April to the first day of November in the Counties of Colleton and Dorchester, and from the first day of May to the first day of November in the Counties of Darlington, Williamsburg, Bamberg, Barnwell, Aiken and Orangeburg, in each and every year hereafter, it shall be unlawful to obstruct by any means the passage of any fish in or to take and catch any fish from any of the navigable streams by seine or bow net, gill or fibre net.

Times in which it is unlawful to catch fish in certain counties, except by hook and line.

Between November 1st and April the 1st in the Counties of Colleton and Dorchester, and between November the 1st and May the 1st in the Counties of Darlington, Williamsburg, Bamberg, Barnwell, Aiken and Orangeburg, in each and every year hereafter, there shall be a close time from 10 P. M. on Saturday to sunrise on Tuesday morning in each week in which it shall be unlawful to take or catch any fish except by hook and line.

Times in which it is lawful to catch fish in certain counties with nets, &c.

Between November the 1st and April the 1st in the Counties of Colleton and Dorchester, and between November 1st and May the 1st in the Counties of Darlington, Williamsburg, Bamberg, Barnwell, Aiken and Orangeburg, in each and every year hereafter, from sunrise on Tuesday morning to 10 P. M. on Saturday, it shall be lawful to take or catch any fish with seine, gill net, bow net or fibre net; in no case shall any net or seine extend more than two-thirds across the stream, nor shall any two or more nets be used within fifty yards of each other.

Violations, how punished.

Any person or persons who shall be convicted of the violation of any of the provisions of this Section shall be punished by a fine of not less than twenty-five nor more than one hundred dollars, or by imprisonment of not less than ten nor more than thirty days, for the first offense; and for the second or any subsequent offense by a fine of not less than one hundred nor more than five hundred dollars, or by imprisonment of not less than thirty days nor more than six months, or both, in the discretion of the Court, three-fourths of the fine or fines recovered to be paid to the informer.

Violation of law as to oysters, &c.

1900, XXIII., 450.

Sec. 533. Any person who shall violate any of the provisions of Sections 2333 and 2334 of the Civil Code, as to oysters, clams and terrapins, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined not more than $500, or imprisoned for a period of not more than one year, in the discretion of the Court, one-half of the fine to go to the informer.

Sec. 534. Whenever any one shall have made or created an artificial pond on his own land, and shall put therein any fish,

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Penalty for fishing or trespassing in any manner.

G. S. 1680; R. S. 414; 1872, XV., 161, § 6.

or the eggs of any fish or oysters, for the purpose of breeding and cultivating fish or oysters, and shall give notice thereof, by written or printed handbills, put up in public places near the said pond, any person or persons who shall thereafter enter in about such pond for the purpose of fishing, or shall catch or take away any fish or oysters therefrom, or shall be guilty of committing any trespass upon any artificial fish pond by fishing in the same, or in any manner using any means to destroy the fish or oysters raised or collected in such pond, or by breaking the dam or dams for the purpose of permitting the fish or oysters to escape, or by poisoning the same, or in any manner destroying or injuring the same, upon conviction, shall be deemed guilty of a misdemeanor, and shall be subject to a fine of not less than twenty dollars nor more than one hundred dollars or be imprisoned at the discretion of the Court; which fine, if imposed, shall go one-half thereof to the informer and the other half thereof to the person or persons whose property shall have been injured: *Provided,* That nothing in this Section shall be construed as applying to ponds used as water power for manufacturing purposes.

Poisoning waters of streams unlawful; penalty.

G. S. 1681; R. S. 415; 1872, XV., 101, § 7.

Sec. 535. It shall not be lawful for any person in this State to take any trout from the streams thereof, by impregnating the waters with poisonous or deleterious substances; and any person violating this provision shall, upon conviction thereof, be fined ten dollars for every such offense, or be imprisoned not less than ten days; which fine, if imposed, shall go one-half thereof to the informer, and the other half to the school fund of the County in which such offense shall have been committed.

Obstructing passage of fish by nets in Savannah River, near city of Augusta, prohibited.

G. S. 1682; R. S. 416; 1882, XVII., 783, § 1

Sec. 536. It shall be unlawful for any person or persons to obstruct the free and convenient passage of fish in Savannah River by nets, seines, or other similar devices, or to fish with nets, seines, or similar devices in said river within one mile below or one-half of one mile above the dam across said river near the City of Augusta, and known as the Augusta Canal dam.

Restrictions as to fishing on South Carolina side of.

G. S. 1683; R. S. 417; *Ib.*, §2.

Sec. 537. It shall be unlawful for any person or persons hereafter to establish any fishery by nets, seines, traps, or other or similar devices, on the South Carolina side of said river within the locality set forth in the preceding Section hereof, or to enter the said locality of said river from the South Carolina side thereof, for the purpose of fishing with said devices, except for the purpose of visiting traps already established.

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Sec. 538. It shall be a misdemeanor for any person or persons to place any trap in Savannah River, on the South Carolina side thereof, within the above distances, where no such traps are now located, or to fail to close up such traps as are now there during the close time now provided by law.

Misdemeanor to place traps on South Carolina side.

G. S. 1684; R. S. 418; *Ib.*, § 3.

Sec. 539. Any person violating the provisions of the last three preceding Sections hereof, upon conviction before any Court of competent jurisdiction, shall for each offense be imprisoned for a term of not less than three months, or fined in a sum of not less than two hundred dollars, or both fined and imprisoned, in the discretion of the Court.

Punishment for violation.

G. S. 1685; R. S. 519; *Ib.*, § 4.

Deer.

Sec. 540. It shall not be lawful for any person in this State to kill any deer, or to worry them with dogs or otherwise with intent of destroying them, between the first day of January and the first day of September in any year hereafter, except in the Counties of Clarendon, Colleton, Williamsburg, Marlboro, Kershaw, Horry, Hampton, Darlington, Marion, Beaufort, Florence and Berkeley, in which Counties it shall not be lawful between the first day of February and the first day of August. Any person violating this Section shall, upon conviction thereof, be fined not less than ten nor more than twenty dollars, or be imprisoned not less than ten nor more than twenty days, which fine, if imposed, shall be recovered before any Court of competent jurisdiction; one-half thereof shall go to the informer, and the other half thereof to the use of the said County.

Unlawful to kill or worry deer within certain times in certain counties.

G. S. 1687; R. S. 420; 1880, XVII., 286; 1886, XIX., 715; 1896, XXII., 219; 1898, XXII., 818; 1900, XXIII., 453.

Sec. 541. Any person in whose possession recently killed venison, or fresh deer skins, shall be found between the dates above mentioned, shall be liable to the same penalty as those violating the preceding Section.

Persons having in their possession liable as above.

G. S. 1688; R. S. 421.

Hunting.—General Provisions.

Sec. 542. If any person, at any time whatsoever, shall hunt or range on any lands whatsoever without the consent of the proprietor, every such person so offending shall forfeit and pay the sum of ten dollars for every such offense.

Persons not allowed to hunt on lands of others.

G. S. 1689; R. 422; 1769, IV., 310, § 1.

Sec. 543. Any person or persons who shall hunt with fire in the night time, for every such offense shall forfeit and pay a sum not exceeding ten dollars, and for every deer so killed a sum not exceeding twenty-five dollars, and for every horse or

Penalty for hunting with fire in the night time.

G. S. 1690; R. S. 423; 1780, V., 124, § 1.

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head of neat cattle, or other stock of any kind, a sum not exceeding fifty dollars.

Fines and forfeitures, how to be recovered and disposed of.

G. S. 1691; R. S. 424; 1769, IV., 311, § 3.

Sec. 544. All of the penalties and forfeitures mentioned in the preceding Section shall and may be recovered before any Magistrate in the County where any of the said offenses shall be committed, and when received shall be divided and paid one-half to and for the use of the poor of the County where the offense shall be committed and the other half to the person who will inform for the same; and the oath of one credible witness, or the confession of the party accused, shall be allowed as sufficient evidence to convict the offender by every Magistrate before whom information shall be made of any of the offenses aforesaid: *Provided,* That where the owners of any lands shall prosecute for any unlawful hunting and ranging on his or her lands, the oath of such owner shall be sufficient evidence to convict the offender; but in that case the whole penalty shall go to the use of the poor of the County.

If fines not paid, offenders to be imprisoned.

G. S. 1692; R. S. 435; 1898, XXII., 420; *Ib*, 1789, V., 124, § 1.

Sec. 545. In case any person or persons so convicted shall refuse or neglect to pay such fine, then it shall and may be lawful, and the Magistrate before whom he is convicted is hereby required, to commit such person or persons to the common jail in the County where the offender or offenders shall have committed the said crime, there to remain without bail for a term not exceeding thirty days for unlawfully hunting with fire in the night time, and for a term not exceeding thirty days for violations of Section 542 of this Chapter.

Civil action allowed also.

In addition to the above penalties, any person or persons who shall hereafter hunt with fire in the night time, or kill any horse or neat cattle or stock of any kind, the property of another person, shall be liable to a civil action by the person aggrieved.

Insectivorous and Other Birds.

Shooting or entrapping certain birds unlawful.

G. S. 1695; R. S. 426; 1872, XIV., 160, § 5.

Sec. 546. It shall not be lawful for any person in this State to wantonly shoot, or entrap for the purpose of killing, or in any other manner destroy, any bird whose principal food is insects, or to take or destroy the eggs or young of any of the species or varieties of birds that are protected by the provisions of this Section, comprising all the species and varieties of birds represented by the several families of bats, whip-poor-wills, fly-catchers, thrashers, warblers, finches, larks, orioles, nut-hatchers, wood-peckers, humming birds, blue birds, and all other species and varieties of land birds, whether great or small,

of every description, regarded as harmless in their habits, and whose flesh is unfit for food, including the turkey buzzard, but excluding the jackdaw, the crow, the crow black bird, the eagle, and all hawks and owls, which prey upon other birds; and any preson violating the provisions of this Section shall, on conviction thereof, forfeit and pay a fine of ten dollars, or be imprisoned not less than ten days, which fine, if imposed, shall go one-half to the informer, and the other half thereof to the use of the County in which the offense was committed: *Provided,* That no person shall be prevented from protecting any crop of fruit or grain on his own lands from the depredations of any birds herein intended to be protected.

Penalty for killing certain birds.

G. S. 1696; R. S. 427; 1878, XVI., 406, § 1; 1883, XVIII., 324.

Sec. 547. No person or persons shall at any time or place within this State take, kill, sell, expose for sale, export beyond the limits of the State, or cause to be taken, killed, sold, exposed for sale or exported beyond the limits of the State, any mocking bird, nonpareil, swallow, bee bird, red bird, woodpecker, thrush or wren, under a penalty of five dollars for each bird so taken, killed, sold, exposed for sale or exported beyond the limits of the State; and it shall be lawful for any person to take or destroy any net, traps or snares used for taking such birds wheresoever found set for such purpose: *Provided,* That nothing herein contained shall prohibit any person from taking and keeping any bird of song or plumage for his own pleasure or amusement and not for sale, traffic or gain.

Proviso.

Penalty for robbing nest.

G. S. 1697; R. S. 428; 1878, XVI., 606, § 2.

Sec. 548. No person or persons shall destroy or rob the nests of any of the said birds, under a penalty of ten dollars for each offense.

Penalties to be recovered before Magistrate.

G. S. 1698; R. S. 429; *Ib.*, §3.

Sec. 549. The penalties incurred for violation of any of the provisions of the last two preceding Sections shall be recovered before any Magistrate in the County where such offense shall be committed, and shall be paid one-half to the informer, and the other half to the County Treasurer for the use of the County.

To be committed to jail in default of payment.

G. S. 1699; R. S. 430; *Ib.*, §4.

Sec. 550. In case of failure by any person or persons to pay any sum recovered under the provision of Sections 546, 547 and 548, the said person or persons shall be committed to the jail of the County for a period not less than five days, and at the rate of one day for every dollar of the sum so recovered and not paid when the amount recovered exceeds five dollars.

Sec. 551. Nothing in the four preceding Sections shall apply to any person who shall kill or take any of the said birds for

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Not applicable to persons killing for scientific purposes.

the purpose of studying its habits or history, or having the same stuffed and set up as a specimen, or to any person who shall kill on his premises any of the said birds in the act of destroying fruit or grain crops.

G. S. 1700; R. S. 433; *Ib.*, §5.

Netting or trapping partridges on the lands of others prohibited.

R. S. 431; 1883, XVIII., 448; 1900, XXIII., 450.

Sec. 552. It shall not be lawful for any person, except upon his own lands, or upon the lands of another with the consent of the owner thereof, to net or trap a partridge, and it shall be unlawful for any person to sell, offer for sale, or ship or export for sale, and partridge or quail for the space of five years from the ninth day of February, A. D. 1900: *Provided,* That nothing in this Section shall prevent the importation for sale of any partridge or quail. Any person violating this Section shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not exceeding thirty dollars, or by imprisonment in the County jail for a term not exceeding thirty days.

Protection of game in certain seasons and of the nests of certain birds.

G. S. 1694; R. S. 432; 1880, XVII., 286; 1885, XIX., 391; 1887, XIX., 850; 1888, XX., 67; 1898, XXII., 816.

Sec. 553. It shall not be lawful for any person in this State, between the first day of April and the first day of November, in any year hereafter, to catch, kill or injure, or to pursue with such intent, or to sell or expose for sale, any wild turkey, partridge, quail, woodcock, or pheasant, or between the first day of March and the first day of November any dove; or at any time during the year to catch, kill or injure, or to pursue with such intent, by firelight, any of the birds named in this Section; nor shall any person or persons destroy or rob the nests of any of said birds. And any person so doing shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined not more than twenty dollars or be imprisoned not more than thirty days.

Unlawful to to kill Mongolian pheasant.

1897, XXII., 493.

Sec. 554. Until the first day of January, 1905, it shall be unlawful for any person to catch, kill, or injure, or to pursue with such intent, any Mongolian pheasant, whether upon his own lands or otherwise, upon penalty of not less than five dollars or more than twenty-five dollars, or not more than thirty days' imprisonment with labor upon the public works of the County.

CHAPTER XXVII.

Violation of Laws Regulating the Sale of Spirituous Liquors.

SEC.
555. The manufacture, sale or keeping spirituous liquors, except as in this Chapter provided, prohibited.
556. Board of Directors of State Dispensary—election of, term of office, &c.
557. Dispensary Commissioner; election of, term of office, duties of, &c.
558. Bond of.
559. County Boards of Control.
560. Certificates to be placed on packages shipped.
561. How liquors must be shipped and sold.
562. County Dispensers, how appointed.
563. County Dispensaries, how located.
564. Oaths of Dispensers; permits, &c.
565. Office and clerk of; books and records; profits; compensation, &c.
566. Requests for liquor, how made and to whom refused.
567. Requests for liquor to be made on blanks furnished by the County Auditor.
568. Returns to be made to County Auditor, when, and form of oath to be taken.
569. Enforcement of returns in case of failure; penalties for failure and for illegal purchases.
570. Dispensers liable for damages for violations of law.
571. Manufacture, sale or barter of liquors prohibited, except by permit. Permits, how obtained; how liquor shipped out of State; penalty for manufacturer refusing inspection, &c.
572. Account book of Dispenser; open to inspection; as evidence.
573. Special U. S. tax as a liquor-seller *prima facie* evidence of illegal sales.
574. Privileges to license druggists.
575. False signatures, statements, &c.; penalties.
576. False oaths and illegal acts of Dispensers.

SEC.
577. Liquors at clubs prohibited.
578. Liquor resorts declared nuisances; arrests, warrants, seizures, &c.
579. Distillers to report quarterly to State Board.
580. Search warrants, by whom issued; disposition of liquor seized.
581. When seizures may be made without a warrant.
582. Possession of illicit liquor prohibited; debt for, void.
583. Proceedings *in rem.*
584. Transportation or possession of falsely branded packages prohibited, penalties.
585. Powers of Constables to detain suspicious packages.
586. Interference with officers forbidden.
587. Proceedings when goods are of the value of $50 or more.
588. Liquor on arrival in State, subject to its laws.
589. Penalty for transporting liquor in vehicles, except as in this Chapter provided.
590. Arrest of open violators.
591. Punishment for violating forbidden acts.
592. Rescue from an officer; penalty.
593. Handling contraband liquor at night.
594. Transportation by vehicles at night.
595. Labels to be cancelled by Dispenser.
596. Common carriers liable to treble damages for goods lost or stolen.
597. Officers to notify Solicitors of violations.
598. Competent to charge divers sales on same or different days.
599. Affidavits may be on information and belief.
600. Actions against officers acting under this Chapter.
601. Use of false or misleading labels by Dispensary Commissioner, or any employee, a misdemeanor.
602. Use of Palmetto label prohibited.

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603. Committee of General Assembly to examine Dispensary accounts, when, pay of, &c.
604. Social, literary or other clubs prohibited from dispensing liquors without a license.
605. Selling liquor to known intemperate persons.
606. Physicians not to prescribe except to patients.

The Dispensary Law was held unconstitutional in McCullough v. Brown, 41 S. C., 220; 19 S. E., 458. But this case was overruled in State v. Aiken, 42 S. C., 222; 20 S. E., 221; State v. Porterfield, 47 S. C., 75; 25 S. E., 39.

Joinder of counts for selling liquor, under Sec. 555; keeping a place where persons are permitted to resort to drink liquor, &c., under Sec. 578; and for storing liquors for illegal sale, under Sec. 555. May be united in same indictment.—State v. Beckroge, 49 S. C., 484; 27 S. E., 658.

This does not repeal the former Dispensary Acts where consistent with this.—State v. Loftis, 49 S. C., 443; 27 S. E., 451.

So far as the former Dispensary Act prohibited the purchasing and bringing into the State from other States liquors for personal use, and not for sale, it was held in violation with interstate commerce provisions of the Constitution.—Donald v. Scott, 67 Fed., 854.

The manufacture, sale or keeping of spirituous liquors prohibited except as herein provided.

1897, XXII., 537; 1896, *Ib.*, 123; 1894, XXI., 721; 1893, XXI., 430.

Section 555. The manufacture, sale, barter or exchange, receipt, or acceptance for unlawful use, delivery, storing and keeping in possession within this State of any spirituous, malt, vinous, fermented, brewed (whether lager or rice beer), or other liquors, any compound or mixture thereof, by whatever name called or known, which contains alcohol and is used as a beverage, except as is hereafter provided, is hereby prohibited under a penalty of not less than three nor more than twelve months at hard labor in the State Penitentiary, or pay a fine of not less than $100 nor more than $500, or both fine and imprisonment, in the discretion of the Court, for each offense. All alcoholic liquors in this State, whether manufactured within this State or elsewhere, not having been tested by the chemist of the South Carolina College and found to be pure and free from poisonous, hurtful and deleterious matters, are hereby declared to be of a detrimental character, and their use and consumption are against the morals, good health and safety of the State, and all such liquors may be seized wherever found, without a warrant, and disposed of as hereinafter provided. Any person resident in this State intending to import for personal use and consumption any spirituous, malt, vinous, fermented, brewed or other liquor containing alcohol from any other State or foreign country shall first certify to the chemist of the South Carolina College the quantity and kind of liquor proposed to be imported, together with the name and place of business of the person, firm or corporation from whom it is desired to purchase, accompanying such certificate with a statement that the proposed consignor has been requested to forward a sample of such

Penalty for violation.

Liquors to be tested by chemist.

How liquors may be imported in State

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liquor to the said chemist at Columbia, South Carolina. Upon receipt of said sample the said chemist shall immediately proceed to test the same, and if found to be pure and free from any poisonous, hurtful or deleterious matters he shall issue a certificate to that effect, stating therein the names of the proposed consignor and consignee, and the quantity and kind of liquor proposed to be imported thereunder, which certificate shall be dated and forwarded by the said chemist post paid to the proposed consignor at his place of business. The said consignor shall cause such certificate to be attached to the package containing the liquor when it is shipped into this State, and no package bearing such certificate shall be liable to seizure and confiscation, but any package of spirituous, malt, vinous, fermented, brewed or other liquor or liquid containing alcohol imported into this State without such certificate, or any package containing liquor other than that described in the certificate thereto attached, or any package shipped by or to any person or persons not named in such certificate, shall be seized and confiscated as provided in this Chapter. Any certificate obtained from the chemist as herein provided shall be used within sixty days after the date of its issue and shall be invalid thereafter. It shall be unlawful to use said certificate for more than one importation, and any persons attempting to counterfeit said certificate or to make any improper use thereof or who shall make any false statement in obtaining or attempting to obtain the same shall be deemed guilty of a misdemeanor and upon conviction shall be punished by imprisonment for not less than thirty days nor more than twelve months, or pay a fine of not less than one hundred nor more than one thousand dollars. Any person or persons convicted of selling or otherwise unlawfully disposing of any liquor imported under the provision of this Chapter shall suffer double the punishment provided for a sale in violation of other provisions of this Chapter. All expenses incurred in enforcing the provisions of this Section, including compensation for such assistant chemists as may be necessary to make prompt analysis and the express charges on samples, shall be paid by the Board of Directors of the State Dispensary hereinafter provided for, as an expense of the State Dispensary established by this Chapter. If the chemist of the South Carolina College shall wilfully fail or refuse to make or have made an analysis of any sample sent to him in accordance with the provisions of this Section he shall, upon con-

Penalty for unlawful use of certificate.

Penalty for selling or disposing of liquor.

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viction thereof before a Court of competent jurisdiction, be fined one hundred dollars for each offense.

Sale may be shown on any day prior to finding of indictment, though not alleged therein.—State v. Green, 61 S. C., 13; 39 S. E., 185.

Where liquor is purchased beyond the limits of the State and brought into the State for personal use, it is not contraband merely because the purchaser does not procure, and attach to it, the certificate from the State Chemist provided for in this Section.—State v. McGee, 55 S. C., 247; 32 S. E., 353; Vance v. Vandercook, 170 U. S., 438.

Alcoholic liquors kept contrary to this Act are not subject to attachment. For the reasons that it would defeat the State's right of forfeiture, under Sec. 581, and could only be made effectual by a sale which this Section prohibits.—Lanahan v. Bailey, 53 S. C., 489; 37 S. C., 333.

Keeping liquors for personal use without certificate being attached.—State v. Chastian, 49 S. C., 170; 27 S. E., 2.

Board of Directors created; election of; term of office, &c.

1900, XXIII., 437.

Sec. 556. A Board consisting of three members, to be known as the Board of Directors of the State Dispensary, is hereby established, whose duties and powers shall be hereinafter defined. The members of said Board shall be men of good moral character, not addicted to the use of intoxicating liquors as a beverage, and shall be elected by the General Assembly in joint session as follows: The Chairman of the Board shall be first elected, and then shall be elected the two remaining members. The term of office of the members of said Board shall be for two years, unless sooner removed by the Governor; they shall qualify and be commissioned in the same manner as other State officers. In the event of vacancy on said Board by death, resignation or otherwise, such vacancy shall be filled by appointment by the Governor, until the next session of the General Assembly, when an election shall be held to fill said vacancy for the unexpired term. Each member of the said Board shall receive for his services the same per diem and mileage allowed to members of the General Assembly: *Provided,* That no member of said Board shall receive per diem for more than one hundred days in any fiscal year. The said Board shall devise such a system of book-keeping and accounting as it may deem advisable. The said Board shall prescribe all rules and regulations, not inconsistent with law, for the government of the State Dispensary and the County Dispensaries: *Provided,* That no member of this Board of Directors, while holding this office, shall become a candidate for any other office.

Commissioner—election of; term of office.

Ib.

Sec. 557. A Dispensary Commissioner shall be elected by the General Assembly, who shall hold his office for the term of two years, and until his successor shall be elected and qualified, and who shall receive an annual salary of three thousand dollars, to be paid as now provided by law. The Governor shall have the

right at any time to suspend the said Commissioner for any cause which he shall consider sufficient until the next meeting of the General Assembly, and appoint some suitable person to fill such vacancy during said suspension. In case of the removal of said Commissioner by the Governor, he shall, on the first day of the next meeting of the Legislature, make a report to said General Assembly, stating the reason for his action, which action, if approved by the General Assembly, shall operate as a removal, and the General Assembly shall elect a successor to said Commissioner. In case of death, suspension or other disability of the Commissioner, the Governor shall have the right to appoint a successor to fill said vacancy until the next meeting of the General Assembly. Said Directors of the Dispensary shall, within thirty days after the 13th day of February, 1900, and thereafter quarterly, advertise in two or more daily newspapers of this State, and one or more daily newspapers published without this State, for bids to be made by parties desiring to furnish liquor to the Dispensary for said quarter. Said bids shall be placed in an envelope, securely sealed with the seal of the company, firm or corporation, and having been so sealed, shall be placed in the Express Office, directed to the State Treasurer, Columbia, S. C.; and only one bid shall be made by any one, which shall state the quality, price and chemical analysis thereof, and accompanying said bids there shall be a sample of each kind of liquor offered for sale, containing not more than one-half pint each, which sample shall, on its arrival, be delivered to the Dispensary Commissioner, to be retained by him until after it has been ascertained that the wines or liquors purchased correspond in all respects with that purchased; said samples to be the property of the State. Said bids shall be kept by the State Treasurer in his office, and he shall not himself, or allow any one to inspect said bids, or the envelopes containing said bids, but shall deliver said bids to the Directors of the Dispensary, at a meeting of the Board of Directors, who shall open said bids in public, and record all said bids in a book, kept for the purpose. Said Directors of the Dispensary may reject any and all bids, and readvertise for other bids. Said Directors of the Dispensary shall purchase all alcoholic liquors for lawful use in this State, and shall have the same tested and declared to be chemically pure; and if the wines and liquors purchased fail to correspond in any respect with the samples furnished, the seller thereof

Duties of and of the Directors.

Purchases of liquors, how made, &c.

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shall forfeit to the State a sum not exceeding the value of said liquor, to be recovered in an action brought by the State against such seller; and said contract shall be awarded to the lowest responsible bidder, for such quantities and kinds of liquors as may be deemed necessary to the Dispensary for the quarter, and said contracts shall further provide that the Directors of the Dispensary may order additional quantities of liquors sufficient to supply the Dispensary, should there be need of more, from the same persons or corporations, at the same price, for that quarter. Said Directors shall require from the successful bidder or bidders such bond, in such sum as they may deem necessary, to insure the compliance of said bidder or bidders with the terms of said contract: *Provided,* That the said Directors of the Dispensary shall not purchase any liquor of any person, firm or corporation, who shall solicit any orders, either by drummer, agents, samples or otherwise, except as hereinbefore provided. The fiscal year of the transactions of the State Dispensary shall end on the 30th day of November each year. The Governor of the State shall appoint, not later than the 15th day of December in each year, two (2) expert accountants, of good character and of high standing in their profession, who shall make a thorough examination of the books of account, trial balances and balance sheet of the Dispensary for the year ending November 30th, together with all bills, vouchers and any and all evidences of receipt and expenditures whatsoever, and they shall certify to the General Assembly, in writing, at the beginning of the regular session in January of each year, the result of such examination. This certificate to be in addition to the annual report of the Board of Directors. The accountants so named by the Governor of the State shall each receive for his services ($4) four dollars per day, for not exceeding thirty days in any one year, to be paid from the earnings of the Dispensary. The Commissioner and the members of the Board of Directors are hereby directed and commanded to give to the accountants appointed by the Governor free and full access to all books of accounts, trial balances, balance sheets, and every and all books, invoices, receipts, bank books, and every and all papers connected with the financial operations of the Dispensary: *Provided, further,* That nothing herein contained shall prevent said Directors of the Dispensary from making distillers in this State contracts for

Examination of books of.

the purchase of liquors manufactured by them within this State.

Bond of Commissioner.

Sec. 558. The Dispensary Commissioner shall, before entering upon the duties of his office, execute a bond to the State of South Carolina in the sum of seventy-five thousand dollars, which bond shall be approved by the Attorney General of the State, according to the provisions of the law as now provided, or which may be hereinafter enacted, and for the faithful observance of all rules and regulations made and adopted by the Directors of the Dispensary during his term of office; said Commissioner shall be charged with the management and control of the State Dispensary, subject to the rules and regulations of said Directors of the Dispensary and the provisions of the Dispensary Law; said Commissioner shall enter into contracts, employ all assistants and help necessary to manage the State Dispensary, at salaries not to exceed those fixed by the Directors of the Dispensary; said Commissioner may discharge any of the employes at pleasure, and report his reasons therefor in writing to the Directors of the Dispensary: *Provided*, That said Dispensary Commissioner shall not employ any person who is related to him or to any member of the Directors of the Dispensary by blood or marriage within the sixth degree: *Provided, further*, That the liquor sold to the County Dispensers shall be sold at a profit of not over ten per cent. of the cost to the State.

County Boards of Control.

1900, XXIII., 437; 1896, XXII., 127.

Sec. 559. The County Board of Control shall be appointed by the Board of State Directors by and with the advice and consent of the members of the Senate and House of Representatives from the respective Counties, or a majority thereof; the County Dispensers shall be elected by the County Boards of Control: *Provided*, That no person shall be elected County Dispenser or Clerk, who is related within the sixth degree by blood or marriage with any member of the Board of Directors of the State Dispensary, with the Dispensary Commissioner, or with any member of the County Board of Control by whom such County Dispenser or Clerk are to be elected.

The County Board of Control composed of three persons believed by the said Board not to be addicted to the use of intoxicating liquors. The persons so appointed shall hold their office for a term of two years, and until their successors are appointed, and shall be subject to removal for cause by the Board of State Directors. Said County Board of Control shall

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make such rules as will be conducive to the best management of the sale of intoxicating liquors in their respective Counties: *Provided,* All such rules shall be submitted to the State Board of Directors and approved by them before adoption. The members of the County Board of Control shall qualify and be commissioned as are other County officers without fees therefor.

Packages shipped to have certificates on them.

1896, XXII., 126; 1897, *Ib.*, 540.

Sec. 560. In all purchases or sales of intoxicating liquors made as contemplated in this Chapter, the Board of State Directors shall cause a certificate to be attached to each and every package containing said liquors when the same is shipped to the State Commissioner from the place of purchase, or by the State Commissioner to the County Dispensers, certified by their official signatures and seal, which certificate shall state that liquors contained in said packages have been purchased by the Board of State Directors for sale and use within the State of South Carolina, under the laws of this State, and shall also cause to be attached to all such liquors the certificate of the chemist of the South Carolina College that samples of the same have been tested as required by this Chapter, and without such certificates any package containing liquors which shall be shipped from place to place within this State, or delivered to the consignee by any railroad, express company or other common carrier, or be found in the possesion of any common carrier, shall be regarded as contraband and may be seized without warrant for confiscation, and such common carrier shall be liable to a penalty of $500 for each offense, to be recovered against said common carrier in any Court of competent jurisdiction by summons and complaint, proceedings to be instituted by the Solicitor of any Circuit, with whom evidence may be lodged by any officer or citizen having knowledge or information of the violation; and any person attaching or using such certificate without the authority of the Board of State Directors, or any counterfeit certificate for the purpose of securing the transportation of any intoxicating liquors within this State in violation of law, shall, upon conviction thereof, be punished by a fine of not less than five hundred ($500) dollars, and imprisonment in the Penitentiary for not less than one year for each offense.

How liquors must be shipped and sold.

1896, XXII., 127.

Sec. 561. The Dispensary Commissioner shall before shipping any liquors to Dispensers, except lager beer, cause the same to be put into packages of not less than one-half pint nor more than five gallons, and securely seal the same, and it shall

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be unlawful for the Dispenser to break any of such packages or open the same for any reason whatsoever. He shall sell by the packages only, and no person shall open the same on the premises: *Provided,* This Section shall not apply to malt liquors shipped in cases or kegs or bottles thereof shipped in barrel; and such malt liquors may be sold by the County Dispenser in such quantities, of not less than one pint, as he may see proper: *Provided,* The same shall not be drunk on the premises. Dispensers shall open their places of business and sell only in the day time, under such rules as may be made by the Board of State Directors, or by the County Board of Control with approval of the Board of State Directors.

County Dispensers, how appointed.

Ib.

Sec. 562. Applications for positions of County Dispenser shall be by petition, signed and sworn to by the applicant, and filed with the County Board of Control at least twenty days before the meeting at which the application is to be considered, which petition shall state the applicant's name, place of residence, in what business engaged, and in what business he was engaged two years previous to filing petition; that he is a qualified elector of this State and a resident of the County; that he has never been adjudged guilty of violating the law relating to intoxicating liquors, and is not a keeper of a restaurant or place of public amusement, and that he is not addicted to the use of intoxicating liquors as a beverage. The appointment shall be made only on condition that the applicant shall execute to the County Treasurer a bond in the penal sum of three thousand dollars, with good and sufficient sureties, in the form prescribed by Section 584 of the Civil Code: *Provided,* That the obligors shall be liable for all attorney's fees incurred in the collection of any shortage covered by such bonds.

Attorney General may employ assistant counsel to enforce bonds.

1900, XXIII., 442.

The Attorney General is hereby authorized, in case he deems it necessary, to employ assistant counsel in all cases for the enforcement of said bonds and the collection of the penalties thereunder; the compensation of said assistant counsel shall be paid out of the sums recovered in such actions on such bonds.

Said bonds shall be for the use of the State and County or any person or persons who may be damaged or injured by reason of any violation on the part of the obligor of the law relating to intoxicating liquors purchased or sold during the term for which said appointment is made. The said bond shall

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be deposited with the County Treasurer, and suit thereon shall be brought at any time by the Solicitor or any person for whose benefit the same is given; and in case the conditions thereof, or any of them, shall be violated, the principal and sureties thereon shall also be jointly and severally liable for all civil damages, costs and judgments that may be obtained against the principal in any civil action brought by wife, child, parent, guardian, employer or other person under the provision of this law. All other moneys collected for breaches of such bond shall be distributed as other funds arising from the Dispensary. Said bond shall be approved as other official bonds for the County.

County Dispensaries; how located.

1896, XXII., 127.

Sec. 563. There may be one or more County Dispensers appointed for each County, the place of business of each of whom shall be designated by the County Board, but the State Board of Directors must give consent before more than one Dispenser can be appointed in any County; and when the County Board designates a locality for a dispensary, twenty days' public notice of which shall be given, it shall be competent for a majority of the voters of the township in which such dispensary is to be located to prevent its location in such township by signing a petition or petitions, addressed to the County Board, requesting that no dispensary be established in that township. The County Board may in its discretion locate a dispensary elsewhere than in an incorporated town in the Counties of Beaufort and Horry, and no others, except such as are authorized by special Act of the General Assembly: *Provided, however,* That any County, town or city wherein the sale of alcoholic liquors was prohibited by law prior to July 1, 1893, may secure the establishment of a dispensary within its borders in the following manner: Upon petition signed by one-fourth of the qualified voters of such County, town or city wishing a dispensary therein being filed with the County Supervisor or Town or City Council, respectively, they shall order an election submitting the question of dispensary or no dispensary to the qualified voters of such County, town or city, which election shall be conducted as other special elections; and if a majority of the ballots cast be found and declared to be for a dispensary, then a dispensary may be established in said County, town or city: *Provided,* That dispensaries may be established in the Counties of Williamsburg, Pickens and Marion and at Seneca and other towns now incorporated in Oconee County without such election or compliance with the other requirements of this Chapter: *Pro-*

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vided, That nothing in this Chapter contained shall be so construed as to prohibit persons resident in Counties which shall elect to have no dispensary from procuring liquors from dispensaries in other Counties, or County Dispensers from shipping same to their places of residence under proper labels or certificates: *Provided, further,* That nothing in this Chapter shall be construed to repeal an Act entitled "An Act to allow the opening of dispensaries in Pickens and Oconee Counties," approved December 18th, 1894.

Action on bond.—Walker v. Holtzclaw, 57 S. C., 459; 35 S. E., 754.

Oath of Dispensers; permits, &c.

Ib.

Sec. 564. If the application for the position of Dispenser be granted, the appointment shall not be made until the applicant shall make and subscribe on oath, before some officer authorized by law to administer oaths, which shall be endorsed upon the bond, to the effect and tenor following: "I,————, do solemnly swear (or affirm) that I will well and truly perform all and singular the condition of the within bond, and keep and perform the trusts confided in me to purchase, keep and sell intoxicating liquors. I will not sell, give or furnish to any person any intoxicating liquors otherwise than is provided by law, and, especially, I will not sell or furnish intoxicating liqours to any minor, intoxicated person or persons who are in the habit of becoming intoxicated, and I will make true, full and accurate returns to the County Board of Control on the first Monday of each month of all certificates and requests made to or received by me, as required by law, during the preceding month; and such returns shall show every sale and delivery of such liquors made by me or for me during the month embraced therein, and the true signature to every request received and granted; and such returns shall show all the liquors sold or delivered to any and every person as returned." Upon taking said oath and the oath required by the Constitution, and filing bond as hereinbefore provided, the County Board of Control shall authorize him to keep and sell intoxicating liquors as in this Chapter provided, and every appointment so made shall specify the building, giving the street and number or location, in which intoxicating liquors may be sold by virtue of the same, and the length of time in which the same shall be in force, which in no case shall exceed twelve months. Appointments made under this Chapter shall be deemed trusts reposed in the recipients thereof, not as a matter of right, but of confidence, and may be revoked upon sufficient showing by order of the

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County Board of Control; and upon the removal of any County Dispenser, or upon demand of the County Board of Control, he shall immediately turn over to the County Board of Control all liquors and other property in his possession belonging to the State or County. The County Board of Control shall be charged with the duty of prosecuting the County Dispenser or any of his employes who may violate any of the provisions of this Chapter. On the death, resignation, or removal of a County Dispenser, or expiration of his term of office, the County Board shall appoint his successor.

Office and Clerk of County Boards; books and records; profits; compensation, &c.

1894, XXI., 728; 1896, XXII., 130; 1901, XXIII., 708.

Sec. 565. The County Board of Control shall use as their office the office of the County Supervisor of their County and shall elect one of their number as Chairman and a clerk of said County Board of Control. The County Board shall preserve as a part of the records and files of their office all petitions, bonds and other papers pertaining to the appointment of Dispensers and keep suitable books in which bonds shall be recorded. The books shall be furnished by the County like other public records. The County Board of Control shall designate or provide a suitable place in which to sell the liquors. The members of the County Board of Control shall meet once a month or oftener, on the call of the Chairman, and each member of the Board shall receive a per diem of two dollars and five cents mileage each way, but they shall not receive compensation for more than thirty days in any one year, except in the County of Charleston, where they shall not receive compensation for more than sixty days in any one year, and in Barnwell County not more than fifty days in any one year, and in Chesterfield County, where the Chairman may receive per diem for not more than fifty days and the other members of the Board may receive per diem for not more than thirty days in any one year. They shall, upon the approval of the Board of State Directors, employ such assistants for the County Dispenser as may be necessary. The Dispenser and his assistants shall receive such compensation as the Board of State Directors may determine. All profits, after paying all expenses of the County Dispensary, shall be paid, one-half to the County Treasurer and one-half to the municipal corporation in which it may be located, such settlements to be made quarterly: *Provided,* That if the authorities of any town or city, in the judgment of the Board of State Directors, do not enforce this law, the State Board may withhold the part going to the said town or city

and use it to pay State Constables or else turn it into the County treasury. All moneys received by the County Dispenser belonging to the State shall be forwarded on Monday of each week to the State Treasurer, and at the same time the County Dispenser shall forward to the Board of State Directors a duplicate statement of the remittance so made to the State Treasurer. On the same day of each week the County Dispenser shall deposit with the County Treasurer the portion of all moneys received by him belonging to the County and to the municipal authorities in which the dispensary is located. The County Treasurer shall give his receipt therefor, and hold the same until the quarterly settlement hereinbefore provided for is had. The quarterly settlements herein provided for shall be made on the fourth Monday in the months of March, June, September and December in each year. Such settlements shall be made in the presence of the County Auditor, who shall make a memorandum of the items thereof and forward the same to the Board of State Directors. The Mayor or Intendant of the city or town in which the dispensary is located may also attend such settlement: *Provided,* That in Counties where dispensaries are established in other than incorporated cities or towns the County shall get all profits that would otherwise go to such cities and towns: *Provided,* That in the County of Barnwell the clerk of the Board of County Commissioners shall be the clerk of the Board of Control.

Requests for liquor, how made, and to whom refused.

1896, XXII., 127, § 10.

Sec. 566. Before selling or delivering any intoxicating liquors to any person a request must be presented to the County Dispenser, printed or written in ink, dated of the true date, stating that he or she is of age and the residence of the signer, for whom or whose use it is required, the quantity and kind required and his or her true name; and the request shall be signed by the applicant in his own true name and signature, attested by the County Dispenser or his clerk who receives and files the requests. But the requests shall be refused if the County Dispenser filling it personally knows the person applying is a minor, that he is intoxicated, or that he is in the habit of using intoxicating liquors to an excess; or if the applicant is not so personally known to said County Dispenser, before filling said order or delivering said liquor he shall require the statement of a reliable and trustworthy person of good character and habits, known personally to him, that the applicant is not a

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minor and is not in the habit of using intoxicating liquors to excess.

Requests for liquor to be made on blanks furnished, &c.

Ib.

Sec. 567. Requests for purchase of liquor shall be made upon blanks furnished by the County Auditor, in packages of one hundred each, to the County Dispenser, from time to time as the same shall be needed, and shall be numbered consecutively by the Auditor. The blanks aforesaid shall be furnished to the County Auditor by the Board of State Directors in uniform books like bank checks, and the date of delivery shall be endorsed by the County Auditor on each book and receipt taken therefor and preserved in his office. The Dispenser shall preserve the application in the original form consecutively by the Auditor. When return thereof is made the County Auditor shall endorse thereon the date of return, and file and preserve the same, to be used in the quarterly settlements between such Dispenser and the County Treasurer. All unused or mutilated blanks shall be returned or accounted for before other blanks are issued to such County Dispenser.

Returns by Dispenser, &c.

Ib.

Sec. 568. On or before the tenth day of each month each Dispenser shall make full returns to the County Auditors of requests filled by him and his clerks during preceding month, upon blanks to be furnished by the Board of State Directors for that purpose, and accompany the same with an oath, duly taken and subscribed before the County Auditor or a Notary Public, which shall be in the following form, to wit: I, ——————————, being duly sworn, state on oath that the request for liquors herewith returned are all that were received and filled at my place of business under my permit during the month of ————————, 189—; that I have carefully preserved the same, and that they were filled up, signed and attested at the date shown thereon, as provided by law; that said requests were filled by delivering the quantity and kind of liquors required, and that no liquors have been sold or dispensed under my permit during said month except as shown by the request herewith returned; and that I have faithfully observed and complied with the provisions of my bond and oath taken by me, thereon endorsed, and with all the laws relating to my duties in the premises.

Enforcement of returns in case of failure.

Ib.

Sec. 569. Upon failure of any Dispenser to make returns to the Auditor as herein required, it shall be the duty of said Auditor to report such failure to the Board of State Directors, and the said Board of State Directors shall immediately order

the County Board to summon said delinquent Dispenser to appear before them and show cause why his appointment should not be revoked; and if cause shall not be shown to the satisfaction of the County Board of Control, they shall immediately annul said appointment and give public notice thereof; and the Circuit Solicitor shall proceed to enforce the penalties prescribed in this Chapter for such violation against such County Dispenser at the next succeeding term of Court in the County in which such appointment is held; and any Dispenser who shall sell or dispose of any intoxicating liquors after his appointment shall have been revoked shall, upon conviction thereof, be fined not less than five hundred (500) dollars and be imprisoned for six months. If any Dispenser or his clerk shall procure any intoxicating liquors from any other person except from the Dispensary Commissioner, or if he, or they, or any person or persons in his or their employ, or by his or their direction, shall sell or offer for sale any liquors other than such as have been furnished by the Dispensary Commissioner, or shall adulterate, or cause to be adulterated, any intoxicating spirituous or malt liquors which he or they may keep for sale under this Chapter, by mixing with some coloring matter or any drug or ingredient whatever, or shall mix the same with other liquors of different kind or quality, or with water, or shall sell or expose for sale such liquors so adulterated, knowing it to be such, or shall change the label upon any box, bottle or package, he or they shall be guilty of a misdemeanor and be fined in a sum not less than two hundred dollars or imprisoned for not less than six months. If any County Dispenser shall misappropriate, misuse or otherwise wrongfully dispose of any moneys or other property belonging to the State, County or municipality, he shall upon conviction be punished as in case of breach of trust with fraudulent intent.

Penalty for illegal purchase, &c.

Sec. 570. Any County Dispenser who, in violation of his oath of office, sells or furnishes intoxicating liquors to any minor, intoxicated person, or person who is in the habit of becoming intoxicated, or fails to make full and accurate returns as required by law, showing the true signature to every request for liquor by him received and granted, or sells liquor to any person without first requiring the written requests therefor to be filled out and signed as provided by law or the regulations of the State Board of Control, that on such information given by any person, with sufficient evidence, it shall be the duty of

Dispensers violating the law liable to damages.

Ib.

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the Solicitor to bring suit in the name of the County for two hundred dollars' damages on the bond of the said County Dispenser against the principal and sureties of said bond for each of such violations, for which said principal and sureties shall be liable, jointly and severally, together with all cost and judgments pertaining to the suit. And on judgments given against him the said County Dispenser shall be immediately deprived of his office as Dispenser, and his principal and sureties aforesaid shall remain further liable, jointly and severally, to the extent of their bond, to all civil damages, costs and judgments which may be obtained against the principal in any civil action brought by wife, child, parent, guardian, employe, or other person, under the provisions of the law: *Provided,* That if the said County Dispenser can show to the satisfaction of a jury by way of defense that the said intoxicating liquor was obtained from him by the infant, intoxicated person, or person in the habit of becoming intoxicated, by fraudulent and deceitful representations, the person making such fraudulent and deceitful representation shall be guilty of a misdemeanor, and be fined in a sum of not less than two hundred dollars or imprisonment for not less than six months.

Manufacture, sale and barter of liquors prohibited, except by permit.

1896, XXII., 127; 1898, XXII., 805; 1897, *Ib.*, 520; 1901, XXIII., 706, § 15.

Permits, how obtained.

Sec. 571. No person, firm, association or corporation shall manufacture for sale, or keep for sale, exchange, barter, or dispense, any liquors containing alcohol, for any purpose whatsoever, otherwise than is provided in this Chapter. Any person, firm, association or corporation desiring or intending to manufacture or distill any liquors containing alcohol within this State shall first obtain from the State Board of Directors a permit or license so to do; nor shall such permit or license be granted to any person, firm, association or corporation to manufacture or distill any liquors containing alcohol within this State within two miles of any church or public school; but in the case of distillers, such permit or license shall not be granted or renewed, except on petition signed in person by a majority of the resident freeholders in the city, town or township in which it is proposed to locate the distillery, and it shall be unlawful for any such person, firm, association or corporation to manufacture or distill any liquors containing alcohol within this State without having such permit or license: *Provided,* That in the County of Pickens it shall be lawful for the said Board to grant such permit or license, when the other provisions of this Section are complied with, and within one mile of any church or public

Special provisions as to Pickens County.

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school. Any violation of the terms of the permit or license shall authorize and warrant the seizure of the product on hand at any distillery or place where liquors containing alcohol are manufactured: *Provided,* The United States has no lien or claim upon the same. And in the application for a permit or license to manufacture liquors containing alcohol, the applicant shall give the State full power upon any violation of this Chapter to seize and take possession of any product on hand at the distillery or place where such applicant shall manufacture such liquors, and shall authorize the State to pay the United States government the tax upon the same, if unpaid, and to dispose thereof as provided herein for contraband goods. Every package, barrel or bottle of such liquor shipped beyond the limits of this State shall have thereon the certificate of the State Board of Directors allowing the same, otherwise it shall be liable to confiscation, and the railroad conveying it shall be punished as in Section 560: *And provided,* That any person shall have the right to make wine for his or her own use, from grapes or other fruits. The Inspector appointed by the Board of State Directors, as herein provided, shall have the right to enter and examine, at any and all times not forbidden by the United States laws, any distillery, brewery or place where liquors containing alcohol are manufactured within this State. Any manufacturer, distiller or brewer who may refuse to allow the Inspector or Constable to enter and examine his place of business and its appurtenances at such time as the Inspector or Constable may deem proper, shall forfeit his permit or license: *Provided, further,* That the provisions of this Chapter shall not apply to distilleries already established and operating according to law, and so long as they continue so to operate: *Provided, also,* That the State Board of Directors may grant privileges for the erection and operation of breweries, distilleries and establishments for the bottling and sale of beer, styled "Beer Dispensaries," in cities of over twenty thousand population, to be operated as now prescribed by law.

Account book of Dispenser.

Ib.

Sec. 572. Every Dispenser shall keep a strict account of all liquors received by him from the Dispensary Commissioner, in a book kept for that purpose, which shall be subject at all times to the inspection of the Circuit Solicitor, any peace officer or grand juror of the County, or of any other citizen, and such book shall show the amount and kind of liquors procured, the date of receipt and amount sold, and the amount on hand of

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each kind for each month. Each book shall be produced by the party keeping the same, to be used as evidence on trial of any prosecution against him on notice duly served that the same will be required as evidence.

U. S. special tax, *prima facie* evidence of illegal sales.

Ib.

Sec. 573. The payment of the United States special tax as a liquor seller, or notice of any kind in any place of resort, or in any store or shop, indicating that alcoholic liquors are there sold, kept or given away, shall be held to be *prima facie* evidence that the person or persons paying said tax and the parties displaying such notices are acting in violation of this Chapter, and unless said person or parties are selling under appointment as prescribed by this Chapter they shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment for a term of not less than three months nor more than twelve months. Conviction in the United States Courts of illicit sales of liquors shall be taken as *prima facie* evidence of violation of the provisions of this Chapter, and any distiller or manufacturer of liquors containing alcohol so convicted in the United States Courts shall, by reason of such conviction, forfeit the permit or license granted him by the Board of State Directors in addition to the other penalties herein provided.

Privileges to licensed druggists.

Ib.

Sec. 574. Licensed druggists conducting drug stores, and manufacturers of proprietary medicines, are hereby authorized to purchase of Dispensers of the Counties of their residence intoxicating liquors (not including malt) for the purpose of compounding medicines, tinctures and extracts that cannot be used as a beverage. The Dispenser shall not charge licensed druggists more than ten per cent. net profits for liquors so sold. Such purchaser shall keep a record of the uses to which the same are devoted, giving the kind and quantity so used, and quarterly they shall make and file with the County Auditor and with the County Board of Control sworn reports, giving a full and true statement of the quantity and kinds of such liquors purchased and used, the uses to which the same have been devoted, and giving the name of the Dispenser from whom the same was purchased, and the dates and quantities so purchased, together with an invoice of each kind still in stock and kept for such compoundings. If said licensed druggist shall sell, barter, give away or exchange, or in any manner dispose of, said liquors for any purpose other than authorized by this Section, he shall, upon conviction, forfeit his license and be liable to all

penalties, prosecutions and proceedings at law and in equity provided against persons selling without authority, and upon such conviction the Clerk of the Court shall, within ten days after such judgment or order, transmit to the Board of Pharmaceutical Examiners the certified record thereof, upon receipt of which the said Board shall strike the name of the said druggist from the list of pharmacists and revoke his certificate: *Provided,* That nothing herein contained shall be construed to authorize the manufacture or sale of any preparation or compound, under any name, form or device, which may be used as a beverage which is intoxicating in its character: *And provided, further,* That the Dispensary Commissioner shall be authorized to sell to manufacturing chemists and wholesale druggists alcohol by the barrel at not exceeding ten per cent. above the net cost.

False signatures, statements, &c.; penalties.

Ib.

Sec. 575. If any person shall make any false or fictitious signature or sign any name other than his or her own to any paper required to be signed by this Chapter, without being authorized to do so, or make any false statement in any paper, request or application signed to procure liquor under this Chapter, the person so offending shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than twenty-five dollars or be imprisoned not more than thirty days.

False oaths and illegal acts of Dispensers.

Ib.

Sec. 576. If any Dispenser or his clerk shall make false oath touching any matter required to be sworn to under the provisions of this Chapter, the person so offending shall, upon conviction, be punished as provided by law for perjury. If any County Dispenser shall procure any intoxicating liquors from any other person than the Dispensary Commissioner, or make any false return to the County Auditor, or use any request for liquors for more than one sale, in any such case he shall be deemed guilty of a misdemeanor and, upon conviction, be punished by a fine of five hundred dollars or six months' imprisonment.

Liquors at clubs prohibited.

Ib.

Sec. 577. Every person who shall, directly or indirectly, keep or maintain by himself, or by associating or combining with others, or who shall in any manner aid, assist or abet in keeping or maintaining, any club room or other place in which any intoxicating liquors are received or kept for use, barter or sale as a beverage, or for distribution or division among the members of any club or association by any means whatever, and every person who shall receive, barter, sell, assist, or abet another in

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receiving, bartering or selling, any alcoholic liquors so received or kept, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment for a term of not less than three months nor more than twelve months: *Provided,* That the Board of State Directors shall have the power, upon a proper showing, and under such rules as they may adopt, to exempt hotels where tourists or health seekers resort from being considered nuisances or as violating this Chapter by reason of any manager of such hotels dispensing liquors bought from the Dispensary by the bottle, either night or day, but before any such exemption shall be granted the Board of State Directors shall require the manager of such hotel to give a good and sufficient bond in the penal sum of three thousand dollars, conditioned for the observance of all the rules, regulations and restrictions prescribed and imposed by the said Board, and with all the requirements of this Chapter; and it shall be lawful for any Constable or officer thus employed under this Chapter to enter such hotel and search it for contraband liquors at any time, day or night, without a warrant.

Liquor resorts declared to be nuisances; arrest warrants, seizures, &c.

Sec. 578. All places where alcoholic liquors are manufactured, sold, bartered or given away in violation of this Chapter, or where persons are permitted to resort for the purpose of drinking alcoholic liquors as a beverage, or where alcoholic liquors are kept for sale, barter or delivery in violation of this Chapter, are hereby declared to be common nuisances, and any person may go before any Magistrate in the County and swear out an arrest warrant on personal knowledge or on information and belief, charging said nuisance, giving the names of witnesses against the keeper or manager of such place and his aids and assistants, if any, and such Magistrate shall direct such arrest warrant either to the Sheriff of the County or to any special Constable, commanding said defendant to be arrested and brought before him to be dealt with according to law, and shall issue a search warrant in which the premises in question shall be particularly described, commanding such Sheriff or Constable to thoroughly search the premises in question and to seize all alcoholic liquors found thereon, and dispose of them as provided in Section 587, and to seize all vessels, bar fixtures, screens, bottles, glasses and appurtenances apparently used or suitable for use in retailing liquors, to make a complete in-

ventory thereof, and deposit the same with the Sheriff. Under the arrest warrant the defendant shall be arrested and brought before such Magistrate, and the case shall be disposed of as in case of other crimes beyond his jurisdiction, except that when he commits or binds over the parties for trial to the next term of Court of General Sessions for the County he shall make out every paper in the case in duplicate and file one with the Clerk of the Court for the County, and immediately transmit the other to the Solicitor of the Circuit, whereupon the said Solicitor shall at once apply to any Circuit Judge at chambers within that Circuit, or to the nearest Circuit Judge if there be none in that Circuit, for an order restraining the defendants, their servants or agents, from keeping, receiving, bartering, selling or giving away any alcoholic liquors until the further order of the Court. Such Circuit Judge is hereby authorized, empowered and required to grant the said restraining order without requiring a bond or undertaking upon the hearing or receipt by him of said papers from the Court of the said Magistrate by the hands of the Solicitor; and any violation of said restraining order before the trial of the case shall be deemed a contempt of Court and punished as such by said Judge or Court, or any other Circuit Judge, as for the violation of an order of injunction. Upon conviction of said defendants of maintaining said nuisance at the trial, they or any of them shall be deemed guilty of a misdemeanor, punishable by imprisonment in the County jail for a term of not less than three months, or a fine of not less than two hundred dollars, or by both, in the discretion of the Court, and the restraining order shall be made perpetual. The articles covered by the inventory, which were retained by the Sheriff, shall be forfeited to the State and sold, and the net proceeds sent to the State Treasurer, and the Sheriff shall forthwith proceed to dispose of the alcoholic liquors covered by said inventory as provided for in this Chapter as when other liquors are seized. Liquors seized as hereinbefore provided, and the vessels containing them, shall not be taken from the custody of the officers in possession of the same by any writ of *replevin* or other process while the proceedings herein provided are pending. No suit shall lie for damages alleged to arise by seizure and detention of liquors under this Chapter. Any person violating the terms of any restraining order granted in such proceedings shall be punished for contempt by a fine of not less than two hundred dollars nor more than one thousand

Restraining order.

Violation of order to be contempt.

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dollars, and by imprisonment not less than ninety days nor more than one year.

Punishment for contempt.

In contempt proceedings arising out of the violation of any injunction granted under the provisions of this Chapter, the Court, or in vacation any Judge thereof, shall have power to try summarily and punish the party or parties guilty, as required by law. The affidavits upon which the attachment for contempt issues shall make a *prima facie* case for the State. At the hearing upon the charge for contempt, evidence may be oral or in the form of affidavits, or both. The defendant shall not necessarily be discharged upon his denial of the fact stated in the moving papers. The Clerk of the Court shall, upon the application of either party, issue subpœnas for witnesses, and, except as above set forth, the practice in such contempt proceedings shall conform as nearly as may to the practice in the Court of Common Pleas. When any Solicitor neglects or refuses to perform any duty, or to take any steps required of him by any of the provisions of this Section, or by any of the provisions of this Chapter, the Attorney General, on his own motion, or by request of the Governor, shall in person, or by his Assistant, proceed to the locality and perform such neglected duty, and take such steps as are necessary in the place of such Solicitor, and at his discretion to cause a prosecution to be instituted, not only in the matter so neglected, but also a prosecution against the Solicitor for malfeasance or misfeasance in office, or for official misconduct, or for other charges justified by facts, and to pursue the prosecution to the extent of a conviction and dismissal from office of any such Solicitor.

Duty of Attorney General when Solicitor neglects his duty.

And in such event the Attorney General shall be, and is hereby, authorized and empowered to appoint one or more additional assistants, who shall each have while actually employed the same compensation, to be paid from the litigation fund of the Attorney General.

Any duty herein imposed upon a Solicitor may be performed with equal force and effect by the Attorney General or other person authorized by him to perform such duty.

Keeping and maintaining a nuisance is continuous, and is properly alleged as being kept on day certain, and on divers days before and since.—State v. Prater, 59 S. C., 271; 37 S. E., 933.

Under indictment for maintaining a nuisance, sales to parties other than those named in the indictment may be shown.—State v. Green, 61 S. C., 13; 39 S. E., 185; State v. Robison, 61 S. C., 106; 39 S. E., 247.

So, it may be shown that liquors were found in an adjoining room over which defendant had control.—State v. Green, 61 S. C., 13; 39 S. E., 185.

Responsibility for acts of servants.—State v. Moore, 49 S. C., 438; 27 S. E., 454.

And that sales were made on day prior to indictment, other than alleged therein.—State v. Green, 61 S. C., 13; 39 S. E., 185.

Objection that question would tend to incriminate witness cannot be made by a defendant.—State v. Butler, 47 S. C., 25; 24 S. E., 991.

Allegation and proof as to place of sale.—State v. Marchbanks, 61 S. C., 20; 39 S. E., 187.

Conduct of person going to and leaving house relevant.—State v. Marchbanks, 61 S. C., 20; 39 S. E., 187.

Defendant may be asked whether he has been convicted for similar charge; subject to his right to refuse to answer.—State v. Mitchell, 56 S. C., 532; 35 S. E., 210.

Charge propounding certain questions to jury held not prejudicial error.—State v. Ross, 58 S. C., 444; 36 S. E., 659.

Distillers to report quarterly to State Board.

Sec. 579. The manager of every registered distillery of liquor in this State shall report quarterly to the Board of State Directors, showing the number of gallons of each kind of liquor on hand, manufactured or disposed of during the quarter; and if the said report fail to correspond with the return of said distiller to the United States Revenue Collector of this State, or it is shown that said manager has disposed of liquor contrary to this Chapter, said distillery shall be deemed to be a common nuisance, and the said manager and his aiders and assistants and the premises shall be proceeded against as in this Chapter provided as to places where liquors are sold contrary to this Chapter.

Search warrant, by whom issued; disposition of liquor seized.

Ib.

Sec. 580. In all places where liquors are unlawfully kept or stored, the same not being in an open house or exposed to view, and a search being necessary, upon affidavit to that effect, or on information and belief that contraband liquor is in such place, a search warrant may be issued by a Justice, Judge or Magistrate, or Mayor or Intendant of a city or town, to whom application is made, empowering a Constable, or any person who may be deputized, to enter the said place by day time, or in the night time, and to search and examine the said premises for the purpose of seizing the said contraband liquors therein concealed, kept or stored, which said liquor when so seized shall be disposed of as hereinafter provided.

When seizures may be made without warrant.

Ib.

Sec. 581. Any of the liquors set forth in Section 555 which are contraband, may be seized and taken without warrant by any Constable, Sheriff or policeman while in transit or after arrival, whether in possession of a common carrier, depot, agent, express agent, private person, firm, corporation or association, and reported to the Dispensary Commissioner at once, who shall dispose of the same as hereinafter provided: *Provided,* That

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liquors purchased outside the State, owned and conveyed as personal baggage, shall be exempt from seizure when the quantity does not exceed one gallon.

Possession of illicit liquor prohibited; debt for void.

Ib.

Sec. 582. The possession of said illicit liquors is hereby prohibited and declared unlawful, and any obligation, note of indebtedness, contracted in their sale or transportation is declared to be absolutely null and void, nor shall any action or suit for the recovery of the same be entertained in any Court in this State.

Proceedings *in rem.*

Ib.

Sec. 583. The proceedings against liquor so illegally kept, stored, sold, delivered, elsewhere than at his or her residence, transported or being transported, shall be considered a proceeding *in rem,* unless otherwise herein provided.

Transportation or possession of falsely branded packages.

Ib.

Sec. 584. The carriage, transportation, possession, removal, sale, delivery or acceptance of any of the said liquors or liquids in any package, cask, jug, box or other package, under any other than the proper name or brand known to the trade as designating the kind and quality of the contents of the casks, packages or boxes containing the same, or the causing of such carriage, transportation, possession, removal, sale, delivery or acceptance, shall work the forfeiture of said liquors or liquids and casks or packages, and the person or persons so offending, knowingly, be subject to pay a fine of not less than one hundred dollars nor more than five hundred dollars, or imprisonment for the term of not less than six months nor more than one year, and the wrongful name, address, mark, stamp or style on such liquor when seized shall be considered evidence *prima facie* of guilt. The books and way bills of the common carrier may be examined to trace said liquor to the shipper, who shall be liable, upon conviction, in like penalty.

Powers of Constables to detain suspicious packages.

Ib.

Sec. 585. All Constables, Deputy Constables, Sheriffs, Magistrates or municipal policemen shall have the right, power and authority, and it shall be their duty, whenever they are informed or suspect that any such suspicious package in possession of a common carrier contains alcoholic liquors or liquids, to detain the same for examination for the term of twenty-four hours without any warrant or process whatever. Any Constable, Deputy Constable, Sheriff or Magistrate who shall neglect or refuse to perform the duties required by this Chapter shall be subject to suspension by the Governor. Any Sheriff or Magistrate seizing any alcoholic liquors or liquids as required by this Section shall be paid one-half the value of said liquor or liquids

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so soon as the same shall have been received at the State Dispensary, approved and disposed of according to law.

Interference with officers forbidden.

Ib.

Sec. 586. Any interference by any person with, obstruction or resistance of, or abusive language to, any officer or person in the discharge of the duties herein enjoined, or the use of abusive language by any such officer or person to any other person or persons, shall be deemed a misdemeanor, and the person or persons so offending shall, upon conviction, be punished by a fine of not less than one hundred dollars, nor more than five hundred dollars, or imprisonment for a term of not less than three months nor more than twelve months.

Proceedings when goods seized are of the value of $50 or more.

Sec. 587. In all cases of seizure of any goods, wares, merchandise, or any other property, hereafter or heretofore, made as being subject to forfeiture under any provisions of this Chapter, or any former Act, which in the opinion of the officer or person making the seizure are of the appraised value of fifty dollars or more, the said officer or person shall proceed as follows: First. He shall cause a list containing a particular description of the goods, wares or merchandise seized to be prepared in duplicate and an appraisement thereof to be made by three sworn appraisers to be selected by him, who shall be respectable and disinterested citizens of the State of South Carolina residing within the County wherein the seizure was made. Said list and appraisement shall be properly attested by the said officer or person and the said appraisers, for which service each of the said appraisers shall be allowed the sum of one dollar per day, not exceeding five days, to be paid by the Board of State Directors. Second. If the said goods are believed by the officer making the seizure to be of less value than fifty dollars, no appraisement shall be made. The said officer or person shall proceed to publish a notice for three weeks, in writing, at three places in the County where the seizure was made, describing the articles and stating the time and place and cause of their seizure, and requiring any person claiming them to appear and make such claim within thirty days from the date of the first publication of such notice. Third. Any person claiming the liquors or other property so seized as contraband within the time specified in the notice may file with the Board of State Directors a claim, stating his interest in the articles seized, and may execute a bond to the Board of State Directors in the penal sum of five hundred dollars, with sureties, to be approved by the said Board of State Directors, conditioned that in the

When of less value than $50.

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case of condemnation of the articles so seized the obligors shall pay all the costs and expenses of the proceedings to obtain such condemnation; and upon the delivery of such bonds to the Board of State Directors he shall transmit the same with the duplicate list or description of the goods seized to the Solicitor of the Circuit in which such seizure was made, and the said Solicitor shall prosecute the case to secure the forfeiture of said contraband liquors or liquids in the Court having jurisdiction.

Duty of Solicitor.

Fourth. If no claim is interposed and no bond given within the time above specified, such liquors shall be forfeited without further proceedings, and the Dispensary Commissioner shall have the said liquors tested by the State Chemist, and, if pure, shall furnish the same through the State Dispensary. If not pure, the same shall be destroyed by the Chemist of the South Carolina College, who shall make a report to the Board of State Directors of the amount and kinds of liquors so destroyed: *Provided,* That in seizures in quantities less in value than fifty dollars of such illicit liquor or liquors, the same may be advertised with other quantities at Columbia by the Board of State Directors and disposed of as hereinbefore provided: *Provided, further,* That the claimants of such liquors may give bond in one hundred dollars as when the value is fifty dollars or over, and shall bear the burden of showing before a Magistrate that they have complied with the law and that the liquor is not liable to seizure.

When claimants may give bond.

Ib.

Liquors on arrival in the State to be subject to its laws.

Ib.

Sec. 588. All fermented, distilled or other liquors, or liquids containing alcohol, transported into this State, or remaining herein for use, sale, consumption, storage, or other disposition, shall, upon introduction and arrival in this State, be subject to the operation and effect of this law to the same extent and in the same manner as though such liquors or liquids had been produced in this State.

Penalty for transporting liquors in vehicles, except as herein provided.

Sec. 589. No person, except as provided in this Chapter, shall bring into this State, or transport from place to place within this State, by wagon, cart or other vehicle, or by any other means or mode of carriage, any liquor or liquids containing alcohol, under a penalty of one hundred dollars or imprisonment for thirty days for each offense, upon conviction thereof, as for a misdemeanor. Any servant, agent or employe of any persons, corporations or associations doing business in this State as a common carrier, or any person whatever (except an officer seizing or examining the same), who shall remove any

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intoxicating liquors from any railroad car, vessel or other vehicle of transportation at any place other than the usual and established stations, wharves, depots or places of business of such common carriers within some incorporated city or town where there is a Dispensary, or who shall aid in or consent to such removal, or attempt to remove, shall, upon conviction, be sentenced to pay a fine of not less than one hundred dollars nor more than five hundred dollars, or imprisonment for a term of not less than three months nor more than twelve months: *Provided,* That said penalty shall not apply to any liquor in transit when changed from car to car to facilitate transportation across the State: *Provided,* That this Section does not apply to liquors purchased from a Dispensary and bearing the proper label or certificate. All liquors in this State, except Dispensary liquors and those passing through this State, consigned to points beyond this State, shall be deemed contraband, and may be seized in transit without warrant. And any steamboat, sailing vessel, railroad, express company or other common carrier transporting or bringing into this State alcoholic liquors for sale or use therein, except by the Dispensary, shall suffer a penalty of five hundred dollars and costs for each offense, to be recovered by the Solicitor of the Circuit or the Attorney General by an action brought therefor in any Court of competent jurisdiction. The State Constable, Sheriff, municipal police or any lawful Constable may enter any railroad car, or express car, or depot, or steamboat, or other vessel, without warrant, and make search for such contraband liquors, and may examine the way bills and freight books of said common carriers, and any one interfering with or resisting such officer shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or imprisonment for a term of not less than three months nor more than twelve months.

Liquors in *transitu.*

Officers may enter and search cars.

This Section does not apply to liquors being brought into the State by a purchaser until his arrival at his home in this State.—State v. Holleyman, 55 S. C., 207; 33 S. E., 366; 31 S. E., 362. Applies to transportation of liquors between points within the State.—State v. Pickett, 47 S. C., 101; 25 S. E., 46.

Sec. 590. Any person detected openly or in the act of violating any of the provisions of this Chapter shall be liable to arrest without warrant: *Provided,* A warrant shall be procured within a reasonable time thereafter.

Arrest of open violators.

Similar power to make arrest is had by United States Deputy Marshals.—State v. Dill, 48 S. C., 249; 26 S. E., 567.

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Punishment for violation of forbidden acts.

Sec. 591. In case of conviction of violations of any of the Sections of this Chapter where punishment is not especially provided for, the person or persons or corporations so convicted shall be punished in the discretion of the Court trying the same. All alcoholic liquors, other than domestic wine, which do not have on the packages in which they are contained the label and certificates going to show that they have been tested by the Chemist and purchased from a State officer authorized to sell them are hereby declared contraband, and on seizure will be forfeited to the State, as provided in Section 587: *Provided,* That this Section shall not apply to liquor held by the owners of registered stills in bonded warehouses. Persons having liquor which they wish to keep for their own use may throw the protection of the law around the same by furnishing an inventory of the quantity and kinds to the Dispensary Commissioner and applying for certificates to affix thereto.

Protection may be had for liquor stored.

Imitation stamps prohibited.

Any persons affixing or causing to be affixed to any package containing alcoholic liquor any imitation stamp or other printed or engraved label or device than those furnished by the Board of State Directors shall, for each offense, be liable to a penalty of ten days' imprisonment or twenty-five dollars' fine.

Rescue from officer.

Ib.

Sec. 592. Every person who dispossesses or rescues from a Constable or other officer, or attempts so to do, any alcoholic liquor taken or detained by such officer charged with the enforcement of this law shall, upon conviction, be imprisoned not less than three months nor more than twelve months, or by a fine of not less than one hundred dollars nor more than five hundred dollars.

Handling contraband liquor at night.

Ib.

Sec. 593. Any person handling contraband liquor in the night time or delivering the same shall be guilty of a misdemeanor, and on conviction shall be punished by imprisonment for not less than three months nor more than twelve months, or by a fine of not less than one hundred dollars nor more than five hundred dollars.

State v. Holleyman, 55 S. C., 207; 33 S. E., 366; 31 S. E., 362; State v. Adams, 49 S. C., 518; 27 S. E., 523.

Transportation by vehicles at night.

Ib.

Sec. 594. Any wagon, cart, boat, or any other conveyance, together with horses, mules, or other animal or animals and harness, accompanying the same, transporting liquors at night, other than regular passenger or freight steamers and railway cars, shall be liable to seizure and confiscation, and to that end the officer shall cause the same to be duly advertised and sold and the proceeds sent to the State Treasurer.

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In determining whether the property should be confiscated under this Section, the acquittal of the person accused of illegally transporting such liquor under Sec. 593, is a material circumstance to be considered.—Dobbins v. Gaines, 52 S. C., 180; 29 S. E., 401.

Labels to be cancelled by Dispenser.

Sec. 595. Every Dispenser when he sells a package containing liquor shall put a cross mark in ink on the label or certificate thereon extending from the top to the bottom and from side to side. When any liquor is seized because it has not the necessary certificates and labels required by this Chapter, the burden of proof shall be upon the claimant of said spirits to show that no fraud has been committed and that the whiskey is not contraband.

Common carriers liable to treble value of goods lost or stolen.

Ib.

Sec. 596. Any railroad, steamboat, express company or other common carrier shall incur a penalty of treble the invoice price of any alcoholic liquors lost or stolen in transit to or from the Dispensary, whether shipped as released or not, such penalty to be recovered by action in any Court of competent jurisdiction.

Officers to notify Solicitors, &c.

Sec. 597. It shall be the duty of Sheriffs, Deputy Sheriffs and Constables having notice of the violation of any of the provisions of this Chapter to notify the Circuit Solicitor of the fact of such violation, and to furnish him the name of any witness within their knowledge by whom such violation can be proven. If any such officer or Solicitor shall wilfully fail to comply with the provisions of this Section, he shall, upon conviction, be fined in a sum not less than one hundred dollars nor more than five hundred dollars, and such conviction shall work a forfeiture of the office held by such person, and the Court before whom such conviction is had shall, in addition to the imposition of the fine aforesaid, order and adjudge the forfeiture of his said office.

Competent to charge divers sales on same or different days.

Ib.

Sec. 598. In any indictment for the sale of intoxicating liquors it shall be competent to charge a series of sales on the same or on divers days up to the finding of the true bill to one person, or to different persons, naming one and stating the others to be unknown, in the same count, as was formerly the practice in indictments for retailing liquor without license in this State, and the prosecuting officer shall not be required to elect which particular sale he will rely on, but may offer proof of all, and proof of any one or of all the sales will sustain a verdict: *Provided,* Upon a trial and conviction or acquittal no other bill of indictment will lie for any sale occurring prior to bill found on the case tried, and that punishment shall be in such cases as for one sale: *Provided, further,* That this Section shall not be so construed as to prevent the prosecuting

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officer from giving out several bills of indictment for several sales in the first instance if he thinks best to do so.

So far as this Section attempts to authorize proof of sales to "divers other persons" to the jurors unknown, it has been held inoperative under the Constitution, Art. I., Sec. 18.—State v. Jeffcoat, 54 S. C., 196; 32 S. E., 298; State v. May, 45 S. C., 511; 23 S. E., 513; State v. Couch, 54 S. C., 286; 32 S. E., 408.

But sales may be alleged on a day certain and on "divers other days" both before and since; and proved on any day prior to the finding of the indictment.—State v. Prater, 59 S. C., 274; 37 S. E., 933.

Affidavits may be on information and belief.

Ib.

Sec. 599. Whenever in this Chapter it is provided that process shall issue upon an affidavit based on information and belief, the affidavit shall contain a statement setting forth the sources of information, the facts and grounds of belief upon which the affiant bases his belief: *Provided*, That it shall not be necessary to set forth the sources of information, the facts and grounds of belief in the affidavit upon which a warrant of arrest shall issue, but it shall only be necessary in cases of search warrants.

Actions against officers acting under this law.

Sec. 600. Chapter I., Title VII. of the Code of Civil Procedure of this State, entitled "Of Provisional Remedies in Civil Actions," shall not apply to any officer or person having duties to perform under this Chapter, and in no case shall an action lie against any such officer or person for damages to person or property, as provided in said Chapter.

See Section 661 of Civil Code as to the appointment of Constables to enforce the Dispensary Law.

Use of false or misleading labels a misdemeanor.

1900, XXIII., 441.

Sec. 601. It shall be unlawful for the Dispensary Commissioner, or any officer or employe of the State Dispensary, or any County Dispenser or his clerk, to put any false or misleading label on any package of liquor to be sold under the provisions of this Chapter, or to receive any samples for personal use, or to drink or to give away any liquors in stock; and any person found guilty of violating any provisions of this Section shall, upon conviction in any Court of competent jurisdiction, be punished by a fine of not less than one hundred dollars ($100) or by imprisonment for not less than three months, and such conviction shall work a forfeiture of the office or position held by such person.

Use of palmetto label prohibited by Board of State Directors.

1899, XXIII., 102.

Sec. 602. The Board of State Directors of this State shall not use any label with the palmetto tree printed on it, or any bottle in which the design or representation of a palmetto tree is blown: *Provided*, That the provisions of this Section shall not apply to the stock of labels and bottles on hand at the time of the approval of this Section.

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Sec. 603. The presiding officers of the Senate and House of Representatives shall annually appoint a Committee, consisting of two members of the House of Representatives and one Senator, whose duty it shall be to make quarterly examinations of the books and financial transactions of the State Dispensary for the fiscal year beginning on the first day of November previous to the date of their appointment, and to make a written report of such examinations to the General Assembly at the session next succeeding after their appointment. It shall be the duty of at least one member of said Committee to be present at the taking of the inventory of the stock of the State Dispensary at the end of each quarter.

Committee to examine Dispensary accounts.

Composition.

1884, XXI., 785.

Duty.

Each member of said Committee shall receive the same per diem and mileage as members of the General Assembly, to be paid out of the Dispensary funds by warrant of Dispensary Commissioner on the State Treasurer: *Provided,* That no per diem be allowed to the members of said Committee for more than twenty-four days during any fiscal year.

Pay.

How paid.

Proviso.

Sec. 604. It shall be unlawful for any club, company, association or corporation, or any chartered company now in existence, or hereafter to be incorporated, for social, literary or other purpose, within this State, to levy, sell, keep for sale, exchange, barter or dispense without a license any liquor, wine, beer, bitters or other intoxicating spirits for any purpose whatever either to members or to other persons; and any member or members knowingly belonging to any club, company, association or corporation which receives and dispenses intoxicating spirits contrary to the provisions of this Section shall be deemed guilty of a misdemeanor, and upon conviction thereof before a Magistrate shall be fined in a sum not less than thirty nor more than fifty dollars, or imprisoned in the County jail not exceeding thirty days, for each and every offense.

Clubs not to dispense liquors without license.

R. S. 483; 1892, XXI., 61.

Penalty for membership in offending club.

Ib.

Passed because of decision in Columbia Club v. McMaster, 35 S. C., 1; 14 S. E., 290.

Sec. 605. Wilfully furnishing any intoxicating drink, by sale, gift or otherwise, to any person of known intemperate habits, or to any person when drunk or intoxicated, or to a minor, or to any insane person, for use as a beverage, shall be held and deemed a misdemeanor, and upon conviction thereof the offender shall be fined not less than ten nor more than one hundred dollars, and imprisoned not less than ten days nor more than thirty days.

Selling liquor to known intemperate persons and minors.

G. S. 1738; R. S. 484; 1874, XV., 799.

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Physicians not to prescribe except to patients.

G. S. 1751; R. S. 485; 1882, XVII., 895.

Sec. 606. It shall be unlawful for any physician to give a prescription for any liquors except when actually in *bona fide* attendance upon patients, and upon violating this Section shall, upon conviction, be fined in a sum not less than two hundred dollars, or imprisonment not less than three months, or both fine and imprisonment, at the discretion of the Court.

When druggist innocently fills prescription for three pints of liquor by delivering it on three several days, one pint each day, does not violate the law—Sec. 1743, Gen. Stat.—State v. May, 33 S. C., 39; 11 S. E., 440.

Under Sec. 1749 General Statutes, as amended, 18 Stat., 694, the penalties for violating Section 1751 applies alike to towns where sale of liquors has been prohibited by special statute and by local option laws.—State v. Atkinson, 33 S. C., 100; 11 S. E., 693.

Povision in General Statutes that "any person violating Sections 1750 and 1751 of this Chapter shall, upon conviction, be fined, &c.," makes a violation of either Section punishable.—*Ib.*

Evidence of the number of prescriptions issued by defendant within a given time, to be filled at the same drug store, is relevant to the issue of defendant's good faith in making them.—*Ib.*

CHAPTER XXVIII.

Violations of the License Laws by Insurance and Other Companies, Emigrant Agents, Owners of Shows, &c., Persons Selling Pistols, &c.

SEC.
607. Insurance companies doing business without a license.
608. Soliciting emigrants without a license.

SEC.
609. Violation of law by persons representing plays, shows, &c.
610. Sale of pistols, &c., without license.

Penalty for acting as agent for a foreign insurance company without license.

G. S. 1357; R. S. 486; 1866, XIV., 205; 1888, XX., 63.

Section 607. Any person who shall transact any business of insurance in this State for any company of the United States or foreign State not incorporated by the laws of this State without having first obtained license by law required, or after his license has been withdrawn, or shall in any way violate the foregoing provisions in relation to license of insurance companies or agents thereof, shall upon conviction in any Court of competent jurisdiction, be fined for every such offense not more than one hundred dollars: *Provided,* That nothing contained in this Section shall release such company or companies upon any policy issued or delivered by it or them.

Proviso.

Misdemeanor to solicit emigrants without.

1891, XX., 1084; 1893, XXI., 429; 1898, XXII., 812.

Sec. 608. No person shall carry on the business of an emigrant agent in this State without having first obtained a license therefor from the State Treasurer. The term "emigrant agent," as contemplated in this Section, shall be construed to mean any person engaged in hiring laborers or soliciting emi-

grants in this State to be employed beyond the limits of the same. Any person shall be entitled to a license, which shall be good for one year, upon payment into the State Treasury for the use of the State of five hundred dollars in each County in which he operates or solicits emigrants for each year so engaged. Any person doing business of an emigrant agent without having first obtained such license shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by fine not less than five hundred dollars and not more than five thousand dollars, or may be imprisoned in the County jail not less than four months, or confined in the State prison, at hard labor, not exceeding two years for each and every offense, within the discretion of the Court.

Who are emigrant agents.

R. S. 488.

Penalty.

Sec. 609. Any person or persons, company or companies, representing publicly for gain or reward any play, comedy, tragedy, interlude or farce, or other entertainment of the stage, or any part therein, all fortune tellers, and those who exhibit wax figures, or shows of any kind whatsoever, and any circus or other show traveling in connection therewith, who shall give any exhibition without complying with the law imposing a tax or license therefor shall upon conviction in any Court of competent jurisdiction be fined in the sum of two hundred dollars and all costs and be imprisoned in the County jail for not less than one month nor more than three months, in the discretion of the Court.

Violation of law by persons representing plays, shows, &c.

G. S. 1759; R. S. 489; 1875, XV., 845.

Sec. 610. No person or corporation with in the limits of this State shall sell or offer for sale any pistol, rifle cartridge or pistol cartidge less than .45 calibre, or metal knuckles, without first obtaining a license from the County in which such person or corporation is doing business so to do. The County Board of Commissioners of the several Counties of this State are authorized to issue licenses in their respective Counties for the sale of pistols and pistol and rifle cartridges of less than .45 calibre, and metal knuckles, upon the payment to the County Treasurer by the person or corporation so applying for said license of the sum of twenty-five dollars annually; and any person who shall sell or offer for sale any pistol, or pistol or rifle cartridge of less than .45 calibre, or metal knuckles, without having obtained the license provided for in this Section shall be deemed guilty of a misdemeanor, and on conviction shall be punished by a fine not exceeding five hundred dollars, or by

Sale of pistols, &c., without a license a misdemeanor.

R. S. 490; 1890, XX., 653; 1891, *Ib.*, 1101.

County Board of Commissioners to issue license.

Ib.; 1898, XXI., 426.

Penalty.

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imprisonment not exceeding one year, or both, at the discretion of the Court.

CHAPTER XXIX.

Violations of the Laws Concerning Sailors, Immigrants, &c.

SEC.
611. Offenses against laws regulating seamen, &c., boarding houses, &c.
612. No tavern keeper to harbor mariner longer than one hour. Not to extend to mariners legally discharged.
613. Harboring deserting seamen and enticing them to desert.
614. Magistrates may order search for deserting seamen.
615. Last two Sections extend to all shipping agreements.
616. Articles of ship admissible in evidence.
617. A misdemeanor to impress seamen.
618. Evidence of master of vessel may be taken *de bene esse* on trial.
619. Masters lodging seamen in jail for desertion to give bond.
620. Procurers of seamen not to board vessels without permission of master.
621. Masters may arrest offenders.
622. Burden of proof.

Offenders against laws as to immigrants and seamen guilty of misdemeanor; punishment.

G. S. 1648; R. S. 493; 1866, XVIII., 472, § 12.

Section 611. Whoever shall offend against any or either of the provisions contained in Sections 2291, 2292, 2297, 2298, 2299, 2300, and 2301, of the Civil Code, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, be punished by imprisonment for a term not exceeding one year and not less than thirty days, or by a fine not exceeding two hundred and fifty dollars and not less than one hundred dollars, or by both such fine and imprisonment.

No tavern keeper to harbor mariner more than one hour; penalty; not to extend to mariners legally discharged.

G. S. 1650; R. S. 494; 1751, III., 735, § 1.

Sec. 612. It shall not be lawful for any tavern keeper, punch house keeper, or victualler, within this State, to harbor, entertain, or employ any seaman or mariner, exceeding one hour in four and twenty, without an order or direction in writing for so doing under the hand of the master or commander of the ship or vessel to which such seaman or mariner shall belong, under pain of forfeiting the sum of ten dollars for every such offense, to be recovered by indictment in any Court of competent jurisdiction, and applied one-half to the informer and the other half for the use of the State: *Provided always, nevertheless,* That nothing herein contained shall extend, or be construed to extend, to such seaman or mariner as shall be legally discharged from any ship or vessel.

Harboring deserting seamen and enticing them to desert.

G. S. 1651; R. S. 495; 1695, II., 119, § 2; 1836, VI., 557, § 1.

Sec. 613. Any person who shall be convicted of harboring deserting seamen, or of inveigling or procuring them to desert any service for which they have engaged, or disregard any articles into which they have entered, shall be held guilty of a

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misdemeanor, and, upon trial and conviction, shall be punished by fine and imprisonment, at the discretion of the Judge, not to exceed three hundred dollars' fine and three months' imprisonment; and, upon a second conviction, the person so offending, if the keeper of a public or lodging house for seamen, in addition to the penalty before provided, shall forfeit his or her license.

State v. Cordes, Rice, 152; Dudley, 225.

Magistrate may order search for deserting seamen.

Ib.; G. S. 1652; R. S. 496.

Sec. 614. In case any such seaman, or any boy apprenticed on board any ship or vessel, shall be harbored, secreted, or detained, it shall be lawful for any Magistrate, upon complaint, on oath, made by the master of the said ship, or on his behalf, to inquire into the matter, and, if he shall see fit, by warrant under his hand and seal, to cause search to be made into any place wherein the said seaman or apprentice may be harbored or secreted, and to cause such seaman or apprentice to be restored to the master of the said ship.

Last two Sections extend to all shipping agreements.

G. S. 1653; R. S. 497; 1837, VI., 576, § 1.

Sec. 615. The provisions of the two preceding Sections shall extend to every agreement to proceed or continue on a voyage, made in this State or elsewhere, by a seaman, and whether in contemplation of a voyage to be commenced in this State or elsewhere: *Provided,* That the said agreement, at the time when any such seaman may be harbored or secreted contrary to the provisions of the said Sections, shall not have been fully executed and determined, but shall be of force and binding on such seaman, according to the laws of this State, or of the country where the same was entered into, or to which the ship or vessel in which such voyage was to be made may belong.

Articles of ship admissible in evidence.

G. S. 1056; R. S. 498; 1837, 577, § 2; 1850, XIII., 171, §§ 1, 2.

Sec. 616. On the prosecution or trial of any indictment under the provisions of this Chapter, a copy of the articles of the ship or vessel, authenticated by the affidavit of the captain, sworn to before any Notary Public or Magistrate of this State, shall be admissible in evidence, and shall be sufficient to establish the fact that any seaman whose name appears subscribed thereto has signed the agreement contained in such articles, until the contrary be made to appear by proof.

A misdemeanor to impress seamen.

G. S. 1657; R. S. 499; 1855, XII., 402, § 1.

Sec. 617. Any attempt by fraud or force to ship, against his will, any person as a seaman on board any vessel in any port in this State is hereby declared a misdemeanor, to be punished by fine and imprisonment, at the discretion of the Court.

Sec. 618. When any prosecution shall be commenced against any person under the provisions of this Chapter, providing

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for the punishment of harboring seamen who have deserted, and it shall appear to the Magistrate before whom the prosecution was commenced that the testimony of any master of a vessel or other transient person will be important on such trial, such Magistrate shall have authority, after five days' notice to the party accused, to summon such witness before some Judge of the Court of General Sessions, or the Recorder of the City Court of Charleston, to appear and give evidence in the said matter, when such witness shall be examined, with the right to the party accused to examine or cross-examine such witness, as in trials in open Court; and the Judge or Recorder shall certify and seal up such evidence, to be used on the trial of the cause, in the same manner as if the same had been given orally on such trial: *Provided,* That such testimony shall in no case be used unless it shall appear, by the affidavit of the Magistrate before whom such prosecution shall have been commenced, that such witness is not at the time of such trial within the jurisdiction of the State.

In trials under this Chapter, evidence of master of vessel may be taken *de bene esse.*

G. S. 1658; R. S. 500; 1852, XII., 172, § 4; 1855, XII., 402, § 2.

Sec. 619. All masters of vessels, and others, lodging seamen in the jails of this State, for desertion, shall, previously thereto, give bond, with security, to the Sheriff of the County, to be by him approved, in the sum of five hundred dollars, for every seaman so lodged in any jail in this State, with a condition that he or they shall be bound to take away the said seaman or seamen from the jail, and pay the expenses thereof.

Masters lodging seamen in jail for desertion to give bond.

G. S. 1659; R. S. 501; 1808, V., 574.

Sec. 620. It shall not be lawful for any broker, shipping master, or other person engaged in the business of procuring seamen for vessels, or furnishing them with such seamen, or making contracts for their services, to enter or attempt to go on board of any vessel lying at any port in any waters within the jurisdiction of this State, except as herein provided, without having previously obtained the permission of the master or other person having the care, custody, and control of such vessel; and any such person so entering any vessel as aforesaid, without such permission, shall be deemed guilty of a misdemeanor, and shall, upon conviction, be punished by fine and imprisonment, at the discretion of the Judge who tries the case, not to exceed three hundred dollars and three months' imprisonment.

Procurers of seamen not to board vessels without permission of master.

G. S. 1660; R. S. 502; 1852, XII., 171, § 3.

Sec. 621. It shall be lawful for the master or other person having the command of the said vessel, or the care, custody, and control of the same, to seize and arrest all persons while so

Masters may arrest offenders.

Ib., G. S. 1661; R. S. 503.

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offending, and to take them before any Magistrate, to be committed or bound over to appear as in other cases of misdemeanor.

Burden of proof.

Ib., G. S. 1662; R. S. 504.

Sec. 622. Upon the trial of any person indicted under the two foregoing Sections of this Chapter, in case it shall be proved that any such person shall have entered or attempted to go on board any vessel within the jurisdiction of this State, it shall be obligatory upon the person accused to prove that he had previously received the required permission; and in default of such proof, such person shall be presumed to have entered without such permission, and be found guilty accordingly.

CHAPTER XXX.

Cruelty to Animals.

SEC.
623. Cruelty to animals.
624. Owners liable to punishment.
625. Ill treatment of animals.
626. Cruel work, abandonment, &c.
627. Overloading and confinement of on railroad cars, &c.
628. Arrest for violation made with or without warrant.
629. When search warrant may be issued.
630. Meaning of "animal" and "owner."
631. Duty of certain officers.
632. Fines, penalties, costs, a lien.
633. Society for prevention of cruelty to animals may destroy certain animals.

Cruelty to animals.

G. S. 2525; R. S. 505; 1878, XVI., 492.

Section 623. Whoever shall wilfully abuse or cruelly treat any horse, mule, or draught animal or beast of burden, shall, upon conviction thereof before any Court of competent jurisdiction, suffer imprisonment for fifteen days, or pay a fine of fifteen dollars.

Owners liable to punishment.

Ib., G. S. 2526; R. S. 506.

Sec. 624. Every owner or person having the possession, charge, or custody of any animal, who cruelly drives or works, when unfit for labor, or cruelly abandons, the same, or who carries or causes the same to be carried, in or upon any vehicle, or otherwise, in an unnecessarily cruel or inhuman manner, or knowingly or wilfully authorizes or permits the same to be subjected to unnecessary torture, suffering, or cruelty of any kind, shall be punished for every such offense in the manner provided in preceding Section.

Ill treatment of animals.

G. S. 1703; R. S. 507; 1881, 1883, XVIII., 388.

XVII., 573, § 1;

Sec. 625. Whoever over loads, over drives, over works, tortures, torments, needlessly mutilates, cruelly kills, ill treats, or whoever deprives of necessary sustenance or shelter, or whoever inflicts unnecessary pain or suffering upon any animal, or whoever causes the same to be done, whether such person be

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the owner thereof or have the charge or custody of the same, shall, for every such offense, be guilty of a misdemeanor, and be punished by imprisonment in jail not exceeding thirty (30) days, or by a fine not exceeding one hundred dollars.

Cruel work, abandonment, &c., misdemeanor.

G. S. 1704; R. S. 508; 1881, XVII., 573, §2

Sec. 626. Every owner, possessor, or person having the charge or custody of any animal, who cruelly drives or works the same when unfit for labor, or cruelly abandons the same, or who carries the same, or causes the same to be carried, in or upon any vehicle, or otherwise, in an unnecessarily cruel or inhuman manner, or knowingly or wilfully authorizes or permits the same to be subjected to unnecessary torture, suffering, or cruelty of any kind, shall, for every such offense, be guilty of a misdemeanor, and shall be punished for every such offense in the manner prescribed in Section 625.

Overloading and confinement of on railroad cars.

Ib., § 3; G. S. 1705; R. S. 509.

Sec. 627. No railroad company, in the carrying or transportation of animals, shall overload the cars, nor permit the animals to be confined in cars for a longer period than twenty-eight consecutive hours, without unloading the same for rest, water, and feeding, for a period of at least five consecutive hours, unless prevented from so unloading by storm or other accidental causes beyond the control of such railroad company. In estimating such confinement, the time during which the animals have been confined without such rest on connecting roads from which they are received shall be included; it being the intent of this Chapter to prohibit their continuous confinement beyond the period of twenty-eight hours, except upon contingencies hereinbefore stated. Animals so unloaded shall be properly fed, watered, and sheltered during such rest by the owner or person having the custody thereof, or, in case of his default in so doing, then by the railroad company transporting the same, at the expense of the owner or person in custody thereof; and the said company shall, in such case, have a lien upon such animals for food, care, and custody furnished, and shall not be liable for any detention of such animals authorized by this Chapter. Any company, owner, or custodian, of such animals, who shall fail to comply with the provisions of this Section, shall, for each and every such offense, be liable for and forfeit and pay a penalty of not less than fifty nor more than five hundred dollars, in any Court of competent jurisdiction: *Provided, however,* That when animals shall be carried in cars in which they can and do have proper food, water, space, and

opportunity for rest, the foregoing provisions in regard to their being unloaded shall not apply.

Arrest for violation made with or without warrant.

Ib., 574, § 4; G. S. 1706; R. S. 510.

Sec. 628. Any person violating the laws in relation to cruelty to animals may be arrested and held, without warrant, in the same manner as in the case of persons found breaking the peace; and the person making the arrest, with or without warrant, shall use reasonable diligence to give notice thereof to the owner of the animals found in the charge or custody of the person arrested, and shall properly care and provide for such animals until the owner thereof shall take charge of the same: *Provided,* The owner shall take charge of the same within fifteen days from the date of such notice. And the person making such arrest shall have a lien on said animals for the expense of such care and provision.

When search warrant may be issued.

G. S. 1707; R. S. 511; 1881, XVII., 574, § 5.

Sec. 629. When complaint is made on oath or affirmation, to any Magistrate authorized to issue warrants in criminal cases, that the complainant believes, and has reasonable cause to believe, that the laws in relation to cruelty to animals have been or are being violated in any particular building or place, such Magistrate, if satisfied that there is reasonable cause for such belief, shall issue a search warrant authorizing any Sheriff, Deputy Sheriff, Deputy State Constable, Constable, or police officer, to search such building or place; but no such search shall be made after sunset, unless specially authorized by the Magistrate, upon satisfactory cause shown.

Meaning of "animal" and "owner."

Ib., § 6; G. S. 1708; R. S. 512.

Sec. 630. In this Chapter the words "animal" or "animals" shall be held to include all brute creatures; and the words "owner," "person" and "whoever" shall be held to include corporations as well as individuals; and the knowledge and acts of agents of and persons employed by corporations in regard to animals transported, owned or employed by or in the custody of such corporations shall be held to be the acts and knowledge of such corporation.

Duty of certain officers.

Ib., § 7; G. S. 1709; R. S. 513.

Sec. 631. It shall be the duty of all Sheriffs, Deputy Sheriffs, Deputy State Constables, Constables and police officers to prosecute all violations of the provisions of this Chapter which shall come to their notice or knowledge; and all fines collected upon complaint or information for violation of this Chapter shall inure and be paid over, one-half to the South Carolina Society for the Prevention of Cruelty to Animals, in aid of the benevolent objects for which it was incorporated.

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Fines, penalties, costs, a lien.

Sec. 632. All penalties, fines and costs incurred by reason of violations of Sections 625, 626, 627 and 628 shall constitute and be a lien upon such animal or animals so cruelly used.

Ib., 575, § 8; G. S. 1710; R. S. 514.

Society for prevention of cruelty to animals authorized to destroy animals under certain circumstances.

1899, XXIII., 99.

Sec. 633. A person, being the owner or possessor, or having charge or custody, of a maimed, diseased, disabled or infirm animal, in any town or city of this State of not less than forty thousand inhabitants, who abandons such animal, or leaves it to die in a street, road, highway or public place, more than three hours after he receives notice that it is left disabled, is guilty of a misdemeanor, and shall be punished by a fine of not exceeding one hundred dollars, or imprisonment not exceeding thirty days. Any agent or officer of the South Carolina Society for the prevention of Cruelty to Animals, or any society duly incorporated for that purpose, may lawfully destroy, or cause to be destroyed, any animal found abandoned and not properly cared for, appearing, in the judgment of two reputable citizens called by him to view the same in his presence, to be glandered, injured or diseased past recovery for any useful purpose. When any person arrested is, at the time of such arrest, in charge of any animal, or any vehicle drawn by or containing any animal, any agent of said society may take charge of such animal and of such vehicle and its contents, and deposit the same in a safe place of custody, or deliver the same into the possession of the police or Sheriff of the County or place wherein such arrest was made, who shall thereupon assume the custody thereof; and all necessary expenses incurred in taking charge of such property shall be a lien thereon.

CHAPTER XXXI.

Felonies; Acessories; Aiders and Abettors.

SEC.
634. Accessories before fact punished as principal.
635. Accessories before fact, when and how tried.
636. Where to be tried.
637. Accessories after the fact, how, where and when tried.

In treason and misdemeanors there are no accessories; all participating are principals.—Whittaker v. English, 1 Bay, 15; State v. Lymburn, 1 Brev., 397; State v. Westfield, 1 Bail., 132.

Persons accessory before fact punished as principal.

G. S. 2610; R. S. 521. See 4 & 5 P. & M., c. 4; 1712, II., 484.

Section 634. Whoever aids in the commission of a felony, or is accessory thereto before the fact, by counselling, hiring, or otherwise procuring such felony to be committed, shall be

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punished in the manner prescribed for the punishment of the principal felon.

A person cannot be convicted as accessory to crime of arson for procuring another to burn his own dwelling.—State v. Sarvis, 45 S. C., 668; 24 S. E., 54.

Whatsoever will make one an accessory before the fact in felony will make him a principal in treason, petit larceny and misdemeanors.—State v. Lymburn, 1 Brev., 397; State v. Westfield, 1 Bail., 132.

There can be no accessory before the fact in *manslaughter*.—State v. Putnam, 18 S. C., 175. But see State v. Sims, 2 Bail., 29, and State v. Crank, 2 Bail., 66.

There may be accessories after the fact.—State v. Burbage, 51 S. C., 290; 28 S. E., 937.

All persons present and aiding in the commission of a felony are principals, and there is no such distinction as principals of the first and second degree.—State v. Fley, 2 Brev., 338; State v. Posey, 4 Strob., 138; State v. Putnam, 18 S. C., 175.

Indictment—Against an accessory before the fact need not allege the conviction or execution of the principal.—State v. Sims, 2 Bail., 29; State v. Crank, 2 Bail., 66; State v. Posey, 4 Strob., 103.

Sufficient if it allege that the murder was committed by a person unknown, and the prisoner was an accessory before the fact.—State v. Green, 4 Strob., 138.

Against three persons for murder, alleging that one of them did the act, and the other two were present aiding, is good.—State v. Putnam, 18 S. C., 175.

Accessories before fact, when and how tried.

Ib.; G. S. 2611; R. S. 522.

Sec. 635. Whoever counsels, hires, or otherwise procures a felony to be committed, may be indicted and convicted as an accessory before the fact, either with the principal felon or after his conviction, or may be indicted and convicted of a substantive felony, whether the principal felon has or has not been convicted, or is or is not amenable to justice, and, in the last mentioned case, may be punished in the same manner as if convicted of being an acessory before the fact.

Applies only to accessories before the fact.—State v. Burbage, 51 S. C., 290; 28 S. E., 937.

The record of the conviction of the principal, if had, must be produced, unless he and accessory are tried together.—State v. Crank, 2 Bail., 66.

Testimony of accomplice is altogether for the jury, and they may act upon it without any confirmation of his statement.—State v. Brown, 3 Strob., 508.

Where to be tried.

G. S. 2612; R. S. 523. See 4 & 5 P. & M., c. 4; 1712, II., 484.

Sec. 636. A person charged with the offense mentioned in the preceding Section may be indicted, tried, and punished in the same Court and County where the principal felon might be indicted and tried, although the offense of counselling, hiring, or procuring the commission of such felony is committed on the high seas, or on land either within or without the limits of this State.

Applies only to accessories before the fact.—State v. Burbage, 51 S. C., 290; 28 S. E., 937.

Accessories after the fact, how, when, and where tried.

Ib.; G. S. 2613; R. S. 524. See 1 Ann St., 2, c. 9; 1712, II., 543, § 1.

Sec. 637. Whoever becomes an acessory to a felony after the fact may be indicted, convicted, and punished (whether the principal felon has or has not been previously convicted, or is not amenable to justice) by any Court having jurisdiction to try the principal felon, and either in the County where such per-

son became an accessory, or in the County where the principal felony was committed.

Applies to accessories after the fact. It does not effect any change in criminal pleading. It merely prescribes the place of trial.—State v. Burbage, 51 S. C., 290; 28 S. E., 937.

TITLE III.

PRISONS AND IMPRISONMENT.

CHAPTER XXXII. *Jails and Prisoners.*
CHAPTER XXXIII. *State Penitentiary.*

CHAPTER XXXII.

Jails and Prisoners.

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647. Jailers to report lunatics, idiots, &c.
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Sheriff to have custody of jail, &c.

G. S. 2690; R. S. 525; 1839, XI., 48, § 42.

Section 638. The Sheriff shall have custody of the jail in his County, and if he appoint a jailer to keep it, the Sheriff shall be liable for him; and the Sheriff, or jailer, shall receive and safely keep in prison any person delivered or commited to either of them, according to law.

Sec. 639. Every Sheriff in this State, who does not live in the jail, shall employ a proper and discreet person as jailer, who shall live within the same, and who is hereby prohibited from using the house for any other purpose than that for which it was designated by law.

To appoint jailer; jailer to live at jail.

G. S. 2691; R. S. 526; 1812, V., 672, § 2; 1839, XI., 48, § 41.

Sec. 640. The Sheriff shall appoint such jailer in writing, a copy of which appointment shall be deposited in the office of the Clerk of the Circuit Court of the County wherein such jailer is appointed.

Appointment of jailer.

Ib.; G. S. 2692; R. S. 527.

Where Sheriff collects salary for jailor from the County, he cannot refuse to pay it over to the *de facto* jailer acting for him on the ground that his appointment was not in writing.—McLemore v. Lancaster, 57 S. C., 384; 35 S. E., 743.

Sec. 641. The Sheriffs or jailers, in the several Counties of this State, shall keep in safe custody all such prisoners as may be committed to them under the authority of the United States, until such prisoners are discharged by due course of law of the United States, under the like penalties as in case of prisoners committed under the authority of this State, and upon the terms of the resolution of the Congress of the United States at their session begun and holden on the fourth day of March, Anno Domini one thousand seven hundred and eighty-nine.

Prisoners committed by U. S. to be kept in custody.

G. S. 2693; R. S. 528; 1790, VII., 257, § 3; 1800, V., 379, § 1; 1839, XI., 47, § 38.

Sec. 642. Sheriff or jailers shall keep prisoners for debt, in cases of fraud, in separate apartments of the jail; and the officer herein offending shall be liable to an action of the party aggrieved, and also to an indictment, and, on conviction, shall be punished as for a misdemeanor.

Felons and debtors to be lodged apart.

Ib., § 37; G. S. 2694; R. S. 529.

Sec. 643. All Sheriffs and jailers are required to receive, and keep securely, all persons committed by the Coroner.

Sheriff to keep prisoners committed by Coroner.

G. S. 2695; R. S. 530; 1839, XI., 76, § 29.

Sec. 644. The Sheriff of each County shall set apart in the jail a room for the confinement of such persons as may be exclusively in the custody of the Coroner, of which the Coroner shall have exclusive control.

To set apart room for Coroner's prisoners.

Ib., 78, § 39; G. S. 2696; R. S. 531; 1825, VI., 262.

Sec. 645. No pauper, lunatic, idiot, or epileptic, shall hereafter be confined for safe keeping in any jail; and if any such person shall be imprisoned, under and by virtue of any legal process, it shall be the duty of the Sheriff, in whose custody he may be, to obtain his discharge as speedily as possible, and send him forthwith to the State Hospital for the Insane, according to law, at the expense of the County within whose limits he shall have gained a settlement.

Paupers lunatics, &c., not to be imprisoned, but sent to the State Hospital for the Insane.

G. S. 2696; R. S. 532; 1839, XI., 51, § 48.

Sec. 646. Every Sheriff shall make a return to every Court of General Sessions of his County, on the first day of the term,

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of the name of every prisoner, and the time and cause of his or her confinement, whether civil or criminal.

Jailer to report lunatics.

Ib., 52, § 5; G. S. 2698; R. S. 533. 3 H. 7, c. 3; 1712, II., 453.

Sec. 647. It shall be the duty of the jailers of the several Counties of this State, at the sitting of each Court of Sessions, to report to the Presiding Judge the names of the persons confined in jail, who are lunatics, idiots, or epileptics, with the cause of their detention.

Sheriff to return names of prisoners to Court.

G. S. 2699; R. S. 534; 1839, XI., 48, § 41; 1829, VI., 382, § 6.

Sec. 648. It shall be unlawful for Sheriffs or jailers to make any discrimination in the treatment of prisoners placed in their custody.

No discrimination in treatment of prisoners. Penalty for discrimination.

Every violation of this Section shall be a misdemeanor, and, upon conviction thereof, the party convicted shall be fined not less than twenty-five dollars, and imprisoned for not less than one month nor more than twelve months.

G. S. 2700; R. S. 535; 1868, XIV., 107, §§ 1, 2.

Removal of prisoners on destruction of jail.

Sec. 649. In all cases where any person shall be apprehended or in confinement according to law, in any County in this State, wherein the jail may be destroyed by fire or other accident, he shall be committed to the jail nearest the one destroyed, for safe keeping; and the several jailers in this State, keepers of the jails nearest to those jails that may be destroyed as aforesaid, are authorized and required to receive and safely keep such person.

G. S. 2701; R. S. 536; 1812, V., 672, § 1; 1839, XI., 47, § 40.

Sheriff may impress a guard, and call out *posse comitatus.*

G. S. 2702; R. S. 537; 1839, XI., 52, § 52.

Sec. 650. When any person accused of a capital offense shall be in custody, and the Sheriff, acting by himself or his regular deputy, shall have cause to suspect that such person may be unlawfully taken from his custody, or will probably effect his escape, he may impress a sufficient guard for securing and keeping safely such prisoner, so long as it may be his duty to keep said prisoner in jail, or in his custody. And the Sheriff, by himself or his regular deputy, shall have power to call out the *posse comitatus* to his assistance, whenever he is resisted, or has reasonable grounds to suspect and believe that such assistance will be necessary in the service or execution of process in any criminal case; and any person refusing to act as such guard, or to assist as one of the *posse comitatus* in the service or execution of such process, when required by the Sheriff, shall be liable to be indicted therefor, and, upon conviction, shall be fined and imprisoned at the discretion of the Court.

To report condition of jail, &c.

Ib., 48, § 42; G. S. 2703; R. S. 538.

Sec. 651. Each Sheriff shall, annually, report to the County Commissioners the actual condition of the jail, the repairs which may be wanting, and their probable cost.

Sec. 652. It shall be the duty of the County Commissioners

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in this State to furnish, at all times, blankets and such other bedding as shall be necessary for prisoners confined in jail in their respective Counties; and prisoners confined on a criminal charge shall be provided with at least two blankets in the winter season.

County to furnish blankets and bedding for prisoners.

Ib., 47, § 39; G. S. 2704; R. S. 539; 1842, XI., 226; 1861, XII., 908, § 2; 1869, XIV., 274, § 2, ¶ 4.

Sec. 653. The several Boards of County Commissioners are authorized and required to make any alterations and additions deemed advisable, or which may become necessary, to any court house or jail now erected, or hereafter to be built, in their several Counties.

County Commissioners may make alterations in Court House or Jail.

G. S. 2705; R. S. 540; 1841, XI., 156.

Sec. 654. The Governor of this State, for the time being, is authorized and empowered, each year, to appoint a physician for the prisoners confined in the jail in Charleston County; his attendance to commence on the 10th day of January, and to continue for one year, and until another appointment shall be made as aforesaid.

He shall receive for such service, including medicine and all other charges, the sum of one thousand dollars per annum, to be paid out of the funds of said County; and the account of no other physician, surgeon, or apothecary, for attendance, operations, or medicines, on the said prisoners, shall be allowed or paid.

Governor to appoint a physician to attend Charleston Jail. Compensation; accounts of others, for such services, not to be paid.

G. S. 2706; R. S. 541; 1820, VI., 143.

1879, XVII., 18.

Sec. 655. If any person shall erect, or cause to be erected, any dwelling house, out-house, or other building, or shall erect, or cause to be erected, any kind of fence, wall, or paling, of any kind, on any public lot or square, whereon the jails and court houses in the several Counties are erected, or who may hereafter hold, occupy, or use, any house, out-house, or other building erected on such square or lot, such person shall, for every such offense, upon being thereof legally convicted by indictment, be fined in a sum not less than one hundred dollars, nor more than one thousand dollars: *Provided, nevertheless*, That the jailers of the respective Counties, who reside in the jails, shall not be subject to such penalty for erecting or using such buildings or fences for their private accommodation.

Buildings and fences not to be erected on Jail or Court House lots.

G. S. 2707; R. S. 542.

Sec. 656. If any person shall wilfully injure or destroy any part of any court house or jail in this State, or the enclosures of the same, or any part thereof, such person shall be liable to be indicted for such offense, and, upon conviction, be fined or imprisoned at the discretion of the Court.

Penalty for injuring a Court House or Jail.

G. S. 2708; R. S. 543; 1827, VI., 321, § 6.

Sec. 657. All the Courts of this State and municipal authorities which under existing laws have power to sentence convicts

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to confinement in prison with hard labor, shall sentence all able-bodied male convicts to hard labor upon the public works of the County in which said person shall have been convicted, and in the alternative to imprisonment in the County jail or State Penitentiary at hard labor: *Provided,* That municipal authorities may sentence municipal convicts to work upon the streets and other public works of the municipality in which they have been convicted, and such convicts when so sentenced shall work under the exclusive direction and control of the municipal authority imposing sentence: *Provided,* That no convict whose sentence shall be for a period longer than five years shall be so sentenced.

Convicts may be sentenced to County chain gangs.

R. S. 544; 1892, XXI., 22; 1899, XXIII., 13.

See Sections 772 to 784 of the Civil Code as to care, management and use of convicts on County chain gangs.

Municipal convicts; proviso as to time.

Town and County authorities authorized to exchange convict labor.

1898, XXII., 821.

Sec. 658. Whenever any town or municipal authority in this State have not a sufficient number of convicts sentenced to work on the public works of the town to warrant the expense of maintaining a town chain gang, the town authorities of said town shall be authorized to place said convicts on the County chain gang for the time so sentenced, and the County authorities of the County in which said town is situated shall be authorized and empowered to exchange labor with said town authorities and place County convicts on the public works of the town for the same number of days that town convicts work on the public works of the County.

County Board of Commissioners may purchase bloodhounds, &c.

1897, XXII., 427.

Sec. 659. It shall be the duty of the County Boards of Commissioners of the several Counties in this State, when in their judgment it is necessary, to require the Sheriff to purchase a pair of bloodhounds or other serviceable dogs, to be kept at the court house, and used as he may deem expedient, for the tracking and arrest of escaped convicts and other fugitive law-breakers.

Appropriation for.

The County Board of Commissioners of each County are hereby authorized to appropriate the sum of one hundred dollars, if so much be necessary, for the purchase of said bloodhounds or other serviceable dogs.

Executions to be within enclosure of Jail; who may be present.

G. S. 2709; R. S. 545; 1877, XVI., 381.

Sec. 660. When the punishment of death is inflicted upon any person pursuant to the sentence of any Court, the exception shall take place within the jail or the enclosure of the jail of the County wherein such execution shall be made. No one shall be allowed to be present at such execution except the Sheriff of the County or his deputy, and his assistants, the

clergy, the State Solicitor, the attorney or attorneys who defended the convict, the family of the convict, and not more than ten discreet persons to be named by the Sheriff; which said ten persons shall be summoned by the Sheriff and be required to be present.

CHAPTER XXXIII.

State Penitentiary.

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688. Governor may order return on information of maltreatment. Physician to inspect and make report.
689. Rewards for capture of escaped convicts and payment of expenses.
690. Duty of Sheriff and other officers to arrest escaped convicts.
691. Penalty for harboring or employing escaped convicts.
692. Convicts to be under officer and guards, who are responsible to Superintendent.
693. Contracts for working and hiring convicts.
694. Superintendent and Board of Directors may purchase or lease farms.
695. Violation of law a misdemeanor.
696. Punishment for violations of regulations by contractors, &c.
697. No convicts to work in phosphate mines.
698. Clerks to notify Superintendent of the number of convicts.
699. Expenses for transportation.
700. State Reformatory.

Who to be confined in Penitentiary.

G. S. 2710; R. S. 546; 1868, XIV., 92, § 1.

Section 661. The Penitentiary at Columbia, in the County of Richland, shall be the general penitentiary and prison of the State, for the reformation as well as the punishment of all offenders, in which shall be securely confined, employed, and governed, in the manner hereinafter directed, all offenders who shall have been convicted and sentenced according to law to

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the punishment of solitary imprisonment or confinement therein at hard labor.

Persons convicted of assault and battery; not to be sentenced to confinement in penitentiary.—State v. Hord, 8 S. C., 84. But if so sentenced, remedy is by appeal.—*Ex parte* Bond, 9 S. C., 80. Service of sentence commences on entry into penitentiary.—State v. Duckett, 15 S. C., 213.

Board of Directors elected by General Assembly; vacancies, how filled.

G. S. 2711; R. S. 547; 1878, XVI., 561; *Ib.*, § 2.

Sec. 662. The General Assembly shall elect five suitable citizens of this State, who shall constitute a Board of Directors of the State Penitentiary, with a term of office of two years, of which the Governor of the State shall be *ex officio* a member. In case of the death or resignation of any member of said Board, the Governor is authorized to fill said vacancy during the recess of the General Assembly.

The Board of Directors shall have power and their duty shall be:

1. Have general supervision, &c.

1. To have a general supervision of the Penitentiary, its inmates, property, &c., and to meet at least once in every month, and oftener if necessary, upon the call of the Governor.

2. Examine into discipline.

1868, XIV., 94.

2. To examine and inquire into all matters connected with the government, discipline and police of the prison, the punishment and employment of the convicts therein confined, the money concerns and contracts for work, and the purchases and sales of articles provided for the prison, or sold on account thereof, and the progress of the work.

3. Require reports.

3. To require reports from the Superintendent and Keeper, or other officers of the prison, in relation to any or all the preceding matters.

4. Make regulations.

4. To make such general regulations for the government and discipline of the prison, or modify such regulations as may have been made by the Superintendent, as they may deem expedient, and from time to time to alter and amend the same; and in making such regulations, it shall be their duty to adopt such as, in their judgment, while consistent with the discipline of the prison, shall best condone to the reformation of the convicts.

5. Investigations.

5. To inquire into any improper conduct which may be alleged to have been committed by the Superintendent, Keeper, or other officer of the prison, and for that purpose, to issue subpœnas to compel the attendance of witnesses, and the production before them of books, writings, and papers, in the same manner, with like effect, and subject to the same penalties for disobedience, as in case of trial before Magistrates; and to examine, under oath, any person or persons who may be brought before them as witnesses.

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6. To keep regular minutes of their meetings and proceedings at the prison, which minutes shall be signed by them and entered in a book which shall be kept for that purpose at the prison.

6. Keep minutes.

7. To prescribe the articles of food and quantities of each kind that shall be inserted in each contract for the supply of provisions to the prison.

7. Prescribe food.

8. To suspend or remove, with the consent of the Governor, the Superintendent, for oppression and misconduct in office; such suspension or removal shall not take place without giving the Superintendent an opportunity to be heard in his defense.

8. Suspend or remove Superintendent.

9. To make an annual report to the Governor, on or before the first day of November in each year, of the state and condition of the prison, the convicts confined therein, of the money expended and received, and generally of all the proceedings during the last year, to be laid before the General Assembly: *Provided,* No one shall be eligible to the office of Director who has any interest in the hiring of convict labor, or who has any direct personal pecuniary interest in any work upon which convict labor is employed; and should any Director at any time during his term of office become disqualified as above, his office shall become *ipso facto* vacant, and it shall be the duty of the Governor to fill the same by appointment, and the Director so appointed shall remain in office till the adjournment of the next session of the General Assembly, and until his successor shall have been elected and qualified.

9. Make annual report to Governor.

10. To enquire and examine into the sentence under which the convicts in the prison are confined, and also into the condition, physical or otherwise, of the convicts so undergoing such sentence, and to report to the Governor quarterly on the first days of November, February, May and August in each year such cases as they may deem, after such examination, fit subjects for Executive clemency.

Report as to sentences, condition, &c., of convicts to Governor for Executive clemency.

1883, XVIII., 553.

Sec. 663. The Directors, for services performed under this Chapter, shall receive as compensation four dollars per diem for each day of attendance on the meetings of the Board at Columbia, and also five cents per mile by the most direct route going to and returning from said meetings.

Compensation of Directors.

G. S. 2712; R. S. 548; 1880, XVII., 374; 1893, XXI., 417.

Sec. 664. The State Penitentiary shall be under the direction and government of a Superintendent, to be elected by the General Assembly, who shall hold his office for two years. In case the office of Superintendent should become vacant, such vacancy

Superintendent elected by General Assembly; term of office.

G. S. 2713; R. S. 549; 1878, XVI., 702.

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shall be filled in the mode provided for certain other State officers.

Lipscomb v. Seegers, 19 S. C., 430.

Bond.

G. S. 2714; R. S. 550; 1868, XIV., 92, § 3.

Sec. 665. The Superintendent, before entering upon the duties of his office, shall take the oath prescribed for public officers, and shall give bond, with two or more sufficient sureties, in the sum of twenty thousand dollars, to the State of South Carolina, conditioned for the faithful performance of the duties of his office.

Duty of Superintendent:

Sec. 666. It shall be the duty of the Superintendent:

1. To make regulations.

G. S. 2715; R. S. 551.

1. To make and establish all such regulations, for the due management of the concerns of the Penitentiary, and for the government and security of the prisoners therein, as may be necessary and proper, and not repugnant to the laws of the State, and the same to alter, from time to time, as shall be found expedient, subject, however, to revision, alteration, or amendment by the Directors.

2. Appoint keeper, &c.

2. To appoint and remove at pleasure a keeper, such servants and guards as shall be necessary for the due management of the prison and safe keeping of the prisoners.

3. Make purchases, &c.

1875, XV., 965; 1894, XXI, 815.

3. To purchase all provisions and materials and other articles necessary for supporting and employing the prisoners, and for effecting the objects of the institution. All bills of articles purchased for the said institution shall be submitted by the Superintendent to the Board of Directors at their monthly meetings, and upon their approval of the same the Superintendent shall draw his order on the Comptroller General, countersigned by the Chairman of the Board of Directors, in payment of said articles purchased. Every bill for articles so furnished shall be presented to the Board of Directors at their meeting next ensuing thereafter.

4. Repairs.

4. To make all necessary repairs of the prison, and superintend the construction of the work.

5. Sales.

5. To make sale of such articles produced in, or belonging to, the prison, as are proper to be sold.

6. To take charge of buildings.

6. To take the charge and custody of the buildings, furniture, tools, implements, stock, provisions, and every species of property pertaining to the prison belonging to the State.

7. Disburse funds.

1875, XV., 965.

7. To receive and pay out all moneys granted by the General Assembly, or in any other way accruing for the support of the prison and carrying on the work: *Provided, however,* That all accounts for payment, including the pay-roll, shall

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be submitted to the examination of the Directors on the first Monday of every month, and, on their approval of the same, he shall draw his order on the Comptroller General, countersigned by the Chairman of the Directors, for the aggregate amount thereof; and he shall not draw any order on the Comptroller General without such countersignature. He shall pay out all moneys at such times and in such manner as the Directors may from time to time direct.

State v. Neal, 59 S. C., 264; 37 S. E., 826.

8. Keep books.

Ib.

8. To keep suitable books, regular and complete accounts of all property, expenses, purchases, sales, income, business, and concerns of the establishment, and to make such monthly reports to the Directors as they may from time to time require.

9. Report annually to Directors.

1868, XIV., 93, § 4.

9. To report to the Directors, on or before the fifteenth day of October, annually, a list of the prisoners, the commencement and expiration of their several sentences, and a copy of the regulations of the prisons.

10. Report accounts, &c.

Ib.

10. To make out and report to the Directors, and to the Comptroller General, on or before the fifteenth day of October, annually, minute statements of all his accounts and doings up to that time.

11. Suppress disorders.

11. To suppress any disorders, riots, or insurrection, that may take place among the prisoners.

12. Appoint physicians; salary.

XVII., 373.

12. To appoint a physician for the prison, who shall receive such salary as may be provided by law.

May require aid to suppress disorders.

G. S. 2716; R. S. 552; 1868, XIV., 94, § 5.

Sec. 667. In order to suppress any disorders, riots, or insurrection among the prisoners, the Superintendent may require the aid and assistance of any of the citizens of the State.

Penalty for refusal.

Ib., § 6; G. S. 2717; R. S. 553.

Sec. 668. If any person, when so required by the Superintendent, shall neglect or refuse to give such aid and assistance, he shall pay a fine not exceeding fifty dollars.

Compensation to those aiding.

Ib., § 7; G. S. 2718; R. S. 554.

Sec. 669. Any person so aiding and assisting the Superintendent shall receive a reasonable compensation therefor, to be paid by the Superintendent, and allowed him on the settlement of his account.

Superintendent guiltless if injury results.

Ib., § 8; G. S. 2719; R. S. 555.

Sec. 670. If, in suppressing any such disorder, riot, or insurrection, any person who shall be acting, aiding, or assisting in committing the same, shall be wounded or killed, the Superintendent, Keeper, or any person aiding or assisting him, shall be held is justified and guiltless.

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Powers of Keeper.

G. S. 2720; R. S. 556; 1868, XIV., 94, § 9.

Sec. 671. In the absence of the Superintendent, the Keeper shall have the same power in suppressing disorders, riots, and insurrections, and in requiring aid and assistance in so doing, that is herein given to the Superintendent.

Prisoners sentenced by U. S. authorities to be received.

Ib., § 10; G. S. 2721; R. S. 557.

Sec. 672. The Superintendent shall receive and safely keep, at hard labor, in the prison, all prisoners sentenced to confinement, at hard labor therein, by the authority of the United States, until they shall be discharged agreeably to the laws of the United States.

G. S. 2722; R. S. 558; 1882, XVIII., 255.

Suits at law to be brought in the name of Superintendent of Penitentiary.

Proviso.

Sec. 673. All actions or suits at law accruing to the Penitentiary shall be brought in the name of the Superintendent thereof, who shall also appear for and defend actions or suits at law in which it is the interest of the Penitentiary to appear as a party defendant: *Provided,* That no suit or action of law shall be brought for or defended on behalf of the Penitentiary, except by authority of the Board of Directors.

Chaplain to be appointed.

Ib., 95, § 14; G. S. 2723; R. S. 559; 1880, XVII., 374; 1893, XXII., 417.

Sec. 674. The Superintendent of the prison may appoint a Chaplain, who may be furnished with quarters within or near the enclosure, whose duty it shall be, on every Sabbath, and as often as the rules will permit, to perform in the prison such religious services as are usually performed in the churches of this State, and attend to instruct the prisoners in their moral and religious duties, and visit the sick on suitable occasions; said Chaplain shall receive as compensation six hundred dollars per annum.

Salary of Superintendent; Physician and Captain of Guard, &c.

G. S. 2724; R. S. 560; 1868, XIV., 95; 1879, XVII., 132; 1880, XVII., 374; 1893, XXI, 418; 1894, XXI, 751.

Sec. 675. The Superintendent shall receive a salary of nineteen hundred dollars per annum; the Physician and Captain of the Guard, each one thousand and fifty dollars per annum; and the other officers and employes, such compensation as may be fixed by the Superintendent and approved by the Board of Directors, unless otherwise provided by law. The salaries of the Superintendent, Chaplain, Physician and Captain of the Guard, and of all other officers and employes of the Penitentiary shall be paid directly out of the earnings and funds of that institution.

Penalty for connivance at escape.

G. S. 2725; R. S. 561; 1868, XIV., 95, § 17.

Sec. 676. If any person employed in keeping, taking care of, or guarding the Penitentiary, or the prisoners therein, shall contrive, procure, connive at, or otherwise voluntarily suffer or permit the escape of any such prisoner or prisoners, he, on conviction thereof, shall be confined at hard labor in the Penitentiary not exceeding twenty years.

Sec. 677. Whenever a convict shall be discharged from the Penitentiary, it shall be the duty of the Superintendent to furnish such convict with a suit of common clothes, if deemed necessary, and transportation from the Penitentiary to his home, or as near thereto as can be done by public conveyances.

Transportation, &c., for discharged convicts.

Ib., 69, § 1; G. S. 2726; R. S. 562.

Sec. 678. The cost of such transportation and clothes shall be paid at the Treasury, on the draft of the Superintendent, countersigned by the Comptroller General.

Payments of, &c.

G. S. 2727; R. S. 563; 1868, XIV., 69, § 2.

Sec. 679. All guards, keepers, employes, and other officers that are now, or may be hereafter, employed at the Penitentiary, shall be exempted from serving on juries, and from military, road, or street duty.

Guards, &c., exempt from jury duty, &c.

G. S. 2728; R. S. 564; 1872, XV., 232.

Convict Labor.

Sec. 680. The Board of Directors of the Penitentiary are hereby authorized and empowered to lease or hire out any convicts in the Penitentiary, except convicts under sentence for rape, murder, arson and manslaughter when the sentence is over five years, under the following rules, regulations and restrictions with all others imposed by the said Board: That the said Board of Directors shall make an annual report to the General Assembly at the regular sessions, showing the number and names of convicts hired out, to whom hired, for what purpose, and for what consideration; and the Board of Directors are authorized to retain for the use of the Penitentiary all amounts received by them for the hire or labor of convicts during the current fiscal year.

Certain convicts may be hired out; Board report annually to General Assembly; proceeds of labor retained for use of Penitentiary.

G. S. 2729; R. S. 565; 1877, XVI., 263, § 4. 1880, XVII., 374, § 1; 1901, XXIII., 630.

Sec. 681. The Superintendent and Directors of the State Penitentiary are hereby authorized and required to hire out to such of the several Counties of this State, as may desire them, all able-bodied male convicts to hard labor in said institution to work on the public highways or the sanitary drainage in said Counties as can be spared from the State farms, and departments connected with the State Penitentiary, and the convicts sentenced to hard labor in the State Penitentiary shall not be hired out for farming purposes, and when hired out to the Counties as aforesaid, the compensation for their services shall be at the rate of four dollars per month, with board, lodging, clothing and medical attendance: *Provided,* That nothing herein contained shall apply to contracts now in force.

To whom convicts may be hired.

1901, XXIII, 660.

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Hire from convicts; disposition of.

1901, XXIII, 779; 1896, XXII., 199.

Sec. 682. The Board of Directors of the State Penitentiary are hereby directed to pay into the Treasury of the State, at the end of each three months or within five days thereafter, all amounts received by them from the hire of convicts and from other sources, after paying the necessary expenses of the said institution and all other disbursements authorized by law, the said amounts to be paid into the Treasury to be held subject to the warrants of the Comptroller General to pay amounts appropriated by the General Assembly in the same manner as other funds in the Treasury.

The hiring of convicts further regulated.

Ib.

Sec. 683. The Board of Directors are hereby instructed, in hiring out or working convicts to receive as compensation for the services of said convicts lawful money of the United States only. And the said Board of Directors are hereby further instructed, in the hiring out of convicts, to give preference to the Supervisor of any County, and of any person, firm or corporation whose purpose is to use said convicts in the working of the public roads in any County in this State, or in the clearing out of streams of any County of this State. The hire from said convicts shall be paid at least monthly.

Treatment of convicts, &c.

G. S. 2730; R. S. 566; 1877, XVI., 263.

Sec. 684. All convicts shall be safely kept within the State and humanely treated, the food, clothing, lodging, and modes of punishment, to be carefully provided for in any and all contracts; and shall not be required to labor more than ten hours a day, or on Sundays or holidays.

Board to hire to highest bidder.

G. S. 2731; R. S. 567; 1879, XVII., 169.

Sec. 685. It shall be the duty of the Board of Directors of the State Penitentiary in leasing convicts to hire them to the highest responsible bidder: *Provided,* That the Board of Directors shall have power to reject any and all bids: *Provided, further,* That no bid shall be received that does not include the board, clothing, and all other expenses connected with the transportation and safe keeping of said convicts to be paid by the bidder: *Provided, further,* That the said bidder do agree that if any convict or convicts so hired shall be proved to the satisfaction of said Directors to have been ill-treated, or the contracts in relation to them to have been in any way violated, to return said convict or convicts immediately to the Penitentiary, upon the order of the said Directors.

Persons hiring convicts to give bond.

1877, XVI., 393; 1882, XVIII., 255.

Sec. 686. The contractor or company hiring said convicts shall enter into bond, payable to the State, in the sum of ten thousand dollars of every hundred convicts, and a bond in like proportion for a less number, for the safe keeping of the con-

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victs; and for each convict that shall escape through negligence of any kind the contractor or company shall forfeit and pay to the State therefor the sum of fifty dollars per annum for each year of the unexpired term of the sentence of such escaped convict, and the fact of such escape shall be taken as *prima facie* evidence of negligence on the part of the contractor or company: *Provided,* That the aggregate of said forfeiture shall not exceed two hundred and fifty dollars for any one convict: *Provided, further,* That if the convict shall be captured within two months and returned to custody free of cost to the State, no penalty shall attach.

Forfeit for escaped convicts.

G. S. 2732; R. S. 568.

Proviso as to aggregate of forfeiture.

One of Directors hiring convicts is liable for convicts negligently permitted to escape, though he did not give bond required.—Lipscomb v. Seegers, 19 S. C., 430.

The fifty dollars is not a technical penalty, but is stipulated damages.—*Ib.*

An action therefor not barred in two years.—*Ib.*

For fractions of a year such damages would be proportionate.—*Ib.*

To recover them before the Act of 1882 the burden of proof is on plaintiff to show that the escape was through negligence of defendant while he had them in his possession.—Lipscomb v. Seegers, 22 S. C., 410.

Sec. 687. Any institution of this State getting convicts from the State Penitentiary by any Act or Joint Resolution of the General Assembly of this State shall be required to pay to the Superintendent of the Penitentiary all moneys expended by him for transportation, guarding, clothing and feeding said convicts while working for said institutions, and also for medical attention, and the officer or officers in charge of said institutions shall also execute and deliver to said Superintendent of the Penitentiary, at the end of each year, a receipt for five dollars and fifty cents per month for the work of each convict so employed.

Costs of maintaining convicts by State institutions when received under Acts of General Assembly.

1897, XXII., 493.

Sec. 688. In case it shall at any time be found to the satisfaction of the Governor that the said convicts, or any of them, are maltreated or cruelly used, or insufficiently fed or clothed, it shall be his duty forthwith to issue his instructions to the Directors of the Penitentiary to recall all such convicts; and thereupon the said contractors shall forthwith return such convicts to the State Penitentiary. In order to secure the intent of this Section, it is hereby made the duty of the Superintendent of the Penitentiary to cause the convicts furnished under the provisions of the foregoing Sections to be inspected by a physician as often as may be deemed necessary by the Superintendent or Board of Directors, and such physician shall report the result of such inspection to the Superintendent, who shall forward the same to the Governor.

Upon information of maltreatment, Governor may order return; physician to inspect and make report.

G. S. 2733; R. S. 569; 1880, XVII., 470.

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Rewards for capture of escaped convicts, and payment of expenses.

G. S. 2734; R. S. 570; 1882, XVII., 952, § 1.

Sec. 689. The Superintendent of the Penitentiary is authorized and required to offer a reward of twenty-five dollars for the capture of each escaped convict, and besides said reward, to pay to any person who captures and returns to the Penitentiary any escaped convict, five cents per mile each for said person and convict, and any reasonable allowance for expenses for board during the travel to the Penitentiary.

Duty of Sheriff and other officers to arrest escaped convicts.

Ib., § 2; G. S. 2735; R. S. 572.

Sec. 690. It shall be the duty of all Sheriffs, Magistrates, and Constables, forthwith to arrest any escaped convicts who may be found within their respective Counties, and to convey them to the State Penitentiary.

Penalty for harboring or employing escaped convicts.

Ib., 953, § 3; G. S. 2736; R. S. 572.

Sec. 691. Whoever shall harbor or employ any escaped convict, knowing him to be such, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined or imprisoned, or both fined and imprisoned, in the discretion of the presiding Judge.

Hired convicts to be under officer and guards.

1884, XVIII., 815.

Hours of labor.

G. S. 2722a; R. S. 573.

By whom punished.

Pay of officers and guards.

Responsible to Superintendent.

Contracts to be rescinded.

Duty of physician.

Duties of officer and guards.

Sec. 692. No convicts shall be hired out as provided in the foregoing Sections unless such convicts shall be and remain under the supervision of a sworn officer and guards appointed by the Superintendent of the Penitentiary; and every contract shall specify the hours of labor, and the time occupied in going to and returning from work shall be taken as a part of the hours making the day's work, and no convict so hired out shall be punished except by such officer. The pay allowance and rations of such officer and guards shall be included in the hire of the convicts and shall be paid and supplied by the person hiring them; the amount of pay of such officer and guards to be paid by the person hiring convicts monthly in advance to the Superintendent of the Penitentiary, to be by him paid to such officer and guards, such officer and guards to be responsible to the Superintendent of the Penitentiary, and to hold their offices subject to removal by the Superintendent; and the Directors of the Penitentiary shall rescind all contracts now in existence at the earliest day they can, and in every new contract enforce the provisions of this Section, and shall hire no convict to be employed at any work or at any place until the physicians of the Penitentiary shall have declared in writing such work and place to be reasonably safe and healthy. The Superintendent and Directors of the Penitentiary shall prescribe the rules and regulations to be observed by said officer and guards in all cases.

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Sec. 693. The Superintendent and Board of Directors of the Penitentiary are authorized to make contracts for the performance of specific work, such work to be done entirely under the control and direction of the officers of the penitentiary. Also to hire out the convicts under the provisions of the laws in force at the time of the passage of the Act of the 24th day of December, 1884, (18 Statutes, 815) being Section 688 of this Code, and such other rules and regulations as they may adopt to secure the well being and humane treatment of the convicts. And that they be authorized to employ a physician, to be nominated by the Surgeon of the penitentiary, resident in the neighborhood, to have medical supervision of squads of fifty or more convicts, such physician to be paid out of funds of the Penitentiary, and to report weekly to the Surgeon of the Penitentiary, the Superintendent and Board of Directors to have regard to such expense in fixing the compensation for the hire of said convicts.

Contracts for working and hiring convicts.

R. S. 574; 1885, XIX., 74.

Physician to be employed.

Sec. 694. The Superintendent and Board of Directors of the Penitentiary are authorized, in their discretion, to purchase or lease, out of the surplus earnings of the Penitentiary, one or more farms in any part of the State, due regard being had to the reasonable healthfulness of the locality.

May purchase or lease farms.

Ib.; R. S. 575.

Sec. 695. It shall be the duty of the Superintendent and Board of Directors, and they are hereby required, to prosecute all violations of the law in reference to the treatment of convicts.

Violations of law to be prosecuted.

Ib.; R. S. 576.

Sec. 696. Any contractor or any other person or persons who shall violate the provisions of any law regulating the hiring of convicts shall be held guilty of a misdemeanor, and, on conviction thereof, shall be punished by imprisonment not exceeding five years, or fine not exceeding five hundred dollars, or both in the discretion of the Court, and in all such prosecutions any convict shall be a competent witness in behalf of the State.

Punishment.

Convicts may be witnesses.

Ib.; R. S. 576.

Sec. 697. No contracts for the hiring or leasing of convicts in phosphate mining shall hereafter be made by the Board of Directors of the Penitentiary.

No convicts to work in phosphate mines.

R. S. 578; 1889, XX., 320.

Sec. 698. It shall be the duty of the Clerks of the Court of General Sessions and Common Pleas of the several Counties in this State, and they are severally hereby directed, immediately after the adjournment of the Court of General Sessions, in their respective Counties, to notify the Superintendent of the

Clerks to notify Superintendent of Penitentiary of number of convicts.

R. S. 579; 1886, XIX., 486.

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Penitentiary of the number of convicts sentenced by the Court to imprisonment in the State Penitentiary; and it shall be the duty of the said Superintendent as soon as he receives said notice to send a suitable number of guards to convey said convicts to the Penitentiary.

Guards to be sent for them.

Expenses of transportation. How paid.

Ib.; R. S. 577.

Sec. 699. No sum beyond the actual expenses incurred in conveying such convicts to the Penitentiary shall be allowed for such services, which said sum shall be paid to the Superintendent by the State Treasurer upon the warrant of the Comptroller General.

Penitentiary to use part of Lexington State farm for Renformatory.

1900, XXIII., 443.

Sec. 700. The Board of Directors and Superintendent of the State Penitentiary are hereby authorized and required to set apart so much of the State farm in the County of Lexington as may be necessary for such Reformatory. They shall also provide suitable buildings and stockade for the safe-keeping and comfort of persons sentenced thereto.

What moneys may be used for said purpose.

The Superintendent of the Penitentiary is authorized to use any money on hand, or that may accrue out of the profits of the State Penitentiary, to defray the expenses incurred in providing such buildings and stockade and other appurtenances to the State Reformatory Farm.

Warden or Overseer, how appointed.

He shall also appoint as warden or overseer, a person who, from practical experience, possesses the ability and qualifications necessary to successfully carry on the industries of the Reformatory, and to enforce and maintain proper discipline therein, and shall remove the same at will. Salary of the warden shall be paid of the profits of the State Penitentiary.

Rules for government.

The Board of Directors and Superintendent of the Penitentiary shall make rules and regulations for the government of the Reformatory.

Who shall be placed in Reformatory.

The Superintendent of the Penitentiary shall place in the Reformatory all male criminals, under sixteen years of age, who shall be legally sentenced to said Reformatory on conviction of any criminal offense in any Court having jurisdiction thereof and punishable by imprisonment in the State Penitentiary. He shall also remove all such convicts now in the Penitentiary as soon as existing circumstances will allow. The discipline to be observed in the said prison shall be reformatory, and the warden shall have power to use such means of reformation, consistent with the improvement of the inmates, as may be prescribed by the Board and Superintendent. The Superintendent shall provide for the instruction of the inmates in

morals as well as useful labor. The white convicts shall be kept and employed separately from the colored convicts.

TITLE IV.

CHAPTER XXXIV.

Of Inquests on Dead.

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Mode of summoning a jury. Form of warrant

G. S. 2664; R. S. 580; 1839, XI., 72, § 9; 1875, XV., 8.

Section 701. When the Coroner shall be informed of, or shall see, the dead body of any person, supposed to have come to a violent and untimely death, found lying within his County, he shall make out his warrant, directed to all or any of the Constables of his County, or to the Sheriff of his County, requiring them, or any of them, forthwith to summon a jury of fourteen men of the County, within a radius of ten miles, to appear before him at the time and place specified in the warrant, which warrant shall be in this form:

"The State of South Carolina.

"To the Sheriff (or to any Constable or Constables, as the case may be,) of .... County, Greeting:

"These are to require you, immediately on receipt and sight

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hereof, to summon and warn, verbally or otherwise, fourteen men of the said County, to be and appear before me, the Coroner of said County, at ...., within the said County, between the hours of .... o'clock, on the .... day of ......, then and there to inquire, upon the view of a body of a certain person there lying dead, how he came to his death. Fail not herein, as you will answer the contrary at your peril.

"Given under my hand and seal, at ...., this .... day of ...., A. D. ...., by me.

"A B, [L. S.]

"Coroner for .... County."

Any Constable or Sheriff to execute warrant.

G. S. 2665, R. S. 581; 1839, XI., 72, § 10.

Sec. 702. Any Constable or Sheriff, to whom such warrant shall come, shall forthwith execute the same, and repair unto the place at the time therein mentioned, and make return of the warrant, with his proceedings thereon, to the Coroner that granted it; and every Constable or Sheriff, failing to perform the duty by such warrant required of him, or failing to return the same, as aforesaid, shall forfeit and pay the sum of twenty dollars, if without reasonable excuse, to be recovered by action; and each and every person summoned and warned, as aforesaid, to be a juror, and failing to appear and act as such juror, shall also forfeit and pay the sum of twenty dollars, if without reasonable excuse, to be recovered by action.

Persons subject to jury duty.

Ib., § 11; G. S. 2666; R. S. 582.

Sec. 703. All persons subject to jury duty in the Circuit Courts shall be liable to serve as jurors on an inquest on a dead body found within their County.

Number of jurors and oath.

Ib., 73, § 12; G. S. 2667; R. S. 583.

Sec. 704. Of the jurors summoned and appearing, the Coroner shall swear twelve or more, and administer to the foreman appointed by him an oath, in the form following: "You shall inquire and true presentment make, on behalf of the State of South Carolina, in what manner A B, here lying dead, came to his death, and you shall deliver a true verdict thereon, according to such evidence as shall be given, and according to your knowledge: So help you God;" and to the others he shall administer an oath in this form: "The oath which your foreman has taken on his part, you shall well and truly observe and keep on your part: So help you God."

Coroner to charge jury.

Ib., § 13; G. S. 2668; R. S. 584.

Sec. 705. The jury so sworn shall be charged by the Coroner to declare, upon oath, whether the deceased came to his death by mischance and accident, or by felony; and if by felony, whether by his own or another's; and if by mischance, whether

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by the act of God or of man; and if he died of another's felony, who were principals and who accessories, who threatened him of life, or murder, and with what instrument he was struck or wounded; and if by mischance or accident, by the act of God or man, whether by hurt, fall, stroke, drowning or otherwise. And he shall also charge them to inquire of the persons that were present at the finding of the body whether he were killed in the same place or elsewhere, and, if elsewhere, by whom or how he was there brought, and of all other circumstances.

Inquiry in case of suicide.

Ib., § 14; G. S. 2669; R. S. 585.

Sec. 706. If the jury so charged find that the deceased came to his death by his own felony, they shall further inquire into the manner, names, and instrument, and into all the circumstances of the death.

Proclamation.

Ib., § 15; G. S. 2670; R. S. 586.

Sec. 707. The jury being charged, they must stand together until proclamation be made for any that can give evidence to draw near, and they shall be heard.

Coroner has power to issue warrants, examine, bind over, commit, &c.

Ib., § 16; G. S. 2671; R. S. 587.

Sec. 708. The Coroner shall have the power to issue a warrant or warrants, to summon witnesses, and examine before the jury any person present, whether summoned or not, concerning the death; and every person summoned or required to give evidence, and disregarding such summons, or refusing to testify, without such excuse as shall be lawful and sufficient, shall forfeit and pay the sum of twenty dollars, and shall be committed to jail by the Coroner until the next Court of General Sessions, or until he testifies and is discharged by the Coroner (the said forfeiture to be recovered by indictment); and, in addition, shall be liable to be indicted at the next Court of General Sessions for the County, and, upon conviction, shall be fined and imprisoned at the discretion of the Court. And the Coroner shall bind such witness or witnesses so appearing, by recognizance, with good and sufficient surety, to appear at the next Court of General Sessions, to stand his trial; and the witnesses refusing to enter into such recognizance shall be forthwith committed to the jail of the County, by commitment, under the hand and seal of the Coroner, there to be kept until they enter into such recognizance as before required.

Power to adjourn the jury, bind jurors, &c.

G. S. 2672; R. S. 588; 1839, XI., 74, § 17.

Sec. 709. A Coroner shall have power, if he deem it necessary, to adjourn the jury, either from day to day, or any other day and place, to receive evidence, binding the jurors severally by one recognizance, in such amount as he shall think fit, for their appearance; which recognizance may be estreated, as to

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any of the conusors for default, by the Court of General Sessions.

Absent jurors, how supplied, &c.

Ib., § 18; G. S. 2673; R. S. 589.

Sec. 710. If all or any of the jurors shall fail to reappear at the day and place to which they were adjourned, the Coroner shall issue his warrant to supply the places of the absent jury, or of so many of the jurors absent as may be necessary; and the jurors last summoned shall be sworn and charged as those first summoned were, and shall have the same powers, and be liable to the same penalties.

Oath of witnesses.

G. S. 2674; R. S. 590.

Sec. 711. The witnesses examined upon the inquest shall be sworn as follows, by the Coroner, who is empowered to administer the oath, that is to say: "The evidence you shall give to this inquest, concerning the death of A B, here lying dead, shall be the truth, the whole truth, and nothing but the truth: So help you God."

Coroner to take down testimony in writing, and bind over or commit witnesses.

Ib., § 20; G. S. 2675; R. S. 591.

Sec. 712. The testimony of all witnesses examined upon an inquest shall be taken down in writing by the Coroner, and signed by the witnesses, and if the testimony given tends to criminate any person as concerned in the death of the deceased, the Coroner shall bind over the witness who gave it, in recognizance, with sufficient surety, to appear at the next Court of General Sessions to be holden for the County, to give evidence concerning the death; and such witness, for refusing to enter into such recognizance, shall be committed by the Coroner to the jail of the County, by warrant under his hand and seal, there to be kept until the session of the Court, or until he shall enter into recognizance as required.

Testimony of witness examined on inquest in absence of prisoner not competent against him, on trial for murder, after death of witness.—State v. Campbell, 1 Rich., 124.

The testimony so taken down is the best evidence of what a witness swore before the Coroner, and other parol testimony as to what he swore should be rejected.—State v. Prater, 26 S. C., 198; 2 S. E., 108. When Coroner fails to have witness to sign the testimony taken down in writing by person, proof of it by Coroner, without his remembering it, is competent.—State v. Jones, 29 S. C., 201; 7 S. E., 296. Testimony of witness may be contradicted by what he swore before Coroner at inquest.—*Ib.*

Form of verdict.

Ib., § 21; G. S. 2677; R. S. 592.

Sec. 713. The jury having viewed the body, heard the evidence, and made inquiry into the cause and manner of the death, shall render their verdict thereon, in writing, to the Coroner, under their hands and seals, in the manner following, (which shall pass by indenture interchangeably between the Coroner and jury,) that is to say:

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"South Carolina,

"County, ...

"An inquisition indented, taken at , in County, the day of , A. D. , before A B, Coroner (or C D, Magistrate, acting as Coroner) for said County, upon view of the body of E F, of , then and there being dead, by the oaths of (inserting the names of the jurors,) being a lawful jury of inquest, who, being charged and sworn to inquire, for the State of South Carolina, where and by what means the said E F came to his death, upon their oath do say, &c.; (inserting how, where, at what time, and by what instrument the deceased was killed;)" and, if it shall appear that the deceased was wilfully killed by another, the inquisition must be concluded in this form: "And so the jurors aforesaid, upon their oaths aforesaid, do say that the aforesaid J K, in manner and form aforesaid, E F then and there feloniously did kill, against the peace and dignity of the same State aforesaid."

Finding in case of death by means unknown.

G. S. 2677; R. S. 593; 1839, XI., 75, § 22.

Sec. 714. If it shall appear that the deceased came to his death by means unknown to the jury, the inquisition shall conclude thus: "That the said E F was killed and murdered by some person or persons (or, by some means,) to the jurors unknown, against the peace and dignity of the same State aforesaid."

Finding in case of death by self-murder.

Ib., § 23; G. S. 2678; R. S. 594.

Sec. 715. If it appears that he died by self-murder, the inquisition shall conclude: "That the said E F, in manner and form aforesaid, then and there, voluntarily and feloniously, himself did kill, against the peace and dignity of the same State aforesaid."

Finding in case of death by mischance.

Ib., § 24, G. S. 2679; R. S. 595.

Sec. 716. If it appear that the deceased came to his death by mischance, the finding shall conclude: "That E F, in manner and form aforesaid, came to his death by misfortune, or accident."

Finding in case of death by the hands of another.

Ib., § 25; G. S. 2680; R. S. 596.

Sec. 717. If the proof shall be that the death was occasioned by the hands of another, the conclusion shall be: "That J K the said E F, by misfortune, and contrary to his will, in manner and form aforesaid, did kill and slay."

Form of conclusion of inquisition.

Ib., § 26; G. S. 2681; R. S. 597.

Sec. 718. After the conclusion above, according to the facts, the inquisition shall end in this form: "In witness whereof, I ...., Coroner aforesaid, and the jurors aforesaid, to this

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inquisition have interchangeably put our hands and seal, the day and year above mentioned.

"A B, [L. S.]
"Coroner .... County.
"C D, &c., [L. S.]
"Foreman of Jury of Inquest.
"E F, &c., [L. S.]
"Jurors."

Warrant in case of murder.

G. S. 2682; R. S. 598; 1839, XI., 76, § 27.

Sec. 719. If the finding of the inquest be wilful killing by the hands or means of another, the Coroner shall forthwith issue his warrant, dictated to the Sheriff, or to one or more Constables for the County, for all the persons implicated by said finding, which warrant shall be in this form:

"The State of South Carolina.

"By A B, Coroner (or C D, Magistrate, acting as Coroner) for .... County:

"To ...., Sheriff of .... County:

"Whereas, by inquisition by me held, on (time and place inserted,) it was found that (here insert the finding of the jury): These are, therefore, to command you forthwith to apprehend (here insert the name or names of the accused,) and bring him (or them) before me, to be dealt with according to law.

"Given under my hand and seal, this .... day of ...., A. D. ....

"A B, Coroner, [L. S.]
"(or C D, Magistrate, acting as Coroner)."

Commitment.

Ib., § 28; G. S. 2683; R. S. 599.

Sec. 720. Upon the return of the said warrant, and the arrest of the party or parties, the Coroner shall proceed to commit him, her, or them, by warrant, in the following form:

"To the Sheriff, or Jailer of .... County:

"You are hereby commanded and required to receive and keep in close confinement, in the jail of your County, (here insert the name or names of the party or parties,) charged before me by the finding of a jury of inquest held on the .... day of ...., at ...., with (here insert finding,) until he (she or they) shall be delivered by due course of law herein fail not.

"Given under my hand and seal, this .... day of ...., A. D. ....

"A B, Coroner [L. S.]
"(or C D, Magistrate, acting as Coroner)."

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Sec. 721. All Sheriffs and Jailers are required to receive and keep securely all persons so committed by the Coroner.

Sheriff, &c., to keep persons committed.

Sec. 722. If the finding of the inquest be that the deceased came to his death by mischance, by the hands of another, the Coroner shall bind in recognizance, with sufficient surety, the party against whom the verdict has been rendered, to appear at the next Court of General Sessions for the County, that the matter may be then and there inquired into; and the Coroner shall also bind over, by recognizance, with good surety, all such material witnesses as were examined before the jury of inquest.

Ib., § 29; G. S. 2684; R. S. 600.

To bind over party killing by mischance and witnesses.

Ib., 77, § 30; G. S. 2685; R. S. 601.

Sec. 723. If any person shall bury, or cause to be buried, the dead body of a person supposed to have come to a violent death, before notice to the Coroner to examine the body, and before inquiry is made into the manner and circumstances of the death, such person shall be liable to indictment therefor before the Court of General Sessions, and, upon conviction, shall be fined and imprisoned at the discretion of the presiding Judge. And the Coroner shall bind him in recognizance, with sufficient surety, to appear and stand his trial at the ensuing term of such Court.

Penalty for burying a body without inquiry.

G. S. 2686; R. S. 602; 1839, XI., 77, § 34.

Sec. 724. If the Coroner shall know, or be informed, of the interment of a body of a person, supposed to have come to a violent death, he shall proceed to empanel a jury, as is hereinbefore directed, and order such body to be taken up, and shall conduct his examination into the cause and manner of the death, as though such body had not been buried.

Body to be taken up on suspicion of violent death.

Ib., § 35; G. S. 2687; R. S. 603.

Sec. 725. If the body has been so long dead and buried or so injured by improper keeping as that the causes of the death cannot be ascertained upon the examination, the Coroner shall make record of the fact, stating its condition, by whom, and how long, it had been kept or buried, the circumstances of the burial, and the identity (if discovered); which record shall be entered in his book, and returned, as any other inquisition, to the Clerk of the Court of General Sessions for the County.

Record of body long dead, &c.

Ib., § 36; G. S. 2688; R. S. 604.

Sec. 726. The person burying or directing the burial of the dead body of one supposed to have come to a casual or violent death, without due notice to the Coroner, upon conviction thereof, by indictment in the Court of Sessions, shall be liable to be fined and imprisoned at the discretion of the Court. And the Coroner shall bind him in recognizance, with sufficient

Liability for burial without inquest, &c.

Ib., 78, § 37; G. S. 2689; R. S. 605.

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surety, to appear and stand his trial at the ensuing term of such Court.

Coroner may punish for contempt.

G. S. 711; R. S. 606; 1839, XI., 78; 1874, XV., 529.

Sec. 727. Whenever any person or persons shall wilfully disturb or impede the proceedings of a jury of inquest while inquiring into the cause of any death, or shall offer any contempt to the person or authority of the Coroner while so engaged, the Coroner is hereby empowered to commit such person or persons to the common jail of the County for a time not exceeding twenty-four hours.

Any person who shall have been at any time duly summoned to attend and serve upon a Coroner's jury who shall neglect or refuse to so attend and serve without proper excuse shall be liable to be punished for contempt; and the Coroner is hereby authorized and empowered to punish such contempt by fine not exceeding twenty dollars or imprisonment not more than twenty-four hours, or both, at his discretion.

See Sec. 888, Civil Code, as to when Magistrates may act as Coroner.

Inquests regulated.

1894, XXI., 815; 1900, XXIII., 456.

Sec. 728. It shall be unlawful for any Coroner or Magistrate to hold an inquest over any dead body, except upon the written request of two reputable citizens residing in the neighborhood of where the dead body is found: *Provided,* That the provisions of this Section shall not apply to Counties where Coroners are paid salaries, except in the Counties of Bamberg, Charleston, Florence and Dorchester, where such requests shall be necessary.

Preliminary examinations.

1884, XXI., 825.

Sec. 729. Whereas great expense to the Counties is being incurred by the apparent requirement of law that Coroners and Magistrates acting for Coroners shall summon a jury, and often one or more doctors, in case of every body found dead, even where there is no suspicion of foul play at all therefore:

Duty of Coroner.

In every case where a body is found dead, and an investigation or inquest is deemed advisable, it shall be the duty of the Coroner, or of the Magistrate acting as Coroner, as the case may be, to go to the body, and examine the witnesses most likely to be able to explain the cause of death, take their testimony in writing, and decide for himself whether there ought to be a trial or whether blame probably attaches to any living person for the death; and if so, he shall proceed to summon a jury and hold a formal inquest as now required by law; but if there be, in his judgment, no apparent or probable blame against living persons as to the death, he shall issue a burial

Formal inquest.

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permit, and all further inquiry or formal inquest shall be dispensed with; and for such preliminary examination such officer shall receive the same fees paid in same way as a Magistrate for any ordinary preliminary examination in a criminal case; and the evidence and the finding of the officer on said preliminary shall be filed in the Clerk's office of the County, the finding to be that deceased came to death from natural cause, or came to death at his own hand, or from act of God, or from mischance, without blame on the part of another person.

When dispensed with.

Fees.

Evidence filed.

Proviso.

In Counties where the Coroner receives a salary no fees shall be allowed to any officer for services in such preliminary examinations.

See Sec. 3125, Civil Code, as to fees of physicians attending at inquests.

ADDENDA

TO

Criminal Code.

Being a List of Sections Construed by Supreme Court in Volumes 62 and 63 S. C. Reports.

Published Since Adoption of Code.

Section 20. Party swearing out, and constable serving warrant, not liable for false imprisonment, where facts stated constitute no offense.—Whaley v. Lawton, 62 S. C., 91; 40 S. E., 128.

Section 24. This Act does not prevent grand jury indicting without preliminary examination.—State v. Brown, 62 S. C., 374; 40 S. E., 776.

Section 57. Preliminary examination before Magistrate not essential to validity of dictment.—State v. Brown, 62 S. C., 374; 40 S. E., 776.

Section 171. Magistrate is not deprived of jurisdiction by plea of title to land.—State v. Holcomb, 63 S. C., 22; 40 S. E., 1017.

Section 359. Enticing a minor child, working under a contract made by its father, from the employ of a farmer is not violation of this Section.—State v. Aye, 63 S. C., 458; 41 S. E., 519.

Section 458. Establishment of highway by adverse use.—Earle v. Poat, 63 S. C., 439; 41 S. E., 525. Kirby v. So. Ry., 63 S. C., 494; 41 S. E., 765.

Section 555. "Keeping and storing" involves the idea of continuity or habit.—Easley Town Council v. Pegg, 63 S. C., 98; 41 S. E., 18.

Section 608. Constitutional; sufficiency of indictment.—State v. Napier, 63 S. C., 60; 41 S. E., 13.

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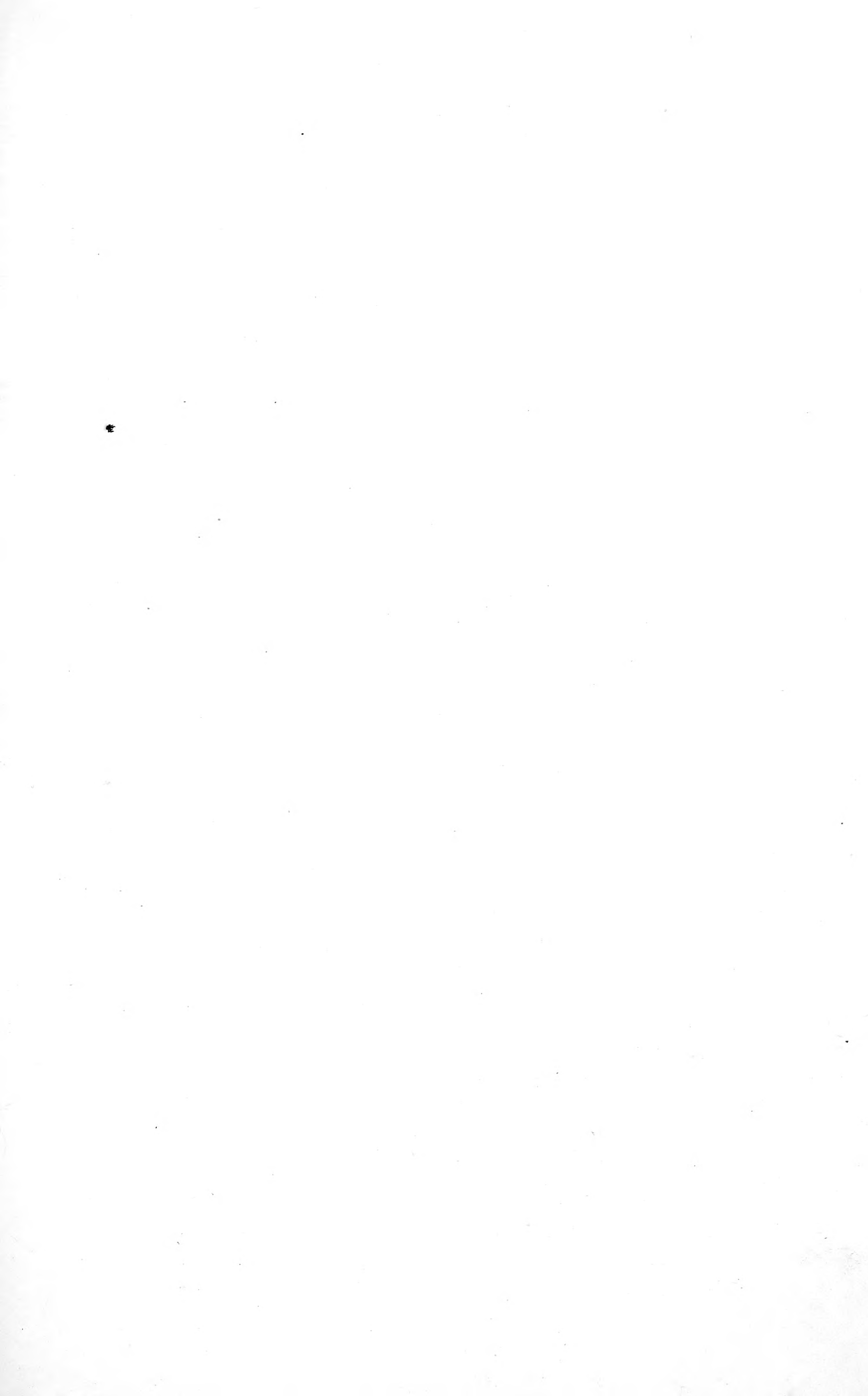

CODE OF LAWS

OF

South Carolina,

1902.

APPENDIX TO VOLUME II.

THE STATE COMPANY, STATE PRINTERS,
COLUMBIA, S. C.,
1902.

I.—C.

CONSTITUTION

OF THE

United States of America

1787.

PREAMBLE---OBJECTS OF THE CONSTITUTION.

ARTICLE I.

SEC.

1. Legislative powers, in whom vested.
2. House of Representatives, how Representatives and direct and by whom chosen. Qualifications of a Representative. taxes, how apportioned. Census. Vacancies to be filled. Power of choosing officers, and of impeachment.
3. Senators, how and by whom chosen. How classified. State Executive to make temporary appointments in case, &c. Qualifications of a Senator. President of the Senate has right to vote. President *pro tem.* and other officers of Senate, how chosen. Power to try impeachment. When President is tried, Chief Justice to preside. Sentence.
4. Times, &c., of holding elections, how prescribed. One session in each year.
5. Membership. Quorum. Adjournments. Rules. Power to punish or expel. Journal. Time of adjournment limited unless, &c.
6. Compensation. Privileges. Disqualification in certain cases.
7. House to originate all revenue bills. Veto. Bill may be passed by two-thirds of each House, notwithstanding, &c. Bill not returned in ten days. Provision as to all orders, &c., except, &c.

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8. Powers of Congress.
9. Provision as to migration or importation of certain persons. *Habeas corpus.* Bills of attainder, &c. Taxes, how apportioned. No export duty. No commercial preferences. No money drawn from Treasury unless, &c. No titular nobility. Officers not to receive presents, unless, &c.
10. States prohibited from the exercise of certain powers.

ARTICLE II.

1. President and Vice President, their term of office. Electors of President and Vice President, number, and how appointed. Electors to vote on same day. Qualification of President. On whom his duties devolve in case of his removal, death, &c. President's compensation. His oath.
2. President to be Commander-in-Chief. He may require opinion of, &c., and may pardon. Treaty-making power. Nomination of certain officers. When President may fill vacancies.
3. President shall communicate to Congress. He may convene and adjourn Congress in case, &c. Shall receive ambassadors, execute laws, and commission officers.
4. All civil offices forfeited for certain crimes.

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2. Judicial power, to what cases it extends. Original jurisdiction of Supreme Court. Appellate. Trial by jury, except, &c. Trial, where.
3. Treason defined. Proof of. Punishment.

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1. Credit to be given to public Acts, &c., of every State.
2. Privileges of citizens of each State. Fugitives from justice to be delivered up. Persons held to service, having escaped, to be delivered up.
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4. Republican form of government guaranteed. Each State to be protected.

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Provisions concerning prosecutions, trials and punishments. Private property not to be taken for public use without, &c.

ARTICLE VI.

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ARTICLE VII.

Right of trial by jury secured.

ARTICLE VIII.

Bail, fines and punishments.

ARTICLE IX.

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ARTICLE X.

Same subject.

ARTICLE XI.

Same subject.

ARTICLE XII.

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ARTICLE XIII.

1. Slavery abolished.
2. Power of Congress, &c.

ARTICLE XIV.

1. Who citizens; privileges.
2. Apportionment and basis of representation.
3. Political disabilities.
4. Validity of public debt; debts of the rebellion, or for slaves, invalid.
5. Power of Congress, &c.

ARTICLE XV.

1. Right to vote not abridged by race, color or previous condition.
2. Power of Congress, &c.

Upon questions arising under United States Constitution the State Courts must conform to the decisions of the United States Supreme Court.—Cochran v. Darcy, 5 S. C., 126.

Preamble.

WE THE PEOPLE of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this CONSTITUTION for the United States of America.

Chisholm v. Georgia, 2 Dall., 419; McCulloch v. State of Maryland et al., 4 Wh., 316; Brown et als. v. Maryland, 12 Wh., 419; Barron v. The Mayor and City Council of Baltimore, 7 Pet., 243; Lane County v. Oregon, 7 Wall., 71; Texas v. White et al., 7 Wall., 700; Claflin v. Houseman, assignee, 93 U. S., 130; Williams v. Bruffy, 96 U. S., 176; Tennessee v. Davis, 100 U. S., 257; Langford v. United States, 101 U. S., 341; United States v. Jones, 109 U. S., 513; Fort Leavenworth Railroad Co. v. Lowe, 114 U. S., 525; The Chinese Exclusion Case, 130 U. S., 581; Geofroy v. Riggs, 133 U. S., 258; in re Neagle, 135 U. S., 1; in re Ross, 140 U. S., 453; Logan v. United States, 144 U. S., 263; Lascelles v. Georgia, 148 U. S., 537; Fong Yue Ting v. United States, 149 U. S., 698; in re Tyler, 149 U. S., 164; United States v. E. C. Knight Co., 156 U. S., 1; Mattox v. United States, 156 U. S., 237; in re Quarles and Butler, 158 U. S., 532; in re Debs, Petitioner, 158 U. S., 564; Ward v. Race Horse, 163 U. S., 504.

ARTICLE. I.

Legislative powers, in whom vested.

Section 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Hayburn's case (notes), 2 Dall., 409; Field v. Clark, 143 U. S., 649.

House of Representatives, how and by whom chosen.

Sec. 2. [1]The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

Qualifications of a Representative.

[2]No Person shall be a Representative who shall not have attained the Age of twenty-five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

Representatives and direct taxes, how apportioned.

[3]*[Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three-fifths of all other Persons.]

Census.

The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State

shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New-York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

*The clause in brackets is amended, in respect to the apportionment of Representatives by the 14th amendment, Sec. 2.

Veazie Bank v. Fenno, 8 Wall., 533; Scholey v. Rew, 23 Wall., 331; De Treville v. Smalls, 98 U. S., 517; Gibbons v. District of Columbia, 116 U. S., 404; Pollock v. Farmers' Loan & Trust Co. (Income Tax case), 157 U. S., 429; Pollock v. Farmers' Loan & Trust Co. (Rehearing), 158 U. S., 601; Downes v. Bidwell, 182 U. S., 260.

Vacancies to be filled.

[4]When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

Power of choosing officers, and of impeachment.

[5]The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment.

Senators, how and by whom chosen.

Sec. 3. [1]The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six Years; and each Senator shall have one Vote.

How classified.

State Executive to make temporary appointments, in case, &c.

[2]Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. The Seats of the Senators of the first Class shall be vacated at the Expiration of the second Year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that one-third may be chosen every second Year; and if Vacancies happen by Resignation, or otherwise, during the Recess of the Legislature of any State, the Executive thereof may make temporary appointments until the next Meeting of the Legislature, which shall then fill such Vacancies.

Cited in Simpson v. Willard, 14 S. C., 199.

Qualifications of a Senator.

[3]No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

President of the Senate, his right to vote.

[4]The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.

[5]The Senate shall chuse their other Officers, and also a President pro tempore, in the Absence of the Vice President, or when he shall exercise the Office of President of the United States.

President pro tem., and other officers of Senate, how chosen.

[6]The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two-thirds of the Members present.

Power to try impeachments.

When President is tried, Chief Justice to preside.

[7]Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

Sentence.

Sec. 4. [1]The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the places of chusing Senators.

Times, &c., of holding elections, how prescribed.

U. S. Stats., 1842, 47, § 2.

Ex parte Siebold, 100 U. S., 371; ex parte Clarke, 100 U. S., 399; ex parte Yarborough, 110 U. S., 651; United States v. Waddell et al., 112 U. S., 76; in re Coy, 127 U. S., 731.

[2]The Congress shall assemble at least once in every Year, and such Meeting shall be on the first Monday in December, unless they shall by law appoint a different Day.

One session in each year.

Sec. 5. [1]Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.

Membership.

Quorum.

Adjournments.

United States v. Ballin, 144 U. S., 1; in re Loney, 134 U. S., 317.

[2]Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behavior, and, with the Concurrence of two-thirds, expel a Member.

Rules. Power to punish or expel.

Anderson v. Dunn, 6 Wh., 204; Kilbourn v. Thompson, 103 U. S., 168; United States v. Ballin, 144 U. S., 1; in re Chapman, 166 U. S., 661.

[3]Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; and the Yeas and

Journal.

Nays of the Members of either House on any question shall, at the Desire of one-fifth of those Present, be entered on the Journal.

Field v. Clark, 143 U. S., 649; United States v. Ballin, 144 U. S., 1; Twin City Bank v. Nebeker, 167 U. S., 196; Wilkes County Com'rs v. Coler, 180 U. S., 522.

Time of adjournment limited, unless, &c.

[4]Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting.

Compensation.

Sec. 6. [1]The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other place.

Privileges.

Cox v. M'Clenachan, 3 Dall., 478; Kilbourn v. Thompson, 103 U. S., 168; Worth v. Norton, 56 S. C., 479; 32 S. E., 792; State v. Smalls, 11 S. C., 285.

Disqualification in certain cases.

[2]No Senator or Representative shall, during the Time for which he was elected, be appointed to any Civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shali have been encreased during such time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.

House to originate all revenue Bills.

Sec. 7. [1]All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

Field v. Clark, 143 U. S., 649; Twin City Bank v. Nebeker, 167 U. S., 196.

Veto.

[2]Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases

Bill may be passed by two-thirds of each House, notwithstanding, &c.

the Votes of both Houses shall be determined by Yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

Bill not returned in ten days.

Field v. Clark, 143 U. S., 649; United States v. Ballin, 144 U. S., 1; Twin City Bank v. Nebeker, 167 U. S., 196; La Abra Silver Mining Co. v. United States, 175 U. S., 423.

[3]Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

Provision as to all orders, &c., except, &c

Field v. Clark, 143 U. S., 649; United States v. Ballin, 144 U. S., 1.

Sec. 8. The Congress shall have Power [1]To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts, and Excises shall be uniform throughout the United States;

Powers of Congress.

Hylton v. United States, 3 Dall., 171; McCulloch v. State of Maryland, 4 Wh., 316; Loughborough v. Blake, 5 Wh., 317; Osborn v. Bank of the United States, 9 Wh., 738; Weston et al. v. City Council of Charleston, 2 Pet., 449; Dobbins v. The Commissioners of Erie County, 16 Pet., 435; License Cases, 5 How., 504; Cooley v. Board of Wardens of Port of Philadelphia et al., 12 How., 299; McGuire v. The Commonwealth, 3 Wall., 387; Van Allen v. The Assessors, 3 Wall., 573; Bradley v. The People, 4 Wall., 459.

License Tax Cases, 5 Wall., 462; Pervear v. The Commonwealth, 5 Wall., 475; Woodruff v. Parham, 8 Wall., 123; Hinson v. Lott, 8 Wall., 148; Veazie Bank v. Fenno, 8 Wall., 533; The Collector v. Day, 11 Wall., 113; United States v. Singer, 15 Wall., 111; State tax on foreign-held bonds, 15 Wall., 300; United States v. Railroad Company, 17 Wall., 322; Railroad Company v. Peniston, 18 Wall., 5; Scholey v. Rew., 23 Wall., 331; National Bank v. United States, 101 U. S., 1; Springer v. United States, 102 U. S., 586; Legal Tender Case, 110 U. S., 421; Head Money Cases, 112 U. S., 580; Van Brocklin v. State of Tennessee, 117 U. S., 151; Field v. Clark, 143 U. S., 649; New York, Lake Erie and Western R. R. v. Pennsylvania, 153 U. S., 628; Pollock v. Farmers' Loan and Trust Co. (Income Tax Case), 157 U. S., 429; United States v. Realty Company, 163 U. S., 427; in re Kollock, 165 U. S., 526; Nichols v. Ames, 173 U. S., 509; Fairbank v. United States, 181 U. S., 295; Downes v. Bidwell, 182 U. S., 249; 251; 260; 278; 288; 352; 373.

[2]To borrow Money on the credit of the United States;

McCulloch v. The State of Maryland, 4 Wh., 316; Weston et al. v. The City Council of Charleston, 2 Pet., 449; Bank of Commerce v. New York City, 2 Black,

620; Bank Tax Cases, 2 Wall., 200; The Bank v. The Mayor, 7 Wall., 16; Bank v. Supervisors, 7 Wall., 26; Hepburn v. Griswold, 8 Wall., 603; National Bank v. Commonwealth, 9 Wall., 353; Parker v. Davis, 12 Wall., 457; Legal Tender Case, 110 U. S., 421; Home Insurance Company v. New York, 134 U. S., 594.

[3]To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

Gibbons v. Ogden, 9 Wh., 1; Brown et als. v. State of Maryland, 12 Wh., 419; Wilson et al. v. Black Bird Creek Marsh Company, 2 Pet., 245; Worcester v. The State of Georgia, 6 Pet., 515; City of New York v. Miln, 11 Pet., 102; United States v. Coombs, 12 Pet., 72; Holmes v. Jennison et al., 14 Pet., 540; License Cases, 5 How., 504; Passenger Cases, 7 How., 283; Nathan v. Louisiana, 8 How., 73; Mager v. Grima et al., 8 How., 490; United States v. Marigold, 9 How., 560; Cowley v. Board of Wardens of Port of Philadelphia, 12 How., 299; The Propeller Genesee Chief et al. v. Fitzhugh et al., 12 How., 443; State of Pennsylvania v. The Wheeling Bridge Company, 13 How., 518; Veazie et al. v. Moor, 14 How., 568; Smith v. State of Maryland, 18 How., 71; State of Pennsylvania v. The Wheeling and Belmont Bridge Company et al., 18 How., 421; Sinnitt v. Davenport, 22 How., 227; Foster et al. v. Davenport et al., 22 How., 244; Conway et al. v. Taylor's ex., 1 Black, 603; United States v. Holliday, 3 Wall., 407; Gilman v. Philadelphia, 3 Wall., 713; The Passaic Bridges, 3 Wall., 782; Steamship Company v. Port Wardens, 6 Wall., 31; Crandall v. State of Nevada, 6 Wall., 35; White's Bank v. Smith, 7 Wall., 646; Waring v. The Mayor, 8 Wall., 110; Paul v. Virginia, 8 Wall., 168; Thomson v. Pacific Railroad, 9 Wall., 579; Downham et al. v. Alexandria Council, 10 Wall., 173; The Clinton Bridge, 10 Wall., 454; The Daniel Ball, 10 Wall., 557; Liverpool Insurance Company v. Massachusetts, 10 Wall., 566; The Montello, 11 Wall., 411; ex parte McNiel, 13 Wall., 236; State freight-tax, 15 Wall., 232; State tax on railway gross receipts, 15 Wall.. 284; Osborn v. Mobile, 16 Wall., 479; Railroad Company v. Fuller, 17 Wall., 560; Bartemeyer v. Iowa, 18 Wall., 129; The Delaware railroad tax, 18 Wall., 206; Peete v. Morgan, 19 Wall., 581; Railroad Company v. Richmond, 19 Wall., 584; Railroad Company v. Maryland, 21 Wall., 456; The Lottawanna, 21 Wall., 558; Welton v. The State of Missouri, 91 U. S., 275; Henderson et al. v. The Mayor of the City of New York, 92 U. S., 259; Chy Lung v. Freeman et al., 92 U. S., 275; South Carolina v. Georgia et al., 93 U. S., 4; Sherlock et al. v. Alling, adm., 93 U. S., 99; United States v. Forty-three Gallons of Whiskey, etc., 93 U. S., 188; Foster v. Master and Wardens of the Port of New Orleans, 94 U. S., 246; McCready v. Virginia, 94 U. S., 391; Railroad Co. v. Husen, 95 U. S., 465; Pound v. Turck, 95 U. S., 459; Hall v. De Cuir, 95 U. S., 485; Pensacola Telegraph Company v. Western Union Telegraph Company, 96 U. S., 1; Beer Company v. Massachusetts, 97 U. S., 25; Cook v. Pennsylvania, 97 U. S., 566; Transportation Co. v. Wheeling, 99 U. S., 273; Packet Co. v. St. Louis, 100 U. S., 423; Guy v. Baltimore, 100 U. S., 434; Kirtland v. Hotchkiss, 100 U. S., 491; Machine Co. v. Gage, 100 U. S., 676; Trade-mark Cases, 100 U. S., 82; Wilson v. McNamee, 102 U. S., 572; Tiernan v. Rinker, 102 U. S., 123; Lord v. Steamship Co., 102 U. S., 541; County of Mobile v. Kimball, 102 U. S., 691; Telegraph Co. v. Texas, 105 U. S., 460; Bridge Co. v. United States, 105 U. S., 470; Wiggins Ferry Co. v. East St. Louis, 107 U. S., 365; Turner v. Maryland, 107 U. S., 38; Escamba Company v. Chicago, 107 U. S., 678; Miller v. Mayor of New York, 109 U. S., 385; Moran v. New Orleans, 112 U. S., 69; Foster v. Kansas, 112 U. S., 201; Head Money Cases, 112 U. S., 580; Cardwell v. American Bridge Co., 113 U. S., 205; Cooper Manufacturing Co. v. Ferguson et al., 113 U. S., 727; Gloucester Ferry Co. v. Pennsylvania, 114 U. S., 196; Brown et al. v. Houston, Collector, et al., 114 U. S., 622; Railroad Commission Cases, 116 U. S., 307, 347, 352; Walling v. Michigan, 116 U. S., 446; Coe v. Errol, 116 U. S., 517; Pickard v. Pullman Southern Car Co., 117 U. S., 34; Tennessee v. Pullman Southern Car Co., 117 U. S., 51; Morgan v. Louisiana, 118 U. S., 455; Wabash, St. Louis & Pacific Railway v. Illinois, 118 U. S., 557; United States v. Kagama, 118 U. S., 375; Philadelphia Fire Association v. New York, 119 U. S., 110; Johnson v. Chicago & Pacific Elevator Co., 119 U. S., 388; Robbins v. Shelby County taxing District, 120 U. S., 489; Corson v. Maryland, 120 U. S., 502; Fargo v. Michigan, 121 U. S., 230; Philadelphia & Southern Steamship Co. v. Pennsylvania, 122 U. S., 326;

Western Union Telegraph Co. v. Pendleton, 122 U. S., 347; Sands v. Manistee River Improvement Co., 123 U. S., 288; Smith v. Alabama, 124 U. S., 465; Willamette Iron Bridge Co. v. Hatch, 125 U. S., 1; Pembina Mining Co. v. Pennsylvania, 125 U. S., 181; Bowman v. Chicago & Northwestern Railway Co., 125 U. S., 465; Western Union Telegraph Co. v. Massachusetts, 125 U. S., 530; California v. Pacific Railroad Co., 127 U. S., 1; Ratterman v. Western Union Telegraph Co., 227 U. S., 411; Leloup v. Port of Mobile, 127 U. S., 640; Kidd v. Pearson, 128 U. S., 1; Asher v. Texas, 128 U. S., 129; Nashville, Chattanooga, etc., Railway v. Alabama, 128 U. S., 96; Stoutenburgh v. Hennick, 129 U. S., 141; Kimmish v. Ball, 129 U. S., 217; Western Union Telegraph Co. v. Alabama, 132 U. S., 472; Fritts v. Palmer, 132 U. S., 282; Louisville, New Orleans, etc., R. R. v. Mississippi, 133 U. S., 587; Leisy v. Harding, 135 U. S., 100; Cherokee Nation v. Southern Kansas R. R., 135 U. S., 641; McCall v. California, 136 U. S., 104; Norfolk & Western R. R. Co. v. Pennsylvania, 136 U. S., 114; Minnesota v. Barber, 136 U. S., 318; Texas & Pacific R. R. v. Southern Pacific Co., 137 U. S., 48; Brimmer v. Rebman, 138 U. S., 78; Manchester v. Massachusetts, 139 U. S., 240; in re Rahrer, 140 U. S., 545; Pullman Palace Car Co. v. Pennsylvania, 141 U. S., 18; Massachusetts v. Western Union Telegraph Co., 141 U. S., 40; Crutcher v. Kentucky, 141 U. S., 47; Voight v. Wright, 141 U. S., 62; Henderson Bridge Co. v. Henderson, 141 U. S., 679; in re Garnett, 141 U. S., 1; Maine v. Grand Trunk Railway Co., 142 U. S., 217; Nishimura Ekiu v. The United States, 142 U. S., 651; Pacific Express Co. v. Seibert, 142 U. S., 339; Horn Silver Mining Co. v. New York, 143 U. S., 305; Field v. Clark, 143 U. S., 649; O'Neil v. Vermont, 144 U. S., 323; Ficklen v. Shelby County Taxing District, 145 U. S., 1; Lehigh Valley Railroad v. Pennsylvania, 145 U. S., 192; Harmon v. Chicago, 147 U. S., 396; Monongahela Navigation Co. v. United States, 148 U. S., 312; Brennan v. Titusville, 153 U. S., 289; Braes v. Stoeser, 153 U. S., 391; Ashley v. Ryan, 153 U. S., 436; Luxton v. North River Bridge Co., 153 U. S., 525; Postal Telegraph Co. v. Charleston, 153 U. S., 692; Covington & Cincinnati Bridge Co. v. Kentucky, 154 U. S., 204; Interstate Commerce Commission v. Brimson, 154 U. S., 447; Plumley v. Massachusetts, 155 U. S., 461; Texas & Pacific Railway v. Interstate Transportation Co., 155 U. S., 585; Hooker v. California, 155 U. S., 648; Postal Telegraph Cable Co. v. Adams, 155 U. S., 688; United States v. E. C. Knight Co., 156 U. S., 1; Emert v. Missouri, 156 U. S., 296; Pittsburg & Southern Coal Co. v. Bates, 156 U. S., 577; Pittsburg & Southern Coal Co. v. Louisiana, 156 U. S., 590; Gulf, Colorado & Santa Fe Railway Co. v. Hefley, 158 U. S., 98; New York, Lake Erie & Western R. R. Co. v. Pennsylvania, 158 U. S., 431; in re Debs, Petitioner, 158 U. S., 564; Geer v. Connecticut, 161 U. S., 519; Western Union Telegraph Co. v. James, 162 U. S., 650; Western Union Telegraph Co. v. Taggart, 163 U. S., 1; Illinois Central Railroad Co. v. Illinois, 163 U. S., 142; Hennington v. Georgia, 163 U. S., 299; Osborne v. Florida, 164 U. S., 650; Scott v. Donald, 165 U. S., 58; Adams Express Co. v. Ohio State Auditor, 165 U. S., 194; Lake Shore & Michigan Southern Railway Co. v. Ohio, 165 U. S., 365; N. Y., N. H. & Hartford R. R. Co. v. New York, 165 U. S., 628; Gladson v. Minnesota, 166 U. S., 427; Henderson Bridge Co. v. Kentucky, 166 U. S., 150; St. Anthony Falls Water Power Co. v. St. Paul Water Commissioners, 168 U. S., 349; Chicago, Milwaukee & St. Paul Railway Co. v. Solan, 169 U. S., 133; Missouri, Kansas & Texas Railway Co. v. Haber, 169 U. S., 613; Richmond & Alleghany R. R. Co. v. R. A. Patterson Tobacco Company, 169 U. S., 311; Rhodes v. Iowa, 170 U. S., 412; Vance v. W. A. Vandercook, No. 1, 170 U. S., 438; Schollenberger v. Pennsylvania, 171 U. S., 1; Collins v. New Hampshire, 171 U. S., 30; Patapsco Guano Co. v. North Carolina, 171 U. S., 345; New York v. Roberts, 171 U. S., 658; Hopkins v. United States, 171 U. S., 578; Anderson v. United States, 171 U. S., 604; Green Bay & Mississippi Canal Co. v. Patten Paper Co., 172 U. S., 58; Lake Shore & Michigan Southern Railway Co. v. Ohio, 173 U. S., 285; Henderson Bridge Co. v. Henderson City, 173 U. S., 592; Missouri, Kansas & Texas Railway Co. v. McCann, 174 U. S., 580; Addystone Pipe and Steel Co. v. United States, 175 U. S., 211; Louisiana v. Texas, 176 U. S., 1; United States v. Bellingham Bay Boom Co., 176 U. S., 211; Lindsay & Phelps Co. v. Mullen, 176 U. S., 126; Waters-Pierce Oil Co. v. Texas, 177 U. S., 28; New York Life Insurance Co. v. Cravens, 178 U. S., 401; Williams v. Fears, 179 U. S., 270, 276; Wisconsin, M. & P. R. Co. v. Jacobson, 179 U. S., 296; Austin v. Tennessee, 179 U. S., 371; State v. Holley-

man, 55 S. C., 207; 33 S. E., 366; City of Laurens v. Elmore, 55 S. C., 477; 33 S. E., 560; McCandless v. Railroad Co., 38 S. C., 103; 16 S. E., 429; Mobile Ins. Co. v. Columbia & Greenville R. Co., 41 S. C., 408; 19 S. E., 858; Hall v. Ry. Co., 25 S. C., 564; Sternberger v. Ry. Co., 29 S. C., 510; 7 S. E., 836; State v. Town Council of Aiken, 42 S. C., 222; 20 S. E., 221; Harbor Commissioners v. Pashley, 19 S. C., 319; Charleston v. Oliver, 16 S. C., 47; So. Express Co. v. Hood, 15 Rich., 66; State v. Pinckney, 10 Rich., 474; State v. Napier, 63 S. C., 60; 41 S. E., 13; Porter v. C. & S. Ry. Co., 63 S. C., 169; 41 S. E., 108; Lowe v. S. A. L. Ry. Co., 63 S. C., 248; 41 S. E., 297.

[4]To establish an uniform Rule of Naturalization,[1] and uniform Laws on the subject of Bankruptcies throughout the United States;[2]

[2]Sturges v. Crowningshield, 4 Wh., 122; [2]McMillan v. McNeil, 4 Wh., 209; [2]Farmers and Mechanics' Bank, Pennsylvania, v. Smith, 6 Wh., 131; [2]Ogden v. Saunders, 12 Wh., 213; [2]Boyle v. Zacharie and Turner, 6 Pet., 348; [1]Gassies v. Ballon, 6 Pet., 761; [2]Beers et al. v. Haughton, 9 Pet., 329; [2]Suydam et al. v. Broadnax, 14 Pet., 67; [2]Cook v. Moffat et al., 5 How., 295; [1]Dred Scott v. Sanford, 19 How., 393; [1]Nishimura Ekiu v. The United States, 142 U. S., 651; Ex parte McKenzie, 51 S. C., 244; 28 S. E., 468.

[5]To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

Briscoe v. The Bank of the Commonwealth of Kentucky, 11 Pet., 257; Fox v. The State of Ohio, 5 How., 410; United States v. Marigold, 9 How., 560.

[6]To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

Fox v. The State of Ohio, 5 How., 410; United States v. Marigold, 9 How., 560.

[7]To establish Post Offices and post Roads;

State of Pennsylvania v. The Wheeling and Belmont Bridge Company, 18 How., 421; Pensacola Telegraph Co. v. Western Union Telegraph Co., 96 U. S., 1; ex parte Jackson, 96 U. S., 727; in re Rapier, 143 U. S., 110; Horner v. United States, 143 U. S., 207; in re Debs, Petitioner, 158 U. S., 564; Illinois Central Railroad Co. v. Illinois, 163 U. S., 142; Gladson v. Minnesota, 166 U. S., 427.

[8]To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

Grant et al. v. Raymond, 6 Pet., 218; Wheaton et als. v. Peters et als., 8 Pet., 591; Trade-mark Cases, 100 U. S., 82; Burrow Giles Lithographic Co. v. Sarony, 111 U. S., 53; United States v. Duell, 172 U. S., 576.

[9]To constitute Tribunals Inferior to the Supreme Court;

Downes v. Bidwell, 182 U. S., 363.

[10]To define and punish Piracies and Felonies committed on the high Seas, and Offenses against the Law of Nations;

United States v. Palmer, 3 Wh., 610; United States v. Wiltberger, 5 Wh., 76; United States v. Smith, 5 Wh., 153; United States v. Pirates, 5 Wh., 184; United States v. Arjona, 120 U. S., 479.

[11]To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

Brown v. United States, 8 Cr., 110; American Insurance Company et al. v. Canter (356 bales cotton), 1 Pet., 511; Mrs. Alexander's cotton, 2 Wall., 404; Miller v. United States, 11 Wall., 268; Tyler v. Defrees, 11 Wall., 331; Stewart v. Kahn, 11 Wall.. 493; Hamilton v. Dillin, 21 Wall., 73; Lamar, ex., v. Browne

et al., 92 U. S., 187; Mayfield v. Richards, 115 U. S., 137; The Chinese Exclusion Cases, 130 U. S., 581; Mormon Church v. United States, 136 U. S., 1; Nishimura Ekiu v. The United States, 142 U. S., 651.

[12]To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

Crandall v. State of Nevada, 6 Wall., 35; Nishimura Ekiu v. The United States, 142 U. S., 651.

[13]To provide and maintain a Navy;

United States v. Bevans, 3 Wh., 336; Dynes v. Hoover, 20 How., 65.

[14]To make Rules for the Government and Regulation of the land and naval Forces;

[15]To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

Houston v. Moore, 5 Wh., 1; Martin v. Mott, 12 Wh., 19; Luther v. Borden, 7 How., 1; Crandall v. State of Nevada, 6 Wall., 35; Texas v. White, 7 Wall., 700.

[16]To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

Houston v. Moore, 5 Wh., 1; Martin v. Mott, 12 Wh., 19; Luther v. Borden, 7 How., 1; Presser v. Illinois, 116 U. S., 252; Ansley v. Timmons, 3 McC., 329.

[17]To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, and Arsenals, dock-Yards, and other needful Buildings;—And

Hepburn et al. v. Ellzey, 2 Cr., 444; Loughborough v. Blake, 5 Wh., 317; Cohens v. Virginia, 6 Wh., 264; American Insurance Company v. Canter (356 bales cotton), 1 Pet., 511; Kendall, Postmaster-General, v. the United States, 12 Pet., 524; United States v. Dewitt, 9 Wall., 41; Dunphy v. Kleinsmith et al., 11 Wall., 610; Willard v. Presbury, 14 Wall., 676; Kohl et al. v. United States, 91 U. S., 367; Phillips v. Payne, 92 U. S., 130; United States v. Fox, 94 U. S., 315; Fort Leavenworth R. R. Co. v. Lowe, 114 U. S., 525; Gibbons v. District of Columbia, 116 U. S., 404; Van Brocklin v. State of Tennessee, 117 U. S., 151; Stoutenburgh v. Hennick, 129 U. S., 141; Geofroy v. Riggs, 133 U. S., 258; Benson v. United States, 146 U. S., 325; Shoemaker v. United States, 147 U. S., 282; Chappell v. United States, 160 U. S., 499; Ohio v. Thomas, 173 U. S., 276; Stearns v. Minnesota, 179 U. S., 248.

[18]To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

McCullough v. The State of Maryland, 4 Wh., 316; Wayman v. Southard, 10 Wh., 1; Bank of United States v. Halstead, 10 Wh., 51; Hepburn v. Griswold, 8 Wall., 603; National Bank v. Commonwealth, 9 Wall., 353; Thomson v. Pacific Railroad, 9 Wall., 579; Parker v. Davis, 12 Wall., 457; Railroad Company v. Johnson, 15 Wall., 195; Railroad Company v. Peniston, 18 Wall., 5; United States v. Fox, 95 U. S., 670; United States v. Hall, 98 U. S., 343; Tennessee v. Davis, 100 U. S., 257; ex parte Curtis, 106 U. S., 371; Legal Tender Case, 110 U. S., 421; Stoutenburgh v. Hennick, 129 U. S., 141; The Chinese Exclusion Case, 130 U. S., 581; Crenshaw v. United States, 134 U. S., 99; Cherokee Nation v. Southern Kansas R. R., 135 U. S., 641; Nishimura Ekiu v. The United States, 142 U. S., 651; Field v. Clark, 143 U. S., 649; Logan v. United States, 144 U. S., 263; Fong Yue Ting v. United States, 149 U. S., 698; Lees v. United States, 150 U. S., 476; Interstate Commerce Commission v. Brimson, 154 U. S., 447; Clune v. United States, 159 U. S., 590; Fairbank v. United States, 181 U. S., 287.

Provision as to migration or importation of certain persons

Sec. 9. [1]The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.

Dred Scott v. Sanford, 19 How., 393.

Habeas corpus.

[2]The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

United States v. Hamilton, 3 Dall., 17; Hepburn et al. v. Ellzey, 2 Cr., 445; ex parte Bollman and Swartwout, 4 Cr., 75; ex parte Kearney, 7 Wh., 38; ex parte Tobias Watkins, 3 Pet., 192; ex parte Milburn, 9 Pet., 704; Holmes v. Jennison et al., 14 Pet., 540; ex parte Dorr, 3 How., 103; Luther v. Borden, 7 How., 1; Ableman v. Booth and United States v. Booth, 21 How., 506; ex parte Vallandigham, 1 Wall., 243; ex parte Mulligan, 4 Wall., 2; ex parte McCardle, 7 Wall., 506; ex parte Yerger, 8 Wall., 85; Tarble's case, 13 Wall., 397; ex parte Lange, 18 Wall., 163; ex parte Parks, 93 U. S., 18; ex parte Karstendick, 93 U. S., 396; ex parte Virginia, 100 U. S., 339; in re Neagle, 135 U. S., 1; in re Frederick, 149 U. S., 70.

Bills of attainder, &c.

[3]No Bill of Attainder or ex post facto Law shall be passed.

Fletcher v. Peck, 6 Cr., 87; Ogden v. Saunders, 12 Wh., 213; Watson et al. v. Mercer, 8 Pet., 88; Carpenter et al. v. Commonwealth of Pennsylvania, 17 How., 456; Locke v. New Orleans, 4 Wall., 172; Cummings v. the State of Missouri, 4 Wall., 277; ex parte Garland, 4 Wall., 333; Drehman v. Stifle, 8 Wall., 595; Klinger v. State of Missouri, 13 Wall., 257; Pierce v. Carskadon, 16 Wall., 234; Hopt v. Utah, 110 U. S., 547; Cook v. United States, 138 U. S., 157.

Taxes, how apportioned.

[4]No Capitation, or other direct, tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.

License Tax Cases, 5 Wall., 462; Springer v. United States, 102 U. S., 586; Nichol v. Ames, 173 U. S., 509; Downes v. Bidwell, 182 U. S., 260; 352.

[5]No Tax or Duty shall be laid on Articles exported from any State.

No export duty.

Cooley v. Board of Wardens of Port of Philadelphia, 12 How., 299; Pace v. Burgess, collector, 92 U. S. 372; Turpin v. Burgess, 117 U. S., 504; Pittsburg & Southern Coal Co. v. Bates, 156 U. S., 577; Nichols v. Ames, 173 U. S., 509; Williams v. Fears, 179 U. S., 270, 276; Fairbank v. United States, 181 U. S., 283, 313, 317; Downes v. Bidwell, 182 U. S., 352.

[6]No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another: nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another.

No commercial preferences.

Cooley v. Board of Wardens of Port of Philadelphia et al., 12 How., 299; State of Pennsylvania v. Wheeling and Belmont Bridge Company et al., 18 How., 421; Munn v. Illinois, 94 U. S., 113; Packet Co. v. St. Louis, 100 U. S., 423; Packet Co. v. Catlettsburg, 105 U. S., 559; Spraigue v. Thompson, 118 U. S., 90; Morgan v. Louisiana, 118 U. S., 455; Johnson v. Chicago & Pacific Elevator Co., 119 U. S., 388; Downes v. Bidwell, 182 U. S., 249, 254, 255, 352; Harbor Commissioners v. Pashley, 19 S. C., 315; Charleston v. Oliver, 16 S. C., 47; State v. Penny, 19 S. C., 222; Chapman v. Miller, 2 Speer., 772.

[7]No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

No money drawn from Treasury, unless, &c.

Downes v. Bidwell, 182 U. S., 355.

[8]No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.

No titular nobility.

Officers, not to receive presents, unless, &c.

Sec. 10. [1]No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; [1]make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law,[2] or Law impairing the Obligation of Contracts,[3] or grant any Title of Nobility.

States prohibited from certain powers

[2]Calder and wife v. Bull and wife, 3 Dall., 386; [3]Fletcher v. Peck, 6 Cr., 87; [3]State of New Jersey v. Wilson, 7 Cr., 164; [3]Sturgis v. Crowningshield, 4 Wh., 122; [3]McMillan v. McNeil, 4 Wh., 209; [3]Darmouth College v. Woodward, 4 Wh., 518; [3]Owings v. Speed, 5 Wh., 420; [3]Farmers and Mechanics' Bank v. Smith, 6 Wh., 131; [3]Green et al. v. Biddle, 8 Wh., 1; [3]Ogden v. Saunders, 12 Wh., 213; [3]Mason v. Haile, 12 Wh., 370; [3]Satterlee v. Matthewson, 2 Pet., 380; [3]Hart v. Lamphire, 3 Pet., 280; [1]Craig et al. v. State of Missouri, 4 Pet., 410; [3]Providence Bank v. Billings and Pitman, 4 Pet., 514; [1]Byrne v. State of Missouri, 8 Pet., 40; [2]Watson v. Mercer, 8 Pet., 88; [3]Mumma v. Potomac Company, 8 Pet., 281; [3]Beers v. Haughton, 9 Pet., 329; [1]Briscoe et al. v. The Bank of the Commonwealth of Kentucky, 11 Pet., 257; [3]The Proprietors of Charles River Bridge v. The Proprietors of Warren Bridge, 11 Pet., 420; [3]Armstrong v. The Treasurer of Athens Company, 16 Pet., 281; [3]Bronson v. Kinzie et al., 1 How., 311; [3]McCracken v. Hayward, 2 How., 608; [3]Gordon v. Appeal Tax Court, 3 How., 133; [3]State of Maryland v. Baltimore and Ohio R. R. Co., 3 How., 534; [3]Neil, Moore & Co. v State of Ohio, 3 How., 720; [3]Cook v. Moffatt, 5 How., 295; [3]Planters' Bank v. Sharp et al., 6 How., 301; [3]West River Bridge Company v. Dix et al., 6 How., 507; [3]Crawford et al. v. Branch Bank of Mobile, 7 How., 279; [3]Woodruff v. Trapnall, 10 How., 190; [3]Paup et al. v. Drew, 10 How., 218; [2,3]Baltimore and Susquehanna R. R. Co. v. Nesbitt et al., 10 How., 395; [3]Butler et al. v. Pennsylvania, 10 How., 402; [1]Darrington et al. v. the Bank of Alabama, 13 How., 12; [3]Richmond, &c., R. R. Co. v. The Louise R. R. Co., 13 How., 71; [3]Trustees for Vincennes University v. State of Indiana, 14 How., 268; [3]Curran v. State of Arkansas et al., 15 How., 304; [3]State Bank of Ohio v. Knoop, 16 How., 369;

[2]Carpenter et al. v. Commonwealth of Pennsylvania, 17 How., 456; [3]Dodge v. Woolsey, 18 How., 331; [3]Beers v. State of Arkansas, 20 How., 527; [3]Aspinwall et al. v. Commissioners of County of Daviess, 22 How., 364; [3]Rector of Christ Church, Philadelphia, v. County of Philadelphia, 24 How., 300; [3]Howard v. Bugbee, 24 How., 461; [3]Jefferson Branch Bank v. Skelley, 1 Black, 436; [3]Franklin Branch Bank v. State of Ohio, 1 Black, 474; [3]Trustees of the Wabash and Erie Canal Company v. Beers, 2 Black, 448; [3]Gilman v. City of Sheboygan, 2 Black, 510; [3]Bridge Proprietors v. Hoboken Company, 1 Wall., 116; [3]Hawthorne v. Calef, 2 Wall., 10; [3]The Binghamton Bridge, 3 Wall., 51; [3]The Turnpike Company v. The State, 3 Wall., 210; [2]Locke v. City of New Orleans, 4 Wall., 172; [3]Railroad Company v. Rock, 4 Wall., 177; [3]Cummings v. State of Missouri, 4 Wall., 277; [2]Ex Parte Garland, 4 Wall., 333; [3]Von Hoffman v. City of Quincy, 4 Wall., 535; [3]Mulligan v. Corbin, 7 Wall., 487; [3]Furman v. Nichol, 8 Wall., 44; [3]Home of the Friendless v. Rouse, 8 Wall., 430; [3]The Washington University v. Rouse, 8 Wall., 439; [3]Butz v. City of Muscatine, 8 Wall., 575; [3]Drehman v. Stifle, 8 Wall., 595; [3]Hepburn v. Griswold, 8 Wall., 603; [2]Gut v. The State, 9 Wall., 35; [3]Railroad Company v. McClure, 10 Wall., 511; [3]Parker v. Davis, 12 Wall., 457; [3]Curtis v. Whiting, 13 Wall., 68; [3]Pennsylvania College Cases, 13 Wall., 190; [3]Wilmington R. R. v. Reid, sheriff, 13 Wall., 264; [3]Salt Company v. East Saginaw, 13 Wall., 373; [3]White v. Hart, 13 Wall., 646; [3]Osborn v. Nicholson et al., 13 Wall., 654; [3]Railroad Company v. Johnson, 15 Wall., 195; [3]Case of the State tax on foreign-held bonds, 15 Wall., 300; [3]Tomlinson v. Jessup, 15 Wall., 454; [3]Tomlinson v. Branch, 15 Wall., 460; [3]Miller v. The State, 15 Wall., 478; [3]Holyoke Company v. Lyman, 15 Wall., 500; [3]Gunn v. Barry, 15 Wall., 610; [3]Humphrey v. Pegues, 16 Wall., 244; [3]Walker v. Whitehead, 16 Wall., 314; [3]Sohn v. Waterson, 17 Wall., 596; [3]Barings v. Dabney, 19 Wall., 1; [3]Head v. The University, 19 Wall., 526; [3]Pacific R. R. Co. v. Maguire, 20 Wall., 36; [3]Garrison v. The City of New York, 21 Wall., 196; [3]Ochiltree v. The Railroad Company, 21 Wall., 249; [3]Wilmington, &c., Railroad v. King, ex., 91 U. S., 3; [3]County of Moultrie v. Rockingham Ten Cent Savings Bank, 92 U. S., 631; [3]Home Insurance Company v. City Council of Augusta, 93 U. S., 116; [3]West Wisconsin R. R. Co. v. Supervisors, 93 U. S., 595; [3]New Jersey v. Yard, 95 U. S., 104; [3]Railroad Company v. Hecht, 95 U. S., 168; [3]Terry v. Anderson, 95 U. S., 628; [3]Farrington v. Tennessee, 95 U. S., 679; [3]Blount v. Windley, 95 U. S., 173; Murray v. Charleston, 96 U. S., 432; Edwards v. Kearzey, 96 U. S., 595; [3]Tennessee v. Snead, 96 U. S., 69; [3]Williams v. Bruffy, 96 U. S., 176; [3]Railroad Co. v. Richmond, 96 U. S., 521; [3]Beer Company v. Massachusetts, 97 U. S., 25; [3]Fertilizing Co. v. Hyde Park, 97 U. S., 659; [3]Railroad Co. v. Gaines, 97 U. S., 697; [3]United States v. Memphis, 97 U. S., 284; Keith v. Clark, 97 U. S., 454; Railroad Co. v. Georgia, 98 U. S., 359; [3]University v. People, 99 U. S., 309; [3]Newton v. Commissioners, 100 U. S., 548; Railroad Co. v. Tennessee, 101 U. S., 337; Wright v. Nagle, 101 U. S., 791; Stone v. Mississippi, 101 U. S., 814; Railroad Co. v. Alabama, 101 U. S., 832; [3]Louisiana v. New Orleans, 102 U. S., 203; Hall v. Wisconsin, 103 U. S., 5; Penniman's case, 103 U. S., 714; Wolf v. New Orleans, 103 U. S., 358; [3]Koshkonong v. Burton, 104 U. S., 668; [3]Railroad Co. v. Hammersley, 104 U. S., 1; [3]County of Clay v. Society for Savings, 104 U. S., 579; Guaranty Co. v. Board of Liquidation, 105 U. S., 622; Greenwood v. Freight Co., 105 U. S., 13; [3]Asylum v. New Orleans, 105 U. S., 362; [3]Louisiana v. Pillsbury, 105 U. S., 278; [3]New Orleans v. Morris, 105 U. S., 600; [2]Kring v. Missouri, 107 U. S., 221; [3]Close v. Glenwood Cemetery, 107 U. S., 466; [3]Antoni v. Greenhow, 107 U. S., 769; [3]Vance v. Vance, 108 U. S., 514; [3]Memphis Gas Light Co., 109 U. S., 398; [3]Canada Southern Railway v. Gebhard, 109 U. S., 527; Louisiana v. New Orleans, 109 U. S., 285; Gilfillan v. Union Canal Co., 109 U. S., 401; [3]Spring Valley Water Works v. Schottler, 110 U. S., 347; [3]Butchers' Union Co. v. Crescent City Company, 111 U. S., 746; Nelson v. St. Martin's Parish, 111 U. S., 716; [3]Marys v. Parsons (Virginia Tax), 114 U. S., 325; [1,3]Virginia Coupon Cases, Poindexter v. Greenhow, 114 U. S., 270; [3]Amy et al. v. Shelby County Taxing District et als., 114 U. S., 387; [1,3]Allen, Auditor, et al. v. Baltimore & Ohio R. R. Co., 114 U. S., 311; [3]Effinger v. Kenney, Trustee, 115 U. S., 566; [3]New Orleans Gas Co. v. Louisiana Light Co., 115 U. S., 650; [3]Louisville Gas Co. v. Citizens Gas Co., 115 U. S., 683; [3]New Orleans Water Works Co. v. Rivers, 115 U. S., 674; [3]Fisk v. Jefferson Police Jury, 116 U. S., 131; [3]Mobile v. Watson, 116

U. S., 289; [3]New Orleans v. Houston, 119 U. S., 265; [3]St. Tammany Water Works v. New Orleans Water Works, 120 U. S., 64; [3]Church v. Kelsey, 121 U. S., 282; [3]Lehigh Water Co. v. Easton, 121 U. S., 388; [3]Seibert v. Lewis, 122 U. S., 284; [3]New Orleans Water Works v. Louisiana Sugar Refining Co., 125 U. S., 18; [3]Maynard v. Hill, 125 U. S., 190; [2]Jaehne v. New York, 128 U. S., 189; [3]Denny v. Bennett, 128 U. S., 489; [3]Williamson v. New Jersey, 130 U. S., 189; [3]Freeland v. Williams, 131 U. S., 405; [3]Campbell v. Wade, 132 U. S., 34; [3]Pennsylvania Railroad Co. v. Miller, 132 U. S., 75; [3]Pennie v. Reis, 132 U. S., 464; [3]Hans v. Louisiana, 134 U. S., 1; [3]Crenshaw v. United States, 134 U. S., 99; [3]Chicago, Milwaukee & St. Paul Railway Co. v. Minnesota, 134 U. S., 418; [3]Minneapolis Eastern R. R. Co. v. Minnesota, 134 U. S., 467; [3]Hill v. Merchants' Ins. Co., 134 U. S., 515; [2]Medley, Petitioner, 134 U. S., 160; [3]Virginia Coupon Cases, 135 U. S., 662; [3]United States v. North Carolina, 136 U. S., 211; [3]Wheeler v. Jackson, 137 U. S., 245; [2]Holden v. Minnesota, 137 U. S., 483; [3]Sioux City Street Railway Co. v. Sioux City, 138 U. S., 98; [3]Wheeling and Belmont Bridge Co. v. Wheeling Bridge Co., 138 U. S., 287; [3]Pennoyer v. McConnaughy, 140 U. S., 1; [3]Scotland County Court v. Hill, 140 U. S., 41; [3]Essex Public Road Board v. Spinkle, 140 U. S., 334; [3]Stein v. Bienville Water Supply Co., 141 U. S., 67; [3]New Orleans v. New Orleans Water Works Co., 142 U. S., 79; [3]New Orleans City & Lake Railroad Co. v. New Orleans, 143 U. S., 192; [3]Louisville Water Co. v. Clark, 143 U. S., 1; [3]New York v. Squire, 145 U. S., 175; [3]Baker v. Kilgore, 145 U. S., 487; [3]Morley v. Lake Shore & Michigan Southern R. R. Co., 146 U. S., 162; [3]Hamilton Gas Light & Coke Co. v. Hamilton City, 146 U. S., 258; [3]Wilmington & Weldon Railroad Co. v. Alsbrook, 146 U. S., 279; [3]Illinois Central Railroad v. Illinois, 146 U. S., 387; [3]Bier v. McGehee, 148 U. S., 137; [3]Schurz v. Cook, 148 U. S., 397; [3]New York and New England Railroad Co. v. Bristol, 151 U. S., 556; [3]Bryan v. Board of Education, etc., 151 U. S., 639; [3]Duncan v. Missouri, 152 U. S., 377; [3]New Orleans v. Benjamin, 153 U. S., 411; [3]Eagle Insurance Co. v. Ohio, 153 U. S., 446; [3]New York, Lake Erie & Western R. R. Co. v. Pennsylvania, 153 U. S., 628; [3]Mobile & Ohio R. R. Co. v. Tennessee, 153 U. S., 486; [3]United States, ex rel. Siegel v. Thoman, 156 U. S., 353; [3]St. Louis & San Francisco Railway Co. v. Gill, 156 U. S., 649; [3]New Orleans City & Lake R. R. Co. v. Louisiana ex rel. New Orleans, 157 U. S., 219; [3]Bank of Commerce v. Tennessee, 161 U. S., 134; [3]Baltzer v. North Carolina, 161 U. S., 240; [3]Barsall v. Great Northern Railway Co., 161 U. S., 646; [3]Louisville & Nashville R. R. Co. v. Kentucky, 161 U. S., 677; [3]Woodruff v. Mississippi, 162 U. S., 291; [3]Gibson v. Mississippi, 162 U. S., 565; [3]Barnitz v. Beverly, 163 U. S., 118; [3]Hanford v. Davies, 163 U. S., 273; [3]Covington & Lexington Turnpike Co. v. Sandford, 164 U. S., 578; [3]St. Louis & San Francisco Railway Co. v. Mathews, 165 U. S., 1; [3]Grand Lodge F. & A. Masons v. New Orleans, 166 U. S., 143; [3]Baltimore v. Baltimore Trust and Guarantee Co., 166 U. S., 673; [3]City Railway Co. v. Citizens' Street Railroad Co., 166 U. S., 557; [3]Wabash R. R. Co. v. Defiance, 167 U. S., 88; [3]Shapleigh v. San Angelo, 167 U. S., 646; [3]St. Anthony Falls Water Power Co. v. St. Paul Water Commissioners, 168 U. S., 349; [3]Douglas v. Kentucky, 168 U. S., 488; [2]Hawker v. New York, 170 U. S., 189; [3]Galveston, Harrisburg, etc., Railway Co. v. Texas, 170 U. S., 226; [3]Houston & Texas Central Railway Co. v. Texas, 170 U. S., 243; [3]Williams v. Eggleston, 170 U. S., 304; [3]Chicago, Burlington & Quincy R. R. v. Nebraska, 170 U. S., 57; [3]Laclede Gas Light Co. v. Murphy, 170 U. S., 78; [3]Louisville Water Co. v. Kentucky, 170 U. S., 127; [2]Thompson v. Missouri, 171 U. S., 380; [3]Walla Walla City v. Walla Walla Water Co., 172 U. S., 1; [3]McCullough v. Virginia, 172 U. S., 102; [3]Connecticut Mutual Life Ins. Co. v. Spratley, 172 U. S., 602; [3]Citizens' Savings Bank v. Owensboro, 173 U. S., 636; [3]Lake Shore & Michigan Southern Railway Co. v. Smith, 173 U. S., 684; [3]Covington v. Kentucky, 173 U. S., 231; [3]Henderson Bridge Co. v. Henderson City, 173 U. S., 592; [3]Walsh v. Columbus, Hocking Valley & Athens R. R. Co., 176 U. S., 469; [3]Adirondack Railway Co. v. New York State, 176 U. S., 335; [3]New York Life Insurance Co. v. Cravens, 178 U. S., 389; DeLima v. Bidwell, 182 U. S., 197; [1]Stearns v. Minnesota, 179 U. S., 245; [1]Blythe v. Hinckley, 180 U. S., 333, 339; Downes v. Bidwell, 182 U. S., 263; [2]Mallett v. North Carolina, 181 U. S., 592; [3]Freeport Water Co. v. Freeport, 180 U. S., 594; [3]Columbia & G. Ry. Co. v. Gibbes, 24 S. C., 60; [3]Thomas v. Daniels, 2 McC., 354; [3]Morton v. Hoge, 4 S. C., 430; [3]Gibbes v. Greenville & C. R. Co.,

13 S. C., 228; [3]State v. Cardoza, 8 S. C., 71; [3]Ex Parte Graham, 13 Rich., 277; [3]State v. Gailliard, 11 S. C., 309; [3]Withers v. Jenkins, 14 S. C., 597; [3]Rose v. Charleston, 3 S. C., 369; [3]Blackman v. Gordon, 2 Rich. Eq., 43; [3] Calhoun v. Calhoun, 2 S. C., 283; [3]Bouknight v. Epting, 11 S. C., 71; [3]Walker v. State, 12 S. C., 200; [3]Shuler v. Bull, 15 S. C., 421; [3]Witte v. Clarke, 17 S. C., 313; [3]McLure v. Melton, 24 S. C., 559; [3]King v. Belcher, 30 S. C., 381; 9 S. E., 359; [3]Henry v. Henry, 31 S. C., 1; 9 S. E., 726; [3]Warren v. Johns, 9 S. C., 288; [3]State v. Town Council of Chester, 39 S. C., 309; 17 S. E., 752; [3]Whaley v. Gailliard, 21 S. C., 360; [3]In re Malone, 21 S. C., 435; [3]In re Gibbes, 1 DeS., 587; [3]Hays v. Harley, 1 Mills Const. Rep., 267; [3]Alexander v. McKenzie, 2 S. C., 81; [3]C. C. & A. Ry. Co. v. Gibbes, 27 S. C., 385; 4 S. E., 49; [3]Att'y General v. Clergy Society, 10 Rich. Eq., 604; [3]State v. Heyward, 3 S. C., 389; [3]State v. Bank of State, 1 S. C., 63; [3]McCandless v. Richmond & D. R. Co., 38 S. C., 103; 16 S. E., 429; [3]Lipfield v. C. C. & A. R. Co., 41 S. C., 285; 19 S E., 497; [3]Mobile Ins. Co. v. C. & G. R. Co., 41 S. C., 408; 19 S. E., 858; [3]Dunham v. Elford, 13 Rich. Eq., 190; [2,3]Callahan v. Callahan, 36 S. C., 454; 15 S. E., 727; [3]Gilliland v. Phillips, 1 S. C., 152; [3]Hardin v. Trimmier, 27 S. C., 110; 3 S. E., 46; [3]Hayes v. Clinkscales, 9 S. C., 441; [3]Miles v. King, 5 S. C., 146; [3]Lumb v. Pinckney, 21 S. C., 471; [3]O'Neil v. McKewn, 1 S. C., 147; [3]Central R. R. & B'k'g Co. v. Ga. Const. & Inv. Co., 32 S. C., 319; 11 S. E., 192; [3]Hand v. Savannah & C. R. Co., 12 S. C., 315; [3]Cochran v. Darcy, 5 S. C., 125; [3]Alexander v. Gibson, 1 N. & McC., 480; [3]Neeley v. McFadden, 2 S. C., 169; [3]Harmon v. Wallace, 2 S. C., 208; [3]In re Kennedy, 2 S. C., 216; [3]Howze v. Howze, 2 S. C., 229; [3]Shelor v. Mason, 2 S. C., 233; [3]Norton v. Bradham, 21 S. C., 375; [3]Ware v. Miller, 9 S. C., 13; [3]Peoples Bank v. Garlington, 54 S. C., 413; 32 S. E., 513; [3]Wood v. Wood, 14 Rich., 148; [3]Goggans v. Turnipseed, 1 S. C., 80; [3]Wardlaw v. Buzzard, 15 Rich. L., 158; [3]Moore v. Holland, 16 S. C., 15; [3]State v. Carew, 13 Rich., 498; [3]Graniteville Co. v. Roper, 15 Rich., 138; [3]Barry v. Iseman, 14 Rich., 129; [3]Curtis v. Renneker, 34 S. C., 468; 13 S. E., 664; [3]Rutland v. Copes, 15 Rich., 84; [2]Duke v. Williamsburg Co., 21 S. C., 414; [2]Byrne v. Stewart, 3 DeS., 466; [2]State v. Solomons, 3 Hill, 96; [2]City Council of Anderson v. O'Donnell, 29 S. C., 355; 7 S. E., 523; [2]State v. Sullivan, 14 Rich., 481; [2]State v. Cooler, 30 S. C., 105; 8 S. E., 692; [2]State v. Williams, 2 S. C., 418; [3]Johnstone v. Crooks, 5 S. C., 200; [1]State v. Billis, 2 McC., 12; [1]Bond Debt Cases, 12 S. C., 284.

[2]No State shall, without the Consent of the Congress, lay any Impost or Duties on Imports or Exports, except what may be absolutely necessary for executing it's inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Controul of the Congress.

McCulloch v. State of Maryland, 4 Wh., 316; Gibbons v. Ogden, 9 Wh., 1; Brown v. The State of Maryland, 12 Wh., 419; Mager v. Grima et al., 8 How., 490; Cooley v. Board of Wardens of Port of Philadelphia et al., 12 How., 299; Almy v. State of California, 24 How., 169; License Tax Cases, 5 Wall., 462; Crandall v. State of Nevada, 6 Wall., 35; Waring v. The Mayor, 8 Wall., 110; Woodruff v. Perham, 8 Wall., 123; Hinson v. Lott, 8 Wall., 148; State Tonnage Tax Cases, 12 Wall., 204; State tax on railway gross receipts, 15 Wall., 284; Inman Steamship Company v. Tinker, 94 U. S., 238; Cook v. Pennsylvania, 97 U. S., 566; Packet Co. v. Keokuk, 95 U. S., 80; People v. Campagnie General Transatlantique, 107 U. S., 59; Turner v. Maryland, 107 U. S., 38; Brown et al. v. Houston, Collector, et al., 114 U. S., 622; Coe v. Errol, 116 U. S., 517; Turpin v. Burgess, 117 U. S., 504; Pittsburg & Southern Coal Co. v. Bates, 156 U. S., 577; Pittsburg & Southern Coal Co. v. Louisiana, 156 U. S., 590; Scott v. Donald, 165 U. S., 58; Patapsco Guano Co. v. North Carolina, 171 U. S., 345; May & Co. v. New Orleans, 178 U. S., 501.

[3]No State shall, without the Consent of Congress, lay any

Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into an Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

Green v. Biddle, 8 Wh., 1; Poole et al. v. The Lessee of Fleeger et al., 11 Pet., 185; Cooley v. Board of Wardens of Port of Philadelphia et al., 12 How., 299; Peete v. Morgan, 19 Wall., 581; Cannon v. New Orleans, 20 Wall., 577; Inman Steamship Company v. Tinker, 94 U. S., 238; Transportation Co. v. Wheeling, 99 U. S., 273; Packet Co. v. St. Louis, 100 U. S., 423; Packet Co. v. Keokuk, 95 U. S., 80; Vicksburg v. Tobin, 100 U. S., 430; Packet Co. v. Catlettsburg, 105 U. S., 559; Wiggins Ferry Co. v. East St. Louis, 107 U. S., 365; Transportation Company v. Parkersburg, 107 U. S., 691; Presser v. Illinois, 116 U. S., 252; Morgan v. Louisiana, 118 U. S., 455; Huse v. Glover, 119 U. S., 543; Ouachita Packet Co. v. Aiken, 121 U. S., 444; Indiana v. Kentucky, 136 U. S., 479; Virginia v. Tennessee, 148 U. S., 503; Wharton v. Wise, 153 U. S., 155; St. Louis & San Francisco Railway Co. v. James, 161 U. S., 545; Harbor Commissioners v. Pashley, 19 S. C., 315; State v. Penny, 19 S. C., 222; State v. City Council, 4 Rich., 287; Alexander v. R. R. Co., 3 Strob., 598; Chapman v. Miller, 2 Speer., 772.

ARTICLE. II.

President and Vice-President, their term of office.

Section 1. [1]The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected, as follows:

Field v. Clark, 143 U. S., 649.

Electors of President and Vice-Presid'nt, number and how appointed.

[2]Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

Chisholm, ex., v. Georgia, 2 Dall., 419; Leitensdorfer et al. v. Webb, 20 How., 176; ex parte Siebold, 100 U. S., 271; in re Green, 134 U. S., 377; McPherson v. Blacker, 146 U. S., 1.

[*"The electors shall meet in their respective States, and vote by ballot for two Persons, of whom one at least shall not be an Inhabitant of the same State with themselves. And they shall make a List of all the Persons voted for, and of the Number of Votes for each; which List they shall sign and certify, and transmit sealed to the Seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the Presence of the Senate and House of Representatives, open all the Certificates, and the Votes shall then be counted. The Person having the greatest Number of Votes shall be the President, if such Number be a Majority of*

the whole Number of Electors appointed; and if there be more than one who have such Majority, and have an equal Number of Votes, then the House of Representatives shall immediately chuse by Ballot one of them for President; and if no Person have a Majority, then from the five highest on the List the said House shall in like Manner chuse the President. But in chusing the President, the Votes shall be taken by States, the Representation from each State having one Vote; A quorum for this Purpose shall consist of a Member or Members from two-thirds of the States, and a Majority of all the States shall be necessary to a choice. In every Case, after the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be the Vice President. But if there should remain two or more who have equal Votes, the Senate shall chuse from them by Ballot the Vice President."]

This clause has been superseded by the twelfth amendment.

Electors to vote on same day.

U. S. Stats., 1845, 1 .

[3]The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.

In re Green, 134 U. S., 377.

Qualifications of President.

[4]No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty five Years, and been fourteen Years a Resident within the United States.

English v. The Trustees of the Sailors' Snug Harhor, 3 Pet., 99; Downes v. Bidwell, 182 U. S., 357.

On whom his duties devolve in case of his removal, death, &c.

[5]In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the same shall devolve on the Vice President, and the Congress may by Law provide for the Case of Removal, Death, Resignation or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected.

President's compensation.

[6]The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be encreased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them.

His oath.

[7]Before he enter on the Execution of his Office, he shall take

the following Oath or Affirmation:—"I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States."

In re Neagle, 135 U. S., 1.

President to be Commander-in-Chief.

Sec. 2. [1]The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.

He may require opinion of, &c., and may pardon.

United States v. Wilson, 7 Pet., 150; ex parte William Wells, 18 How., 307; ex parte Garland, 4 Wall., 333; Armstrong's Foundry, 6 Wall., 766; The Grape Shot, 9 Wall., 129; United States v. Padelford, 9 Wall., 542; United States v. Klein, 13 Wall., 128; Armstrong v. The United States, 13 Wall., 152; Pargoud v. The United States, 13 Wall., 156; Hamilton v. Dillin, 21 Wall., 73; Mechanics and Traders' Bank v. Union Bank, 22 Wall., 276; Lamar, ex., v. Browne et al., 92 U. S., 187; Wallach et al. v. Van Riswick, 92 U. S., 202; Eustis v. Bolles, 150 U. S., 361.

Treaty-making power.

[2]He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two-thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

Nomination of certain officers.

Ware v. Hylton et al., 3 Dall, 199; Marbury v. Madison, 1 Cr., 137; United States v. Kirkpatrick, 9 Wh., 720; American Insurance Company v. Center (356 bales cotton), 1 Pet., 511; Foster and Elam v. Neilson, 2 Pet., 253; Cherokee Nation v. State of Georgia, 5 Pet., 1; Patterson v. Gwinn et al., 5 Pet., 233; Worcester v. State of Georgia, 6 Pet., 515; City of New Orleans v. De Armas et al., 9 Pet., 224; Holden v. Joy, 17 Wall., 211; United States v. Germaine, 99 U. S., 508; United States v. Corson, 114 U. S., 619; United States v. Perkins, 116 U. S., 483; United States v. Rauscher, 119 U. S., 407; Mormon Church v. United States, 136 U. S., 1; Field v. Clark, 143 U. S., 649; Shoemaker v. United States, 147 U. S., 282; Parsons v. United States, 167 U. S., 324; De Lima v. Bidwell, 182 U. S., 194.

When President may fill vacancies.

[3]The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

The United States v. Kirkpatrick et al., 9 Wh., 720.

President shall communicate to Congress.

He may convene and adjourn Congress, in case, &c.

Shall receive ambassadors, execute laws, and commission officers.

Sec. 3. He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

Marbury v. Madison, 1 Cr., 137; Kendall, Postmaster-General, v. The United States, 12 Pet., 524; Luther v. Borden, 7 How., 1; The State of Mississippi v. Johnson, President, 4 Wall., 475; Stewart v. Kahn, 11 Wall., 493; In re Neagle, 135 U. S., 1.

All civil offices forfeited for certain crimes.

Sec. 4. The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

Langford v. United States, 101 U. S., 341.

ARTICLE. III.

Judicial power.

Section 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

Tenure.

Compensation.

Chisholm ex., v. Georgia, 2 Dall., 419; Stuart v. Laird, 1 Cr., 299; United States v. Peters, 5 Cr., 115; Cohens v. Virginia, 6 Cr., 264; Martin v. Hunter's Lessee, 1 Wh., 304; Osborn v. United States Bank, 9 Wh., 738; Benner et al. v. Porter, 9 How., 235; The United States v. Richie, 17 How., 525; Murray's Lessee et al. v. Hoboken Land and Improvement Company, 18 How., 272; Ex Parte Vallandigham, 1 Wall., 243; Pennoyer v. Neff, 95 U. S., 714; United States v. Union Pacific Railroad Co., 98 U. S., 569; Mitchell v. Clark, 110 U. S., 633; Ames v. Kansas, 111 U. S., 449; In re Loney, 134 U. S., 373; In re Green, 134 U. S., 377; McAllister v. United States, 141 U. S., 174; Robertson v. Baldwin, 165 U. S., 275; Downes v. Bidwell, 182 U. S., 266, 363 and 364; State v. Davis, 12 S. C., 534; State v. Wells, 2 Hill, 687; State v. McBride, Rice, 96.

Judicial power, to what cases it extends.

See amendment XI.

Sec. 2. [1]The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the

United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between citizens of different States,—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

Hayburn's case (note), 2 Dall., 410; Chisholm, ex., v. Georgia, 2 Dall., 419; Glass et al. v. Sloop Betsey, 3 Dall., 6; United States v. La Vengeance, 3 Dall., 297; Hollingsworth et al. v. Virginia, 3 Dall., 378; Mossman, ex., v. Higginson, 4 Dall., 12; Marbury v. Madison, 1 Cr., 137; Hepburn et al. v. Ellezley, 2 Cr., 444; United States v. Moore, 3 Cr., 159; Strawbridge et al. v. Curtiss et al., 3 Cr., 267; Ex parte Bollman and Swartwout, 4 Cr., 75; Rose v. Himley, 4 Cr., 241; Chappedelaine et al. v. Dechenaux, 4 Cr., 305; Hope Insurance Co. v. Boardman et al., 5 Cr., 57; Bank of United States v. Deveaux et al., 5 Cr., 61; Hodgson et al. v. Bowerbank et als., 5 Cr., 303; Owings v. Norwood's Lessee, 5 Cr., 344; Durousseau v. The United States, 6 Cr., 307; United States v. Hudson and Goodwin, 7 Cr., 32; Martin v. Hunter, 1 Wh., 304; Colson et al. v. Lewis, 2 Wh., 377; United States v. Bevans, 3 Wh., 336; Cohens v. Virginia, 6 Wh., 264; Ex parte Kearney, 7 Wh., 38; Matthews v. Zane, 7 Wh., 164; Osborn v. United States Bank, 9 Wh., 738; United States v. Ortega, 11 Wh., 467; American Insurance Company v. Canter (356 bales cotton), 1 Pet., 511; Jackson v. Twentyman, 2 Pet., 136; Cherokee Nation v. State of Georgia, 5 Pet., 1; State of New Jersey v. State of New York, 5 Pet., 283; Davis v. Packard et al., 6 Pet., 41; United States v. Arrendondo et al., 6 Pet., 691; Davis v. Packard et al., 7 Pet., 276; Breedlove et al. v. Nicolet et al., 7 Pet., 413; Brown v. Keene, 8 Pet., 112; Davis v. Packard et al., 8 Pet., 312; City of New Orleans v. De Armas et al., 9 Pet., 224; The State of Rhode Island v. The Commonwealth of Massachusetts, 12 Pet., 657; The Bank of Augusta v. Earle, 13 Pet., 519; The Commercial and Railroad Bank of Vicksburg v. Slocomb et al., 14 Pet., 60; Suydam et al. v. Broadnax, 14 Pet., 67; Prigg v. The Commonwealth of Pennsylvania, 16 Pet., 539; Louisville, Cincinnati and Charleston Railway Company v. Letson, 2 How., 497; Cary et als., v. Curtis, 3 How., 236; Warring v. Clark, 5 How., 441; Luther v. Borden, 7 How., 1; Sheldon et al. v. Sill, 8 How., 441; The Propeller Gennessee Chief v. Fitzhugh et al., 12 How., 443; Fretz et al. v. Ball et al., 12 How., 466; Neves et al. v. Scott et al., 13 How., 268; State of Pennsylvania v. The Wheeling, &c., Bridge Company et al., 13 How., 518; Marshall v. The Baltimore and Ohio R. R. Co., 16 How., 314; The United States v. Guthrie, 17 How., 284; Smith v. State of Maryland, 18 How., 71; Jones et al. v. League, 18 How., 76; Murray's Lessee et al. v. Hoboken Land and Improvement Company, 18 How., 272; Hyde et al. v. Stone, 20 How., 170; Irvine v. Marshall et al., 20 How., 558; Fenn v. Holmes, 21 How., 481; Moorewood et al. v. Erequist, 23 How., 491; Commonwealth of Kentucky v. Dennison, Governor, 24 How., 66; Ohio and Mississippi Railroad Company v. Wheeler, 1 Black, 286; The Steamer Saint Lawrence, 1 Black, 522; The Propeller Commerce, 1 Black, 574; Ex parte Vallandigham, 1 Wall., 243; Ex parte Milligan, 4 Wall., 1; The Moses Taylor, 4 Wall., 411; State of Mississippi v. Johnson, President, 4 Wall., 475; The Hine v. Trevor, 4 Wall., 555; City of Philadelphia v. The Collector, 5 Wall., 720; State of Georgia v. Stanton, 6 Wall., 50; Payne v. Hook, 7 Wall., 425; The Alicia, 7 Wall., 571; Ex parte Yerger, 8 Wall., 85; Insurance Company v. Dunham, 11 Wall., 1; Virginia v. West Virginia, 11 Wall., 39; Coal Company v. Blatchford, 11 Wall., 172; Railway Company v. Whitton's adm., 13 Wall., 270; Tarble's Case, 13 Wall., 397; Blyew et al. v. The United States, 13 Wall., 581; Davis v. Gray, 16 Wall., 203; Case of the Sewing Machine Companies, 18 Wall., 553; Insurance Company v. Morse, 20 Wall, 445; Vannevar v. Bryant, 21 Wall., 41; The Lottawanna, 21 Wall., 558; Gaines v. Fuentes et al., 92 U. S., 10; Claflin v. Houseman, assignee, 93 U. S., 130; Muller v. Dows, 94 U. S., 444; Doyle v. Continental Insurance Company, 94 U. S., 535; United States v. Union Pacific Railroad Co., 98 U. S., 569; Tennessee v. Davis, 100 U. S., 257; Ex parte Boyd, 105 U. S., 647; Bush v. Kentucky, 107 U. S., 110; Transportation Company v. Parkersburg, 107 U. S., 691; Goss v. United States Mortgage Co., 108 U.

S., 477; Chicago and Alton R. R. Co., v. Wiggins Ferry Co., 108 U. S., 18; Louisiana v. New Orleans, 108 U. S., 568; Ellis v. Davis, 109 U. S., 485; Carroll County v. Smith, 111 U. S., 556; Southern Pacific Railroad Co., v. California, 118 U. S., 109; Barron v. Burnside, 121 U. S., 186; Lincoln County v. Luning, 133 U. S., 529; Hans v. Louisiana, 134 U. S., 1; North Carolina v. Temple, 134 U. S., 22; In re Neagle, 135 U. S., 1; Nashua and Lowell R. R. v. Boston and Lowell R. R., 136 U. S., 356; Jones v. United States, 137 U. S., 202; Cook County v. Calumet and Chicago Canal Co., 138 U. S., 635; Manchester v. Massachusetts, 139 U. S., 240; In re Garnett, 141 U. S., 1; United States v. Texas, 143 U. S., 621; Southern Pacific Company v. Denton, 146 U. S., 202; Cooke v. Avery, 147 U. S., 375; Cates v. Allen, 149 U. S., 451; McNulty v. California, 149 U. S., 645; In re Tyler, 149 U. S., 164; Newport Light Co. v. Newport, 151 U. S., 527; New York and New England Railroad Co. v. Bristol, 151 U. S., 556; Israel v. Arthur, 152 U. S., 355; Michigan v. Flint and Pere Marquette R. R. Co., 152 U. S., 363; New Orleans v. Benjamin, 153 U. S., 411; Mobile and Ohio Railroad Co. v. Tennessee, 153 U. S., 486; Reagan v. Farmer's Loan and Trust Co., 154 U. S., 362; Inter-State Commerce Commission v. Brimson, 154 U. S., 447; Plumley v. Massachusetts, 155 U. S., 461; Andrews v. Schwarz, 156 U. S., 272; St. Louis and San Francisco Railway Co. v. Gill, 156 U. S., 649; Stevens' administrator v. Nichols, 157 U. S., 370; In re Debs, Petitioner, 158 U. S., 564; Central Land Co. v. Laidley, 159 U. S., 103; Folsom v. Ninety-Six, 159 U. S., 611; Laing v. Rigney, 160 U. S., 531; St. Louis and San Francisco Railway Co. v. James, 161 U. S., 545; Woodruff v. Mississippi, 162 U. S., 291; Fallbrook Irrigation District v. Bradley, 164 U. S., 112; Scott v. Donald, 165 U. S., 107; Robertson v. Baldwin, 165 U. S., 275; Chicago, Burlington and Quincy R. R. Co. v. Chicago, 166 U. S., 226; Forsyth v. Hammond, 166 U. S., 506; Oxley Stave Company v. Butler County, 166 U. S., 648; In re Lennon, 166 U. S., 548; City Railway Co. v. Citizens' Street R. R. Co., 166 U. S., 557; Douglas v. Kentucky, 168 U. S., 488; Miller v. Cornwall R. R. Co., 168 U. S., 131; Baker v. Grice, 169 U. S., 284; Smyth v. Ames, 169 U. S., 466; Backus v. Fort street Union Depot Co., 169 U. S., 557; Tinsley v. Anderson, 171 U. S., 101; Walla Walla City v. Walla Walla Water Company., 172 U. S., 1; Green Bay and Mississippi Canal Co. v. Patten Paper Co., 172 U. S., 58; Meyer v. Richmond, 172 U. S., 82; McCullough v. Virginia, 172 U. S., 102; Fitts v. McGhee, 172 U. S., 516; Dewey v. Des Moines, 173 U. S., 193; Nichol v. Ames, 173 U. S., 509; Covington v. Kentucky, 173 U. S., 231; La Abra Silver Mining Co. v. United States, 175 U. S., 423; Louisiana v. Texas, 176 U. S., 1; Whitman v. Oxford National Bank, 176 U. S., 559; Hancock National Bank v. Farnum, 176 U. S., 640; Carter v. Texas, 177 U. S., 442; Smith v. Reeves, 178 U. S., 436; Wiley v. Sinkler, 179 U. S., 58; Workman v. Mayor, etc., of New York, 179 U. S., 557; Downes v. Bidwell, 182 U. S., 266, 363, 364; Missouri v. Illinois, 180 U. S., 219; State ex rel Barker v. Bowen, 8 S. C., 384; State v. Davis, 12 S. C., 539; State v. Corbin, 16 S. C., 545; Hyatt v. McBurney, 18 S. C., 212; McCollough v. Hicks, 63 S. C., 543; 41 S. E., 761; Kennedy v. Rountree, 63 S. C., ——; 41 S. E., 477.

Original jurisdiction of Supreme Court.

[2]In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be a Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

Appellate.

Chisholm, ex., v. Georgia, 2 Dall., 419; Wiscart et al. v. Dauchy, 3 Dall., 321; Marbury v. Madison, 1 Cr., 137; Durrousseau et al. v. United States, 6 Cr., 307; Martin v. Hunter's Lessee, 1 Wh., 304; Cohens v. Virginia; 6 Wh., 234; Ex parte Kearney, 7 Wh., 38; Wayman v. Southard, 10 Wh., 1; Bank of the United States v. Halstead, 10 Wh., 51; United States v. Ortega, 11 Wh., 467; The Cherokee Nation v. The State of Georgia, 5 Pet., 1; Ex Parte Crane et als., 5 Pet., 189; The State of New Jersey v. The State of New York, 5 Pet., 283; Ex parte Sibbald v. United States, 12 Pet., 488; The State of Rhode Island v. The State of Massachu-

setts, 12 Pet., 657; State of Pennsylvania v. The Wheeling, &c., Bridge Company, 13 How., 518; In re Kaine, 14 How., 103; Ableman v. Booth and United States v. Booth, 21 How., 506; Freeborn v. Smith, 2 Wall., 160; Ex parte McCardle, 6 Wall., 318; Ex parte McCardle, 7 Wall., 506; Ex parte Yerger, 8 Wall., 85; The Lucy, 8 Wall., 307; The Justices v. Murray, 9 Wall., 274; Pennsylvania v. Quicksilver Company, 10 Wall., 553; Murdock v. City of Memphis, 20 Wall., 590; The "Francis Wright," 105 U. S., 381; Bors v. Preston, 111 U. S., 252; Ames v. Kansas, 111 U. S., 449; Craig v. Leitensdorfer, 127 U. S., 764; Wisconsin v. Pelican Ins. Co. 127 U. S., 265; United States v. Texas, 143 U. S., 621; Louisiana v. Texas, 176 U. S., 1.

[3]The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

Trial by jury, except, &c.

Trial, where.

Ex parte Milligan, 4 Wall., 2; Barton v. Barbour, 104 U. S., 126; Ex parte Wall, 107 U. S., 265; Callan v. Wilson, 127 U. S., 540; Nashville, Chattanooga, etc., Railway v. Alabama, 128 U. S., 96; Eilenbecker v. Plymouth County, 134 U. S., 31; Jones v. United States, 137 U. S., 202; Cook v. United States, 138 U. S., 157; In re Ross, 140 U. S., 453; Fong Yul Ting v. United States, 149 U. S., 698; In re Debs, Petitioner, 158 U. S., 564; Thompson v. Utah, 170 U. S., 343.

Sec. 3. [1]Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

Treason defined.

Proof of.

United States v. The Insurgents, 2 Dall., 335; United States v. Mitchell, 2 Dall., 348; Ex parte Bollman and Swartwout, 4 Cr., 75; United States v. Aaron Burr, 4 Cr., 469.

[2]The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.

Punishment of.

Bigelow v. Forest, 9 Wall., 339; Day v. Micou, 18 Wall., 156; Ex parte Lange, 18 Wall., 163; Wallach et al. v. Van Riswick, 92 U. S., 202.

ARTICLE. IV.

Section 1. Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

Credit to public Acts, &c., of every State.

U. S. Stats., 1790, 11; 1804, 56, 481.

Mills v. Duryee, 7 Cr., 481; Hampton v. McConnel, 3 Wh., 234; Mayhew v. Thatcher, 6 Wh., 129; Darby's Lessee v. Mayer, 10 Wh., 465; The United States v. Amedy, 11 Wh., 392; Caldwell et al. v. Carrington's heirs, 9 Pet., 86; M'Elmoyle v. Cohen, 13 Pet., 312; The Bank of Augusta v. Earle, 13 Pet., 519; Bank of the State of Alabama v. Dalton, 9 How., 522; D'Arcy v. Ketchum, 11 How., 165; Christmas v. Russell, 5 Wall., 290; Green v. Van Buskirk, 7 Wall., 139; Paul v. Virginia, 8 Wall., 168; Board of Public Works v. Columbia College, 17 Wall., 521;

Thompson v. Whitman, 18 Wall., 457; Pennoyer v. Neff., 95 U. S., 714; Bonaparte v. Tax Court, 104 U. S., 592; Robertson v. Pickrell, 109 U. S., 608; Brown et al., v. Houston, Collector, et al., 114 U. S., 622; Hanley v. Donoghue, 116 U. S., 1; Renaud v. Abbott, 116 U. S., 277; Chicago & Alton R. R. v. Wiggins Ferry Co., 119 U. S., 615; Borer v. Chapman, 119 U. S., 587; Cole v. Cunningham, 133 U. S., 107; Blount v. Walker, 134 U. S., 607; Simmons v. Saul, 138 U. S., 439; Reynolds v. Stockton, 140 U. S., 254; Carpenter v. Strange, 141 U. S., 87; Huntington v. Attrill, 146 U. S., 657; Glenn v. Garth, 147 U. S., 360; Laing v. Rigney, 160 U. S., 531; Chicago, Rock Island and Pacific Railway Co. v. Sturm, 174 U. S., 710; Thormann v. Frame, 176 U. S., 350; Hancock National Bank v. Farnum, 176 U. S., 640; Clarke v. Clarke et al., 178 U. S., 186; Wabash R. R. Co. v. Townville, 179 U. S., 379; Atherton v. Atherton, 181 U. S., 160; Jacobs v. Marks, 182 U. S., 585; Burkhim v. Pinkhussohn, 58 S. C., 469; 36 S. E., 908; Coskery v. Wood, 52 S. C., 516; 31 S. C., 475; Campbell v. Home Ins. Co., 1 S. C., 165; Hilton v. Townes, 1 Hill, 439; McCollough v. Hicks, 63 S. C., 543; 41 S. E., 761.

Privileges of citizens of each State.

Sec. 2. [1]The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

Bank of United States v. Devereux, 5 Cr., 61; Gassius v. Ballou, 6 Pet., 761; The State of Rhode Island v. The Commonwealth of Massachusetts, 12 Pet., 657; The Bank of Augusta v. Earle, 13 Pet., 519; Moore v. The People of the State of Illinois, 14 How., 13; Conner et al. v. Elliott et al., 18 How., 591; Dred Scott v. Sanford, 19 How., 393; Crandall v. State of Nevada, 6 Wall., 35; Woodruff v. Parham, 8 Wall., 123; Paul v. Virginia, 8 Wall., 168; Downham v. Alexandria Council, 10 Wall., 173; Liverpool Insurance Company v. Massachusetts, 10 Wall., 566; Ward v. Maryland, 12 Wall., 418; Slaughterhouse Cases, 16 Wall., 36; Bradwell v. The State, 16 Wall., 130; Chemung Bank v. Lowery, 93 U. S., 72; McCready v. Virginia, 94 U. S., 391; Philadelphia Fire Association v. New York, 119 U. S., 110; Pembina Mining Co. v. Pennsylvania, 125 U. S., 181; Kimmish v. Ball, 129 U. S., 217; Cole v. Cunningham, 133 U. S., 107; Manchaster v. Massachusetts, 139 U. S., 240; Pittsburg & Southern Coal Co. v. Bates, 156 U. S., 577; Vance v. W. A. Vandercook, No. 1, 170 U. S., 438; Blake v. McClung, 172 U. S., 239; Williams v. Fears, 179 U. S., 270; New York v. Barker, Ib., 279; Central R. R. and B'k'g. Co. v. Ga. Co., 32 S. C., 319; 11 S. E., 192; Cummings v. Wingo, 31 S. C., 427; 10 S. E., 107.

Fugitives from justice to be delivered up.

[2]A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

Holmes v. Jennison et al., 14 Pet., 540; Commonwealth of Kentucky v. Dennison, governor, 24 How., 66; Taylor v. Tainter, 16 Wall., 366; Carroll County v. Smith, 111 U. S., 556; ex parte Reggel, 114 U. S., 642; Mahon v. Justice, 127 U. S., 700; Lascelles v. Georgia, 148 U. S., 537; Utter v. Franklin, 172 U. S., 416; Ex parte Swearengen, 13 S. C., 74; State v. Anderson, 1 Hill, 327.

Persons held to service, having escaped, to be delivered up.

U. S. Stats., 1793, 7; 1850, 60.

[3]No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.

Prigg v. The Commonwealth of Pennsylvania, 16 Pet., 539; Jones v. Van Zandt, 5 How., 215; Strader et al. v. Graham, 10 How., 82; Moore v. The People of the State of Illinois, 14 How., 13; Dred Scott v. Sanford, 19 How., 393; Ableman v. Booth and United States v. Booth, 21 How., 506.

Admission of new States.

Sec. 3. [1]New States may be admitted by the Congress into

this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

American Insurance Company et al. v. Canter (356 bales cotton), 1 Pet., 511; Pollard's Lessee v. Hagan, 3 How., 212; Cross et al. v. Harrison, 16 How., 164; Benson v. United States, 146 U. S., 325; Ward v. Race Horse, 163 U. S., 504; Bollin v. Nebraska, 176 U. S., 83.

Power of Congress over territory and other property.

[2]The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

McCulloch v. State of Maryland, 4 Wh., 316; American Insurance Company v. Canter, 1 Pet., 511; United States v. Gratiot et al., 14 Pet., 526; United States v. Rogers, 4 How., 567; Cross et al. v. Harrison, 16 How., 164; Muckey et al. v. Coxe, 18 How., 100; Gibson v. Chouteau, 13 Wall., 92; Clinton v. Englebert, 13 Wall., 434; Beall v. New Mexico, 16 Wall., 535; National Bank v. Yankton County, 101 U. S., 129; United States v. Waddell et als., 112 U. S., 76; Van Brocklin v. State of Tennessee, 117 U. S., 151; Clayton v. Utah Territory, 132 U. S., 632; Wisconsin Central Railroad Co. v. Price, 133 U. S., 496; Geofroy v. Riggs, 133 U. S., 258; Mormon Church v. United States, 136 U. S., 1; Jones v. United States, 137 U. S., 202; St. Paul, Minneapolis, etc., Railway Co. v. Phelps, 137 U. S., 528; Talton v. Mayes, 163 U. S., 376; American Publishing Co. v. Fisher, 166 U. S., 464; Camfield v. United States, 167 U. S., 518; Thompson v. Utah, 170 U. S., 343; Green Bay & Mississippi Canal Co. v. Patten Paper Co., 173 U. S., 179; DeLima v. Bidwell, 182 U. S., 207; Downes v. Bidwell, 182 U. S., 290.

Republican form of government guaranteed; each State to be protected.

Sec. 4. The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

Luther v. Borden, 7 How., 1; Texas v. White, 7 Wall., 700; In re Duncan, 139 U. S., 449; Taylor et al. v. Beckham, 178 U. S., 548; Downes v. Bidwell, 182 U. S., 279.

ARTICLE. V.

Constitution, how amended.

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Pro-

Proviso.

vided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

ARTICLE. VI.

Certain debts, &c., adopted.

[1]All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

Downes v. Bidwell, 182 U. S., 319.

Supremacy of Constitution, treaties, and laws of the United States.

[2]This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

Hayburn's case, 2 Dall., 409; Ware v. Hylton, 3 Dall., 199; Calder and wife v. Bull and wife, 3 Dall., 386; Marbury v. Madison, 1 Cr., 137; Chirac v. Chirac, 2 Wh., 259; McCulloch v. The State of Maryland, 4 Wh., 316; Society v. New Haven, 8 Wh., 464; Gibbons v. Ogden, 9 Wh., 1; Foster and Elam v. Neilson, 2 Pet., 253; Buckner v. Finley, 2 Pet., 586; Worcester v. State of Georgia, 6 Pet., 515; Kennett et al. v. Chambers, 14 How., 38; Dodge v. Woolsey, 18 How., 331; State of New York v. Dibble, 21 How., 366; Ableman v. Booth and United States v. Booth, 21 How., 506; Sinnot v. Davenport, 22 How., 227; Foster v. Davenport, 22 How., 244; Haver v. Yaker, 9 Wal., 32; Claflin v. Houseman, assignee, 93 U. S. 130; United States v. 43 Gallons of Whiskey, 93 U. S., 188; Hanenstein v. Lynham, 100 U. S., 483; Neal v. Delaware, 103 U. S., 370; Ex parte Crow Dog, 109 U. S., 556; Carroll County v. Smith, 111 U. S., 556; Head Money Cases, 112 U. S., 580; Van Brocklin v. State of Tennessee, 117 U. S., 151; United States v. Rauscher, 119 U. S., 407; Kerr v. Illinois, 119 U. S., 436; Whitney v. Robinson, 124 U. S., 190; The Chinese Exclusion Cases, 130 U. S., 581; Geofroy v. Riggs, 133 U. S., 258; In re Neagle, 135 U. S., 1; Horner v. United States, 143 U. S., 570; Fong Yue Ting v. United States, 149 U. S., 698; Gulf, Colorado and Santa Fe Railway Co. v. Hefley, 158 U. S., 98; Ward v. Race Horse, 163 U. S., 504; McClellan v. Chipman, 164 U. S., 347; Smyth v. Ames, 169 U. S., 466; Missouri, Kansas & Texas Railway Co. v. Haber, 169 U. S., 613; Ohio v. Thomas, 173 U. S., 276; DeLima v. Bidwell, 182 U. S., 195; Downes v. Bidwell, 182 U. S., 362.

Oath to support Constitution, by whom taken.

[3]The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

No religious test.

Ex parte Garland, 4 Wall., 333; Davis v. Beason, 133 U. S., 333; Mormon Church v. United States, 136 U. S., 1.

ARTICLE. VII.

The Ratification of the Conventions of nine States, shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same.

What ratification shall establish Constitution.

DONE in Convention by the Unanimous Consent of the States present the Seventeenth Day of September in the Year of our Lord one thousand seven hundred and Eighty seven and of the Independence of the United States of America the Twelfth. **In Witness** whereof We have hereunto subscribed our Names,

Go. WASHINGTON—
Presdt. and Deputy from Virginia

New Hampshire.

JOHN LANGDON, NICHOLAS GILMAN.

Massachusetts.

NATHANIEL GORHAM, RUFUS KING.

Connecticut.

WM. SAML. JOHNSON, ROGER SHERMAN.

New York.

ALEXANDER HAMILTON.

New Jersey.

WIL: LIVINGSTON,
DAVID BREARLEY,
WM. PATERSON,
JONA. DAYTON.

Pennsylvania.

B. FRANKLIN,
ROBT. MORRIS,
THO: FITZSIMONS,
JAMES WILSON,
THOMAS MIFFLIN,
GEO: CLYMER,
JARED INGERSOLL,
GOUV: MORRIS.

Delaware.

GEO: READ,
JOHN DICKINSON,
JACO. BROOM,
GUNNING BEDFORD, Jun'r,
RICHARD BASSETT.

Maryland.

JAMES M'HENRY,
DANL CARROLL
DAN: OF ST. THOS. JENIFER,

Virginia.

JOHN BLAIR,	JAMES MADISON, Jr,

North Carolina.

WM, BLOUNT,	RICH'D DOBBS SPAIGHT,
HU. WILLIAMSON.	

South Carolina.

J. RUTLEDGE,	CHARLES COTESWORTH PINCKNEY,
CHARLES PINCKNEY,	PIERCE BUTLER.

Georgia.

WILLIAM FEW,	ABR. BALDWIN.

Attest: WILLIAM JACKSON, *Secretary.*

AMENDMENTS.

ARTICLES IN ADDITION TO, AND AMENDMENT OF, THE CONSTITUTION OF THE UNITED STATES OF AMERICA, PROPOSED BY CONGRESS, AND RATIFIED BY THE LEGISLATURES OF THE SEVERAL STATES PURSUANT TO THE FIFTH ARTICLE OF THE ORIGINAL CONSTITUTION.

[ARTICLE I.]

Religious establishment prohibited; freedom of speech, of the press and right to petition.

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

Terret et al. v. Taylor et al., 9 Cr., 43; Vidal et al. v. Girard et al., 2 How., 127; Ex parte Garland, 4 Wall., 333; United States v. Cruikshank et al., 92 U. S., 542; Reynolds v. United States, 98 U. S., 145; Spiers v. Illinois, 123 U. S., 131; Davis v. Beason, 133 U. S., 333; Eilenbecker v. Plymouth County, 134 U. S., 31; Mormon Church v. United States, 136 U. S., 1; In re Rapier, 143 U. S., 110; Horner v. United States, 143 U. S., 207; Bradfield v. Roberts, 175 U. S., 291; Downes v. Bidwell, 182 U. S., 277; Magee v. O'Neill, 19 S. C., 187.

[ARTICLE II.]

Right to keep and bear arms.

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

Presser v. Illinois, 116 U. S., 252; Spiers v. Illinois, 123 U. S., 131; Eilenbecker v. Plymouth County, 134 U. S., 31.

[ARTICLE III.]

No soldier to be quartered in any house, unless, &c.

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

Spiers v. Illinois, 123 U. S., 131; Eilenbecker v. Plymouth County, 134 U. S., 31.

[ARTICLE IV.]

Right of search and seizure regulated.

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

Smith v. State of Maryland, 18 How., 71; Murray's Lessee et al. v. Hoboken Land and Improvement Company, 18 How., 272; Ex parte Milligan, 4 Wall., 2; Boyd v. United States, 116 U. S., 616; Spiers v. Illinois, 123 U. S., 131; Eilenbecker v. Plymouth County, 134 U. S., 31; Fong Yue Ting v. United States, 149 U. S., 698; Interstate Commerce Commission v. Brimson, 154 U. S., 447; in re Chapman, 166 U. S., 661; Fairbank v. United States, 181 U. S., 302; State v. Atkinson, 40 S. C., 363; 18 S. E., 1021; State v. Aiken, 42 S. C., 222; 20 S. E., 221.

[ARTICLE V.]

Provisions concerning prosecutions, trials and punishments.

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

Private property not to be taken for public use, without, &c.

United States v. Perez, 9 Wh., 579; Barron v. The City of Baltimore, 7 Pet., 243; Fox v. Ohio, 5 How., 410; West River Bridge Company v. Dix et al., 6 How., 507; Mitchell v. Harmony, 13 How., 115; Moore, ex., v. The People of the State of Illinois, 14 How., 13; Murray's Lessee et al. v. Hoboken Land and Improvement Company, 18 How., 272; Dynes v. Hoover, 20 How., 65; Withers v. Buckley et al., 20 How., 84; Gilman v. The City of Sheboygan, 2 Black, 510; ex parte Milligan, 4 Wall., 2; Twitchell v. The Commonwealth, 7 Wall., 321; Hepburn v. Griswold, 8 Wall., 603; Miller v. United States, 11 Wall., 268; Legal Tender Cases, 12 Wall., 457; Pumpelly v. Green Bay Company, 13 Wall., 166; Osborn v. Nicholson, 13 Wall., 654; ex parte Lange, 18 Wall., 163; Kohl et al. v. United States, 91 U. S., 367; Davidson v. New Orleans, 96 U. S., 97; Sinking Fund Cases, 99 U. S., 700; Langford v. United States, 101 U. S., 341; Kelly v. Pittsburgh, 104 U. S., 78; ex parte Wall., 107 U. S., 265; United States v. Jones, 109 U. S., 513; United States v. Great Falls Manufacturing Co., 112 U. S., 645; ex parte Wilson, 114 U. S., 417; Boyd v. United States, 116 U. S., 616; Mackin v. United States, 117 U. S., 348; ex parte Bain, 121 U. S., 1; Parkinson v. United States, 121 U. S., 281; Spiers v. Illinois, 123 U. S., 131; Callan v. Wilson, 127 U. S., 540; United States v. De Walt, 128 U. S., 393; Manning v. French, 133 U. S., 186; Eilenbecker v. Plymouth County, 134 U. S., 31; Louisville & Nashville R. R. Co. v. Woodson, 134 U. S., 614; in re Ross, 140 U. S., 453; Counselman v. Hitchcock, 142 U. S., 547; Simmonds v. United States, 142 U. S., 148; Thorington v. Montgomery, 147 U. S., 490; Monongahela Navigation Co. v. United States, 148 U. S., 312; Fong Yue Ting v. United States, 149 U. S., 698; Lees v. United States, 150 U. S., 476; Marchant v. Pennsylvania Railroad Co., 153 U. S., 380; Linford v. Ellison, 155 U. S., 503; Johnson v. Sayre, 158 U. S., 109; Sweet v. Rechel, 159 U. S., 380; Brown v. Walker, 161 U. S., 591; Wong Wing v. United States, 163 U. S., 228; Talton v. Mayes, 163 U. S., 376; Bauman v. Ross, 167 U. S., 548; Wilson v. Lambert, 168 U. S., 611; United States v. Joint Traffic Association, 171 U. S., 505; Maxwell v. Dow, 176 U. S., 581; Fairbank v. United States, 181 U. S., 302; Chapin v. Fye, 179 U. S., 127; French v. Barber Asphalt Paving Co., 181 U. S., 329, 355; Wight v. Davidson, *Ib.*, 387; Tonawanda v. Lyon, *Ib.*, 392; Cass Farm Co. v. City of Detroit, *Ib.*, 398; Detroit v. Parker, *Ib.*, 401; Downes v. Bidwell, 182 U. S., 298; State v. Atkinson, 40 S. C., 363; 18 S. E., 1021; State v. Aiken, 42 S. C., 222; 20 S. E., 221; City Council v. Werner, 38 S. C., 488; 17 S. E., 33; State v. Shumpert, 1 S. C., 86; State v. Shirer, 20 S. C., 404; ex parte Schmidt, 24 S. C., 365.

ARTICLE VI.

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

Further provisions respecting criminal prosecutions.

United States v. Cooledge, 1 Wh., 415; ex parte Kearney, 7 Wh., 38; United States v. Mills, 7 Pet., 142; Barron v. City of Baltimore, 7 Pet., 243; Fox v. Ohio, 5 How., 410; Withers v. Buckley et al., 20 How., 84; ex parte Milligan, 4 Wall., 2; Twitchell v. The Commonwealth, 7 Wall., 321; Miller v. The United States, 11 Wall., 268; United States v. Cook, 17 Wall., 168; United States v. Cruikshank et al., 92 U. S., 542; Reynolds v. United States, 98 U. S., 145; Spiers v. Illinois, 123 U. S., 131; Brooks v. Missouri, 124 U. S., 394; Callan v. Wilson, 127 U. S., 540; Eilenbecker v. Plymouth County, 134 U. S., 31; Jones v. United States, 137 U. S., 202; Cook v. United States, 138 U. S., 157; in re Shubuya Jugiro, 140 U. S., 291; in re Ross, 140 U. S., 453; Fong Yue Ting v. United States, 149 U. S., 698; Mattox v. United States, 156 U. S., 237; Rosen v. United States, 161 U. S., 29; United States v. Zucker, 161 U. S., 475; Wong Wing v. United States, 163 U. S., 228; Thompson v. Utah, 170 U. S., 343; Maxwell v. Dow, 176 U. S., 581; Motes v. United States, 178 U. S., 458; Chapin v. Fye, 179 U. S., 126; ex parte Schmidt, 24 S. C., 365.

ARTICLE VII.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

Right of trial by jury secured.

United States v. La Vengeance, 3 Dall., 297; Bank of Columbia v. Oakley, 4 Wh., 235; Parsons v. Bedford et al., 3 Pet., 433; Lessee of Livingston v. Moore et al., 7 Pet., 469; Webster v. Reid, 11 How., 437; State of Pennsylvania v. The Wheeling, &c., Bridge Company et al., 13 How., 518; The Justices v. Murray, 9 Wall., 274; Edwards v. Elliott et al., 21 Wall., 532; Pearson v. Yewdall, 95 U. S., 294; McElrath v. United States, 102 U. S., 426; Spiers v. Illinois, 123 U. S., 131; Arkansas Valley Land & Cattle Co. v. Mann., 130 U. S., 69; Eilenbecker v. Plymouth County, 134 U. S., 31; Whitehead v. Shattuck, 138 U. S., 146; Scott v. Neely, 140 U. S., 106; Cates v. Allen, 149 U. S., 451; Fong Yue Ting v. United States, 149 U. S., 698; Coughran v. Bigelow, 164 U. S., 301; Walker v. New Mexico & Southern Pacific Railroad, 165 U. S., 593; Chicago, Burlington & Quincy v. Chicago, 166 U. S., 226; American Publishing Co. v. Fisher, 166 U. S., 464; Chapin v. Fye, 179 U. S., 126; Downes v. Bidwell, 182 U. S., 270.

ARTICLE VIII.

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

Bail, fines and punishments.

Pervear v. Commonwealth, 5 Wall., 475; Spiers v. Illinois, 123 U. S., 131; Manning v. French, 133 U. S., 186; Eilenbecker v. Plymouth County, 134 U. S., 31; McElvaine .v Brush, 142 U. S., 155; O'Neil v. Vermont, 144 U. S., 323.

ARTICLE IX.

Rule of construction.

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

Lessee of Livingston v. Moore et al., 7 Pet., 469; Spiers v. Illinois, 123 U. S., 131.

ARTICLE X.

Same subject.

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Chisholm, ex., v. State of Georgia, 2 Dall., 419; Hollingsworth et al. v. The State of Virginia, 3 Dall., 378; Martin v. Hunter's Lessee, 1 Wh., 304; McCulloch v. State of Maryland, 4 Wh., 316; Anderson v. Dunn, 6 Wh., 204; Cohens v. Virginia, 6 Wh., 264; Osborn v. United States Bank, 9 Wh., 738; Buchler v. Finley, 2 Pet., 586; Ableman v. Booth, 21 How., 506; The Collector v. Day, 11 Wall., 113; Claflin v. Houseman, assignee, 93 U. S., 130; Inman Steamship Company v. Tinker, 94 U. S., 238; United States v. Fox, 94 U. S., 315; Tennessee v. Davis, 100 U. S., 257; Spiers v. Illinois, 123 U. S., 131; Pollock v. Farmers' Loan & Trust Co. (Income Tax Case), 157 U. S., 429; Forsyth v. Hammond, 166 U. S., 506; St. Anthony Falls Water Power Co. v. St. Paul Water Commissioners, 168 U. S., 349; Missouri, Kansas & Texas Railway Co. v. Haber, 169 U. S., 613; Downes v. Bidwell, 182 U. S., 381; State v. Davis, 12 S. C., 528; State v. Antonio, 2 Tread. Const., 776; State v. Billis, 2 McC., 12.

ARTICLE XI.

Same subject. Judicial power.

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

State of Georgia v. Brailsford et al., 2 Dall., 402; Chisholm, ex., v. State of Georgia, 2 Dall., 419; Hollingsworth et al. v. Virginia, 3 Dall., 378; Cohen v. Virginia, 6 Wh., 264; Osborn v. United States Bank, 9 Wh., 738; United States v. The Planters' Bank, 9 Wh., 904; the Governor of Georgia v. Juan Madrazo, 1 Pet., 110; Cherokee Nation v. State of Georgia, 5 Pet., 1; Briscoe v. The Bank of the Commonwealth of Kentucky, 11 Pet., 257; Curran v. State of Arkansas et al., 15 How., 304; Louisiana v. Jumel, 107 U. S., 711; New Hampshire v. Louisiana, 108 U. S., 76; Clark v. Barnard, 108 U. S., 436; Cunningham v. Macon & Brunswick Railroad, 109 U. S., 446; Virginia Coupon Cases: Poindexter v. Greenlow, 114 U. S., 270; Allen, auditor, et al. v. Baltimore and Ohio R. R. Co., 114 U. S., 311; Hagood v. Southern, 117 U. S., 52; Ralston v. Missouri Fund Commissioners, 120 U. S., 390; in re Ayers, 123 U. S., 443; Lincoln County v. Luning, 133 U. S., 529; Christian v. Atlantic & North Carolina R. R. Co., 133 U. S., 233; Hans v. Louisiana, 134 U. S., 1; North Carolina v. Temple, 134 U. S., 22; New York Guaranty Co. v. Steele, 134 U. S., 230; Virginia Coupon Cases, 135 U. S., 662; Pennoyer v. McConnaughty, 140 U. S., 1; United States v. Texas, 143 U. S., 621; in re Tyler, 149 U. S., 164; Reagan v. Farmers' Loan & Trust Co., 154 U. S., 362; Scott v. Donald, 165 U. S., 58; Scott v. Donald, 165 U. S., 107; Tindal v. Wesley, 167 U. S., 204; Smyth v. Ames, 169 U. S., 466; Fitts v. McGhee, 172 U. S., 516; Louisiana v. Texas, 176 U. S., 1; Smith v. Reeves, 178 U. S., 436; Illinois Central R. Co. v. Adams, 180 U. S., 37.

ARTICLE XII.

Manner of choosing President and Vice-President.

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

In re Green, 134 U. S., 377; Downes *v* Bidwell, 182 U. S., 357.

ARTICLE XIII.

Slavery abolished.

Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Sec. 2. Congress shall have power to enforce this article by appropriate legislation.

Dred Scott v. Sanford, 19 How., 393; White v. Hart, 13 Wall., 646; Osborn v. Nicholson, 13 Wall., 654; Slaughter-house Cases, 16 Wall., 36; ex parte Virginia, 100 U. S., 339; Civil Rights Case, 109 U. S., 3; Plessy v. Ferguson, 163 U. S., 537; Robertson v. Baldwin, 165 U. S., 275; Downes v. Bidwell, 182 U. S., 251, 277, 282, 336, 358.

ARTICLE XIV.

Who are citizens.

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Privileges.

Crandall v. The State of Nevada, 6 Wall., 35; Paul v. Virginia, 8 Wall., 168; Ward v. Maryland, 12 Wall., 418; Slaughter-house Cases, 16 Wall., 36; Bradwell v. The State, 16 Wall., 130; Bartemeyer v. Iowa, 18 Wall., 129; Minor v. Happersett, 21 Wall., 162; Walker v. Sauvinet, 92 U. S., 90; Kennard v. Louisiana, ex rel. Morgan, 92 U. S., 480; United States v. Cruikshank, 92 U. S., 542; Munn v. Illinois, 94 U. S., 113; McMillen v. Anderson, 95 U. S., 37; Pennoyer v. Neff, 95 U. S., 714; Pearson v. Yewdall, 95 U. S., 294; Kirtland v. Hotchkiss, 100 U. S., 491; Railroad Co. v. Richmond, 96 U. S., 521; Davidson v. New Orleans, 96 U. S., 97; Strauder v. West Virginia, 100 U. S., 303; Virginia v. Rivers, 100 U. S., 313; ex parte Virginia, 100 U. S., 339; Missouri v. Lewis, 101 U. S., 22; Neal v. Delaware, 103 U. S., 370; Fox v. Cincinnati, 104 U. S., 783; Kelly v. Pittsburgh, 104 U. S., 78; Pace v. Alabama, 106 U. S., 583; Goss v. United States Mortgage Co., 108 U. S., 477; Civil Rights Cases, 109 U. S., 3; Louisiana v. New Orleans, 109 U. S., 285; Hurtado v. California, 110 U. S., 516; Hagar v. Reclamation Dist., 111 U. S., 701; Elk v. Wilkins, 112 U. S., 94; Foster v. Kansas, 112 U. S., 201; Head v. Amoskeag Man'f. Co., 113 U. S., 9; Barbier v. Connolly, 113 U. S., 27; Provident Institution for Savings v. Mayor and Aldermen of Jersey City, 113 U. S., 506; Soon Hing v. Crowley, 113 U. S., 703; ex parte Reggel, 114 U. S., 642; Wurts et al. v. Hoagland et als., 114 U. S., 606; Kentucky Railroad Tax Cases, 115 U. S., 321; Missouri Pacific R. R. Co. v. Humes, 115 U. S., 512; Campbell et al. v. Holt, 115 U. S., 620; Presser v. Illinois, 116 U. S., 252; Railroad Commission Cases, 116 U. S., 307, 347, 352; Royall v. Virginia, 116 U. S., 572; Arrowsmith v. Harmoning, 118 U. S., 194; Yick Wo v. Hopkins, 118 U. S., 356; Santa Clara County v. Southern Pacific R. R., 118 U. S., 394; Philadelphia Fire Association v. New York, 119 U. S., 110; Home Insurance Co. v. New York, 119 U. S., 129; Schmidt v. Cobb, 119 U. S., 286; Kerr v. Illinois, 119 U. S., 436; Hayes v. Missouri, 120 U. S., 68; Baldwin v. Franks, 120 U. S., 678; Church v. Kelsey, 121 U. S., 282; Spiers v. Illinois, 123 U. S., 131; Sands v. Manistee River Improvement Co., 123 U. S., 288; Mugler v. Kansas, 123 U. S., 623; Pembina Mining Co. v. Pennsylvania, 125 U. S., 181; Spencer v. Merchant, 125 U. S., 345; Dow v. Beidelman, 125 U. S., 680; Bank of Redemption v. Boston, 125 U. S., 60; Cali-

fornia v. Pacific Railroad Co., 127 U. S., 1; Ro Bardo v. Lamb, 127 U. S., 58; Missouri Pacific Railway Co. v. Mackey, 127 U. S., 205; Powell v. Pennsylvania, 127 U. S., 678; Mahon v. Justice, 127 U. S., 700; Kidd v. Pearson, 128 U. S., 1; Nashville, Chattanooga, etc., Railway v. Alabama, 128 U. S., 96; Walston v. Nevin, 128 U. S., 578; Minneapolis & St. Louis Railway v. Beckwith, 129 U. S., 26; Dent v. West Virginia, 129 U. S., 114; Huling v. Kaw Valley Railway & Improvement Co., 130 U. S., 559; Freeland v. Williams, 131 U. S., 405; Cross v. North Carolina, 132 U. S., 131; Pennie v. Reis, 132 U. S., 464; Sugg v. Thornton, 132 U. S., 524; Manning v. French, 133 U. S., 186; Davis v. Beason, 133 U. S., 333; Palmer v. McMahon, 133 U. S., 660; Eilenbecker v. Plymouth County, 134 U. S., 31; Bell Gap R. R. Co. v. Pennsylvania, 134 U. S., 232; Chicago, Milwaukee & St. Paul Railway Co. v. Minnesota, 134 U. S., 418; Minneapolis Eastern Railroad Co. v. Minnesota, 134 U. S., 467; Home Insurance Co. v. New York, 134 U. S., 594; Louisville & Nashville R. R. Co. v. Woodson, 134 U. S., 614; Cherokee Nation v. Southern Kansas R. R., 135 U. S., 641; in re Kemmler, 136 U. S., 436; York v. Texas, 137 U. S., 15; Crowley v. Christensen, 137 U. S., 86; Wheeler v. Jackson, 137 U. S., 245; Holden v. Minnesota, 137 U. S., 483; in re Converse, 137 U. S., 624; Caldwell v. Texas, 137 U. S., 692; Kauffman v. Wooters, 138 U. S., 285; Leeper v. Texas, 139 U. S., 462; in re Manning, 139 U. S., 504; Natal v. Louisiana, 139 U. S., 621; Lent v. Tillson, 140 U. S., 316; in re Rahrer, 140 U. S., 545; New Orleans v. New Orleans Water Works Co., 142 U. S., 79; McElvaine v. Brush, 142 U. S., 155; Kaukauna Water Power Co. v. Green Bay and Mississippi Canal Co., 142 U. S., 254; Charlotte, Augusta & Columbia Railroad Co. v. Gibbes, 142 U. S., 386; Pacific Express Co. v. Seibert, 142 U. S., 339; Horn Silver Mining Co. v. New York, 143 U. S., 305; Budd v. New York, 143 U. S., 517; Schwab v. Berggren, 143 U. S., 442; Fielden v. Illinois, 143 U. S., 452; O'Neil v. Vermont, 144 U. S., 323; New York v. Squire, 145 U. S., 175; Brown v. Smart, 145 U. S., 454; McPherson v. Blacker, 146 U. S., 1; Morley v. Lake Shore & Michigan Southern R. R. Co., 146 U. S., 162; Hallinger v. Davis, 146 U. S., 314; Yesler v. Washington Harbor Line Commissioners, 146 U. S., 646; Jennings v. Coal Ridge Improvement & Coal Co., 147 U. S., 147; Giozza v. Tiernan, 148 U. S., 657; Paulsen v. Portland, 149 U. S., 30; Minneapolis & St. Louis Railway v. Emmons, 149 U. S., 364; Fong Yue Ting v. United States, 149 U. S., 698; McNulty v. California, 149 U. S., 645; Columbus Southern Railway Co. v. Wright, 151 U. S., 470; New York & New England Railroad Co. v. Bristol, 151 U. S., 556; Lawton v. Steele, 152 U. S., 133; Montana Co. v. St. Louis Mining & Milling Co., 152 U. S., 160; Duncan v. Missouri, 152 U. S., 377; Marchant v. Pennsylvania Railroad Co., 153 U. S., 380; Braes v. Stoeser, 153 U. S., 391; McKane v. Durston, 153 U. S., 684; Scott v. McNeal, 154 U. S., 34; Reagan v. Farmers' Loan & Trust Co., 154 U. S., 362; Pittsburgh, Cincinnati, Chicago & St. Louis Railway Co. v. Backus, 154 U. S., 421; St. Louis & San Francisco Railway Co. v. Gill, 156 U. S., 649; Bergeman v. Backer, 157 U. S., 655; Gray v. Connecticut, 159 U. S., 74; Central Land Co. v. Laidley, 159 U. S., 103; Moore v. Missouri, 159 U. S., 673; Winona & St. Peter Land Co. v. Minnesota, 159 U. S., 526; Iowa Central Railway Co. v. Iowa, 160 U. S., 389; Eldridge v. Trezevant, 160 U. S., 452; Gibson v. Mississippi, 162 U. S., 565; Western Union Telegraph Co. v. Taggart, 163 U. S., 1; Lowe v. Kansas, 163 U. S., 81; Plessy v. Ferguson, 163 U. S., 537; Talton v. Mayes, 163 U. S., 376; Fallbrook Irrigation District v. Bradley, 164 U. S., 112; Missouri Pacific Railway Co. v. Nebraska, 164 U. S., 403; Covington & Lexington Turnpike Co. v. Sandford, 164 U. S., 578; St. Louis & San Francisco Railway Co. v. Matthews, 165 U. S., 1; Gulf, Colorado & Sante Fe Railway v. Ellis, 165 U. S., 150; Jones v. Brim, 165 U. S., 180; Adams Express Co. v. Ohio State Auditor, 165 U. S., 194; Western Union Telegraph Co. v. Indiana, 165 U. S., 304; Allgeyer v. Louisiana, 165 U. S., 578; N. Y., N. H. & Hartford R. R. v. New York, 165 U. S., 628; Allen v. Georgia, 166 U. S., 138; Chicago, Burlington & Quincy R. R. Co. v. Chicago, 166 U. S., 226; Gladson v. Minnesota, 166 U. S., 427; Sentell v. New Orleans & Carrollton R. R. Co., 166 U. S., 698; Henderson Bridge Co. v. Kentucky, 166 U. S., 150; Davis v. Massachusetts, 167 U. S., 43; Merchants' & Manufacturers' Bank v. Pennsylvania, 167 U. S., 461; Turner v. New York, 168 U. S., 90; Craemer v. Washington State, 168 U. S., 124; Hodgson v. Vermont, 168 U. S., 262; Nobles v. Georgia, 168 U. S., 398; McHenry v. Alford, 168 U. S., 651; Holden v. Hardy, 169 U. S., 366; Smyth v. Ames, 169 U. S., 466; Wilson v. North Caro-

lina, 169 U. S., 586; Savings & Loan Society v. Multnomah County, 169 U. S., 421; United States v. Wong Kim Ark, 169 U. S., 649; Backus v. Fort street Union Depot Co., 169 U. S., 557; Williams v. Mississippi, 170 U. S., 213; Magoun v. Illinois Trust & Savings Bank, 170 U. S., 283; Williams v. Eggleston, 170 U. S., 304; Tinsley v. Anderson, 171 U. S., 101; King v. Mullins, 171 U. S., 404; New York v. Roberts, 171 U. S., 658; Meyer v. Richmond, 172 U. S., 82; Blake v. McClung, 172 U. S., 239; Norwood v. Baker, 172 U. S., 269; Orient Insurance Co. v. Daggs, 172 U. S., 557; Wilson v. Eureka City, 173 U. S., 32; Dewey v. Des Moines, 173 U. S., 193; St. Louis, Iron Mountain & St. Paul Railway Co. v. Paul, 173 U. S., 404; Lake Shore & Michigan Southern Railway Co. v. Smith, 173 U. S., 684; Central Loan & Trust Co. v. Campbell Commission Co., 173 U. S., 84; Henderson Bridge Co. v. Henderson City, 173 U. S., 592; Atchison, Topeka & Santa Fe R. R. Co. v. Matthews, 174 U. S., 96; Brown v. New Jersey, 175 U. S., 172; Addyston Pipe and Steel Co. v. United States, 175 U. S., 211; Tullis v. Lake Erie & Western R. R. Co., 175 U. S., 348; Cumming v. Richmond County Board of Education, 175 U. S., 528; Bolln v. Nebraska, 176 U. S., 83; Clark v. Kansas City, 176 U. S., 114; Wyerhauesser v. Minnesota, 176 U. S., 550; Maxwell v. Dow, 176 U. S., 581; Roller v. Holly, 176 U. S., 398; Adirondack Railway Co. v. New York State, 176 U. S., 335; Petit v. Minnesota, 177 U. S., 164; Grundling v. Chicago, 177 U. S., 183; Ohio Oil Co. v. Indiana, No. 1, 177 U. S., 190; Louisville & Nashville R. R. Co. v. Schmidt, 177 U. S., 230; Saranac Land & Timber Co. v. Comptroller of New York, 177 U. S., 318; Carter v. Texas, 177 U. S., 442; L'Hote v. New Orleans, 177 U. S., 587; Waters-Pierce Oil Co. v. Texas, 177 U. S., 28; Taylor et al. v. Beckham, 178 U. S., 548; Sully et al. v. American National Bank, 178 U. S., 289; Wheeler et als. v. N. Y., N. H. & Hartford R. R., 178 U. S., 321; Downes v. Bidwell, 182 U. S., 251, 357; Carson v. Sewer Commissioners of Brockton, 182 U. S., 401; Simon v. Craft, 182 U. S., 437; Williams v. Fears, 179 U. S., 274, 275; Chesapeake & O. R. Co. v. Kentucky, 179 U. S., 393; Chapin v. Fye, *Ib.*, 126; Wisconsin, M. & P. R. Co. v. Jacobson, 179 U. S., 291; Davis v. Burke, *Ib.*, 404; Tyler v. Judges of the Court of Registration, *Ib.*, 410; Lampasas v. Bell, 180 U. S., 283; Cargill Co. v. Minnesota, 180 U. S., 625; Lombard v. West Chicago Park Commissioners, 181 U. S., 38, 41-43; French v. Barber Asphalt Paving Co., 327-346, 351-357; Wright v. Davidson, 181 U. S., 383-388; Tonawanda v. Lyon, 181 U. S., 392; Webster v. Fargo, 181 U. S., 394; Cass Farm Co. v. Detroit, 181 U. S., 398; Shumate v. Heman, 181 U. S., 403; Mallett v. North Carolina, 181 U. S., 599; American Sugar Refining Co. v. Louisiana, 179 U. S., 91; Mason v. Missouri, 179 U. S., 335; Missouri, Kansas & Texas R'y Co. v. Ferris, 179 U. S., 602; State v. Brownfield, 60 S. C., 509; 39 S. E., 2; State v. Chapman, 56 S. C., 420; 39 S. E., 961; State v. Atkinson, 40 S. C., 363; 18 S. E., 1021; 41 S. C. 551; 19 S. E., 691; State v. Berlin, 21 S. C., 292; State v. City Council of Aiken, 42 S. C., 422; 20 S. E., 221, overruling McCollough v. Brown, 41 S. C., 220; 19 S. E., 458; Cummings v. Wingo, 31 S. C., 427; 10 S. E., 107; McCandless v. Richmond & Danville R. R. Co., 38 S. E., 103; 16 S. E., 429; Lipfield v. C., C. & A. R'y Co., 41 S. C., 285; 19 S. E., 497; Mobile Ins. Co. v. C. & G. Ry. Co., 41 S. C., 408; 19 S. E., 858; C., C. & A. R'y Co. v. Gibbes, 27 S. C., 385; 4 S. E., 49; Blum v. Richland Co., 38 S. C., 291; 17 S. E., 20; Port Royal Co. v. Hagood, 30 S. C., 519; 9 S. E., 686; Town Council v. Pressley, 33 S. C., 56; 11 S. E., 545; State v. Napier, 63 S. C., 60; 41 S. E., 13; Porter v. C. & S. Ry. Co., 63 S. C., 178; 41 S. E., 108; Simmons v. W. U. Tel. Co., 63 S. C., 425; 41 S. E., 521.

Apportionment of representation.

Sec. 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or

in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Basis of representation.

McPherson v. Blacker, 146 U. S., 1.

Sec. 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a Member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Political disabilities.

Removal of political disabilities.

Sec. 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Validity of public debt

Debts of the rebellion or for slaves invalid.

Sec. 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Power of Congress to enforce.

ARTICLE XV.

Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

Right to vote not abridged by race, color, or previous condition.

Sec. 2. The Congress shall have power to enforce this article by appropriate legislation.

United States v. Reece et al., 92 U. S., 214; United States v. Cruikshank et al., 92 U. S., 542; ex parte Yarborough, 110 U. S., 651; Neal v. Delaware, 103 U. S., 370; United States v. Waddell et al., 112 U. S., 76; McPherson v. Blacker, 146 U. S., 1; Downes v. Bidwell, 182 U. S., 358.

RATIFICATIONS OF THE UNITED STATES CONSTITUTION.

The Constitution was adopted by a Convention of the States September 17, 1787, and was subsequently ratified by the several States, in the following order, viz:

Delaware, December 7, 1787.
Pennsylvania, December 12, 1787.
New Jersey, December 18, 1787.
Georgia, January 2, 1788.
Connecticut, January 9, 1788.
Massachusetts, February 6, 1788.
Maryland, April 28, 1788.
South Carolina, May 23, 1788.
New Hampshire, June 21, 1788.
Virginia, June 26, 1788.
New York, July 26, 1788.
North Carolina, November 21, 1789.
Rhode Island, May 29, 1790.

The State of Vermont, by convention, ratified the Constitution on the 10th of January, 1791, and was, by an Act of Congress of the 18th of February, 1791, "received and admitted into this Union as a new and entire member of the United States of America."

RATIFICATIONS OF THE AMENDMENTS TO THE UNITED STATES CONSTITUTION.

The first ten of the preceding articles of amendment, (with two others which were not ratified by the requisite number of States,) were submitted to the several State Legislatures by a resolution of Congress which passed on the 25th of September, 1789, at the first session of the First Congress, and was ratified by the Legislatures of the following States:

New Jersey, November 20, 1789.
Maryland, December 19, 1789.
North Carolina, December 22, 1789.
South Carolina, January 19, 1790.
New Hampshire, January 25, 1790.
Delaware, January 28, 1790.
Pennsylvania, March 10, 1790.
New York, March 27, 1790.
Rhode Island, June 15, 1790.
Vermont, November 3, 1791.
Virginia, December 15, 1791.

The Acts of the Legislatures of the States ratifying these amendments were transmitted by the Governors to the President, and by him communicated to Congress. The Legislatures of Massachusetts, Connecticut, and Georgia, do not appear by the record to have ratified them.

The eleventh article was submitted to the Legislatures of the several States by a resolution of Congress passed on the 5th of March, 1794, at the first session of the Third Congress; and on the 8th of January, 1798, at the second session of the Fifth Congress, it was declared by the President, in a message to the two Houses of Congress, to have been adopted by the Legislatures of three-fourths of the States, there being at that time sixteen States in the Union.

The twelfth article was submitted to the Legislatures of the several States, there being then seventeen States, by a resolution of Congress, passed on the 12th of December, 1803, at the first session of the Eighth Congress; and was ratified by the Legislatures of three-fourths of the States, in 1804, according to a proclamation of the Secretary of State dated the 25th of September, 1804.

The thirteenth article was submitted to the Legislatures of the several States, there being then thirty-six States, by a resolution of Congress passed on the 1st

of February, 1865, at the second session of the Thirty-eighth Congress, and was ratified, according to a proclamation of the Secretary of State dated December 18, 1865, by the Legislatures of the following States:

Illinois, February 1, 1865.
Rhode Island, February 2, 1865.
Michigan, February 2, 1865.
Maryland, February 3, 1865.
New York, February 3, 1865.
West Virginia, February 3, 1865.
Maine, February 7, 1865.
Kansas, February 7, 1865.
Massachusetts, February 8, 1865.
Pennsylvania, February 8, 1865.
Virginia, February 9, 1865.
Ohio, February 10, 1865.
Missouri, February 10, 1865.
Indiana, February 16, 1865.
Nevada, February 16, 1865.
Louisiana, February 17, 1865.
Minnesota, February 23, 1865.
Wisconsin, March 1, 1865.
Vermont, March 9, 1865.
Tennessee, April 7, 1865.
Arkansas, April 20, 1865.
Connecticut, May 5, 1865.
New Hampshire, July 1, 1865.
South Carolina, November 13, 1865.
Alabama, December 2, 1865.
North Carolina, December 4, 1865.
Georgia, December 9, 1865.

The following States not enumerated in the proclamation of the Secretary of State also ratified this amendment:

Oregon, December 11, 1865.
California, December 20, 1865.
Florida, December 28, 1865.
New Jersey, January 23, 1866.
Iowa, January 24, 1866.
Texas, February 18, 1870.

The fourteenth article was submitted to the Legislatures of the several States, there being then thirty-seven States, by a resolution of Congress passed on the 16th of June, 1866, at the first session of the Thirty-ninth Congress; and was ratified, according to a proclamation of the Secretary of State dated July 28, 1868, by the Legislatures of the following States:

Connecticut, June 30, 1866.
New Hampshire, July 7, 1866.
Tennessee, July 19, 1866.
*New Jersey, September 11, 1866.
†Oregon, September 19, 1866.
Vermont, November 9, 1866.
New York, January 10, 1867.
‡Ohio, January 11, 1867.
Illinois, January 15, 1867.
West Virginia, January 16, 1867.
Kansas, January 18, 1867.

*New Jersey withdrew her consent to the ratification in April, 1868.
†Oregon withdrew her consent to the ratification October 15, 1868.
‡Ohio withdrew her consent to the ratification in January, 1868.

Maine, January 19, 1867.
Nevada, January 22, 1867.
Missouri, January 26, 1867.
Indiana, January 29, 1867.
Minnesota, February 1, 1867.
Rhode Island, February 7, 1867.

Wisconsin, February 13, 1867.
Pennsylvania, February 13, 1867.
Michigan, February 15, 1867.
Massachusetts, March 20, 1867.
Nebraska, June 15, 1867.
Iowa, April 3, 1868.
Arkansas, April 6, 1868.
Florida, June 9, 1868.
*North Carolina, July 4, 1868.
Louisiana, July 9, 1868.
*South Carolina, July 9, 1868.
Alabama, July 13, 1868.
*Georgia, July 21, 1868.

*The State of Virginia ratified this amendment on the 8th of October, 1869, subsequent to the date of the proclamation of the Secretary of State.

The States of Delaware, Maryland, Kentucky, and Texas rejected the amendment.

*North Carolina, South Carolina, Georgia, and Virginia had previously rejected the amendment.

The fifteenth article was submitted to the Legislatures of the several States, there being then thirty-seven States, by a resolution of Congress passed on the 27th of February, 1869, at the first session of the Forty-first Congress; and was ratified, according to a proclamation of the Secretary of State dated March 30, 1870, by the Legislatures of the following States:

Nevada, March 1, 1869.
West Virginia, March 3, 1869.
North Carolina, March 5, 1869.
Louisiana, March 5, 1869.
Illinois, March 5, 1869.
Michigan, March 8, 1869.
Wisconsin, March 9, 1869.
Massachusetts, March 12, 1869.
Maine, March 12, 1869.
South Carolina, March 16, 1869.
Pennsylvania, March 26, 1869.
Arkansas, March 30, 1869.
*New York, April 14, 1869.
Indiana, May 14, 1869.
Connecticut, May 19, 1869.
Florida, June 15, 1869.
New Hampshire, July 7, 1869.
Virginia, October 8, 1869.
Vermont, October 21, 1869.
Alabama, November 24, 1869.
Missouri, January 10, 1870.
Mississippi, January 17, 1870.
Rhode Island, January 18, 1870.
Kansas, January 19, 1870.
†Ohio, January 27, 1870.
Georgia, February 2, 1870.
Iowa, February 3, 1870.
Nebraska, February 17, 1870.
Texas, February 18, 1870.
Minnesota, February 19, 1870.

‡The State of New Jersey ratified this amendment on the 21st of February, 1871, subsequent to the date of the proclamation of the Secretary of State.

The States of California, Delaware, Kentucky, Maryland, Oregon, and Tennessee rejected this amendment.

*New York withdrew her consent to the ratification January 5, 1870.

†Ohio had previously rejected the amendment May 4, 1869.

‡New Jersey had previously rejected the amendment.

CONSTITUTION

OF THE

State of South Carolina

1895.

RATIFIED IN CONVENTION, DECEMBER 4.

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CONSTITUTION.

THE STATE OF SOUTH CAROLINA:

At a Convention of the People of the State of South Carolina, begun and holden at Columbia, on the Tenth day of September, in the year of Our Lord one thousand eight hundred and ninety-five, and thence continued by divers adjournments to the Fourth day of December, in the year of our Lord one thousand eight hundred and ninety-five.

We, the people of the State of South Carolina, in Convention assembled, grateful to God for our liberties, do ordain and establish this Constitution for the preservation and perpetuation of the same.

The Constitution "is a form of government delineated by the mighty hand of the people."—Grier v. Taylor, 4 McC., 206. Its object is to lay down the fundamental principles and limit the powers of government.—Ex parte Lynch, 16 S. C., 55.

While the Courts must determine the constitutionality of a statute.—Byrne v. Stewart, 3 DeS., 466; White v. Kendrick, 1 Brev., 469; they will not declare it unconstitutional unless clearly so.—R. R. Co. v. Gibbes, 24 S. C., 60; Pelzer v. Campbell, 15 S. C., 582; State v. Aiken, 42 S. C., 222; 20 S. E., 221; McCollough v. Brown, 41 S. C., 220; 19 S. E., 458; Mauldin v. Greenville, 42 S. C., 293; 20 S. E., 842; Feldman v. City Council, 23 S. C., 57.

The Act, 22 Stat., 427, making it a misdemeanor for a laborer to violate a contract made with a land owner after receiving supplies, is constitutional.—State v. Chapman, 56 S. C., 420; 34 S. E., 961.

Where a case presents two questions, one of which is a constitutional question, and the other is not, if the view taken by the Court below on the latter question is decisive of the case, and the Supreme Court is divided on the question of public policy, and not the constitutional question, there is no ground for a rehearing.—Johnson v. Railway Company, 55 S. C., 178; 32 S. E., 2; 33 S. E., 174.

An exception alleging the unconstitutionality of an Act must state what Article and Section, or what principle, of the Constitution it conflicts with.—State v. Washington, 55 S. C., 372; 33 S. E., 453.

An Act of the Legislature will not be declared unconstitutional where there are other grounds upon which the case can be disposed of.—Butler v. Ellerbe, 44 S. C., 257; 44 S. C., 256; 22 S. E., 425; Scottish Co. v. Deas, 35 S. C., 42; 14 S. E., 486; ex parte Board Com. Florence, 43 S. C., 1; 20 S. E., 794.

The question must be raised by exceptions.—Frazee v. Beattie, 26 S. C., 348; 2 S. E., 125; and not for the first time on appeal.—Tompkins v. R. R. Co., 21 S. C., 421. Who may question.—State v. Porterfield, 47 S. C., 75; 25 S. E., 39.

Weight should be given contemporaneous construction.—State v. Williams, 40 S. C., 373; 19 S. E., 5; Simpson v. Willard, 14 S. C., 195.

Validation of existing laws.—Cohen v. Hoff, 3 Brev., 500.

The Constitution of 1895 held not to affect bonds issued by a city after its adoption under Act passed prior to it.—McCreight v. Zemp, 49 S. C., 78; 26 S. E., 984.

The State will not be permitted to deny her liability for the salaries of her registration and election officers for services rendered by her direction on the plea that the registration law was unconstitutional; and therefore the Court of Equity will not, at the instance of a citizen and taxpayer of the State, enjoin the fiscal officers of the State from paying the appropriation made by the Legislature for such purpose.—Butler v. Ellerbe, 44 S. C., 257; 22 S. E., 425.

A Court of Equity, in action to enjoin the payment of appropriations made by the Legislature for registration and election officers will not grant the relief de-

manded, nor consider the constitutionality of the registration laws, where the petition does not show that the petitioner, or any other person entitled, has been denied his rights of registration and voting.—*Id.*

Constitutions should be construed as a whole.—Smith v. McConnell, 44 S. C., 494; 22 S. E., 721; Norton v. Bradham, 21 S. C., 383.

Constitutional questions not raised in or passed on by the circuit court will not be considered on appeal.—Burnett v. So. Ry. Co., 62 S. C., 281; 40 S. E., 679; Hunter v. Bamberg County, 63 S. C., 149; 41 S. E., 26. It is not necessary to raise a constitutional question that the section and article infringed be stated in the pleadings and proceedings. It is sufficient to state the principle.—Porter v. C. & S. Ry. Co., 63 S. C., 169; 41 S. E., 108.

As to waiver of objection to the constitutionality of Acts, see Goodale v. Sowell, 62 S. C., 516; 40 S. E., 970; State v. Faile, 43 S. C., 52; 20 S. E., 798; ex parte Hilton, 64 S. C., 201; 41 S. E., ——.

ARTICLE I.

Declaration of Rights.

Political power in people.

See Const., 1868, I., 1.

Section 1. All political power is vested in and derived from the people only, therefore they have the right at all times to modify their form of government.

Apportionment Representatives.

Sec. 2. Representation in the House of Representatives shall be apportioned according to population.

See Const. 1868, I,. 34.

Meeting General Assembly.

Sec. 3. The General Assembly ought frequently to assemble for the redress of grievances and for making new laws, as the common good may require.

See Const. 1868, I., 27.

Religious worship.

Freedom of speech.

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Sec. 4. The General Assembly shall make no law respecting an establishment of religion or prohibiting the free exercise thereof, or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble and to petition the Government or any department thereof for a redress of grievances.

See Const. 1868, I., 6, 7, 9 and 10.

Privileges and immunities.

See Const., 1868, I,. 12.

Protection of laws.

Sec. 5. The privileges and immunities of citizens of this State and of the United States under this Constitution shall not be abridged, nor shall any person be deprived of life, liberty or property without due process of law, nor shall any person be denied the equal protection of the laws.

The Act of 9th March, 1896, No. 98 of 22 Stats., which in its Title and the provisions of the first Section clearly make it a general law, applicable to fishing in any of the waters of this State, within any of the Counties of this State, and the provision in the third Section expressly confines its operations to the two Counties therein specified, thereby makes the Act a local or special law. And the intention of the Act being to prohibit the citizens of every other County, except those of Colleton and Berkeley, from fishing for profit in the waters of Colleton and Berkeley without a license; and there being nothing in the Act to forbid the citizens of Colleton and Berkeley from fishing in the waters of every other County in the State without a license, it is a discrimination in favor of the citizens of those two Counties, and is unconstitutional under the above Section.—State v. Higgins, 51 S. C., 51; 28 S. E., 15.

"Due process of law" means the common law and the statute law existing in this State at the adoption of our Constitution. Altogether they constitute the

body of the law, prescribing the course of justice to which a freeman is to be considered amenable in all times to come.—Stehmeyer v. City Council, 53 S. C., 281; 31 S. E., 322.

Similar provision in former Constitution construed.—State v. Mitchell, 2 Bail., 225.

The emigrant agents' Act, Criminal Code, Sec. 608, held not violative of this Section.—State v. Napier, 63 S. C., 60; 41 S. E., 13. The Act requiring carriers to adjust claims for damages within sixty days, Civil Code, Sec. 1711, is not violative of this Section.—Porter v. C. & S. Ry. Co., 63 S. C., 169; 41 S. E., 108. So also the Act allowing damages against telegraph companies for mental anguish, Civil Code, Section 2223—Simmons v. W. U. Tel. Co., 63 S. C., 425; 41 S. E., 521. Acts exempting portions of Chesterfield County from the general stock law, Civil Code, Section 1508, held unconstitutional under this section in that they confer upon the commissioners arbitrary powers of discrimination against the rights of those living on the outside or inside who might desre to be excluded or ncluded.—Goodale v. Sowell, 62 S. C., 516; 40 S. E., 970.

Taxation.

See Const. 1868, I., 37.

Sec. 6. All property subject to taxation shall be taxed in proportion to its value.

A system of special assessment by a municipal corporation, whereby the owners of property abutting on the streets through which water mains are to be laid, not in accordance to its valuation, but in as much as it is to result in a benefit to the land owners whose land abut on the streets, is unconstitutional.—Stehmeyer v. City Council, 53 S. C., 284; 31 S. E., 322.

An assessment or valuation of property for taxation is essential to constitute a legal liability to pay taxes, and a valuation of such property is expressly enjoined by the Constitution, and taxes are not to be laid upon taxable property merely, nor upon its actual value, but upon its actual value as ascertained by an assessment made for the purpose of laying such tax.—State v. Railroad Co., 54 S. C., 573; 32 S. E., 691.

Sections 1273 and 1274 of the Revised Statutes of 1893 are unconstitutional, as violating the above and other Sections, when considered as a tax on property.—State v. Tucker, 56 S. C., 522; 35 S. E., 216.

No tax without consent.

See Const. 1868, I., 36.

Sec. 7. No tax, subsidy, charge, impost tax or duties shall be established, fixed, laid or levied, under any pretext whatsoever, without the consent of the people or their representatives lawfully assembled.

Attainder—*ex post facto* law.

See Const. 1868, I., 4; 21.

Sec. 8. No bill of attainder, *ex post facto* law, law impairing the obligation of contracts, nor law granting any title of nobility or hereditary emoluments, shall be passed, and no conviction shall work corruption of blood or forfeiture of estate.

See cases noted under Sec. 10, Art. I., Constitution of United States, *ante*.

The Act of 1883, providing that contingent remainders cannot be barred by deed or feoffment with livery of seizin, is neither unconstitutional nor retroactive, when applied to a power vested before, but not executed until after the enactment of the statute, and is not violative of the above Section.—Bank v. Garlington, 54 S. C., 425; 32 S. E., 513.

Suffrage.

Sec. 9. The right of suffrage, as regulated in this Constitution, shall be protected by law regulating elections and prohibiting, under adequate penalties, all undue influences from power, bribery, tumult or improper conduct.

Elections free and open.

See Const. 1868, I., 31.

Sec. 10. All elections shall be free and open, and every inhabitant of this State possessing the qualifications provided for

in this Constitution shall have equal right to elect officers and be elected to fill public offices.

Property qualifications.

Sec. 11. No property qualification, unless prescribed in this Constitution, shall be necessary for an election to or the holding of any office. No person shall be elected or appointed to office in this State for life or during good behavior, but the terms of all officers shall be for some specified period, except Notaries Public and officers in the militia. After the adoption of this Constitution any person who shall fight a duel or send or accept a challenge for that purpose, or be an aider or abettor in fighting a duel, shall be deprived of holding any office of honor or trust in this State, and shall be otherwise punished as the law shall prescribe.

Term of office.

See Const 1868, I., 32.

Duelling.

Residence.

See Const. 1868, I., 35.

Sec. 12. Temporary absence from the State shall not forfeit a residence once obtained.

Suspension of laws.

See Const. 1868, I., 24.

Sec. 13. The power of suspending the laws or the execution of the laws shall only be exercised by the General Assembly or by its authority in particular cases expressly provided for by it.

Departments separate.

See Const. 1868, I., 26.

Sec. 14. In the government of this State the legislative, executive and judicial powers of the Government shall be forever separate and distinct from each other, and no person or persons exercising the functions of one of said departments shall assume or discharge the duties of any other.

The hearing and deciding a question by the Legislature as to the result of an election, to decide whether a new County should be established, is an exercise of judicial power, and as such is unconstitutional under the above Section.—Segars v. Parrott, 54 S. C., 27; 31 S. E., 677, 865.

Courts—remedy.

See Const. 1868, I., 15.

Sec. 15. All Courts shall be public, and every person shall have speedy remedy therein for wrongs sustained.

Searches, seizures.

See Const. 1868, I., 22.

Sec. 16. The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized.

A warrant under which a defendant was arrested was not supported either by oath or affirmation, and the arrest was therefore illegal, and the Sheriff had no lawful authority to retain him in custody, as the warrant was unconstitutional, null and void, under the above Section.—State v. Huggins, 51 S. C., 54; 28 S. E., 16.

Presentment of grand jury.

See Const. 1868, I., 17.

Sec. 17. No person shall be held to answer for any crime where the punishment exceeds a fine of one hundred dollars or imprisonment for thirty days, with or without hard labor, unless on a presentment or indictment of a grand jury of the

County where the crime shall have been committed, except in cases arising in the land or naval forces or in the militia when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or liberty, nor shall be compelled in any criminal case to be a witness against himself. Private property shall not be taken for private use without the consent of the owner, nor for public use without just compensation being first made therefor.

Not tried twice.

See Const. 1868, I., 18.

Private property.

See Const. 1868, I., 23.

Sections 1175 and 1180 of the Revised Statutes of 1893 are unconstitutional under the present Constitution, in that they are repealed by the Constitution when the Sections apply to a state of facts whereby M goes upon the land of B, tears down the fencing because he conceives he could obtain a right of way from his dwelling house over the lands of B without her consent; when, in fact, he already had a right of way whereby he could enter his lot, and when B's land did not entirely surround his lot.—Beaudrot v. Murphy, 53 S. C., 119; 30 S. E., 825.

Remaindermen are within the protection of this Section.—Cureton v. South Bound R. R. Co., 59 S. C., 371; 37 S. E., 914.

A city under our present Constitution has no right to enter into a contract for the purchase of waterworks and light plant to be paid for by a scheme of taxation to be laid on lot owners whose lots abut the streets in which the water pipes are laid.—Stehmeyer v. City Council of Charleston, 53 S. C., 259; 31 S. E., 322.

The great weight of authority is to the effect that the change in the grade of a street, which diminishes the value of adjacent property is not a "taking" of property within the limitation of the above Section, and there is no implied liability resting upon a municipality to make compensation for injury resulting from grading its streets.—Garraux v. Greenville, 53 S. C., 577; 31 S. E., 597.

One is in jeopardy when a legal jury is sworn and empannelled to try him upon a valid indictment, in a competent Court, unless the jury before reaching a verdict be discharged with the prisoner's consent, or upon some ground of legal necessity, or the verdict, if rendered, be set aside according to law. In this State the inability of the jury to agree upon a verdict is regarded as presenting a case of legal necessity, authorizing the discharge of the jury.—State v. Stephenson, 54 S. C., 237; 32 S. E., 305. The Constitution of 1895 governs in trials subsequent to it for offences previously committed.—State v. Richardson, 47 S. C., 166; 25 S E., 220. Compare Sec. 18, Art. I., of Constitution of 1868.

Unless the defendant expressly consents thereto, he is not put in jeopardy when tried before a jury of eleven men, as the Constitution requires a jury of twelve men.—State v. Coleman, 54 S. C., 285; 32 S. E., 406.

It is unconstitutional to require a defendant charged with a crime to testify against himself, even when he raises no objection to testifying, as he might be punished for contempt if he refused to testify.—Town Council v. Owens, 61 S. C., 24; 39 S. E., 184.

Right under former Constitution to deprive individual of property for great national purposes.—Stark v. McGowen, 1 N. & McC., 387. Under that Constitution compensation was not required.—Lindsey v. Commissioners, 2 Bay, 38; Patrick v. Commissioners, 4 McC, 541.

The exemption of property within certain territorial limits from the operation of the general stock law, is not a taking, within the meaning of this Section. But the Civil Code, Section 1508, requiring the residents within the exempted territorial limits to build and keep in repair a fence along the lines therein described is such a taking for a private purpose, without compensation and without consent, and renders the act unconstitutional.—Goodale v. Sowell, 62 S. C., 516; 40 S. E., 970.

The Criminal Code, Section 24, requiring Magistrates to hold preliminary examinations in cases beyond their jurisdictions, does not oust the grand jury in their ancient right under the Constitution to find bills of indictment where there has been no previous examination before a magistrate.—State v. Brown, 62 S. C., 374; 40

S. E., 776; State v. Bowman, 43 S. C., 108; 20 S. E., 1010; State v. Bullock, 54 S. C,. 313; 32 S. E., 424.

Trial by jury. Witnesses. See Const. 1868, I., 13.

Sec. 18. In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury; and to be fully informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to be fully heard in his defence by himself or by his counsel or by both.

The words "to be fully informed of the nature and cause of the accusation" are equally as strong as the words employed in Sec. 13 of Art. I. of the Constitution of 1868, and an indictment charging the defendant with selling spirituous liquors "to divers other persons" is unconstitutional, and those words may be either stricken out or regarded as surplusage.—State v. Jeffcoat, 54 S. C., 198; 32 S. E., 298.

Section 43 of the Dispensary Act of 1896, authorizing a conviction under the charge in an indictment of a sale "to divers other persons" is unconstitutional.—State v. Couch, 54 S. C., 286; 32 S. E., 408.

The provision that a defendant shall have compulsory process for obtaining witnesses in his favor does not carry to the witness for a defendant charged with assault and battery with intent to kill, the right to claim fees from the County in such a case, as the liability of the County to pay defendant's witness fees is limited to felonies.—Ex parte Henderson, 51 S. C., 331; 29 S. E., 5; Whittle v. Saluda Co., 59 S. C., 554; 38 S. E., 168.

An indictment under Criminal Code, Section 608, charging Defendant on a day certain with unlawfully hiring laborers and soliciting emigrants to labor without the State, wthout first having obtained a license therefor, is sufficiently definite without specifying the specific acts of hiring or soliciting; as it charges sufficiently a continuation or succession of acts, under the exception to the rule of pleading where the offense consists of a single act.—State v. Napier, 63 S. C., 60; 41 S. E., 13

Excessive bail. See Const. 1868, I., 38. Corporal punishment. Contempt.

Sec. 19. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted, nor shall witnesses be unreasonably detained. Corporal punishment shall not be inflicted. The power to punish for contempt shall not in any case extend to imprisonment in the State penitentiary.

Where a fine imposed by a Mayor is within the limits prescribed by charter and ordinance, there is no error of law in imposing a fine within those limits, and the matter is exclusively within the discretion of the Mayor.—Greenville v. Kemmis, 58 S. C., 434; 36 S. C., 727.

Right of bail. Sureties. See Const. 1868, I., 16.

Sec. 20. All persons shall, before conviction, be bailable by sufficient sureties, except for capital offences when the proof is evident or the presumption great.

Libel. See Const. 1868, I., 8.

Sec. 21. In all indictments or prosecutions for libel, the truth of the alleged libel may be given in evidence, and the jury shall be the judges of the law and the facts.

State v. Brock, 61 S. C., 141; 39 S. E., 359.

Treason.

Sec. 22. Treason against the State shall consist alone in levying war or in giving aid and comfort to enemies against the State. No person shall be held guilty of treason, except upon

testimony of at least two witnesses to the same overt act, or upon confession in open Court.

Habeas corpus.

See Const. 1868, I., 17.

Sec. 23. The privilege of the writ of *habeas corpus* shall not be suspended unless when, in case of insurrection, rebellion or invasion, the public safety may require it.

Imprisonment for debt.

See Const. 1868, I., 24.

Sec. 24. No person shall be imprisoned for debt except in cases of fraud.

Selling property under lien.—Criminal Code, Sec. 337: State v. Barden, 64 S. C., 206; 41 S. E.

Violation of labor contract.—State v. Easterlin, 61 S. C., 71; 39 S. E., 251.

Trial by jury.

Sec. 25. The right of trial by jury shall be preserved inviolate.

Rule of Court requiring copy of indictment for felony to be obtained by order of the Judge who tried it before an action for malicious prosecution shall be commenced is no abridgement of right to jury trial.—Burton v. Watkins, 2 Hill, 674.

It only preserves jury trials in those cases where they were allowed at time of adoption of the Constitution.—Commissioners v. Seabrooke, 2 Strob., 563.

The mode of forming and empanelling jury may be changed.—State v. Boatwright, 10 Rich., 407; State v. Clayton, 11 Rich., 581. See Sec. 11, Art. I., of Constitution of 1868 and note.

Where a demurrer to the indictment is overruled the defendant is entitled to plead over and be tried by jury.—State v. Barden, 64 S. C., 206; 41 S. E.

Keep and bear arms.

See Const. 1868, I., 28

General Assembly may maintain armies.

Soldier, how quartered.

See Const. 1868, I., 29.

Sec. 26. A well regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed. As in times of peace armies are dangerous to liberty, they shall not be maintained without the consent of the General Assembly. The military power of the State shall always be held in subordination to the civil authority and be governed by it. No soldier shall in time of peace be quartered in any house without the consent of the owner, nor in time of war but in the manner to be prescribed by law.

Martial law.

See Const. 1868, I., 25.

Sec. 27. No person shall in any case be subject to Martial law or to any pains or penalties by virtue of that law, except those employed in the army and navy of the United States, and except the militia in actual service, but by the authority of the General Assembly.

Navigable waters free.

No tax for use of wharf.

See Const. 1868, I., 40.

Sec. 28. All navigable waters shall forever remain public highways free to the citizens of the State and the United States without tax, impost or toll imposed; and no tax, poll, impost or wharfage shall be imposed, demanded or received from the owners of any merchandise or commodity for the use of the shores or any wharf erected on the shores or in or over the waters of any navigable stream unless the same be authorized by the General Assembly.

There can be no doubt that an obstruction of any highway is a public nuisance, which, ordinarily, can only be redressed by indictment.—Steamboat Co. v. Railroad Co., 46 S. C., 333; 24 S. E., 337.

Provisions of Constitution.

Sec. 29. The provisions of the Constitution shall be taken, deemed and construed to be mandatory and prohibitory, and not merely directory, except where expressly made directory or permissory by its own terms.

Carolina Grocery Co. v. Burnett, 61 S. C., 205; 39 S. E., 381.

ARTICLE II.

RIGHT OF SUFFRAGE.

Elections by ballot.

See Const. 1868, VIII., 1.

Section 1. All elections by the people shall be by ballot, and elections shall never be held or the ballots counted in secret.

Martin v. School District Laurens, 57 S. C., 125; 35 S. E., 517; State ex rel. Martin v. Moore, 54 S. C., 556; 32 S. E., 700.

Qualification for office.

Two offices.

See Const. 1868, VIII., 2; XIV., 1.

Sec. 2. Every qualified elector shall be eligible to any office to be voted for, unless disqualified by age, as prescribed in this Constitution. But no person shall hold two offices of honor or profit at the same time: *Provided,* That any person holding another office may at the same time be an officer in the militia or a Notary Public.

The Intendant of a town is an office of trust, and the office of Clerk of a Circuit Court is an office of profit, and they cannot be held by the same person, and a Clerk of Court accepting the office of Intendant of a town thereby vacates the office of Clerk of Court.—State v. Coleman, 54 S. C., 283; 32 S. E., 406.

A person may hold the office of Postmaster and Notary Public at the same time, as the office of Notary Public is not incompatible with any other office.—Ex parte Furniture Co., 49 S. C., 40; 27 S. E., 9.

The term "qualified elector," as used above, means "registered elector," and one who has not been registered as an elector in the County when the Court sits is not qualified to serve as a juror in said Court.—Mew v. Railroad Co., 55 S. C., 95; 32 S. E., 828.

Electors.

See Const. 1868, VIII., 2.

Sec. 3. Every male citizen of this State and of the United States twenty-one years of age and upwards, not laboring under the disabilities named in this Constitution and possessing the qualifications required by it, shall be an elector.

Sec. 4. The qualifications for suffrage shall be as follows:

Residence.

See Const. 1868, VIII., 2.

(*a*) Residence in the State for two years, in the County one year, in the polling precinct in which the elector offers to vote four months, and the payment six months before any election of any poll tax then due and payable: *Provided,* That ministers in charge of an organized church and teachers of public schools shall be entitled to vote after six months' residence in the State, otherwise qualified.

Registration.

(*b*) Registration, which shall provide for the enrollment of every elector once in ten years, and also an enrollment during each and every year of every elector not previously registered under the provisions of this Article.

A juror must be a registered elector.—Mew v. Railroad, 55 S. C., 95; 32 S. E., 828.

(*c*) Up to January 1st, 1898, all male persons of voting age applying for registration who can read any Section in this Constitution submitted to them by the registration officer, or understand and explain it when read to them by the registration officer, shall be entitled to register and become electors. A separate record of all persons registered before January 1st, 1898, sworn to by the registration officer, shall be filed, one copy with the Clerk of Court and one in the office of the Secretary of State, on or before February 1st, 1898, and such persons shall remain during life qualified electors unless disqualified by the other provisions of this Article. The certificate of the Clerk of Court or Secretary of State shall be sufficient evidence to establish the right of said citizens to any subsequent registration and the franchise under the limitations herein imposed.

Qualification for registration up to January, 1898.

List of registered voters.

(*d*) Any person who shall apply for registration after January 1st, 1898, if otherwise qualified, shall be registered: *Provided,* That he can both read and write any Section of this Constitution submitted to him by the registration officer or can show that he owns, and has paid all taxes collectible during the previous year on property in this State assessed at three hundred dollars ($300) or more.

Qualification for registration after January, 1898.

(*e*) Managers of election shall require of every elector offering to vote at any election, before allowing him to vote, proof of the payment of all taxes, including poll tax, assessed against him and collectible during the previous year. The production of a certificate or of the receipt of the officer authorized to collect such taxes shall be conclusive proof of the payment thereof.

Payment of taxes necessary for voting.

(*f*) The General Assembly shall provide for issuing to each duly registered elector a certificate of registration, and shall provide for the renewal of such certificate when lost, mutilated or destroyed, if the applicant is still a qualified elector under the provisions of this Constitution, or if he has been registered as provided in subsection (*c*).

Certificate of registration.

Sec. 5. Any person denied registration shall have the right to appeal to the Court of Common Pleas, or any Judge thereof, and thence to the Supreme Court, to determine his right to vote under the limitations imposed in this article, and on such appeal the hearing shall be *de novo,* and the General Assembly shall provide by law for such appeal, and for the correction of illegal and fraudulent registration, voting, and all other crimes against the election laws.

Appeal.

Crimes against election laws.

Sec. 6. The following persons are disqualified from being registered or voting:

Persons disqualified from voting.

See Const. 1868, VIII., 8.

First, Persons convicted of burglary, arson, obtaining goods or money under false pretenses, perjury, forgery, robbery, bribery, adultery, bigamy, wife-beating, house-breaking, receiving stolen goods, breach of trust with fraudulent intent, fornication, sodomy, incest, assault with intent to ravish, miscegenation, larceny, or crimes against the election laws: *Provided,* That the pardon of the Governor shall remove such disqualification.

Second, Persons who are idiots, insane, paupers, supported at the public expense, and persons confined in any public prison.

See Mew v. Railroad, 55 S. C., 93; 32 S. E., 828.

The above Section disqualifies a citizen from being a juror who has been convicted of larceny, and where none of the parties to an action, or their respective counsel, had knowledge of the conviction of the juror during the trial, a new trial must be granted.—State v. Robertson, 54 S. C., 146; 31 S. E., 868.

See McCreight v. Camden, 49 S. C., 94; 26 S. E., 984; Garrett v. Weinberg, 54 S. C., 127; 31 S. E., 341.

A summary of the terms of the Constitution regarding the registration of voters for municipal elections is as follows: 1. A County Board of Registration certificate of registration must be produced. 2. Residence for four months before the election in the town or city in which he desires to vote must exist. 3. Payment of all taxes due and collectible for the preceding fiscal year must appear to have been made by the applicant for registration. 4. "The General Assembly shall provide for the registration of all voters before each election in municipalities; and the General Assembly has, of its own motion, provided an additional requirement, that registration must be had for what may be called regular, as contradistinguished from special elections."—Hunter v. Senn, 61 S. C., 67; 39 S. E., 235.

Residence gained or lost.

See Const. 1868, VIII., 4 and 5.

Sec. 7. For the purpose of voting, no person shall be deemed to have gained or lost a residence by reason of his presence or absence while employed in the service of the United States, nor while engaged in the navigation of the waters of this State, or of the United States, or of the high seas, nor while a student of any institution of learning.

Registration provided.

See Const. 1868, VIII., 3.

Elections.

Board of Registration.

Books of registration.

Sec. 8. The General Assembly shall provide by law for the registration of all qualified electors, and shall prescribe the manner of holding elections and of ascertaining the results of the same: *Provided,* At the first registration under this Constitution, and until the first of January, 1898, the registration shall be conducted by a Board of three discreet persons in each County, to be appointed by the Governor, by and with the advice and consent of the Senate. For the first registration to be provided for under this Constitution, the registration books shall be kept open for at least six consecutive weeks, and thereafter from time to time at least one week in each month, up to thirty days next preceding the first election to be held under this Constitution.

The registration books shall be public records open to the inspection of any citizen at all times.

Sec. 9. The General Assembly shall provide for the establishment of polling precincts in the several Counties of the State, and those now existing shall so continue until abolished or changed. Each elector shall be required to vote at his own precinct, but provision shall be made for his transfer to another precinct upon his change of residence.

Polling precincts.

Sec. 10. The General Assembly shall provide by law for the regulation of party primary elections and punishing fraud at the same.

Primary elections.

Sec. 11. The registration books shall close at least thirty days before an election, during which time transfers and registration shall not be legal: *Provided,* Persons who will become of age during that period shall be entitled to registration before the books are closed.

Closing books of registration.

Sec. 12. Electors in municipal elections shall possess the qualifications and be subject to the disqualifications herein prescribed. The production of a certificate of registration from the registration officers of the County as an elector at a precinct included in the incorporated city or town in which the voter desires to vote is declared a condition prerequisite to his obtaining a certificate of registration for municipal elections, and in addition he must have been a resident within the corporate limits at least four months before the election and have paid all taxes due and collectible for the preceding fiscal year. The General Assembly shall provide for the registration of all voters before each election in municipalities: *Provided,* That nothing herein contained shall apply to any municipal elections which may be held prior to the general election of the year 1896.

Municipal elections.

Registration in.

Sec. 13. In authorizing a special election in any incorporated city or town in this State for the purpose of bonding the same, the General Assembly shall prescribe as a condition precedent to the holding of said election a petition from a majority of the freeholders of said city or town as shown by its tax books, and at such elections all electors of such city or town who are duly qualified for voting under Section 12 of this Article, and who have paid all taxes, State, County and municipal, for the previous year, shall be allowed to vote; and the vote of a majority of those voting in said election shall be necessary to authorize the issue of said bonds.

Bonded debt in municipalities.

The Act of Dec. 24th, 1890, 20 Stat., 976, is not repealed by the above Section, but the effect of the Constitution is not to wholly nullify said Act, but merely to nullify so much of said Act as is inconsistent with the Constitution, or rather the special Act must be read as if amended so as to prescribe for electors thereunder the qualifications required under the Constitution, and to require a petition by a majority of the freeholders, instead of one-third.—Cleveland v. Spartanburg, 54 S. C., 85; 31 S. E., 871.

See McCreight v. Camden, 49 S. C., 93; 26 S. E., 984; Hunter v. Senn, 61 S. C., 67; 39 S. E., 235; Bray v. Florence, — S. C., ——; 39 S. E., 810.

The above Section plainly provides that the General Assembly, in authorizing a special election for the purposes referred to, shall prescribe, as a condition precedent to holding such election, a petition from the majority of the freeholders of said city or town as shown by its tax books.—Ex rel. McWhirter v. Newberry, 47 S C., 424; 25 S. E., 216.

Arrests of electors.

See Const. 1868, VIII., 6.

Sec. 14. Electors shall in all cases except treason, felony, or a breach of the peace, be privileged from arrest on the days of election during their attendance at the polls, and going to and returning therefrom.

Right of suffrage free.

Sec. 15. No power civil, or military, shall at any time interfere to prevent the free exercise of the right of suffrage in this State.

ARTICLE III.

Legislative Department.

Legislative power.

See Const. 1868, II., 1.

Section 1. The legislative power of this State shall be vested in two distinct branches, the one to be styled the "Senate" and the other the "House of Representatives," and both together the "General Assembly of the State of South Carolina."

Legislative distinguished from judicial power.—Segars v. Parrott, 54 S. C., 29; 31 S. E., 677, 865.

Power under former Constitution.—State v. Williams, 2 McC., 301.

House of Representatives.

See Const. 1868, II., 2.

Sec. 2. The House of Representatives shall be composed of members chosen by ballot every second year by citizens of this State, qualified as in this Constitution is provided.

Number of members.

Enumeration of inhabitants.

See Const. 1868, II., 3 and 4.

Sec. 3. The House of Representatives shall consist of one hundred and twenty-four members, to be apportioned among the several Counties according to the number of inhabitants contained in each. Each County shall constitute one Election District. An enumeration of the inhabitants for this purpose shall be made in the year nineteen and one, and shall be made in the course of every tenth year thereafter, in such manner as shall be by law directed: *Provided,* That the General Assembly may at any time, in its discretion, adopt the immediately preceding United States Census as a true and correct enumeration of the inhabitants of the several Counties, and make the apportionment of Representatives among the several Counties

according to said enumeration: *Provided, further,* That until the apportionment which shall be made upon the next enumeration shall take effect, the representation of the several Counties as they now exist (including the County of Saluda established by ordinance) shall be as follows: Abbeville, 5; Aiken, 3; Anderson, 5; Barnwell, 5; Beaufort, 4; Berkeley, 4; Charleston, 9; Chester, 3; Chesterfield, 2; Clarendon, 3; Colleton, 4; Darlington, 3; Edgefield, 3; Fairfield, 3; Florence, 3; Georgetown, 2; Greenville, 5; Hampton, 2; Horry, 2; Kershaw, 2; Lancaster, 2; Laurens, 3; Lexington, 2; Marion, 3; Marlboro, 3; Newberry, 3; Oconee, 2; Orangeburg, 5; Pickens, 2; Richland, 4; Saluda, 2; Spartanburg, 6; Sumter, 5; Union, 3; Williamsburg, 3; York, 4: *Provided, further,* That in the event other Counties are hereafter established, then the General Assembly shall reapportion the Representatives between the Counties.

Apportionment.

Sec. 4. In assigning Rpresentatives to the several Counties, the General Assembly shall allow one Representative to every one hundred and twenty-fourth part of the whole number of inhabitants in the State: *Provided,* That if in the apportionment of Representatives any County shall appear not to be entitled, from its population, to a Representative, such County shall, nevertheless, send one Representative; and if there be still a deficiency in the number of Representatives required by Section third of this Article, such deficiency shall be supplied by assigning Representatives to those Counties having the largest surplus fractions.

Assignment of Representatives.

See Const. 1868, II., 6.

Sec. 5. No apportionment of Representatives shall take effect until the general election which shall succeed such apportionment.

Apportionment takes effect.

See Const. 1868, III., 7.

Sec. 6. The Senate shall be composed of one member from each County, to be elected for the term of four years by the qualified electors in each County, in the same manner in which members of the House of Representatives are chosen.

Senate.

See Const. 1868, II., 8.

Sec. 7. No person shall be eligible to a seat in the Senate or House of Representatives who, at the time of his election, is not a duly qualified elector under this Constitution in the County in which he may be chosen. Senators shall be at least twenty-five and Representatives at least twenty-one years of age.

Qualification of Senators and members of House.

See Const. 1868, II., 10.

Sec. 8. The first election for members of the House of Representatives under this Constitution shall be held on Tuesday after the first Monday in November, eighteen hundred and

Election of Senators and Representatives.

See Const. 1868, II., 9 and 11.

ninety-six, and in every second year thereafter, in such manner and at such places as the General Assembly may prescribe; and the first election for Senators shall be held on Tuesday after the first Monday in November, eighteen hundred and ninety-six, and every fourth year thereafter, except in Counties in which there was an election for Senator in eighteen hundred and ninety-four for a full term, in which Counties no election for Senator shall be held until the general election to be held in eighteen hundred and ninety-eight, and every fourth year thereafter, except to fill vacancies. Senators shall be so classified that one-half of their number, as nearly as practicable, shall be chosen every two years. Whenever the General Assembly shall establish more than one County at any session, it shall so prescribe the first term of the Senators from such Counties as to observe such classification.

Classification of Senators.

Sec. 9. The annual session of the General Assembly heretofore elected, fixed by the Constitution of the year eighteen hundred and sixty-eight to convene on the fourth Tuesday of November, in the year eighteen hundred and ninety-five, is hereby postponed, and the same shall be convened and held in the City of Columbia on the second Tuesday in January in the year eighteen hundred and ninety-six. The first session of the General Assembly elected under this Constitution shall convene in Columbia on the second Tuesday in January in the year eighteen hundred and ninety-seven, and thereafter annually at the same time and place.

Sessions General Assembly.

See Const. 1868, II., 12.

Should the casualties of war or contagious disease render it unsafe to meet at the seat of government, then the Governor may, by proclamation, appoint a more secure and convenient place of meeting. Members of the General Assembly shall not receive any compensation for more than forty days of any one session: *Provided,* That this limitation shall not affect the first four sessions of the General Assembly under this Constitution.

Compensation of members of.

Sec. 10. The terms of office of the Senators and Representatives chosen at a general election shall begin on the Monday following such election.

Terms of office.

See Const. 1868, II., 13.

Sec. 11. Each house shall judge of the election returns and qualifications of its own members, and a majority of each house shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may compel the attendance of absent members, in such manner and under such penalties as may be provided by law or rule.

Election returns.

Quorum.

Absent members.

See Const. 1868, II., 14.

The General Assembly did not, by Section 5 of the Act of 9th March, 1896, intend to invest itself with judicial power; and if it did, then that Section of the Act is clearly unconstitutional, and is null and void. That the framers of the Constitution never intended the General Assembly to exercise judicial powers is shown by the above Section.—Segars v. Parrott, 54 S. C., 29; 31 S. E., 677, 865.

Sec. 12. Each house shall choose its own officers, determine its rules of procedure, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member, but not a second time for the same cause.

Officers. See Const. 1868, II., 15. Rules. Expulsion.

Sec. 13. Each house may punish by imprisonment during its sitting any person not a member who shall be guilty of disrespect to the house by any disorderly or contemptuous behavior in its presence, or who, during the time of its sitting, shall threaten harm to the body or estate of any member for anything said or done in either house, or who shall assault any of them therefor, or who shall assault or arrest any witness or other person ordered to attend the house in his going thereto or returning therefrom, or who shall rescue any person arrested by order of the house: *Provided,* That such time of imprisonment shall not in any case extend beyond the session of the General Assembly.

Right of punishment. See Const. 1868, II., 16.

Sec. 14. The members of both houses shall be protected in their persons and estates during their attendance on, going to and returning from the General Assembly, and ten days previous to the sitting and ten days after the adjournment thereof. But these privileges shall not protect any member who shall be charged with treason, felony or breach of the peace.

Members protected. See Const. 1868, II., 17.

See Worth v. Norton, 56 S. C., 66; 33 S. E., 792, for comments on this Section. For provision under former Constitution.—Tillinghast v. Carr, 4 McC., 152.

Sec. 15. Bills for raising revenue shall originate in the House of Representatives, but may be altered, amended or rejected by the Senate; all other Bills may originate in either house, and may be amended, altered or rejected by the other.

Bills for revenue. See Const. 1868, II., 18. Other Bills.

Sec. 16. The style of all laws shall be: "Be it enacted by the General Assembly of the State of South Carolina."

Style of laws. See Const. 1868, II., 19.

Sec. 17. Every Act or resolution having the force of law shall relate to but one subject, and that shall be expressed in the title.

One subject. See Const. 1868, II., 20.

See also Sec. 20, Art. II., Const. of 1868.

Act violative of this Section.—State v. Crosby, 51 S. C., 247; 28 S. E., 529; Blair v. Morgan, 59 S. C., 52; 37 S. E., 45.

This provision has no application to municipal ordinances.—State v. Gibbes, 60 S. C., 500; 39 S. E., 1.

The Act of 1892, 21 Stats., 92, Rev. Stats., 1893, is not violative of the above Section, since its title and body relate to the same subject, and it covers damages resulting from negligent mismanagement of a steam roller used by a municipality in working its streets.—Barksdale v. Laurens, 58 S. C., 415; 36 S. E., 661.

Formalities of Act.

See Const. 1868, II., 21.

Sec. 18. No Bill or Joint Resolution shall have the force of law until it shall have been read three times and on three several days in each house, has had the Great Seal of the State affixed to it, and has been signed by the President of the Senate and the Speaker of the House of Representatives: *Provided,* That either branch of the General Assembly may provide by rule for a first and third reading of any Bill or Joint Resolution by its title only.

Mileage.

See Const., 1868, II., 23.

Increase of per diem.

Extra session.

Sec. 19. Each member of the General Assembly shall receive five cents for every mile for ordinary route of travel in going to and returning from the place where its sessions are held; no General Assembly shall have the power to increase the per diem of its own members; and members of the General Assembly when convened in extra session shall receive the same compensation as is fixed by law for the regular session.

Elections "*viva voce.*"

See Const. 1868, II., 24.

Sec. 20. In all elections by the General Assembly, or either house thereof, the members shall vote "*viva voce,*" and their votes, thus given, shall be entered upon the journal of the house to which they respectively belong.

Adjournments.

See Const. 1868, II., 25.

Sec. 21. Neither house, during the session of the General Assembly, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which it shall be at the time sitting.

Journal.

See Const. 1868, II., 26.

"Yeas" and "nays."

Sec. 22. Each house shall keep a journal of its own proceedings, and cause the same to be published immediately after its adjournment, excepting such parts as, in its judgment, may require secrecy; and the yeas and nays of the members of either house, on any question, shall, at the desire of ten members of the House or five members of the Senate, respectively, be entered on the journal. Any member of either house shall have the liberty to dissent from and protest against any Act or resolution which he may think injurious to the public or to an individual, and have the reasons of his dissent entered on the journal.

Doors open.

See Const. 1868, II., 27.

Sec. 23. The doors of each house shall be open, except on such occasions as in the opinion of the House may require secrecy.

Holding two offices.

1868, II., 28.

Sec. 24. No person shall be eligible to a seat in the General Assembly while he holds any office or position of profit or trust under this State, the United States of America, or any of them, or under any other power, except officers in the militia and Notaries Public; and if any member shall accept or exercise

any of the said disqualifying offices or positions he shall vacate his seat.

Vacancies.

See Const. 1868, II., 29.

Sec. 25. If any election district shall neglect to choose a member or members on the day of election, or if any person chosen a member of either house shall refuse to qualify and take his seat, or shall resign, die, depart the State, accept any disqualifying office or position, or become otherwise disqualified to hold his seat, a writ of election shall be issued by the President of the Senate or Speaker of the House of Representatives, as the case may be, for the purpose of filling the vacancy thereby occasioned for the remainder of the term for which the person so refusing to qualify, resigning, dying, departing the State, or becoming disqualified, was elected to serve, or the defaulting election district ought to have chosen a member or members.

Oath of office.

See Const. 1868, II., 30.

Sec. 26. Members of the General Assembly, and all officers before they enter upon the duties of their respective offices, and all members of the bar, before they enter upon the practice of their profession, shall take and subscribe the following oath: "I do solemnly swear (or affirm) that I am duly qualified, according to the Constitution of this State, to exercise the duties of the office to which I have been elected, (or appointed,) and that I will, to the best of my ability, discharge the duties thereof, and preserve, protect, and defend the Constitution of this State and of the United States. I do further solemnly swear (or affirm) that I have not since the first day of January, in the year eighteen hundred and eighty-one, engaged in a duel as principal or second or otherwise; and that I will not, during the term of office to which I have been elected (or appointed) engage in a duel as principal or second or otherwise. So help me God."

Removal of officer.

See Const. 1868, II., 31.

Sec. 27. Officers shall be removed for incapacity, misconduct or neglect of duty, in such manner as may be provided by law, when no mode of trial or removal is provided in this Constitution.

Homestead.

See Const. 1868, II., 32.

Sec. 28. The General Assembly shall enact such laws as will exempt from attachment, levy and sale under any mesne or final process issued from any Court, to the head of any family residing in this State, a homestead in lands, whether held in fee or any lesser estate, to the value of one thousand dollars, or so much thereof as the property is worth if its value is less than one thousand dollars, with the yearly products thereof, and to

every head of a family residing in this State, whether entitled to a homestead exemption in lands or not, personal property to the value of five hundred dollars, or so much thereof as the property is worth if its value is less than five hundred dollars. The title to the homestead to be set off and assigned shall be absolute and be forever discharged from all debts of the said debtor then existing or thereafter contracted except as herein-after provided: *Provided,* That in case any woman having a separate estate shall be married to the head of a family who has not of his own sufficient property to constitute a homestead as hereinbefore provided, said married woman shall be entitled to a like exemption as provided for the head of a family: *Provided, further,* That there shall not be an allowance of more than one thousand dollars' worth of real estate and more than five hundred dollars' worth of personal property to the husband and wife jointly: *Provided, further,* That no property shall be exempt from attachment, levy or sale for taxes, or for payment of obligations contracted for the purchase of said homestead or personal property exemption or the erection or making of improvements or repairs thereon: *Provided, further,* That the yearly products of said homestead shall not be exempt from attachment, levy or sale for the payment of obligations contracted in the production of the same: *Provided, further,* That no waiver shall defeat the right of homestead before assignment except it be by deed of conveyance, or by mortgage, and only as against the mortgage debt; and no judgment creditor or other creditor whose lien does not bind the homestead shall have any right or equity to require that a lien which embraces the homestead and other property shall first exhaust the homestead: *Provided, further,* That after a homestead in lands has been set off and recorded the same shall not be waived by deed of conveyance, mortgage or otherwise, unless the same be executed by both husband and wife, if both be living: *Provided, further,* That any person not the head of a family shall be entitled to a like exemption as provided for the head of a family in all necessary wearing apparel and tools and implements of trade, not to exceed in value the sum of three hundred dollars.

Married woman's exemption.

Taxes.

Purchase money.

Yearly products.

Waiver.

Deed of husband and wife.

Exemption for single person.

Money borrowed to pay purchase price of land bought from a third party is not purchase money.—McNair v. Moore, 54 S. C., 82; 41 S. E.

A life estate in real property is the subject of homestead exemption, and the value of such estate, and not the value of the fee simple in the same lands, must be taken as the basis of appraising the exemption. Bank v. Gibbes, 54 S. C., 579; 32 S. E., 690. The provision of the above section, abrogating the two-fund doctrine as applied to homesteads, is not retroactive, does not apply to judgments ob-

tained before adoption of the Constitution, and is not a mere incident to the remedy. Bank v. Kohn, 52 S. C., 120; 29 S. E., 625. A request to charge "that if the improvements were made on the lands that had been assigned to the defendant for a homestead, then neither the plaintiff nor those through whom he claims would have the right to recover judgment against such homestead for improvements made thereon," was properly refused. Wilson v. Counts, 52 S. C., 218; 29 S. E., 649. The mere failure to give the sheriff notice of the claim of homestead cannot be deemed a waiver of the right or estoppel to assert the right of homestead. Gray v. Putnam, 51 S. C., 101; 28 S. E., 150. The right to a homestead is not tested by the existing conditions at the time of the contraction of the debt on which the judgment sought to be enforced was rendered. The test is, did the conditions "head of a family, resident of this State" exist at the time of the levy or attempted levy. *Ib.*

Taxes laid upon actual value.

See Const. 1868, II., 33.

Sec. 29. All taxes upon property, real and personal, shall be laid upon the actual value of the property taxed, as the same shall be ascertained by an assessment made for the purpose of laying such tax.

See Thomas v. Moultrieville, 52 S. C., 181; 29 S. E., 647; State v. Tucker, 56 S. C., 522; 35 S. E., 216; State v. Railroad Co., 54 S. C., 573; 32 S. E., 691; Stehmeyer v. City Council, 53 S. C., 275; 31 S. E., 322.

Extra compensation not permitted.

Sec. 30. The General Assembly shall never grant extra compensation, fee or allowance to any public officer, agent, servant or contractor after service rendered, or contract made, nor authorize payment or part payment of any claim under any contract not authorized by law; but appropriations may be made for expenditures in repelling invasion, preventing or suppressing insurrection.

Appropriations for repelling invasion.

Public lands.

Sec. 31. Lands belonging to or under the control of the State shall never be donated, directly or indirectly, to private corporations or individuals, or to railroad companies. Nor shall such land be sold to corporations or associations, for a less price than that for which it can be sold to individuals. This, however, shall not prevent the General Assembly from granting a right of way, not exceeding one hundred and fifty feet in width, as a mere easement to railroads across State lands, nor to interfere with the discretion of the General Assembly in confirming the title to lands claimed to belong to the State, but used or possessed by other parties under an adverse claim.

Salary of deceased officer.

Sec. 32. The General Assembly shall not authorize payment to any person of the salary of a deceased officer beyond the date of his death; nor grant pensions except for military and navy service; nor retire any officer on pay or part pay.

Marriages of whites and negroes.

Sec. 33. The marriage of a white person with a negro or mulatto, or person who shall have one-eighth or more negro blood, shall be unlawful and void. No unmarried woman shall legally consent to sexual intercourse who shall not have attained the age of fourteen years.

Sexual intercourse.

See State v. Gilchrist, 54 S. C., 159; 31 S. E., 866. Under the common law the age of consent was ten years, this rule was not of force after December 31st, 1895, under the above section and since that day no unmarried woman under the age of fourteen years, can consent to sexual intercourse. State v. Haddon, 49 S. C., 313, 27; S. E. R., 194. This provision did not create a new crime, but merely created a new rule of evidence in proof of consent. *Ib.*, 314.

Special laws prohibited.

Sec. 34. The General Assembly of this State shall not enact local or special laws concerning any of the following subjects or for any of the following purposes, to wit:

I. To change the names of persons or places.

II. To lay out, open, alter or work roads or highways.

III. To incorporate cities, towns or villages, or change, amend or extend the charter thereof.

IV. To incorporate educational, religious, charitable, social, manufacturing or banking institutions, not under the control of the State, or amend or extend the charters thereof.

V. To incorporate school districts.

VI. To authorize the adoption or legitimation of children.

VII. To provide for the protection of game.

VIII. To summon and empanel grand or petit jurors.

IX. To provide for the age at which citizens shall be subject to road or other public duty.

X. To fix the amount or manner of compensation to be paid to any County officer except that the laws may be so made as to grade the compensation in proportion to the population and necessary service required.

XI. In all other cases, where a general law can be made applicable, no special law shall be enacted.

XII. The General Assembly shall forthwith enact general laws concerning said subjects for said purposes, which shall be uniform in their operations: *Provided,* That nothing contained in this Section shall prohibit the General Assembly from enacting special provisions in general laws.

XIII. The provisions of this Section shall not apply to charitable and educational corporations where, under the terms of a gift, devise, or will, special incorporation may be required.

See State v. Tucker, 56 S. C., 522; 35 S. E., 215. The Act of 1896, 22 Stat., 218, is in violation of the provisions of the above section, provided it concerns any of the subjects, or is for the purposes mentioned in the above section, and is in direct violation of sub-division XI. This is conclusively shown by the terms of the first section of the act, which, if it stood alone, would have been a good gen-

eral law, but when the Legislature saw fit, by the provision of the third section, to limit its operation to certain specified localities, the act was deprived of its character as a general law and became a special or local law concerning a subject, and for a purpose expressly forbidden by the Constitution. State v. Higgins, 51 S. C., 54; 28 S. E. R., 15. The above section is not retroactive, and legislation had before the adoption of the Constitution, is not repealed by the section, which only repeals the provisions of all laws inconsistent with the self-enacting provisions of the Constitution. A law that was valid when enacted cannot be held inconsistent with the provisions of the Constitution relating to prospective legislation. State v. Tucker, 54 S. C., 253; 35 S. E., 215.

County government law as to working roads, etc. Carolina Grocery Co. v. Burnett, 61 S. C., 205; 39 S. E., 381.

Special law as to compensation of County officers. Dean v. Spartanburg County, 59 S. C., 110; 37 S. E., 226; Nance v. Anderson County, 60 S. C., 501; 39 S. E., 5.

The words "summon and empanel," used in sub-division 8 of this Section include listing and drawing juries, and under the jury act of 1900, XXIII., 315, amending the jury law of the State is violative of this Section. Its operation not being uniform throughout the State.—State v. Queen, 62 S. C., 247; 40 S. E., 553.

But Civil Code Sec. 2931, as to drawing jurors in Counties having over 40,000 inhabitants, is not unconstitutional as special legislation.—State v. Berkeley, 64 S. C., 194; 41 S. E. ——.

Lands owned by aliens.

Sec. 35. It shall be the duty of the General Assembly to enact laws limiting the number of acres of land which any alien or any corporation controlled by aliens may own within this State.

ARTICLE IV.

Executive Department.

Chief Magistrate.

See Const. 1868, III., 1.

Section 1. The supreme executive authority of this State shall be vested in a Chief Magistrate, who shall be styled "The Governor of the State of South Carolina."

Governor.

See Const. 1868, III., 2.

Sec. 2. The Governor shall be elected by the electors duly qualified to vote for members of the House of Representatives, and shall hold his office for two years, and until his successor shall be chosen and qualified, and shall be re-eligible. He shall be elected at the first general election held under this Constitution for members of the General Assembly, and at each general election thereafter, and shall be installed during the first session of the said General Assembly after his election on such day as shall be provided by law. The other State officers-elect shall at the same time enter upon the performance of their duties.

State officers.

Qualifications of Governor.

See Const. 1868, III., 3.

Sec. 3. No person shall be eligible to the office of Governor who denies the existence of the Supreme Being; or who at the time of such election has not attained the age of thirty years; and who shall not have been a citizen of the United States and a citizen and resident of this State for five years next preceding the day of election. No person while governor shall hold any office or other commission (except in the militia) under the authority of this State, or of any other power, at one and the same time.

Boards of Canvassers transmit returns of election for Governor.

See Const. 1868, III., 4.

Sec. 4. The returns of every election for Governor shall be sealed up by the Boards of Canvassers in the respective Counties, and transmitted by mail, to the seat of Government, directed to the Secretary of State, who shall deliver them to the Speaker of the House of Representatives at the next ensuing session of the General Assembly; and duplicates of said returns shall be filed with the Clerks of the Courts of said Counties. It shall be the duty of any Clerk of Court to forward to the Secretary of State a certified copy of said returns upon being notified that the returns previously forwarded by mail have not been received at his office. It shall be the duty of the Secretary of State, after the expiration of seven days from the day upon which the votes have been canvassed by the County Board, if the returns thereof from any County have not been received, to notify the Clerk of the Court of said County, and order a copy of the returns filed in his office to be forwarded forthwith.

Returns delivered to the Speaker of House of Representatives.

The Secretary of State shall deliver the returns to the Speaker of the House of Representatives, at the next ensuing session of the General Assembly; and during the first week of the session, or as soon as the General Assembly shall have organized by the election of the presiding officers of the two houses, the Speaker shall open and publish them in the presence of both houses. The person having the highest number of votes shall be Governor; but if two or more shall be equal, and highest in votes, the General Assembly shall during the same session, in the House of Representatives, choose one of them Governor *viva voce*.

Contested elections.

Contested elections for Governor shall be determined by the General Assembly in such manner as shall be prescribed by law.

In Sec. III. of Art. III., and in the above Section of the General Assembly is given the right in two cases to pass on elections. In these two cases, and these only, is the General Assembly invested with the power to determine the result of any popular election; and they are not only invested with any power to determine the result of any other election, but they are forbidden to assume or exercise such a power in any other case by the terms of Sec. 14 of Art. 1. Segars v. Parrott, 54 S. C., 28; 31 S. E., 677, 865.

Lieutenant Governor.

See Const. 1868, III., 50.

Sec. 5. A Lieutenant Governor shall be chosen at the same time, in the same manner, continue in office for the same period and be possessed of the same qualifications as the Governor, and shall *ex officio*, be President of the Senate.

An erroneous reference to this Section made in amending resolution.—Bray v. Florence, —— S. C., ——; 39 S. E., 810.

Vote of Lieutenant Governor.

See Const. 1868, III., 6.

Sec. 6. The Lieutenant Governor while presiding in the Senate shall have no vote, unless the Senate be equally divided.

Sec. 7. The Senate shall, as soon as practicable after the convening of the General Assembly, choose a President *pro tempore* to act in the absence of the Lieutenant Governor, or when he shall fill the office of Governor.

President *pro tempore* of Senate.

See Const. 1868, III., 7.

Sec. 8. A member of the Senate acting as Governor or Lieutenant Governor shall thereupon vacate his seat and another person shall be elected in his stead.

Member of Senate acting as Governor.

See Const. 1868, III., 8.

Sec. 9. In case of the removal of the Governor from office by impeachment, death, resignation, disqualification, disability, or removal from the State, the Lieutenant Governor shall then be Governor; and in case of the removal of the last named officer from his office by impeachment, death, resignation, disqualification, disability, or removal from the State, the President *pro tempore* of the Senate shall be Governor; and the last named officer shall then forthwith, by proclamation, convene the Senate in order that a President *pro tempore* may be chosen. In case the Governor be impeached, the Lieutenant Governor shall act in his stead and have his powers until judgment in the case shall have been pronounced. In case of the temporary disability of the Governor the Lieutenant Governor shall perform the duties of the Governor.

Vacancy in office of Governor, how filled.

See Const. 1868, III., 9.

Sec. 10. The Governor shall be Commander-in-Chief of the militia of the State, except when they shall be called into the active service of the United States.

Commander-in-Chief.

See Const. 1868, III., 10.

Sec. 11. He shall have power to grant reprieves, commutations and pardons after conviction (except in cases of impeachment), in such manner, on such terms and under such restrictions as he shall think proper; and he shall have power to remit fines and forfeitures, unless otherwise directed by law. It shall be his duty to report to the General Assembly, at the next regular session thereafter, all pardons granted by him, with the report of the Board of Pardons. Every petition for pardon or commutation of sentence may be first referred by him to a Board of Pardons, to be provided by the General Assembly, which Board shall hear all such petitions under such rules and regulations as the General Assembly may provide. The Governor may adopt the recommendations of said Board, but in case he does not he shall submit his reasons to the General Assembly.

Pardons.

See Const. 1868, III., 11.

Board of Pardons.

Sec. 12. He shall take care that the laws be faithfuly executed in mercy.

Laws executed.

See Const. 1868, III., 12.

Compensation of Governor and Lieutenant Governor.

See Const. 1868, III., 13.

Sec. 13. The Governor and Lieutenant Governor shall, at stated times, receive for their services compensation, which shall be neither increased nor diminished during the period for which they shall have been elected.

Officers and Boards report to Governor.

See Const. 1868, III., 14.

Sec. 14. All officers in the Executive Department, and all Boards of public institutions, shall, when required by the Governor, give him information in writing upon any subject relating to the duties of their respective offices or the concerns of their respective institutions, including itemized accounts of receipts and disbursements.

Information to Legislature.

See Const. 1868, III., 15.

Sec. 15. The Governor shall, from time to time, give to the General Assembly, information of the condition of the State, and recommend for its consideration such measures as he shall deem necessary or expedient.

Extra sessions.

See Const. 1868, III., 16.

Governor may adjourn General Assembly.

Sec. 16. He may on extraordinary occasions convene the General Assembly in extra session. Should either house remain without a quorum for five days, or in case of disagreement between the two houses during any session with respect to the time of adjournment, he may adjourn them to such time as he shall think proper, not beyond the time of the annual session then next ensuing.

Commissions.

See Const. 1868, III., 17.

Sec. 17. He shall commission all officers of the State.

Seal of State.

See Const. 1868, III., 18.

Sec. 18. The seal of the State now in use shall be used by the Governor officially, and shall be called "The Great Seal of the State of South Carolina."

Grants and commissions.

See Const. 1868, III., 19.

Sec. 19. All grants and commissions shall be issued in the name and by the authority of the State of South Carolina, sealed with the Great Seal, signed by the Governor, and countersigned by the Secretary of State.

Oath of Governor and Lieut. Governor.

See Const. 1868, III., 20.

Sec. 20. The Governor and Lieutenant Governor, before entering upon the duties of their respective offices, shall take and subscribe the oath of office as prescribed in Article III., Section 26, of the Constitution.

Residence of Governor.

See Const. 1868, III., 21.

Sec. 21. The Governor shall reside at the Capital of the State, except in cases of contagion or the emergencies of war; but during the sittings of the General Assembly he shall reside where its sessions are held.

Suspension of officers.

Sec. 22. Whenever it shall be brought to the notice of the Governor by affidavit that any officer who has the custody of public or trust funds is probably guilty of embezzlement or the appropriation of public or trust funds to private use, then the Governor shall direct his immediate prosecution by the proper

officer, and upon true bill found the Governor shall suspend such officer and appoint one in his stead, until he shall have been acquitted by the verdict of a jury. In case of conviction the office shall be declared vacant and the vacancy filled as may be provided by law.

Above Section prescribes that the three requisites must exist before the governor can remove an officer: 1. The officer must have in custody public or trust funds. 2. He must be probably guilty of embezzlement, or appropriation of such funds to private use. 3. There must be true bill for such crime. And when an officer is suspended under above section, the appointee to fill such vacancy may obtain possession of books, etc., without judicial determination of his rights of office. McMillan v. Bullock, 53 S. C., 172; 31 S. E., 860.

Bill or Joint Resolution must be signed or vetoed by the Governor.

See Const. 1868, III., 22.

Sec. 23. Every Bill or Joint Resolution which shall have passed the General Assembly, except on a question of adjournment, shall, before it becomes a law, be presented to the Governor, and if he approves he shall sign it; if not, he shall return it, with his objections, to the house in which it originated, which shall enter the objection at large on its Journal and proceed to reconsider it. If after such reconsideration two-thirds of that house shall agree to pass it, it shall be sent, together with the objections, to the other house, by which it shall be reconsidered, and if approved by two-thirds of that house it shall have the same effect as if it had been signed by the Governor; but in all such cases the vote of both houses shall be taken by yeas and nays, and the names of the persons voting for and against the Bill or Joint Resolution shall be entered on the Journals of both houses respectively. Bills appropriating money out of the Treasury shall specify the objects and purposes for which the same are made, and appropriate to them respectively their several amounts in distinct items and Sections. If the Governor shall not approve any one or more of the items or Sections contained in any Bill, but shall approve of the residue thereof, it shall become a law as to the residue in like manner as if he had signed it. The Governor shall then return the Bill with his objections to the items or Sections of the same not approved by him to the house in which the Bill originated, which house shall enter the objections at large upon its Journal and proceed to reconsider so much of said Bill as is not approved by the Governor. The same proceedings shall be had in both houses in reconsidering the same as is provided in case of an entire Bill returned by the Governor with his objections; and if any item or Section of said Bill not approved by the Governor shall be passed by two-thirds of each house of the General Assembly, it shall become a part of said law notwithstanding the ob-

jections of the Governor. If a Bill or Joint Resolution shall not be returned by the Governor within three days after it shall have been presented to him, Sundays excepted, it shall have the same force and effect as if he had signed it, unless the General Assembly, by adjournment, prevent its return, in which case it shall have such force and effect unless returned within two days after the next meeting.

Other State officers.

See Const. 1868, III., 23.

Sec. 24. There shall be elected by the qualified voters of the State a Secretary of State, a Comptroller-General, an Attorney-General, a Treasurer, an Adjutant and Inspector-General, and a Superintendent of Education, who shall hold their respective offices for the term of two years, and until their several successors have been chosen and qualified; and whose duties and compensation shall be prescribed by law. The compensation of such officers shall be neither increased nor diminished during the period for which they shall have been elected.

ARTICLE V.

Judicial Department.

Judicial power vested in certain Courts.

See Const. 1868, IV., 1.

Section 1. The judicial power of this State shall be vested in a Supreme Court, in two Circuit Courts, to wit: A Court of Common Pleas having civil jurisdiction and a Court of General Sessions with criminal jurisdiction only. The General Assembly may also establish County Courts, Municipal Courts and such Courts in any or all of the Counties of this State inferior to Circuit Courts as may be deemed necessary, but none of such Courts shall ever be invested with jurisdiction to try cases of murder, manslaughter, rape or attempt to rape, arson, common law burglary, bribery or perjury: *Provided*, Before a County Court shall be established in any County it must be submitted to the qualified electors and a majority of those voting must vote for its establishment.

Supreme Court.

See Const. 1868, IV., 2.

Sec. 2. The Supreme Court shall consist of a Chief Justice and three Associate Justices, any three of whom shall constitute a quorum for the transaction of business. The Chief Justice shall preside, and in his absence the senior Associate Justice. They shall be elected by a joint *viva vocc* vote of the General Assembly for the term of eight years, and shall continue in office until their successors shall be elected and qualified, and shall be so classified that one of them shall go out of office every two years.

The Supreme Court as organized under the Constitution of 1868 had jurisdiction to hear any causes pending therein before the meeting of the General Assembly at which the third associate justice was to be elected. Middleton v. Taber, 46 S. C., 337; 24 S. E. R., 282.

The provision of the Constitution requiring the concurrence of three justices to reverse a circuit judge, does not apply to a case decided below before the adoption of the Constitution of 1895, and argued in this Court before it was completed by election of a third associate justice, as contemplated by the Constitution. Hunt v. Nolen, 46 S. C., 554; 24 S. E., 543.

Present Chief Justice and Associate Justice.

See Const. 1868, IV., 3.

Sec. 3. The present Chief Justice and Associate Justices of the Supreme Court are declared to be the Chief Justice and two of the Associate Justices of said Court as herein established until the terms for which they were elected shall expire, and the General Assembly at its next session shall elect the third Associate Justice and make suitable provision for accomplishing the classification above directed.

Jurisdiction of Supreme Court.

See Const. 1868, IV., 4.

Sec. 4. The Supreme Court shall have power to issue writs or orders of injunction, mandamus, quo warranto, prohibition, certiorari, habeas corpus and other original and remedial writs. And said Court shall have appellate jurisdiction only in cases of chancery, and in such appeals they shall review the findings of fact as well as the law, except in chancery cases where the facts are settled by a jury and the verdict not set aside, and shall constitute a Court for the correction of errors at law under such regulations as the General Assembly may by law prescribe.

Under the above section the Supreme Court has power to grant bail in any case where a person is in custody under a charge of violating the criminal law of the State. State v. Farris, 51 S. C., 178; 28 S. E., 308.

The Supreme Court not being a court of original jurisdiction, only matters brought up before it by exceptions from the lower court could be entertained under the power given it by the Constitution and Statutes. If action should be taken without such appeal or exceptions from the lower court, such action would be beyond the powers given by that tribunal. The phraseology of the present Constitution imposes an obligation on the Supreme Court to accept as final fact found by a jury in a chancery case, unless their verdict had been set aside.—Pollick v. Association, 51 S. C., 431; 29 S. E., 77.

The Supreme Court is invested with jurisdiction in only three classes of cases: 1. To issue certain specified writs as well as other original and remedial writs. 2. To hear and determine appeals in cases of chancery. 3. For the purpose of correcting errors at law. The Court, therefore, has no jurisdiction to hear an application for naturalization. Ex parte McKenzie, 51 S. C., 245; 28 S. E., 468.

The Supreme Court has power to issue writs or orders of injunction, and such power is not restricted to cases pending in this Court either in its original or appellate jurisdiction. A justice of the Supreme Court has power at chambers to grant an interlocutory order of injunction in a cause not pending in the Supreme Court.—Salinas v. Aultman, 49 S. C., 378; 27 S. E. R., 385; Gilmer v. Hunnicutt, 57 S. C., 166; 35 S. E., 521; see ex parte Bank, 56 S. C., 25; 33 S. E., 781.

It is now settled that the Supreme Court may reverse a finding of fact by the Circuit Court, when the appellant satisfies the Supreme Court that the preponderance of the evidence is against the finding of the Circuit Court. Finley v. Cartwright, 55 S. C., 203; 33 S. E., 359; Bleckley v. Goodwin, 51 S. C., 363; 29 S. E., 3, ——; see also Wagener v. Kirven, 47 S. C., 347; 25 S. E., 130; Land, Mortgage, Invest. and Agency Co. v. Faulkner, 45 S. C., 503; 24 S. E., 288. See Segars v. Parrott, 54 S. C., 50; 31 S. E., 677,865; Brown v. Newell, 64 S. C., 27; 41 S. E., ——.

Demurrer for failure to state facts sufficient to constitute a cause of action cannot be interposed for the first time in the Supreme Court. Green v. Green, 50 S. C., 514; 27 S. E., 953.

Held twice a year at capital.

See Const. 1868, IV., 5.

Sec. 5. The Supreme Court shall be held at least twice in each year at the seat of government and at such other place or places in the State as the General Assembly may direct.

Disqualification of Judges in certain cases.

See Const. 1868, IV., 6.

Sec. 6. No Judge shall preside at the trial of any cause in the event of which he may be interested, or when either of the parties shall be connected with him by affinity or consanguinity, within such degrees as may be prescribed by law, or in which he may have been counsel or have presided in any inferior Court. In case all or any of the Justices of the Supreme Court shall be thus disqualified, or be otherwise prevented from presiding in any cause or causes, the Court or the Justices thereof shall certify the same to the Governor of the State, and he shall immediately commission, specially, the requisite number of men learned in the law for the trial and determination thereof. The same course shall be pursued in the Circuit and inferior Courts as is prescribed in this Section for cases of the Supreme Court. The General Assembly shall provide by law for the temporary appointment of men learned in the law to hold either special or regular terms of the Circuit Courts whenever there may be necessity for such appointment.

Vacancies, how filled.

Holding Circuit Courts.

The disqualification of Judge, if known, is waived by not objecting to him.—Ex parte Hilton, 64 S. C., 201; 41 S. E. ——.

The term "judge," as usual in this section, includes magistrates. Marchbanks v. Marchbanks, 58 S. C., 92; 36 S. E., 438.

In this State the rule for ascertaining the relationship between a judge and a party litigant is to count up from either to the common ancestor and then down to the other, each step in the ascending and descending scale to count one degree.—Ex parte Kreps, 61 S. C., 29; 39 S. E., 181.

Reporter. Clerk.

See Const. 1868, IV., 7.

Sec. 7. There shall be appointed by the Justices of the Supreme Court a Reporter and a Clerk of said Court, who shall hold their offices for four years, and whose duties and compensation shall be prescribed by law.

Judgment of Supreme Court.

See Const. 1868, IV., 8.

Sec. 8. When a judgment or decree is reversed or affirmed by the Supreme Court, every point made and distinctly stated in the cause and fairly arising upon the record of the case shall be considered and decided, and the reason thereof shall be concisely and briefly stated in writing and preserved with the record of the case.

Requires specific exceptions. Garrett v. Weinberg, 59 S. C., 162; 37 S. E., 51; State v. Mears, 60 S. C., 527; 39 S. E., 244.

Compensation of Judges and Justices.

See Const. 1868, IV., 9.

Sec. 9. The Justices of the Supreme Court and Judges of the Circuit Court shall each receive compensation for their ser-

vices to be fixed by law, which shall not be increased or diminished during their continuance in office. They shall not be allowed any fees or perquisites of office, nor shall they hold any other office of trust or profit under this State, the United States, or any other power.

Qualifications of.

See Const. 1868, IV. 10.

Sec. 10. No person shall be eligible to the office of Chief Justice, Associate Justice or Judge of the Circuit Court who is not at the time of his election a citizen of the United States and of this State, and has not attained the age of twenty-six years, has not been a licensed attorney at law for at least five years, and been a resident of this State for five years next preceding his election.

Vacancies.

See Const. 1868, IV., 11.

Sec. 11. All vacancies in the Supreme Court or inferior tribunals shall be filled by elections as herein prescribed: *Provided,* That if the unexpired term does not exceed one year such vacancy may be filled by Executive appointment. All Judges, by virtue of their office, shall be conservators of the peace throughout the State; and when a vacancy is filled by either appointment or election, the incumbent shall hold only for the unexpired term of his predecessor.

Conservators.

Unexpired term.

Three necessary for reversal.

See Const. 1868, IV., 12.

Sec. 12. In all cases decided by the Supreme Court the concurrence of three of the Justices shall be necessary for a reversal of the judgment below, but if the four Justices equally divide in opinion the judgment below shall be affirmed, subject to the provisions hereinafter prescribed. Whenever, upon the hearing of any cause or question before the Supreme Court, in the exercise of its original or appellate jurisdiction, it shall appear to the Justices thereof, or any two of them, that there is involved a question of constitutional law, or of conflict between the Constitution and laws of this State and of the United States, or between the duties and obligations of her citizens under the same, upon the determination of which the entire Court is not agreed; or whenever the Justices of said Court, or any two of them, desire it on any cause or question so before said Court, the Chief Justice, or in his absence the presiding Associate Justice, shall call to the assistance of the Supreme Court all of the Judges of the Circuit Court: *Provided, however,* That when the matter to be submitted is involved in an appeal from the Circuit Court, the Circuit Judge who tried the cause shall not sit. A majority of the Justices of the Supreme Court and Circuit Judges shall constitute a quorum. The decision of the Court so constituted, or a majority of the Justices and Judges

Constitutional questions.

Judge shall not sit.

In the absence of legislation on the subject the probate courts have jurisdiction in cases of persons non compos mentis. State v. Gregory, 58 S. C., 116; 36 S. E., 433

Acting as public guardian is a new duty imposed by the Legislature upon the Judge of Probate, and is merely incidental to his office, and does not create a new office. State v. Green, 52 S. C., 526; 30 S. E., 1006.

Magistrates.

Sec. 20. A sufficient number of Magistrates shall be appointed and commissioned by the Governor, by and with the advice and consent of the Senate, for each County, who shall hold their offices for the term of two years and until their successors are appointed and qualified. Each Magistrate shall have power, under such regulations as may now or hereafter be provided by law, to appoint one or more Constables to execute writs and processes issued by him. The present Trial Justices are declared Magistrates as herein created, and shall exercise the powers and duties of said office of Magistrate until their successors shall be appointed and qualified. Each Magistrate shall receive a salary, to be fixed by the General Assembly, in lieu of all fees in criminal cases.

Term of office.

See Const. 1868, IV., 21.

Constables.

Salary.

Trial Justices were continued in office upon the adoption of the Constitution of 1895 under the name of Magistrates, with all the powers and duties previously belonging to the office of Trial Justice. Delk v. Zorn, 48 S. C., 149; 26 S. E. R., 466.

May appoint a special Constable for a particular occasion. Cromer v. Watson, 59 S. C., 560; 38 S. E., 126.

Jurisdiction of Magistrates.

Sec. 21. Magistrates shall have jurisdiction in such civil cases as the General Assembly may prescribe: *Provided,* Such jurisdiction shall not extend to cases where the value of property in controversy, or the amount claimed, exceeds one hundred dollars, or to cases where the title to real estate is in question, or to cases in chancery. They shall have exclusive jurisdiction in such criminal cases as the General Assembly may prescribe: *Provided, further,* Such jurisdiction shall not extend to cases where the punishment exceeds a fine of one hundred dollars or imprisonment for thirty days. In criminal matters beyond their jurisdiction to try, they shall sit as Examining Courts, and commit, discharge or (except in capital cases) recognize persons charged with such offenses, subject to such regulations as the General Assembly may provide. They shall also have the power to bind over to keep the peace and for good behavior for a time not to exceed twelve months.

See Const. 1868, IV., 22.

Examining Courts.

Jurisdiction in Dispensary cases. State v. Adams, 49 S. C., 518; 27 S. E., 523.

A Magistrate has jurisdiction to bind over a party to keep the peace, and in default of bond, put him in jail. State v. Garlington, 56 S. C., 413; 34 S. E., 689. Generally as to jurisdiction, see Harby v. Wells, 52 S. C., 161; 29 S. E., 563. See Delk v. Zorn, 48 S. C., 150; 26 S. E. R., 466; State v. Wolfe, 61 S. C., 28; 39 S. E., 179; Baker v. Irvine, 61 S. C., 114; 39 S. E., 252; Holliday v. Poston, 60 S. C., 103; 39 S. E., 449; Burckhalter v. Jones, 58 S. C., 90; 36 S. E., 495; Dill v. Durham, 56 S. C., 425; 35 S. E., 3.

ERRATA.

Code of Laws S. C., Vol. 2.

In State Constitution of 1895 pages 76 and 78 should be transposed. By tracing the Sections by number the connection can be readily obtained.

tion of inferior Courts, except from such inferior Courts from which the General Assembly shall provide an appeal directly to the Supreme Court.

In the absence of legislative authority therefor, the Court of Common Pleas have appellate jurisdiction of all cases within the jurisdiction of the Probate Court.—State v. Gregory, 58 S. C., 116; 36 S. E., 433. See Segars v. Parrott, 54 S. C., 51; 31 S. E., 677, 865.

The Court of Common Pleas has jurisdiction to enjoin special proceedings, under Civil Code, Section 2211-2219, to obtain a right of way, on the ground of the inadequacy of the remedy provided by the Statute.—S. C. & Ga. R. R. Co. et al. v. Am. Tel. &c., Co., 63 S. C., 199; 41 S. E., 307

Sit twice.

See Const. 1868, IV., 16.

Sec. 16. The Court of Common Pleas shall sit in each County in this State at least twice in every year at such stated times and places as may be appointed by law.

Decisions, when filed.

See Const. 1868, IV., 17.

Sec. 17. It shall be the duty of the Justices of the Supreme Court to file their decisions within sixty days from the last day of the Court at which the cases were heard; and the duty of the Judges of the Circuit Courts to file their decisions within sixty days from the rising of the last Court of the Circuit then being held.

Failure to file decision within time limited, not occasioned by act of the parties, does not affect its validity. Griffith v. Cromley, 58 S. C., 448; 36 S. E., 738.

Court of General Sessions.

See Const. 1868, IV., 18.

Sec. 18. The Court of General Sessions shall have jurisdiction in all criminal cases except those cases in which exclusive jurisdiction shall be given to inferior Courts, and in these it shall have appellate jurisdiction. It shall also have concurrent jurisdiction with, as well as appellate jurisdiction from, the inferior Courts in all cases of riot, assault and battery, and larceny. It shall sit in each County in the State at least twice in each year at such stated times and places as the General Assembly may direct.

See State v. Langford, 55 S. C., 327; 33 S. E., 370. The Court of General Sessions has jurisdiction of all cases of larceny of live stock. State v. Crosby, 51 S. C., 249; 28 S. E., 529.

Under the above section the Court of General Sessions has concurrent jurisdiction in all cases except those in which the General Assembly may prescribe exclusive jurisdiction in cases cognizable before Magistrates, or in which exclusive jurisdiction shall be given to some other inferior court. State v. Wolfe, 61 S. C., 28; 39 S. E., 179.

Court of Probate.

See Const. 1868, IV., 20.

Sec. 19. The Court of Probate shall remain as now established in the County of Charleston. In all other Counties of the State the jurisdiction in all matters testamentary and of administration, in business appertaining to minors and the allotment of dower, in cases of idiocy and lunacy, and persons *non compos mentis,* shall be vested as the General Assembly may provide, and until such provision such jurisdiction shall remain in the Court of Probate as now established.

sitting, shall be final and conclusive. In such case the Chief Justice, or in his absence the presiding Associate Justice, shall preside. Whenever the Justices of the Supreme Court and the Circuit Judges meet together for the purposes aforesaid, if the number thereof qualified to sit constitute an even number, then one of the Circuit Judges must retire; and the Circuit Judges present shall determine by lot which of their number shall retire.

Number even, one must retire.

Upon appeal, the judgment of the Circuit Court being affirmed by reason of the equal division of the Supreme Court Judges the decision of the issue so made and affirmed is final for the purposes of that case. Johnson vs. Railway Co., 58 S. C., 490; 36 S. E., 851.

A judgment of the Supreme Court affirming a circuit judgment by a divided court is binding authority in all similar subsequent cases.—City of Florence v. Berry, 62 S. C., 469; 40 S. E., 871.

The Supreme Court being divided upon a question of public policy and not upon a constitutional question, there is no ground upon which the Circuit Judges should be called to the assistance of the Supreme Court upon a re-hearing. Johnson vs. Railroad, 55 S. C., 179; 32 S. E., 2; 33 S. E., 174. See Segars v. Parrott, 54 S. C., 17, 65; 31 S. E., 677, 865.

The Constitution and the Statute provide for but two contingencies in which the Circuit Judges shall be called to the assistance of the Supreme Court: 1. Where a constitutional question is involved. 2. Where at least two of the Supreme Court Judges desire that the Circuit Judges shall be called in. Florence v. Brown, 49 S. C., 343; 27 S. E., 273. See Middleton v. Taber, 46 S. C., 343; 24 S. E., 282.

Judicial Circuits.

See Const. 1868, IV., 13.

Election of Judges.

Present Judges.

Sec. 13. The State shall be divided into as many Judicial Circuits as the General Assembly may prescribe, and for each Circuit a Judge shall be elected by joint *viva voce* vote of the General Assembly, who shall hold his office for the term of four years; and at the time of his election he shall be an elector of a County of, and during his continuance in office he shall reside in, the Circuit of which he is Judge. The present Judges of the Circuit Courts shall continue in office until the expiration of the terms for which they were elected, and, should a new division of the Judicial Circuits be made, shall be the Judges of the respective Circuits in which they shall reside after said division.

Application for writ of *mandamus* must be heard within circuit.—State v. Smith, 50 S. C., 558; 27 S. E., 933.

Interchange of Circuits.

See Const. 1868, IV., 14.

Sec. 14. Judges of the Circuit Courts shall interchange Circuits with each other, and the General Assembly shall provide therefor.

Jurisdiction of Courts of Common Pleas.

See Const. 1868, IV., 15.

Sec. 15. The Courts of Common Pleas shall have original jurisdiction, subject to appeal to the Supreme Court, to issue writs or orders of injunction, mandamus, habeas corpus, and such other writs as may be necessary to carry their powers into full effect. They shall have jurisdiction in all civil cases. They shall have appellate jurisdiction in all cases within the jurisdic-

A Magistrate is not deprived of jurisdiction in cases under Criminal Code, 171, because title to real estate may be incidentally involved.—State v. Holcomb, 63 S. C., 22; 40 S. E., 1018.

Sec. 22. All persons charged with an offence shall have the right to demand and obtain a trial by jury. The jury in cases civil or criminal in all municipal Courts, and Courts inferior to Circuit Courts shall consist of six. The grand jury of each County shall consist of eighteen members, twelve of whom must agree in a matter before it can be submitted to the Court.

Trial by Jury.

See Const. 1868, I., 11.

Jury in inferior Courts.

Grand jury.

Mandatory.—State v. Powers, 59 S. C., 200; 37 S. E., 690.

The petit jury of the Circuit Courts shall consist of twelve men, all of whom must agree to a verdict in order to render the same.

Petit jury.

Each juror must be a qualified elector under the provisions of this Constitution, between the ages of twenty-one and sixty-five years and of good moral character.

Qualifications of jurors.

"Qualified elector" means "registered elector" in the above section, and all jurors must be registered in the County in which the court sits. Mew v. Railroad, 55 S. C., 95; 32 S. E., 828. See State v. Robertson, 54 S. C., 150; 31 S. E. 868. A person convicted of larceny is disqualified from sitting as a juror, and where such a person is drawn and it is a fact that none of the parties to the action had knowledge of the conviction, his disqualification entitled defendants to a new trial. Garrett v. Weinberg, 54 S. C., 144; 31 S. E., 341, 34 S. E., 70. A juror regularly drawn cannot have substituted in his place another, without the consent of defendant, and where such was the case a new jury was properly drawn. State v. Coleman, 54 S. C., 285; 32 S. E., 406. Qualifications of jurors. State v. Brownfield, 60 S. C., 509; 39 S. E., 2. The first clause of the above Section did not change the law then of force, but only made it permanent by incorporating it in the organic law of the land. Burkhalter v. Jones, 58 S. C., 90; 36 S. E., 495. The Act of 1887, 19 Stats., 1027, providing that a Magistrate shall have jurisdiction in two Counties, is unconstitutional, and in violation of the above Section.—Dill v. Durham, 56 S. C., 425; 35 S. E., 3. See Delk v. Zorn, 48 S. C., 150; 26 S. E., 466. Jury trial may be waived. Belcher v. Commissioners, 2 McC., 23.

On demurrer under Criminal Code Sec. 50 to indictment being overruled the defendant is entitled to plead over, and be tried by jury.—State v. Barden, 64 S. C., 206; 41 S. E., ——.

Sec. 23. Every civil action cognizable by Magistrates shall be brought before a Magistrate in the County where the defendant resides, and every criminal action in the County where the offence was committed. In all cases tried by them, the right of appeal shall be secured under such rules and regulations as may be provided by law: *Provided*, That in Counties where Magistrates have separate and exclusive territorial jurisdiction, criminal causes shall be tried in the Magistrate's district where the offence was committed, subject to such provision for change of venue from one Magistrate's district to another in the same County as may be provided by the General Assembly.

Actions in Magistrates' Courts.

See Const. 1868, IV., 23.

Sec. 24. All officers other than those named in Section nine provided for in this Article shall receive for their services such

Compensation for all other officers.

See Const. 1868, IV., 25.

compensation as the General Assembly may from time to time by law direct.

Powers at Chambers.

Sec. 25. Each of the Justices of the Supreme Court and Judges of the Circuit Court shall have the same power at chambers to issue writs of *habeas corpus, mandamus, quo warranto, certiorari,* prohibition and interlocutory writs or orders of injunction as when in open Court. The Judges of the Circuit Courts shall have such powers at chambers as the General Assembly may provide.

Application for writ of mandamus must be heard within circuit. State ex rel LaMotte v. Smith, 50 S. C., 558; 27 S. E., 933. Issuance of injunction by Supreme Court Justice. Salinas v. Aultman, 49 S. C., 385; 27 S. E., 385.

Charge to juries.

See Const. 1868, IV., 26.

Sec. 26. Judges shall not charge juries in respect to matters of fact, but shall declare the law.

Remarks made by a judge while the witnesses are testifying cannot be considered as part of a charge, and as coming under this section. State v. Marchbanks, 61 S. C., 21; 39 S. E., 187. Any direct reference to the testimony in charging the jury, any expression as to what is in evidence, any remark that would amount to a stating of the testimony in whole or in part, is absolutely prohibited. Norris v. Clinkscales, 47 S. C., 489; 25 S. E., 798. It is unconstitutional for a judge to state in the interrogative form to the jury facts sworn to by witnesses. Burnett v. Crawford, 50 S. C., 161; 27 S. E., 645; State v. Stello, 49 S. C., 488; 27 S. E., 659.

When a trial judge says: "If the city place obstructions there, not giving any notice, and he sustains damages, it would be an act of negligence and mismanagement, and the city would be liable," he charges on the facts, and violates the above section. China v. Sumter, 51 S. C., 453; 29 S. E., 206.

Negligence is a mixed question of law and fact and should be submitted to the jury, under proper instructions from the Court.—Hunter v. The Pelham Mills, 52 S. C., 278; 29 S. E., 727.

The reasons assigned by a Circuit Judge for asking a witness a question, is not a part of his charge, and did not convey to the jury his impressions of the testimony. Wilson v. Ry. Co., 52 S. C., 539; 30 S. E., 406.

Magistrates are included in the word "judges" in the above section, and it is their duty to charge juries in their court. Marchbanks v. Marchbanks, 58 S. C., 94; 36 S. E., 438.

A charge of legal propositions based on hypothetical statements of fact, including admitted facts, is not violative of constitutional inhibition. Jenkins v. Railway Co., 58 S. C., 373; 36 S. E., 703. A judge in advising the jury how they might weigh the testimony, or whether any force or effect should be given to contradictory testimony, charges in respect to matters of fact and commits error. State v. Mitchell, 56 S. C., 524; 35 S. E., 210.

Charge not in contravention to above Section. Kingman v. Ins. Co., 54 S. C., 599; 32 S. E., 762. See State v. Aughtry, 49 S. C., 285; 26 S. E., 619; 27 S. E., 199; State v. Dill, 48 S. C., 249; 26 S. E., 567; State v. Godfrey, 60 S. C., 498; 39 S. E., 1; State v. Taylor, 54 S. C., 174; 32 S. E., 149; McDaniel v. Monroe Bros., 63 S. C., 307; 41 S. E., 465; Kirby v. So. Ry. Co., 63 S. C., 494; 41 S. E., ——.

What is not a charge on the facts.—Sec. 26, Art. 5; McDaniel v. Monroe Bros., 63 S. C., 307; 41 S. E., 465; Kirby v. So. Ry. Co., 63 S. C., 494; 41 S. E.

It is error to state to the jury the undisputed facts where no uncontradicted evidence is introduced of a case. State v. Cannon, 49 S. C., 558; 27 S. E., 526.

What is a charge on the facts—Edwards v. So. Ry. Co., 63 S. C., 271; 41 S. E., 458.

Clerk of Court.

See Const. 1868, IV., 27.

Sec. 27. There shall be elected in each County, by the electors thereof, one Clerk for the Court of Common Pleas, who shall

hold his office for the term of four years, and until his successor shall be elected and qualified. He shall, by virtue of his office, be Clerk of all other Courts of record held therein, but the General Assembly may provide by law for the election of a Clerk, with a like term of office, for each or any other of the Courts of record, and may authorize the Judge of the Probate Court to perform the duties of Clerk for his Court under such regulations as the General Assembly may direct. Clerks of Courts shall be removable for such cause and in such manner as shall be prescribed by law.

Attorney General.

See Const. 1868, IV., 28.

Sec. 28. There shall be an Attorney General for the State, who shall perform such duties as may be prescribed by law. He shall be elected by the qualified electors of the State for the term of two years, and shall receive for his services such compensation as shall be fixed by law.

Solicitor.

See Const. 1868, IV., 29.

Sec. 29. There shall be one Solicitor for each Circuit, who shall reside therein, to be elected by the qualified electors of the Circuit, who shall hold his office for the term of four years, and shall receive for his services such compensation as shall be fixed by law. In all cases when an Attorney for the State of any Circuit fails to attend and prosecute according to law, the Court shall have power to appoint an Attorney *pro tempore*. In the event of the establishment of County Courts the General Assembly may provide for one Solicitor for each County in the place and instead of the Circuit Solicitor, and may prescribe his powers, duties and compensation.

Sheriff and Coroner.

See Const. 1868, IV., 30.

Sec. 30. The qualified electors of each County shall elect a Sheriff and Coroner for the term of four years, and until their successors are elected and qualified; they shall reside in their respective Counties during their continuance in office, and be disqualified for the office a second time if it should appear that they, or either of them, are in default for moneys collected by virtue of their respective offices.

Writs.

See Const. 1868, IV., 31.

Indictments.

Sec. 31. All writs and processes shall run and all prosecutions shall be conducted in the name of the State of South Carolina; all writs shall be attested by the Clerk of the Court from which they shall be issued; and all indictments shall conclude "against the peace and dignity of the State."

An indictment concluding "against the peace and dignity of the same State aforesaid" is good and the words "same" and "aforesaid" are mere surplusage. State v. Mason, 54 S. C., 241; 32 S. E., 357.

Does not apply to prosecutions by a City Council for violations of municipal ordinances. City Council of Abbeville v. Leopard, 61 S. C., 99; 39 S. E., 248.

Decisions of Supreme Court.

See Const. 1868, IV., 32.

Sec. 32. The General Assembly shall provide by law for the speedy publication of the decisions of the Supreme Court made under this Constitution.

Sentence to labor on highways.

Sec. 33. Circuit Courts and all Courts inferior thereto and municipal Courts shall have the power, in their discretion, to impose sentence of labor upon highways, streets and other public works upon persons by them sentenced to imprisonment.

Matters now pending.

Sec. 34. All matters, civil and criminal, now pending within the jurisdiction of any of the Courts of this State shall continue therein until disposed of according to law.

See Delk v. Zorn, 48 S. C., 515; 26 S. E., 466.

ARTICLE VI.

Jurisprudence.

Arbitration.

See Const. 1868, V., 1.

Section 1. The General Assembly shall pass laws allowing differences to be decided by arbitrators, to be appointed by the parties who may choose that mode of adjustment.

Change of venue.

See Const. 1868, V., 2.

Sec. 2. It shall be the duty of the General Assembly to pass laws for the change of venue in all cases, civil and criminal, over which the Circuit Courts have original jurisdiction, upon a proper showing, supported by affidavit, that a fair and impartial trial cannot be had in the County where such action or prosecution was commenced. The State shall have the same right to move for a change of venue that a defendant has for such offences as the General Assembly may prescribe. Unless a change of venue be had under the provisions of this Article the defendant shall be tried in the County where the offence was committed: *Provided, however,* That no change of venue shall be granted in criminal cases until after a true bill has been found by the grand jury: *And provided, further,* That if a change be ordered it shall be to a County in the same Judicial Circuit.

Findings of fact by a Circuit Judge in application for a change of venue, cannot be reviewed in the Supreme Court. McCown vs. Railroad Co., 55 S. C., 389; 33 S. E., 506.

Law and equity.

See Const. 1868, V., 3.

Sec. 3. Justice shall be administered in a uniform mode of pleading without distinction between law and equity.

Statute public law.

Sec. 4. Every Statute shall be a public law, unless otherwise declared in the Statute itself.

Codification of laws.

See Const. 1868, V., 5.

Sec. 5. The General Assembly, at its first session after the adoption of this Constitution, shall provide for the appointment or election of a Commissioner, whose duty it shall be to collect

and revise all the General Statute law of this State then of force as well as that which shall be passed from time to time, and to properly index and arrange the said Statutes when so passed. And the said Commissioner shall reduce into a systematic Code the general statutes, including the Code of Civil Procedure, with all the amendments thereto, and shall, on the first day of the session for the year nineteen hundred and one, and at the end of every subsequent period of not more than ten years, report the result of his labors to the General Assembly, with such recommendations and suggestions as to the abridgement and amendments as may be deemed necessary or proper. Said report when ready to be made, shall be printed and a copy thereof laid upon the desk of each member of both houses of the General Assembly on the first day of the first session, but shall not be taken up for consideration until the next session of said General Assembly. The said Code shall be declared by the General Assembly, in an Act passed according to the forms of this Constitution for the enactment of laws, to be the only general statutory law of the State; but no alterations or additions to any of the laws therein contained shall be made except by Bill passed under the formalities heretofore prescribed for the passage of laws. Provision shall be made by law for filling vacancies, regulating the term of office and the compensation of said Commissioner, not exceeding five hundred dollars per annum, and imposing such other duties as may be desired. And the General Assembly shall by committee inquire into the progress of his work at each session.

Prisoner lynched through negligence of officer, penalty on officer.

Sec. 6. In the case of any prisoner lawfully in the charge, custody or control of any officer, State, County or municipal, being seized and taken from said officer through his negligence, permission or connivance, by a mob or other unlawful assemblage of persons, and at their hands suffering bodily violence or death, the said officer shall be deemed guilty of a misdemeanor, and, upon true bill found, shall be deposed from his office pending his trial, and upon conviction shall forfeit his office, and shall, unless pardoned by the Governor, be ineligible to hold any office of trust or profit within this State. It shall be the duty of the Prosecuting Attorney within whose Circuit or County the offence may be committed to forthwith institute a prosecution against said officer, who shall be tried in such County, in the same Circuit, other than the one in which the offence was committed, as the Attorney General may elect. The fees and mile-

age of all material witnesses, both for the State and for the defence, shall be paid by the State Treasurer, in such manner as may be provided by law: *Provided,* In all cases of lynching when death ensues, the County where such lynching takes place shall, without regard to the conduct of the officers, be liable in exemplary damages of not less than two thousand dollars to the legal representatives of the person lynched: *Provided, further,* That any County against which a judgment has been obtained for damages in any case of lynching shall have the right to recover the amount of said judgment from the parties engaged in said lynching in any Court of competent jurisdiction.

County liable for damages.

The Act of the Legislature, 22 Stat., 213, is intended to make the County liable in those cases only which fall within the provisions of the Constitution. Brown v. Orangeburg, 55 S. C., 49; 32 S. E., 764.

ARTICLE VII.

Counties and County Government.

Formation of new Counties.

Section 1. The General Assembly may establish new Counties in the following manner: Whenever one-third of the qualified electors within the area of each section of an old County proposed to be cut off to form a new County shall petition the Governor for the creation of a new County, setting forth the boundaries and showing compliance with the requirements of this Article, the Governor shall order an election, within a reasonable time thereafter, by the qualified electors within the proposed area, in which election they shall vote "Yes" or "No" upon the question of creating said new County; and at the same election the question of a name and a County seat for such County shall be submitted to the electors.

County seat and name.

See Segars v. Parrott, 54 S. C., 40; 31 S. E., 677, 865. This and the following Section do not require a two-thirds vote for County seat of a new County, but its name and location may be determined by majority vote, and the ordering and holding of more than one election to determine the name and location of a new County seat for a new County, is not in violation of the Constitution. State v. Parler, 52 S. C., 207; 29 S. E., 651.

Section of old County to be cut off.

Sec. 2. If two-thirds of the qualified electors voting at such election shall vote "Yes" upon such questions, then the General Assembly at the next session shall establish such new County: *Provided,* No section of the County proposed to be dismembered shall be thus cut off without consent by a two-thirds vote of those voting in such section; and no County shall be formed without complying with all the conditions imposed in this Article. An election upon the question of forming the

same proposed new County shall not be held oftener than once in four years.

See Segars v. Parrott, 54 S. C., 1; 31 S. E., 677; 865.

Sec. 3. No new County hereafter formed shall contain less than one one hundred and twenty-fourth part of the whole number of inhabitants of the State, nor shall it have less assessed taxable property than one and one half millions of dollars as shown by the last tax returns, nor shall it contain less area than four hundred square miles.

Inhabitants, taxable property, area of new County.

Sec. 4. No old County shall be reduced to less area than five hundred square miles, to less assessed taxable property than two million dollars, nor to a smaller population than fifteen thousand inhabitants.

Area, taxable property, and inhabitants of old County.

Sec. 5. In the formation of new Counties no old County shall be cut within eight miles of its court house building.

Eight mile limit.

Sec. 6. All new Counties hereafter formed shall bear a just apportionment of the valid indebtedness of the old County or Counties from which they have been formed.

Indebtedness.

See Abbeville v. McMillan, 52 S. C., 70; 29 S. E., 540.

Sec. 7. The General Assembly shall have the power to alter County lines at any time: *Provided,* That before any existing County line is altered the question shall be first submitted to the qualified electors of the territory proposed to be taken from one County and given to another, and shall have received two-thirds of the votes cast: *Provided, further,* That the change shall not reduce the County from which the territory is taken below the limits prescribed in Sections 3, 4 and 5 of this Article: *Provided,* That the proper proportion of the existing County indebtedness of the section so transferred shall be assumed by the County to which the territory is transferred.

Alteration of County lines.

Sec. 8. No County seat shall be removed except by a vote of two-thirds of the qualified electors of said County voting in an election held for that purpose, but such election shall not be held in any County oftener than once in five years.

Removal of County seat.

Sec. 9. Each County shall constitute one election district, and shall be a body politic and corporate.

Election district. Body corporate.

Sec. 10. The General Assembly may provide for the consolidation of two or more existing Counties if a majority of the qualified electors of such Counties voting at an election held for that purpose shall vote separately therefor, but such election shall not be held oftener than once in four years in the same Counties.

Consolidation of two or more Counties.

Townships. **Sec. 11.** Each of the several townships of this State, with names and boundaries as now established by law, shall constitute a body politic and corporate, but this shall not prevent the General Assembly from organizing other townships or changing the boundaries of those already established; and the General Assembly may provide such system of township governmenet as it shall think proper in any and all the Counties, and may make special provision for municipal government and for the protection of chartered rights and powers of municipalities.

Body corporate.

Township government.

Boundaries of Counties. **Sec. 12.** Until changed by the General Assembly, as allowed by this Constitution, the boundaries of the several Counties shall remain as now established, except that the boundaries of the County of Edgefield shall undergo such changes as are made necessary for the formation of a new County from a portion of Edgefield, to be known as Saluda, the boundaries of which are set forth in a Constitutional ordinance. The election ordered in said ordinance for the location of its County seat shall be held under the Constitution and laws now of force. And the General Assembly shall provide for the assessment of property in the County of Saluda for the fiscal year beginning January first, eighteen hundred and ninety-six, and for the collection of said taxes when assessed.

Boundaries of Counties of Saluda and Edgefield.

Judicial and Congressional Districts. **Sec. 13.** The General Assembly may at any time arrange the various Counties into Judicial Circuits, and into Congressional Districts, including the County of Saluda, as it may deem wise and proper, and may establish or alter the location of voting precincts in any County.

No County line through city or town. **Sec. 14.** Hereafter no County lines shall be so established as to pass through any incorporated city or town of this State.

ARTICLE VIII.

Municipal Corporations and Police Regulations.

Organization and classification of municipal corporations. **Section 1.** The General Assembly shall provide by general laws for the organization and classification of municipal corporations. The powers of each class shall be defined so that no such corporation shall have any powers or be subject to any restrictions other than all corporations of the same class. Cities and towns now existing under special charters may reorganize under the general laws of the State, and when so reorganized their special charters shall cease and determine.

Sec. 2. No city or town shall be organized without the consent of the majority of the electors residing and entitled by law to vote within the district proposed to be incorporated; such consent to be ascertained in the manner and under such regulations as may be prescribed by law.

Electors must consent to organization.

Sec. 3. The General Assembly shall restrict the powers of cities and towns to levy taxes and assessments, to borrow money and to contract debts, and no tax or assessment shall be levied or debt contracted except in pursuance of law, for public purposes specified by law.

Taxes.

The Act of 1871, 14 Stats., 569, conferring on the City of Columbia power to assess license tax, is not repealed by above Section. Ry. Co. v. Columbia, 54 S. C., 267; 32 S. E., 408; See Stehmeyer v. City Council, 53 S. C., 275; 31 S. E., 322.

Sec. 4. No law shall be passed by the General Assembly granting the right to construct and operate a street or other railway, telegraph, telephone or electric plant, or to erect water or gas works for public uses or to lay mains for any purpose, without first obtaining the consent of the local authorities in control of the streets or public places proposed to be occupied for any such or like purposes.

Street railway, &c.

Sec. 5. Cities and towns may acquire, by construction or purchase, and may operate, water works systems and plants for furnishing lights, and may furnish water and lights to individuals, firms and private corporations for reasonable compensation: *Provided,* That no such construction or purchase shall be made except upon a majority vote of the electors in said cities or towns who are qualified to vote on the bonded indebtedness of said cities or towns.

Water works and plants for furnishing lights.

This Section plainly makes it a condition precedent to the election on the question of issuing city bonds, that there should be a petition from a majority of the freeholders of the city as shown by its tax books. Ex rel McWhirter v. Newberry, 47 S. C., 424; 25 S. E., 216.

Sec. 6. The corporate authorities of cities and towns in this State shall be vested with power to assess and collect taxes for corporate purposes, said taxes to be uniform in respect to persons and property within the jurisdiction of the body composing the same; and all property, except such as is exempt by law, within the limits of cities and towns shall be taxed for the payment of debts contracted under authority of law. License or privileged taxes imposed shall be graduated so as to secure a just imposition of such tax upon the classes subject thereto.

Corporate taxes must be uniform.

License.

Constitution authorizes General Assembly to provide for license or privilege taxes, and municipalities are allowed to graduate the same, and the city of Abbeville can levy such taxes on businesses and occupations carried on in the city.

The above section provides that such taxes shall be just, but not uniform, but the city must tax without discrimination all businesses or avocations of the same class. Hill v. Abbeville, 59 S. C., 396; 38 S. E., 11. See Ry. Co. v. Columbia, 54 S. C., 277; 32 S. E. R., 408; Stehmeyer v. City Council, 53 S. C., 275; 31 S. E., 322.

Bonded debt.

Sec. 7. No city or town in this State shall hereafter incur any bonded debt which, including existing bonded indebtedness, shall exceed eight per centum of the assessed value of the taxable property therein, and no such debt shall be created without submitting the question as to the creation thereof to the qualified electors of such city or town, as provided in this Constitution for such special elections; and unless a majority of such electors voting on the question shall be in favor of creating such further bonded debt, none shall be created: *Provided,* That this Section shall not be construed to prevent the issuing of certificates of indebtedness in anticipation of the collection of taxes for amounts actually contained or to be contained in the taxes for the year when such certificates are issued and payable out of such taxes: *And provided, further,* That such cities and towns shall on the issuing of such bonds create a sinking fund for the redemption thereof at maturity. Nothing herein contained shall prevent the issuing of bonds to an amount sufficient to refund bonded indebtedness existing at the time of the adoption of this Constitution: *Provided,* That the limitation imposed by this Section and by Section 5, Article IV., of this Constitution shall not apply to bonded indebtedness incurred by the cities of Columbia, Rock Hill, Charleston and Florence, where the proceeds of said bonds are applied solely for the purchase, establishment, maintenance or increase of water works plants, sewerage system; and by the City of Georgetown, when the proceeds of said bonds are applied solely for the purchase, establishment, maintenance or increase of water works plant or sewerage system, gas and electric light plants where the entire revenue arising from the operation of such plants or systems shall be devoted solely and exclusively to the maintenance and operation of the same, and where the question of incurring such indebtedness is submitted to the freeholders and qualified voters of such municipality, as provided in the Constitution, upon the question of other bonded indebtedness.

Certificates of indebtedness.

Sinking fund.

Refunding bonded debt.

Proviso as to certain cities added by amendment.

1901, XXIII., 616.

Where city and school district cover same territory, the city may incur a debt not exceeding eight per cent. of the value of the taxable property therein, provided the aggregate indebtedness on such property does not exceed fifteen per cent. of the value thereof.—Todd v. City of Laurens, 48 S. C., 395; 26 S. E., 682.

Under the Constitution city may issue bonds to refund outstanding maturing bonds, without submitting the question to the voters of the city, when so authorized by its charter.—McCreight v. Camden, 49 S. C., 78; 26 S. E., 984.

Contract in violation of limitations.—Duncan v. City of Charleston, 60 S. C., 532; 39 S. E., 265. Constitutional amendment of 1901 construed.—Bray v. City Council of Florence, —— S. C., ——; 39 S. E., 810.

Manufactories may be exempt from taxation.

Sec. 8. Cities and towns may exempt from taxation, by general or special ordinance, except for school purposes, manufactories established within their limits for five successive years from the time of the establishment of such manufactories: *Provided,* That such ordinance shall be first ratified by a majority of such qualified electors of such city or town as shall vote at an election held for that purpose.

Armed police force.

Sec. 9. No armed police force or representatives of a detective agency shall ever be brought into this State for the suppression of domestic violence; nor shall any other armed or unarmed body of men be brought in for that purpose, except upon the application of the General Assembly or of the Executive of this State (when the General Assembly is not in session), as provided in the Constitution of the United States. The General Assembly shall provide proper penalties for the enforcement of the provisions of this Section.

Boards of Health.

Sec. 10. It shall be the duty of the General Assembly to create Boards of Health wherever they may be necessary, giving to them power and authority to make such regulations as shall protect the health of the community and abate nuisances.

Alcoholic liquor and beverages.

Sec. 11. In the exercise of the police power the General Assembly shall have the right to prohibit the manufacture and sale and retail of alcoholic liquors or beverages within the State. The General Assembly may license persons or corporations to manufacture and sell and retail alcoholic liquors or beverages within the State under such rules and restrictions as it deems proper; or the General Assembly may prohibit the manufacture and sale and retail of alcoholic liquors and beverages within the State, and may authorize and empower State, County and municipal officers, all or either, under the authority and in the name of the State, to buy in any market and retail within the State liquors and beverages in such packages and quantities, under such rules and regulations, as it deems expedient: *Provided,* That no license shall be granted to sell alcoholic beverages in less quantities than one-half pint, or to sell them between sundown and sunrise, or to sell them to be drunk on the premises: *And provided, further,* That the General Assembly shall not delegate to any municipal corporation the power to issue licenses to sell the same.

The city of Florence, under its charter, cannot pass an ordinance prohibiting the sale of liquors anywhere in the city, and the dispensary law does not preclude a municipal corporation from passing and enforcing an ordinance prohibiting the sale of liquors, except by duly authorized officers, where the charter gives the municipality such power. Florence v. Brown, 49 S. C., 332; 26 S. E., 880.

Prize fighting.

Sec. 12. All prize-fighting is prohibited in this State, and the General Assembly shall provide by proper laws for the prevention and punishment of the same.

ARTICLE IX.

CORPORATIONS.

Corporation defined.

Section 1. The term corporation as used in this Article includes all associations and joint stock companies having powers and privileges not possessed by individuals or partnerships, and excludes municipal corporations.

Charter of incorporation.

See Const. 1868, IX., 9; XII., 1.

Sec. 2. No charter of incorporation shall be granted, changed or amended by special law, except in the case of such charitable, educational, penal or reformatory corporations as may be under the control of the State, or may be provided for in this Constitution, but the General Assembly shall provide by general laws for changing or amending existing charters, and for the organization of all corporations hereafter to be created, and any such law so passed, as well as all charters now existing or hereafter created, shall be subject to future repeal or alteration: *Provided,* That the General Assembly may by a two-thirds vote of each house on a concurrent resolution allow a Bill for a special charter to be introduced, and when so introduced may pass the same as other Bills.

In order to enable stockholders to claim the benefits of the Constitution of 1895, it is necessary to show that a new or amended charter was taken out under the provisions of the Constitution. Laura Glenn Mills v. Ruff, 52 S. C., 449; 30 S. E., 587.

Transporting and transmitting corporations taxed as such.

Sec. 3. All railroad, express, canal and other corporations engaged in transportation for hire, and all telegraph and other corporations engaged in the business of transmitting intelligence for hire are common carriers in their respective lines of business, and are subject to liability and taxation as such. It shall be unlawful for any such corporation to make any contract relieving it of its common law liability or limiting the same, in reference to the carriage of passengers.

Common law liability.

Agent of corporation.

Sec. 4. Every corporation organized or doing business in this State, other than religious, educational or benevolent associations, shall have and maintain at least one agent in this State

upon whom process may be served, and at least one public office for the transaction of its business: *Provided,* This Section shall not apply to mercantile corporations: *Provided,* That nothing contained in this Section shall be construed to prohibit the General Assembly from providing for the service of process on any agent of a corporation so as to bind such corporation.

Office of corporation.

Sec. 5. No discrimination in charges or facilities for transportation of the same classes of freight or passengers, or for the transmission of intelligence within this State, or coming from or going to any other State, shall be made by any railroad or other transportation or transmission company between places or persons.

Discrimination in charges.

Persons and property transported by any railroad or any other transportation or transmission company or corporation, shall be delivered at any station, landing or port at charges not exceeding the charges for the transportation of persons and property of the same class, in the same direction, to any more distant station, landing or port. Excursion and commutation tickets may be issued at special rates. This Section shall not prevent the Railroad Commission from making such competitive rates as shall, in their judgment, be just and equitable between the railroads and the public, at all junctional and competitive points or at points where water competition controls the traffic or at points where the competition of points located in other States may make necessary the prescribing of different rates for the protection of the commerce of this State.

Excursion tickets.

Competitive rates.

Sec. 6. Any railroad or other transportation corporation, and any telegraph or other transmitting corporation, organized under the laws of this State, shall have the right to connect its roads or lines, at the State line, with those in other States, and shall have the right to intersect with or cross any other railroad, street railway, transportation road or transmitting line, and shall each receive and transport the freight, passengers, cars (loaded or empty) and messages delivered to it by another without delay or discrimination.

Transportation company may connect or cross lines of another.

Sec. 7. No railroad, or other transportation company, and no telegraph or other transmitting corporation, or the lessees, purchasers or managers of any such corporation, shall consolidate the stock, property or franchises of such corporation with, or lease or purchase the works or franchises of, or in any way control, any other railroad or other transportation, telegraph or other transmitting company owning or having under its control

Consolidation of stock with competing line.

a parallel or competing line; and the question whether railroads or other transportation, telegraph or other transmitting companies are parallel or competing lines shall, when demanded by the party complainant, be decided by a jury as in other civil causes.

Jury may decide whether lines are parallel or competing.

No foreign corporation can build or operate a railroad in this State.

Sec. 8. The General Assembly shall not grant to any foreign corporation or association a license to build, operate or lease any railroad in this State; but in all cases where a railroad is to be built or operated, or is now being operated, in this State, and the same shall be partly in this State and partly in another State, or in other States, the owners or projectors thereof shall first become incorporated under the laws of this State; nor shall any foreign corporation or association lease or operate any railroad in this State, or purchase the same or any interest therein. Consolidation of any railroad lines and corporations in this State with others shall be allowed only where the consolidated company shall become a domestic corporation of this State. No general or special law shall ever be passed for the benefit of any foreign corporation operating a railroad under any existing license of this State or under any existing lease, and no grant of any right or privilege and no exemption from any burden shall be made to any such foreign corporation, except upon the condition that the owners or stockholders thereof shall first organize a corporation in this State under the laws thereof, and shall thereafter operate and manage the same and the business thereof under said domestic charter.

No general or special law for foreign corporation, except on conditions.

A foreign corporation operating a railroad in this and other States, which has complied with the requirements of the Act of 1896, 22 Stat., 92, is under the above Section a domestic corporation, and it was held could not remove a case against it out of the Courts of this State to the United States Circuit Court, upon the ground of diverse citizenship.—Mathis v. Southern Railway Co., 53 S. C., 246; 31 S. E., 241.

This case was subsequently overruled, and the right of removal held to still exist.—Calvert v. So. Ry. Co., 64 S. C., 139; 36 S. E., 750; Wilson v. So. Ry. Co., 64 S. C., 162; 36 S. E., 701.

The Act of 1896, XXII., 92, allowing a foreign corporation, by filing a copy of its charter, to become a domestic corporation is not in violation of this Section. State ex rel Southern Railway Company v. Tompkins, 48 S. C., 49; 25 S. E., 982.

Banks.

Const. 1868, XII., 6.

Sec. 9. The General Assembly shall have no power to grant any special charter for banking purposes, but corporations or associations may be formed for such purposes under general laws, with such privileges, powers and limitations, not inconsistent with this Constitution, as it may deem proper. The General Assembly shall provide by law for the thorough examination and inspection of all banking and fiscal corporations of this State.

Sec. 10. Stock or bonds shall not be issued by any corporation save for labor done, or money or property actually received or subscribed; and all fictitious increase of stock or indebtedness shall be void.

Stock issued for money or labor.

Sec. 11. The General Assembly shall provide by law for the election of directors, trustees or managers of all corporations so that each stockholder shall be allowed to cast, in person or by proxy, as many votes as the number of shares he owns multiplied by the number of directors, trustees or managers to be elected, the same to be cast for any one candidate or to be distributed among two or more candidates.

Election of officers of corporations.

See Looker v. Maynard, 179 U. S., 45, declaring constitutional a similar provision in another State.

Sec. 12. Corporations shall not engage in any business except that specifically authorized by their charters or necessarily incident thereto.

Business of corporations.

Sec. 13. The General Assembly shall enact laws to prevent all trusts, combinations, contracts and agreements against the public welfare; and to prevent abuses, unjust discriminations and extortion in all charges of transporting and transmitting companies; and shall pass laws for the supervision and regulation of such companies by commission or otherwise, and shall provide adequate penalties, to the extent, if necessary for that purpose, of forfeiture of their franchises.

Trusts, combinations, &c.

Sec. 14. A Commission is hereby established to be known as "the Railroad Commission," which shall be composed of not less than three members, whose powers over all transporting and transmitting corporations, and duties, manner of election and term of office shall be regulated by law; and until otherwise provided by law the said Commissioners shall have the same powers and jurisdiction, perform the same duties and receive the same compensation as now conferred, prescribed and allowed by law to the existing Railroad Commissioners: *Provided,* That the members thereof shall be elected at the expiration of the terms of the present Railroad Commissioners, who are hereby continued in office for the terms for which they were elected.

The Railroad Commission.

Sec. 15. Every employe of any railroad corporation shall have the same rights and remedies for any injury suffered by him from the acts or omissions of said corporations or its employes as are allowed by law to other persons not employes, when the injury results from the negligence of a superior agent

Rights and remedies of employes.

or officer, or of a person having a right to control or direct the services of a party injured, and also when the injury results from the negligence of a fellow servant engaged in another department of labor from that of the party injured, or of a fellow servant on another train of cars, or one engaged about a different piece of work. Knowledge by any employe injured of the defective or unsafe character or condition of any machinery, ways or appliances shall be no defence to an action for injury caused thereby, except as to conductors or engineers in charge of dangerous or unsafe cars or engines voluntarily operated by them. When death ensues from any injury to employes, the legal or personal representatives of the person injured shall have the same right and remedies as are allowed by law to such representatives of other persons. Any contract or agreement, expressed or implied, made by any employe to waive the benefit of this Section shall be null and void; and this Section shall not be construed to deprive any employe of a corporation, or his legal or personal representative, of any remedy or right that he now has by the law of the land. The General Assembly may extend the remedies herein provided for to any other class of employes.

This Section construed in Rutherford v. So. Ry., 56 S. C., 446; 35 S. E., 35.
A contract whereby a railroad company beforehand seeks immunity from damages caused by its negligence, is not prohibited by above section, but is contrary to public policy, and is, therefore, void. Johnson v. Ry. Co., 55 S. C., 152; 32 S. E., 2. Under above Section a servant may recover of a railroad company for injuries caused by the carelessness of a fellow servant directing him. Bussy v. Ry. Co., 52 S. C., 438; 30 S. E., 477. See Wilson v. Ry. Co., 51 S. C., 95; 28 S. E., 91; Youngblood v. Ry. Co., 60 S. C., 9; 38 S E., 232; Bodie v. Ry. Co., 61 S C., 468; 39 S. E., 715.

Existing charters.

Sec. 16. All existing charters or grants of corporate franchise under which organizations have not in good faith taken place at the adoption of this Constitution shall be subject to the provisions of this Article.

See Lauraglenn Mills v. Ruff, 52 S. C., 450; 30 S. E., 587.

Laws for benefit of corporation passed only on conditions.

Sec. 17. The General Assembly shall never remit the forfeiture of the franchise of any corporation now chartered, nor alter nor amend the charter thereof, nor pass any general or special law for the benefit of such corporation, except upon the condition that such corporation shall thereafter hold its charter and franchise subject to the provisions of this Constitution, and the acceptance by any corporation of any provision of any such laws or the taking of any benefit or advantage from the same shall be conclusively held an agreement by such corporation to

hold its charter and franchise under the provisions of this Article.

Liability of stockholders.

See Const. 1868, XII, 6.

Sec. 18. The stockholders of all insolvent corporations shall be individually liable to the creditors thereof only to the extent of the amount remaining due to the corporation upon the stock owned by them: *Provided,* That stockholders in banks or banking institutions shall be liable to depositors therein in a sum equal in amount to their stock over and above the face value of the same.

In banks.

See Lauraglenn Mills v. Ruff, 52 S. C., 448; 30 S. E., 587; Cotton Mills v. Springs, 56 S. C., 436; 35 S. E., 222; Parker v. Bank, 53 S. C., 583; 31 S. E., 673.

Corporations cannot do act prohibited through controlling interest in other corporations.

Sec. 19. Nothing prohibited in this Article shall be permitted to be done by any corporation or company, persons or person, either for its or their own benefit or otherwise, by its or their holding or controlling in its or their own name or otherwise, or in the name of any other person or persons, or other corporation or company whatsoever, a majority of the capital stock, or of bonds having voting power, of any railroad or transportation company, or corporation created by or existing under the laws of this State, or doing business within this State.

Right of way.

See Const. 1868, XII., 3.

Sec. 20. No right of way shall be appropriated to the use of any corporation until full compensation therefor shall be first made to the owner or secured by a deposit of money, irrespective of any benefit from any improvement proposed by such corporation, which compensation shall be ascertained by a jury of twelve men, in a Court of record, as shall be prescribed by law.

It is doubtful under this Section, whether a person who has taken an appeal to the Circuit Court can be denied the right to have the issue of the amount of compensation, tried by a jury. Railroad Co., v. Johnson, 58 S. C., 563; 36 S. E., 919; see Gilmer v. Hunnicutt, 57 S. C., 172; 35 S. E., 523. A party applying under a statute for condemnation of a right of way is estopped from saying that the statute is unconstitutional. Sections 1744, 1746, 1747 of Revised Statutes of 1893, Civil Code Sections 2188, 2190 and 2191, are not violative of the above Section.—Railroad Co. v. Railroad Co., 57 S. C., 317; 35 S. E., 553.

Sec. 21. The General Assembly shall enforce the provisions of this Article by appropriate legislation.

See Lauraglenn Mills v. Ruff, 52 S. C., 450; 30 S. E., 587.

ARTICLE X.

Finance and Taxation.

Taxation and assessment.

See Const. 1868, IX., 1.

Sec. 1. The General Assembly shall provide by law for a uniform and equal rate of assessment and taxation, and shall prescribe regulations to secure a just valuation for taxation of

all property, real, personal and possessory, except mines and mining claims, the products of which alone shall be taxed; and also excepting such property as may be exempted by law for municipal, educational, literary, scientific, religious or charitable purposes: *Provided, however,* That the General Assembly may impose a capitation tax upon such domestic animals as from their nature and habits are destructive of other property: *And provided, further,* That the General Assembly may provide for a graduated tax on incomes, and for a graduated license on occupations and business.

See State v. Tucker, 56 S. C., 516; 35 S. E., 215; Stehmeyer v. City Council, 53 S. C., 277; 31 S. E., 322; Hill v. City Council, 59 S. C., 404; 38 S. E., 11.

Expenses of State Government.

See Const. 1868, IX., 3.

Sec. 2. The General Assembly shall provide for an annual tax sufficient to defray the estimated expenses of the State for each year, and whenever it shall happen that the ordinary expenses of the State for any year shall exceed the income of the State for such year the General Assembly shall provide for levying a tax for the ensuing year sufficient, with other sources of income, to pay the deficiency of the preceding year together with the estimated expenses of the ensuing year.

Tax shall be levied in pursuance of law.

See Const. 1868, IX., 4.

Sec. 3. No tax shall be levied except in pursuance of a law which shall distinctly state the object of the same; to which object the tax shall be applied.

This means an Act of the Legislature, except where there is a self-executing provision of the Constitution, as in the case of the three-mill school tax. So. Ry. Co. v. Kay, 62 S. C., 28; 39 S. E., 787.

Property exempt from taxation.

See Const. 1868, IX., 5.

Sec. 4. There shall be exempted from taxation all County, township and municipal property used exclusively for public purposes and not for revenue, and the property of all schools, colleges and institutions of learning, all charitable institutions in the nature of asylums for the infirm, deaf and dumb, blind, idiotic and indigent persons, except where the profits of such institutions are applied to private uses; all public libraries, churches, parsonages and burying grounds; but property of associations and societies, although connected with charitable objects, shall not be exempt from State, County or municipal taxation: *Provided,* That as to real estate this exemption shall not extend beyond the buildings and premises actually occupied by such schools, colleges, institutions of learning, asylums, libraries, churches, parsonages and burial grounds, although connected with charitable objects.

A parsonage belonging to a church which the pastor rents, collecting and applying the rents as a part of his salary, or to the rent of another residence, does not thereby lose its character as a parsonage, and is exempt from taxation. The Pro-

testant Episcopal Church of the Parish of St. Phillips v. Prioleau, as County Auditor, 63 S. C., 70; 40 S. E., 1026.

Taxes may be levied for corporate purposes.

See Const. 1868, IX., 8.

Share of stockholders.

Sec. 5. The corporate authorities of Counties, townships, school districts, cities, towns and villages may be vested with power to assess and collect taxes for corporate purposes; such taxes to be uniform in respect to persons and property within the jurisdiction of the body imposing the same. All shares of stockholders in any bank or banking association located in this State, whether now or hereafter incorporated, or organized under the laws of this State or of the United States, shall be listed at their true value in money, and taxed for municipal purposes in the city, ward, town or incorporated village, where such bank is located, and not elsewhere: *Provided*, That the words "true value in money" as used in line 12 [line 12 of original MS. and line 9 of this printing.—EDITOR] of this Section shall be so construed as to mean and include all surplus or extra moneys, capital, and every species of personal property of value owned or in possession of any such bank: *Provided*, A like rule of taxation shall apply to the stockholders of all corporations other than banking institutions. And the General Assembly shall require that all the property, except that herein permitted to be exempted within the limits of municipal corporations, shall be taxed for corporate purposes and for the payment of debts contracted under authority of law. The bonded debt of any County, township, school district, municipal corporation or political division or subdivision of this State shall never exceed eight per centum of the assessed value of all the taxable property therein. And no County, township, municipal corporation or other political division of this State shall hereafter be authorized to increase its bonded indebtedness if at the time of any proposed increase thereof the aggregate amount of its already existing bonded debt amounts to eight per centum of the value of all taxable property therein as valued for State taxation. And wherever there shall be several political divisions or municipal corporations covering or extending over the territory, or portions thereof, possessing a power to levy a tax or contract a debt, then each of such political divisions or municipal corporations shall so exercise its power to increase its debt under the foregoing eight per cent. limitation that the aggregate debt over and upon any territory of this State shall never exceed fifteen per centum of the value of all taxable property in such territory as valued for taxation by the State: *Provided,* That

Limit of bonded debt.

nothing herein shall prevent the issue of bonds for the purpose of paying or refunding any valid municipal debt heretofore contracted in excess of eight per centum of the assessed value of all the taxable property therein.

A Statute authorizing a city council to tax owners of abutting property on one street between certain limits for two-thirds of the cost of improvement to the sidewalk, is unconstitutional. Mauldin v. City Council, 53 S. C., 285; 31 S. E., 252. The above section does not apply to issues of bonds to refund a previously existing debt. McCreight v. Camden, 49 S. C., 79; 26 S. E., 984.

No city or town can create a larger bonded indebtedness than eight per cent. of the value of its property as assessed for State taxation, nor greater than 15 per cent. of such property so assessed, including the bonded debts of all the political division embracing such city or town.—Todd v. Laurens, 48 S. C., 395; 27 S. E. R., 683. See amendment of 1901 to Art. 8, Sec. 7, as to limit of indebtedness of certain cities, construed in Bray v. City Council of Florence, S. C., ; 39 S. E., 810. Contract made prior to that amendment held in violation of this Section. Duncan v. City of Charleston, 60 S. C., 532; 39 S. E., 265.

The Legislature may authorize the levy of a tax by the County or Township authorities, or itself make the levy directly. In either event the power to collect is conferred on the fiscal authorities of the County.—So. Ry. Co. v. Kay, 62 S. C., 28; 39 S. E., 787.

Credit of State.

For what purposes tax levied or bonds issued.

Sec. 6. The credit of the State shall not be pledged or loaned for the benefit of any individual, company, association or corporation; and the State shall not become a joint owner of or stockholder in any company, association or corporation. The General Assembly shall not have power to authorize any County or township to levy a tax or issue bonds for any purpose except for educational purposes, to build and repair public roads, buildings and bridges, to maintain and support prisoners, pay jurors, County officers, and for litigation, quarantine and Court expenses, and for ordinary County purposes, to support paupers, and pay past indebtedness.

Scrip, certificate, or evidence of State debt.

See Const. 1868, IX., 10.

Sec. 7. No scrip, certificate or other evidence of State indebtedness shall be issued except for the redemption of stock, bonds or other evidence of indebtedness previously issued, or for such debts as are expressly authorized in this Constitution.

Receipts and expenditures.

See Const. 1868, IX., 11.

Sec. 8. An accurate statement of the receipts and expenditures of the public money shall be published with the laws of each regular session of the General Assembly, in such manner as may by law be directed.

Money.

See Const. 1868, II., 22, and IX., 12.

Sec. 9. Money shall be drawn from the Treasury only in pursuance of appropriations made by law.

Fiscal year.

See Const. 1868, IX., 13.

Sec. 10. The fiscal year shall commence on the first day of January in each year.

Public debt.

See 16th amendment to Const., 1868.

Sec. 11. To the end that the public debt of South Carolina may not hereafter be increased without the due consideration and free consent of the people of the State, the General Assem-

bly is hereby forbidden to create any further debt or obligation, either by the loan of the credit of the State, by guaranty, endorsement or otherwise, except for the ordinary and current business of the State without first submitting the question as to the creation of such new debt, guaranty, endorsement or loan of its credit to the qualified electors of this State at a general State election; and unless two-thirds of the qualified electors of this State, voting on the question, shall be in favor of increasing the debt, guaranty, endorsement, or loan of its credit, none shall be created or made. And any debt contracted by the State shall be by loan on State bonds, of amounts not less than fifty dollars each, bearing interest, payable not more than forty years after final passage of the law authorizing such debt. A correct registry of all such bonds shall be kept by the Treasurer in numerical order, so as to always exhibit the number and amount unpaid, and to whom severally made payable. And the General Assembly shall levy an annual tax sufficient to pay the annual interest on said bonds.

State bonds.

Sec. 12. Suitable laws shall be passed by the General Assembly for the safe-keeping, transfer and disbursement of the State, County and school funds; and all officers and other persons charged with the same shall keep an accurate entry of each sum received, and of each payment and transfer, and shall give such security for the faithful discharge of such duties as the General Assembly may provide. And it shall be the duty of the General Assembly to pass laws making embezzlement of such funds a felony, punishable by fine and imprisonment, proportioned to the amount of the deficiency or embezzlement, and the party convicted of such felony shall be disqualified from ever holding any office of honor or emolument in this State: *Provided, however,* That the General Assembly, by a two-thirds vote, may remove the disability upon payment in full of the principal and interest of the sum embezzled.

Safe-keeping of public funds.

See Const. 1868, Art. 10, Sec. 12.

Embezzlement of, felony.

General Assembly may remove.

Sec. 13. The General Assembly shall provide for the assessment of all property for taxation; and State, County, township, school, municipal and all other taxes shall be levied on the same assessment, which shall be that made for State taxes; and the taxes for the subdivisions of the State shall be levied and collected by the respective fiscal authorities thereof.

One assessment for all taxes.

See State v. Tucker, 56 S. C., 523; 35 S. E., 215; State v. Railroad Co., 54 S. C., 574; 32 S. E., 691; So. Ry. Co. v. Kay, 62 S. C., 28; 39 S. E., 787.

ARTICLE XI.

EDUCATION.

The provisions of this Article do not repeal the laws applying to the special school districts and graded schools in this State, and the Act 19 Stat., 1050, and 20 Stat. 935, are not unconstitutional. Voting for a school tax in a special school district *viva voce* is not in violation of the provisions of the constitution as to elections.—Martin v. School District, 57 S. C., 125; 35 S. E., 517.

Superintendent of Education.

See Const. 1868, X., 1.

Section 1. The supervision of public instruction shall be vested in a State Superintendent of Education, who shall be elected for the term of two years by the qualified electors of the State, in such manner and at such time as the other State officers are elected; his powers, duties and compensation shall be defined by the General Assembly.

State Board of Education.

See Const. 1868, X., 2.

Sec. 2. There shall be a State Board of Education, composed of the Governor, the State Superintendent of Education, and not exceeding seven persons to be appointed by the Governor every four years, of which Board the Governor shall be Chairman, and the State Superintendent of Education, Secretary. This Board shall have the regulation of examination of teachers applying for certificates of qualification, and shall award all scholarships, and have such other powers and duties as may be determined by law. The traveling expenses of the persons to be appointed shall be provided for by the General Assembly.

School officers.

See Const. 1868, X., 2.

Sec. 3. The General Assembly shall make provision for the election or appointment of all other necessary school officers, and shall define their qualifications, powers, duties, compensation and terms of office.

Salaries of school officers and County Treasurer.

Sec. 4. The salaries of the State and County school officers and compensation of County Treasurers for collecting and disbursing school moneys shall not be paid out of the school funds, but shall be otherwise provided for by the General Assembly.

Free public schools.

See Const. 1868, X., 3.

School districts.

Sec. 5. The General Assembly shall provide for a liberal system of free public schools for all children between the ages of six and twenty-one years, and for the division of the Counties into suitable school districts, as compact in form as practicable, having regard to natural boundaries, and not to exceed forty-nine nor be less than nine square miles in area: *Provided,* That in cities of ten thousand inhabitants and over, this limitation of area shall not apply: *Provided, further,* That when any school district laid out under this Section shall embrace cities or towns already embraced into special school districts in which graded school buildings have been erected by the issue of bonds, or by

Bonded debt.

special taxation, or by donation, all the territory included in said school district shall bear its just proportion of any tax that may be levied to liquidate such bonds or support the public schools therein: *Provided, further,* That nothing in this Article contained shall be construed as a repeal of the laws under which the several graded school districts of this State are organized. The present division of the Counties into school districts and the provisions of law now governing the same shall remain until changed by the General Assembly.

Graded school districts.

Martin v. School District, 57 S. C., 125; 35 S. E., 517.

Sec. 6. The existing County Boards of Commissioners of the several Counties, or such officer or officers as may hereafter be vested with the same or similar powers and duties, shall levy an annual tax of three mills on the dollar upon all taxable property in their respective Counties, which tax shall be collected at the same time and by the same officers as the other taxes for the same year, and shall be held in the County treasury of the respective Counties; and the said fund shall be apportioned among the school districts of the County in proportion to the number of pupils enrolled in the public schools of the respective districts, and the officer or officers charged by law with making said apportionment shall notify the Trustees of the respective school districts thereof, who shall expend and disburse the same as the General Assembly may prescribe. The General Assembly shall define "enrollment." Not less than three Trustees for each school district shall be selected from the qualified voters and taxpayers therein, in such manner and for such terms as the General Assembly may determine, except in cases of special school districts now existing, where the provisions of law now governing the same shall remain unchanged by the General Assembly: *Provided,* The manner of the selection of said Trustees need not be uniform throughout the State. There shall be assessed on all taxable polls in the State between the ages of twenty-one and sixty years (excepting Confederate soldiers above the age of fifty years,) an annual tax of one dollar on each poll, the proceeds of which tax shall be expended for school purposes in the several school districts in which it is collected. Whenever during the three next ensuing fiscal years the tax levied by the said County Boards of Commissioners or similar officers and the poll tax shall not yield an amount equal to three dollars per capita of the number of children enrolled in the public schools of each County for the scholastic year ending the

Three mill tax for public schools.

See Const. 1868, X., 5.

Trustees disburse.

Enrollment.

Trustees.

Poll tax.

See Const. 1868, IX., 2.

Supplementary tax.

thirty-first day of October in the year eighteen hundred and ninety-five, as it appears in the report of the State Superintendent of Education for said scholastic year, the Comptroller General shall, for the aforesaid three next ensuing fiscal years, on the first day of each of said years, levy such an annual tax on the taxable property of the State as he may determine to be necessary to make up such deficiency, to be collected as other State taxes, and apportion the same among the Counties of the State in proportion to the respective deficiencies therein. The sum so apportioned shall be paid by the State Treasurer to the County Treasurers of the respective Counties, in proportion to the respective deficiencies therein, on the warrant of the Comptroller General, and shall be apportioned among the school districts of the Counties, and disbursed as other school funds; and from and after the thirty-first day of December, in the year eighteen hundred and ninety-eight, the General Assembly shall cause to be levied annually on all the taxable property of the State such a tax, in addition to the said tax levied by the said County Boards of Commissioners or similar officers, and poll tax above provided, as may be necessary to keep the schools open throughout the State for such length of time in each scholastic year as the General Assembly may prescribe; and said tax shall be apportioned among the Counties in proportion to the deficiencies therein and disbursed as other school funds.

School district tax.

Any school district may by the authority of the General Assembly levy an additional tax for the support of its schools.

Under above Section and Section 12 and Joint Resolution of 1898, the surplus of net income from the dispensary in the State treasury in 1898 can only be divided among the Counties after making up the deficiencies provided for in the Constitution. Capers v. Derham, 54 S. C., 349; 32 S. E., 418.

Separate schools.

See Const. 1868, II., 7.

Sec. 7. Separate schools shall be provided for children of the white and colored races, and no child of either race shall ever be permitted to attend a school provided for children of the other race.

State University.

Clemson Agricultural College.

Land scrip.

Const. 1868, X., 9.

Sec. 8. The General Assembly may provide for the maintenance of Clemson Agricultural College, the University of South Carolina, and the Winthrop Normal and Industrial College, a branch thereof, as now established by law, and may create scholarships therein; the proceeds realized from the land scrip given by the Act of Congress passed the second day of July, in the year eighteen hundred and sixty-two, for the support of an agricultural college, and any lands or funds which have heretofore been or may hereafter be given or appropriated

for educational purposes by the Congress of the United States, shall be applied as directed in the Acts appropriating the same: *Provided,* That the General Assembly shall, as soon as practicable, wholly separate Claflin College from Claflin University, and provide for a separate corps of professors and instructors therein, representation to be given to men and women of the negro race; and it shall be the Colored Normal, Industrial, Agricultural and Mechanical College of this State.

Claflin University.

Colored Normal, Industrial, Agricultural and Mechanical College.

Sec. 9. The property or credit of the State of South Carolina, or of any County, city, town, township, school district, or other subdivision of the said State, or any public money, from whatever source derived, shall not, by gift, donation, loan, contract, appropriation, or otherwise, be used, directly or indirectly, in aid or maintenance of any college, school, hospital, orphan house, or other institution, society or organization, of whatever kind, which is wholly or in part under the direction or control of any church or of any religious or sectarian denomination, society or organization.

Property or credit of State shall not benefit sectarian institutions.

Sec. 10. All gifts of every kind for educational purposes, if accepted by the General Assembly, shall be applied and used for the purposes designated by the giver, unless the same be in conflict with the provisions of this Constitution.

Gifts for educational purposes.

Sec. 11. All gifts to the State where the purpose is not designated, all escheated property, the net assets or funds of all estates or copartnerships in the hands of the Courts of the State where there have been no claimants for the same within the last seventy years, and other money coming into the Treasury of the State by reason of the twelfth Section of an Act entitled "An Act to provide a mode of distribution of the moneys as direct tax from the citizens of this State by the United States in trust to the State of South Carolina," approved the twenty-fourth day of December, in the year eighteen hundred and ninety-one, together with such other means as the General Assembly may provide, shall be securely invested as the State School Fund, and the annual income thereof shall be apportioned by the General Assembly for the purpose of maintaining the public schools.

Gifts to State.

Assets of estates or copartnerships.

Direct tax.

State school fund.

Sec. 12. All the net income to be derived by the State from the sale or license for the sale of spirituous, malt, vinous and intoxicating liquors and beverages, not including so much thereof as is now or may hereafter be allowed by law to go to the Counties and municipal corporations of the State, shall be applied annually in aid of the supplementary taxes provided for

Income from sale or licenses for sale of liquors.

in the sixth Section of this Article; and if after said application there should be a surplus, it shall be devoted to public school purposes, and apportioned as the General Assembly may determine: *Provided, however,* That the said supplementary taxes shall only be levied when the net income aforesaid from the sale or license for the sale of alcoholic liquors or beverages are not sufficient to meet and equalize the deficiencies for which the said supplementary taxes are provided.

See Capers v. Derham, 54 S. C., 350; 32 S. E., 418.

ARTICLE XII.

Charitable and Penal Institutions.

Institutions for blind, insane, deaf and dumb.

Const. 1868, X., 7.

Section 1. Institutions for the care of the insane, blind, deaf and dumb and the poor shall always be fostered and supported by this State, and shall be subject to such regulations as the General Assembly may enact.

State Hospital for Insane, officers of.

See Const. 1868, XI., 6.

Sec. 2. The Regents of the State Hospital for the Insane and the Superintendent thereof, who shall be a physician, shall be appointed by the Governor, by and with the advice and consent of the Senate. All other physicians, officers and employes of the Hospital shall be appointed by the Regents, unless otherwise ordered by the General Assembly.

County poor.

See Const. 1868, XI., 5.

Sec. 3. The respective Counties of this State shall make such provision as may be determined by law for all those inhabitants who by reason of age, infirmities and misfortune may have a claim upon the sympathy and aid of society.

Directors of benevolent and penal State institutions.

See Const. 1868, XI., 3.

Sec. 4. The Directors of the benevolent and penal State institutions which may be hereafter created shall be appointed or elected as the General Assembly may direct.

Directors of Penitentiary.

See Const. 1868, XI., 2.

Sec. 5. The Directors and Superintendent of the Penitentiary shall be appointed or elected as the General Assembly may direct.

Convicts sentenced to hard labor.

Sec. 6. All convicts sentenced to hard labor by any of the Courts in this State may be employed upon the public works of the State or of the Counties and upon the public highways.

Reformatory for juvenile offenders.

See Const. 1868, X., 8.

Sec. 7. Provision may be made by the General Assembly for the establishment and maintenance by the State of a Reformatory for juvenile offenders separate and apart from hardened criminals.

Vacancies.

See Const. 1868, XI., 4.

Sec. 8. The Governor shall have power to fill all vacancies that may occur in the offices aforesaid, except where otherwise

provided for, with the power of removal until the next session of the General Assembly and until a successor or successors shall be appointed and confirmed.

Sec. 9. The Penitentiary and the convicts thereto sentenced shall forever be under the supervision and control of officers employed by the State; and in case any convicts are hired or farmed out, as may be provided by law, their maintenance, support, medical attendance and discipline shall be under the direction of officers detailed for those duties by the authorities of the Penitentiary.

Control of convicts.

ARTICLE XIII.

Militia.

Section 1. The militia of this State shall consist of all able-bodied male citizens of the State between the ages of eighteen and forty-five years, except such persons as are now or may be exempted by the laws of the United States or this State, or who from religious scruples may be averse to bearing arms, and shall be organized, officered, armed, equipped and disciplined as the General Assembly may by law direct.

Militia.

See Const. 1868, XIII., 1.

Sec. 2. The volunteer and militia forces shall (except for treason, felony and breach of the peace) be exempt from arrest by warrant or other process while in active service or attending muster or the election of officers, or while going to or returning from either of the same.

When exempt from arrest.

Sec. 3. The Governor shall have the power to call out the volunteer and militia forces, either or both, to execute the laws, repel invasions, suppress insurrections and preserve the public peace.

Governor may call out.

See Const. 1868, XIII., 2.

Sec. 4. There shall be an Adjutant and Inspector General elected by the qualified electors of the State at the same time and in the same manner as other State officers, who shall rank as Brigadier General, and whose duties and compensation shall be prescribed by law. The Governor shall, by and with the advice and consent of the Senate, appoint such other staff officers as the General Assembly may direct.

Adjutant and Inspector General.

See Const. 1868, XIII., 3.

Staff officers.

Sec. 5. The General Assembly is hereby empowered and required, at its first session after the adoption of this Constitution, to provide such proper and liberal legislation as will guarantee and secure an annual pension to every indigent or disabled Confederate soldier and sailor of this State and of the late Confed-

Pensions.

erate States who are citizens of this State, and also to the indigent widows of Confederate soldiers and sailors.

ARTICLE XIV.

Eminent Domain.

Boundary rivers.

See Const. 1868, VI., 1.

Section 1. The State shall have concurrent jurisdiction on all rivers bordering on this State, so far as such rivers shall form a common boundary to this and any other State bounded by the same; and they, together with all navigable waters within the limits of the State, shall be common highways and forever free, as well to the inhabitants of this State as to the citizens of the United States, without any tax or impost therefor, unless the same be expressly provided for by the General Assembly.

S. C. Steamboat Co. v. Wilmington, C. & A. Ry. Co., 46 S. C., 327; 24 S. E., 337.

Title to certain lands.

See Const. 1868, VI., 2.

Sec. 2. The title to all lands and other property which have heretofore accrued to this State by grant, gift, purchase, forfeiture, escheats or otherwise shall vest in the State of South Carolina, the same as though no change had taken place.

Ultimate property in lands.

See Const. 1868, VI., 3.

Sec. 3. The people of the State are declared to possess the ultimate property in and to all lands within the jurisdiction of the State; and all lands the title to which shall fail from defect of heirs shall revert or escheat to the people.

See Mauldin v. City Council, 53 S. C., 288; 31 S. E., 322; Stehmeyer v. City Council, 53 S. C., 259; 31 S. E., 322.

ARTICLE XV.

Impeachment.

Power of impeachment.

Officer impeached.

See Const. 1868, VII., 1.

Section 1. The House of Representatives shall have the sole power of impeachment. A vote of two-thirds of all the members elected shall be required for an impeachment. Any officer impeached shall thereby be suspended from office until judgment in the case shall have been pronounced; and the office shall be filled during the trial in such manner as may be provided by law.

Senate try impeachment.

See Const. 1868, VII., 2.

Chief Justice preside.

Sec. 2. All impeachments shall be tried by the Senate, and when sitting for that purpose they shall be under oath or affirmation. No person shall be convicted except by a vote of two-thirds of all the members elected. When the Governor is impeached, the Chief Justice of the Supreme Court, or if he be disqualified, the Senior Justice shall preside, with a casting vote in all preliminary questions.

Sec. 3. The Governor and all other executive and judicial officers shall be liable to impeachment; but judgment in such cases shall not extend further than removal from office. The persons convicted shall, nevertheless, be liable to indictment, trial and punishment according to law.

Officers liable to.

See Const. 1868, VII., 3.

Sec. 4. For any wilful neglect of duty, or other reasonable cause, which shall not be sufficient ground of impeachment, the Governor shall remove any executive or judicial officer on the address of two-thirds of each house of the General Assembly: *Provided,* That the cause or causes for which said removal may be required shall be stated at length in such address, and entered on the Journals of each house: *And provided, further,* That the officer intended to be removed shall be notified of such cause or causes, and shall be admitted to a hearing in his own defence, or by his counsel, or by both, before any vote for such address; and in all cases the vote shall be taken by yeas and nays, and be entered on the Journal of each house respectively.

Removal of officers.

See Const. 1868, VII., 4.

The Constitution does not require the impeachment of a Probate Judge as condition precedent to indictment for failure to perform official duties. State v. Green, 52 S. C., 521; 30 S. E., 683.

ARTICLE XVI.

Amendment and Revision of the Constitution.

Section 1. Any amendment or amendments to this Constitution may be proposed in the Senate or House of Representatives. If the same be agreed to by two-thirds of the members elected to each house, such amendment or amendments shall be entered on the Journals respectively, with the yeas and nays taken thereon; and the same shall be submitted to the qualified electors of the State at the next general election thereafter for Representatives; and if a majority of the electors qualified to vote for members of the General Assembly, voting thereon, shall vote in favor of such amendment or amendments, and a majority of each branch of the next General Assembly shall, after such an election and before another ratify the same amendment or amendments, by yeas and nays, the same shall become part of the Constitution: *Provided,* That such amendment or amendments shall have been read three times, on three several days, in each house.

Amendments.

See Const. 1868, XV., 1.

Sec. 2. If two or more amendments shall be submitted at the same time, they shall be submitted in such manner that the

Two or more.

See Const. 1868, XV., 2.

electors shall vote for or against each of such amendments separately.

Constitutional Convention.

See Const. 1868, XV., 3.

Sec. 3. Whenever two-thirds of the members elected to each branch of the General Assembly shall think it necessary to call a Convention to revise, amend or change this Constitution, they shall recommend to the electors to vote for or against a Convention at the next election for Representatives; and if a majority of all the electors voting at said election shall have voted for a Convention, the General Assembly shall, at its next session, provide by law for calling the same; and such Convention shall consist of a number of members equal to that of the most numerous branch of the General Assembly.

See Mew v. Railway Co., 55 S. C., 94; 32 S. E., 828.

ARTICLE XVII.

Miscellaneous Matters.

Qualification of officers.

See Const. 1868, XIV., 1.

Section 1. No person shall be elected or appointed to any office in this State unless he possess the qualifications of an elector: *Provided,* The provisions of this Section shall not apply to the offices of State Librarian and Departmental Clerks, to either of which offices any woman, a resident of the State two years, who has attained the age of twenty-one years, shall be eligible.

A minor may serve by special appointment a Magistrate's summons, and he is not, by so acting, an officer in the sense of the above section. Bell v. Pruitt, 51 S. C., 347; 29 S. E., 5.

Claims against State.

See Const. 1868, XIV., 4.

Sec. 2. The General Assembly may direct by law, in what manner claims against the State may be established and adjusted.

Divorces.

See Const. 1868, XIV., 5.

Sec. 3. Divorces from the bonds of matrimony shall not be allowed in this State.

Supreme Being.

See Const. 1868, XIV., 6.

Sec. 4. No person who denies the existence of a Supreme Being shall hold any office under this Constitution.

Public printing.

See Const. 1868, XIV., 7.

Sec. 5. The printing of the laws, journals, bills, legislative documents and papers for each branch of the General Assembly, with the printing required for the Executive and other departments of the State, shall be let, on contract, in such manner as shall be prescribed by law.

Removal of causes.

See Const. 1868, XIV., 9.

Sec. 6. The General Assembly shall provide for the removal of all causes which may be pending when this Constitution goes into effect to Courts created by the same.

See Middleton v. Taber, 46 S. C., 343; 24 S. E., 282.

Sec. 7. No lottery shall ever be allowed, or be advertised by newspapers, or otherwise, or its tickets be sold in this State; and the General Assembly shall provide by law at its next session for the enforcement of this provision.

Lotteries.

See Const. 1868, XIV., 2.

Sec. 8. It shall be unlawful for any person holding an office of honor, trust or profit to engage in gambling or betting on games of chance; and any such officer, upon conviction thereof, shall become thereby disqualified from the further exercise of the functions of his office, and the office of said person shall become vacant, as in the case of resignation or death.

Gambling and betting.

Sec. 9. The real and personal property of a woman held at the time of her marriage, or that which she may thereafter acquire, either by gift, grant, inheritance, devise or otherwise, shall be her separate property, and she shall have all the rights incident to the same to which an unmarried woman or a man is entitled. She shall have the power to contract and be contracted with in the same manner as if she were unmarried.

Property of married women.

Const. 1898, XIV., 8.

See Holtzclaw v. Gassway, 52 S. C., 553; 30 S. E., 399; Glenn v. Gerald, 64 S. C., 236; 42 S. E. ——.

Sec. 10. All laws now in force in this State and not repugnant to this Constitution shall remain and be enforced until altered or repealed by the General Assembly, or shall expire by their own limitations.

Laws now of force.

See Burkhalter v. Jones, 58 S. C., 91; 36 S. E., 495.

Sec. 11. That no inconvenience may arise from the change in the Constitution of this State, and in order to carry this Constitution into complete operation, it is hereby declared:

First. That all laws in force in this State, at the time of the adoption of this Constitution, not inconsistent therewith and constitutional when enacted, shall remain in full force until altered or repealed by the General Assembly or expire of their own limitation. All ordinances passed and ratified at this Convention shall have the same force and effect as if included in and constituting a part of this Constitution.

Laws now of force.

Ordinances.

These words are the usual repealing words of a statute. Bank v. Kohn, 52 S. C., 120; 29 S. E., 625; Beaurot v. Murphy, 53 S. C., 120; 30 S. E., 825. See McCreight v. Camden, 49 S. C., 94; 26 S. E., 984; Railroad Co. v. Railroad Co., 57 S. C., 317; 35 S. E., 553. All laws of force at the time of the adoption of the present Constitution remained in force, unless they were unconstitutional when enacted, or were inconsistent with the provisions of the Constitution. Railroad Co. v. Columbia, 54 S. C., 277; 32 S. E., 408. When two sections of a Constitution are inconsistent, effect will ordinarily be given to that which is in harmony with other provisions, rather than to that which is inconsistent with more than one provsion. Delk v. Zorn, 48 S. C., 149; 26 S. E. R., 466.

Writs, actions, &c.

Second. All writs, actions, causes of action, proceedings, prosecutions, and rights of individuals, of bodies corporate and of the State, when not inconsistent with this Constitution, shall continue as valid.

Laws inconsistent with Constitution.

Third. The provisions of all laws which are inconsistent with this Constitution shall cease upon its adoption, except that all laws which are inconsistent with such provisions of this Constitution as require legislation to enforce them shall remain in force until such legislation is had.

See Railroad Co. v. Columbia, 54 S. C., 277; 32 S. E., 408. An indictment charging a crime committed before the adoption of the present Constitution should be prosecuted as if no change had been made, except as otherwise provided in the present Constitution.—State v. Richardson, 47 S. C., 173; 25 S. E. R., 210. See Middleton v. Taber, 46 S. C., 344; 24 S. E. R., 282; State v. Tucker, 54 S. C., 251; 32 S. E., 361.

Fines, &c., accruing.

Fourth. All fines, penalties, forfeitures and escheats accruing to the State of South Carolina under the Constitution and laws heretofore in force shall accrue to the use of the State of South Carolina under this Constitution, except as herein otherwise provided.

Recognizances, &c.

Fifth. All recognizances, obligations and all other instruments entered into or executed before the adoption of this Constitution to the State, or to any County, township, city or town therein, and all fines, taxes, penalties and forfeitures due or owing to this State, or to any County, township, city or town therein, and all writs, prosecutions, actions and proceedings, except as herein otherwise provided, shall continue and remain unaffected by the adoption of this Constitution. All indictments which shall have been found, or may hereafter be found, for any crime or offence committed before the adoption of this Constitution may be prosecuted as if no change had been made, except as otherwise provided herein.

Indictments.

State v. Richardson, 47 S. C., 173; 25 S. E., 220.

All officers hold over.

Sixth. All officers, State, executive, legislative, judicial, circuit, district, County, township and municipal, who may be in office at the adoption of this Constitution, or who may be elected before the election of their successors as herein provided, shall hold their respective offices until their terms have expired and until their successors are elected or appointed and qualified as provided in this Constitution, unless sooner removed as may be provided by law; and shall receive the compensation now fixed by the Statute Laws in force at the adoption of this Constitution.

Compensation.

Delk v. Zorn, 48 S. C., 149; 26 S. E., 466.

Seventh. At all elections held for members of the General Assembly in case of a vacancy, or for any other office, State, County or municipal, the qualifications of electors shall remain as they were under the Constitution of eighteen hundred and sixty-eight until the first day of November, in the year eighteen hundred and ninety-six.

Elections.

Eighth. This Constitution, adopted by the people of South Carolina in Convention assembled, shall be in force and effect from and after the thirty-first day of December, in the year eighteen hundred and ninety-five.

Takes effect.

Ninth. The provisions of the Constitution of eighteen hundred and sixty-eight and amendments thereto are repealed by this Constitution, except when re-ordained and declared herein.

Constitution of 1868 repealed.

Middleton v. Taber, 46 S. C., 346; 24 S. E., 282; Delk v. Zorn, 48 S. C., 153; 26 S. E., 466.

Done in Convention in Columbia on the fourth day of December, in the year of our Lord one thousand eight hundred and ninety-five.

JOHN GARY EVANS,
President of the Convention.

IRA B. JONES,
Vice President of the Convention.

Attest:

S. W. VANCE,
Secretary of the Convention.

DELEGATES FROM ABBEVILLE:

FRANK B. GARY.
ROBERT R. HEMPHILL.
J. C. KLUGH.
I. H. McCALLA.
R. F. McCASLAN.
W. C. McGOWAN.

DELEGATES FROM AIKEN:

D. S. HENDERSON.
R. L. GUNTER.
F. P. WOODWARD.

DELEGATES FROM ANDERSON:

J. E. BREAZEALE.
GEO. E. PRINCE.
J. M. SULLIVAN.

D. H. RUSSELL.
J. PERRY GLENN.
L. D. HARRIS.

DELEGATES FROM BARNWELL:

W. C. SMITH.
C. M. HIERS.
A. HOWARD PATTERSON.
ROBERT ALDRICH.
G. DUNCAN BELLINGER.
GEO. H. BATES.

DELEGATES FROM BEAUFORT:

None.

DELEGATES FROM BERKELEY:

E. J. DENNIS.
J. B. MORRISON.
H. H. MURRAY.
JAS. B. WIGGINS.
R. C. McMAKIN.
A. H. DeHAY.

DELEGATES FROM CHARLESTON:

JULIAN MITCHELL.
J. N. NATHANS.
W. St. JULIEN JERVEY.
GEO. F. von KOLNITZ, Jr.
J. P. K. BRYAN.
JOS. L. OLIVER.
WILLIAM MOSELEY FITCH.

DELEGATES FROM CHESTER:

J. L. GLENN.
T. J. CUNNINGHAM.
R. O. ATKINSON.
GEORGE WILLIAMS GAGE.

DELEGATES FROM CHESTERFIELD:

E. J. KENNEDY.
E. N. REDFEARN.
F. P. TAYLOR.

DELEGATES FROM CLARENDON:

DANIEL J. BRADHAM.
JOSEPH S. CANTEY.
JOHN W. KENNEDY.
*J. M. SPROTT.

DELEGATES FROM COLLETON:

D. H. BEHRE.
L. E. PARLER.
C. W. GARRIS.
M. R. COOPER.
M. P. HOWELL.

DELEGATES FROM DARLINGTON:

J. O. A. MOORE.
HENRY CASTLES BURN.
J. N. PARROTT.

DELEGATES FROM EDGEFIELD:

B. R. TILLMAN.
W. J. TALBERT.
W. H. TIMMERMAN.
G. D. TILLMAN.
J. C. SHEPPARD.
R. B. WATSON.

DELEGATES FROM FAIRFIELD:

G. W. RAGSDALE.
W. L. ROSBOROUGH.
THOS. W. BRICE.

DELEGATES FROM FLORENCE:

R. M. McGOWAN.
W. F. CLAYTON.
BROWN B. McWHITE.
*J. O. BYRD.

DELEGATES FROM GEORGETOWN:

I. HARLESTON READ.
E. F. MATHEWS.

DELEGATES FROM GREENVILLE:

J. WALTER GRAY.
G. G. WELLS.
J. THOMAS AUSTIN.

*Died during session.

HUGH M. BARTON.
HUGH B. BUIST.
HENRY J. HAYNESWORTH.

DELEGATES FROM HAMPTON:

WILLIAM J. GOODING.
CHARLES J. C. HUTSON.
AMOS J. HARRISON.

DELEGATES FROM HORRY:

JOHN P. DERHAM.
J. A. McDERMOTTE.
JEREMIAH SMITH.

DELEGATES FROM KERSHAW:

J. W. FLOYD.
C. L. WINKLER.
J. T. HAY.

DELEGATES FROM LANCASTER:

J. N. ESTRIDGE.
JNO. W. HAMEL.

DELEGATES FROM LAURENS:

ALEX. J. SMITH.
R. L. HENRY.
J. H. WHARTON.

DELEGATES FROM LEXINGTON:

C. M. EFIRD.
J. L. SHULER.
E. L. LYBRAND.

DELEGATES FROM MARION:

W. J. MONTGOMERY.
J. EDWIN ELLERBE.
E. B. BERRY.
JAMES D. MONTGOMERY.

DELEGATES FROM MARLBORO:

THOMAS EDWARD DUDLEY.
W. DeWITT EVANS.
THOS. IRBY ROGERS.
*ROBERT HAYNE HODGES.

*Died during session.

Delegates from Newberry:

GEORGE JOHNSTONE.
J. A. SLIGH.
GEO. S. MOWER.
JOS. L. KEITT.

Delegates from Oconee:

J. C. ALEXANDER.
O. M. DOYLE.
WM. J. STRIBLING.

Delegates from Orangeburg:

I. W. BOWMAN.
L. S. CONNOR.
E. H. HOUSER.
OSCAR R. LOWMAN.
A. K. SMOKE.
J. WM. STOKES.

Delegates from Pickens:

WM. THOS. FIELD.
WM. THOS. BOWEN.
R. FRANK SMITH.

Delegates from Richland:

JOHN T. SLOAN.
JOHN JOSEPH McMAHAN.
WILIE JONES.
H. C. PATTON.

Delegates from Spartanburg:

C. A. BARRY.
M. O. ROWLAND.
W. T. BOBO.
W. E. CARVER.
A. S. WATERS.
T. EARLE JOHNSON.
STANYARNE WILSON.

Delegates from Sumter:

T. B. FRASER.
RICHARD D. LEE.
GEO. P. McKAGEN, Sr.

SHEPARD NASH.
JAS. H. SCARBOROUGH.
R. P. STACKHOUSE.

DELEGATES FROM UNION:

JAMES T. DOUGLASS.
WM. A. NICHOLSON.
C. H. PEAKE.
J. C. OTTS.

DELEGATES FROM WILLIAMSBURG:

S. W. GAMBLE.
THOS. M. GILLAND.
GEORGE J. GRAHAM.
WM. R. SINGLETARY.

DELEGATES FROM YORK:

A. H. WHITE.
W. BLACKBURN WILSON.
J. FRANK ASHE.

Articles in Addition to, and Amendments, of the Constitution of the State of South Carolina, 1895.

Article I. of Amendments to the Constitution.

The General Assembly shall provide by law for the condemnation, through proper official channels, of all lands necessary for the proper drainage of the swamp and low lands of this State, and shall also provide for the equitable assessment of all lands so drained, for the purpose of paying the expenses of such condemnation and drainage.

Drainage.

1901, XXIII., 616.

Act ratifying amendment approved February 8, 1901.

Amendment to Section 7, Art. VIII., of the Constitution, Relating to Municipal Bonded Indebtedness.

Whereas the General Assembly did, by Joint Resolution, approved February 19, 1900, submit to the qualified electors of the State, at the general election next thereafter, an amendment to the Section 7, of Article VIII., of the Constitution of the State of South Carolina by adding thereto a clause providing that the limitation imposed by said Section 7, Article VIII., and by Section 5, Article IV., of said Constitution (Article IV. in said Joint Resolution being inadvertently written for Article X., and hereinafter designated as Article IV. instead of Article X., so as to conform to the amendments as proposed and voted on) should not apply to bonded indebtedness incurred by the cities of Columbia, Rock Hill, Charleston, Florence and Georgetown, when the proceeds of said bonds are applied to certain purposes:

And whereas a majority of the electors qualified to vote for members of the General Assembly, voting thereon at the general election next succeeding the passage of the said Joint Resolution, did vote in favor of said amendment.

Section 1. *Be it enacted* by the General Assembly of the State of South Carolina: That the amendment to Section 7, of Article VIII., submitted by the last General Assembly to the qualified electors of the State at the general election next there-

Special provisions as to indebtedness of certain cities.

1901, XXIII., 616.

after, and upon which a majority of the electors qualified to vote for the members of the General Assembly, voting thereon at the last past general election voted in favor thereof, be, and the same is hereby, ratified and made a part of the Constitution of the State of South Carolina, that the said amendment so made, a part of the said Constitution, is as follows:

That the following amendment to Section 7, of Article VIII., of the Constitution be agreed to: Add at the end thereof the following words: *Provided,* That the limitation imposed by this Section and by Section 5, Article IV., of this Constitution shall not apply to bonded indebtedness incurred by the cities of Columbia, Rock Hill, Charleston and Florence, where the proceeds of said bonds are applied solely for the purchase, establishment, maintenance or increase of water works plants, sewerage system; and by the City of Georgetown, when the proceeds of said bonds are applied solely for the purchase, establishment, maintenance or increase of water works plant or sewerage system, gas and electric light plants where the entire revenue arising from the operation of such plants or systems shall be devoted solely and exclusively to the maintenance and operation of the same, and where the question of incurring such indebtedness is submitted to the freeholders and qualified voters of such municipality, as provided in the Constitution, upon the question of other bonded indebtedness.

Approved the 8th day of February, A. D. 1901.

The reference to Sec. 5, Art. IV., held nugatory.—Bray v. City Council, —— S. C., ——; 39 S. E., 812.

CONSTITUTION

OF THE

Commonwealth of South Carolina

1868.

We, the People of the State of South Carolina, in Convention assembled, Grateful to Almighty God for this opportunity, deliberately and peaceably of entering into an explicit and solemn compact with each other, and forming a new Constitution of civil government for ourselves and posterity, recognizing the necessity of the protection of the people in all that pertains to their freedom, safety and tranquility, and imploring the direction of the Great Legislator of the Universe, do agree upon, ordain and establish the following

Declaration of rights.

DECLARATION OF RIGHTS AND FORM OF GOVERNMENT AS THE CONSTITUTION OF THE COMMONWEALTH OF SOUTH CAROLINA.

The State did not lose her position as a State in the Union by secession.—Calhoun v. Calhoun, 2 S. C., 293. And the approval of the Constitution of 1868 by Congress did not give it the force and effect of an Act of Congress.—In re Kennedy, 2 S. C., 220; nor give the force of law to provisions therein in conflict with the United States Constitution.—Calhoun v. Calhoun, 2 S. C., 299.

Inasmuch as many of the provisions of the Constitution of 1868 have been "reordained and declared" in the Constitution of 1895, which are still of force, and unrepealed—Middleton v. Taber, 46 S. C., 346; 24 S. E., 282; Delk v. Zorn, 48 S. C., 153; 26 S. E., 466—it has been here inserted for reference in this Code of Laws.

ARTICLE I.

Declaration of Rights.

See opinion of McGowan, A. J., in Pelzer, Rodgers & Co. v. Campbell & Co., 15 S. C., 581.

Section 1. All men are born free and equal—endowed by their Creator with certain inalienable rights, among which are the rights of enjoying and defending their lives and liberties, of acquiring, possessing and protecting property and of seeking and obtaining their safety and happiness.

Equality of men.

McCollough v. Brown, 41 S. C., 220; 19 S. E., 458, overruled in State v. City Council of Aiken, 42 S. C., 222; 20 S. E., 221; Lumb v. Pinckney, 21 S. C., 471.

Sec. 2. Slavery shall never exist in this State; neither shall involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted.

Slavery prohibited.

Enforcement of penalty for violation of contract for labor.—State v. Williams, 32 S. C., 583; 10 S. E., 551.

Political power vested in the people.

See Const. of 1895, Art. 1, § 1.

Sec. 3. All political power is vested in and derived from the people only; therefore they have the right, at all times, to modify their form of government in such manner as they may deem expedient, when the public good demands.

Paramount allegiance.

Sec. 4. Every citizen of this State owes paramount allegiance to the Constitution and Government of the United States, and no law or ordinance of this State in contravention or subversion thereof can have any binding force.

The Union indissoluble.

Sec. 5. This State shall ever remain a member of the American Union, and all attempts from whatsoever source, or upon whatever pretext, to dissolve the said Union, shall be resisted with the whole power of the State.

Right of petition and discussion.

See Const. of 1895, Art. 1, § 4.

Sec. 6. The right of the people peaceably to assemble to consult for the common good and to petition the Government, or any department thereof, shall never be abridged.

Freedom of speech and of the press.

See Const. of 1895, Art. 1, § 4.

Sec. 7. All persons may freely speak, write, and publish their sentiments on any subject, being responsible for the abuse of that right; and no laws shall be enacted to restrain or abridge the liberty of speech or of the press.

License tax on newspapers not an abridgement of the liberty of the press.—In re Jager, 29 S. C., 438; 7 S. E., 605.

Trials for libel.

See § 21, Art. 1, Const. 1895, and note.

Sec. 8. In prosecutions for the publication of papers investigating the official conduct of officers or men in public capacity, or when the matter published is proper for public information, the truth thereof may be given in evidence; and in all indictments for libel, the jury shall be the judges of the law and the facts.

Does not prevent Judge charging the law, nor the Supreme Court hearing appeal in such cases.—State v. Syphrett, 27 S. C., 29; 2 S. E., 624.

Freedom of conscience.

See § 4, Art. 1, Const. 1895.

Sec. 9. No person shall be deprived of the right to worship God according to the dictates of his own conscience: *Provided,* That the liberty of conscience hereby declarted shall not justify practices inconsistent with the peace and moral safety of society.

Provision for religious training in bequest.—Magee v. O'Neill, 19 S. C., 170.

Sunday laws, under similar provision in former Constitution.—City of Charleston v. Benjamin, 2 Strob., 508.

Religious worship protected.

See § 4, Art. 1, Const. 1895.

Sec. 10. No form of religion shall be established by law; but it shall be the duty of the General Assembly to pass suitable laws to protect every religious denomination in the peaceable enjoyment of its own mode of worship.

Trial by jury.

See § 22, Art. 5, Const. 1895.

Sec. 11. The right of trial by jury shall remain inviolate.

Juries in inferior Courts.—State v. Williams, 40 S. C., 373; 19 S. E., 5; Anderson v. O'Donnell, 29 S. C., 355; 7 S. E., 523. Considered in connection with Sec. 2 of Art. 5.—Utsey v. Railroad Co., 38 S. C., 399; 17 S. E., 141. Does not forbid trial without jury by Trial Justice in special proceeding to eject tenant.—Frazee v. Beattie, 26 S. C., 348; 2 S. E., 125. Does not prevent change of law as to number of peremptory challenges.—State v. Wyse, 32 S. C., 45; 10 S. E., 612. Nor does it apply to cases in the equitable jurisdiction of the Court.—Lucken v. Wichman, 5 S. C., 412. Construed in State v. Williams, 35 S. C., 344; 14 S. E., 820; State v. Boatwright, 10 Rich., 407; Cregier v. Burton, 2 Strob., 487; Gilmer v. Hunnicutt, 57 S. C., 166; 35 S. E., 521; Murray v. Alston, 1 Mills Const., 128; Smith v. Bryce, 17 S. C., 538; Beaufort v. Ohlandt, 24 S. C., 162.

Personal rights.

See § 5, Art. 1, Const. 1895.

Sec. 12. No person shall be disqualified as a witness, or be prevented from acquiring, holding and transmitting property, or be hindered in acquiring education, or be liable to any other punishment for any offence, or be subjected in law to any other restraints or disqualifications in regard to any personal rights than such as are laid upon others under like circumstances.

Liability of railroads for fires.—McCandless v. Railroad Co., 38 S. C., 103; 16 S. E., 429; Mobile Ins. Co. v. Railroad Co., 19 S. E., 859; 41 S. C., 408; Lipfield v. R. R. Co., 41 S. C., 285; 19 S. E., 497.

Liability of Counties for defective bridges.—Blum v. Richland Co., 38 S. C., 291; 17 S. E., 20.

Class legislation.—Utsey v. Hiott, 30 S. C., 360; 9 S. E., 338; Sanders v. Venning, 38 S. C., 502; 17 S. E., 134; Town Council v. Pressley, 33 S. C., 56; 11 S. E., 545.

Rights of citizens.—McCollough v. Brown, 41 S. C., 220; 19 S. E., 458, overruled in State v. City Council of Aiken, 42 S. C., 222; 20 S. E., 221; Mauldin v. Greenville, 42 S. C., 293; 20 S. E., 842; Charleston v. Oliver, 16 S. C., 47; State v. Chester, 18 S. C., 464; State v. Berlin, 21 S. C., 294; Information v. Oliver, 21 S. C., 319; State v. Williams, 32 S. C., 123; 10 S. E., 551.

Rights of accused persons.

See § 18, Art. 1, Const. 1895, and note.

Sec. 13. No person shall be held to answer for any crime or offence until the same is fully, fairly, plainly, substantially, and formally described to him; or be compelled to accuse or furnish evidence against himself; and every person shall have a right to produce all proofs that may be favorable to him, to meet the witnesses against him face to face, to have a speedy and public trial by an impartial jury, and to be fully heard in his defence by himself or by his counsel, or by both, as he may elect.

Waiver of constitutional rights by consent in open Court.—State v. Faile, 43 S. C., 42; 20 S. E., 799.

Juries in inferior Courts and rights of appeal.—State v. Williams, 40 S. C., 373; 19 S. E., 5.

Stenographer's notes of testimony may be read over to jury in absence of prisoner.—State v. Haines, 36 S. C., 504; 15 S. E., 555.

Right to hearing.—State v. Atkinson, 40 S. C., 363; 18 S. E., 1021.

Privilege of defendant to testify or not as he desires.—State v. Howard, 35 S. C., 197; 14 S. E., 481.

Sufficiency of indictment.—State v. Jeffcoat, 54 S. C., 196; 32 S. E., 298; State v. Brown, 24 S. C., 227.

Prevents taking testimony in criminal case by commission, without consent of the defendant.—State v. Murphy, 48 S. C., 4; 25 S. E., 43; State v. Bowen, 4 McC., 253; State v. Smith, 8 Rich., 461.

Right to be heard by counsel.—State v. Courteney, 23 S. C., 185.

Ex post facto laws prohibited.

See § 8, Art. I, Const. 1895.

Sec. 14. No person shall be arrested, imprisoned, despoiled, or dispossessed of his property, immunities, or privileges, put out of the protection of the law, exiled, or deprived of his life, liberty, or estate, but by the judgment of his peers or the law of the land. And the General Assembly shall not enact any law that shall subject any person to punishment without trial by jury; nor shall he be punished but by virtue of a law already established, or promulgated prior to the offence, and legally applied.

Dispensary Law constitutional.—State v. City Council of Aiken, 42 S. C., 222; 20 S. E., 221; overruling McCollough v. Brown, 41 S. C., 220; 19 S. E., 458.

Justices Courts, trial by jury in.—State v. Williams, 40 S. C., 373; 19 S. E., 5.

Jury trial in municipal Courts.—Ex parte Schmidt, 24 S. C., 365.

Betterment law sustained.—Lumb v. Pinckney, 21 S. C., 71.

Taking property by due process of law.—State v. Stackhouse, 14 S. C., 422; ex parte Lynch, 16 S. C., 32; Information v. Oliver, 21 S. C., 319; Mauldin v. Greenville, 42 S. C., 293; 20 S. E., 842.

See also State v. Bowen, 3 Strob., 573; State v. Maxey, 1 McC., 501; State v. Simons, 2 Speer, 761; Talvade v. City Council, 3 McC., 147; City Council v. Goldsmith, 2 Speer, 428; State v. Allen, 2 McC., 55.

Publicity of Courts.

See § 15, Art. 1, Const. 1895.

Sec. 15. All Courts shall be public, and every person, for any injury that he may receive in his lands, goods, person, or reputation, shall have remedy by due course of law and justice administered without unnecessary delay.

The object of this Section was not to open the Courts of the State to all persons, to demand redress for injuries received anywhere, but simply to secure to the inhabitants of this State, for whom the Constitution was made, access to the Courts for the redress of any injury they may have received.—Central R. R. & B'k'g Co. v. Ga. Construction & I. Co., 32 S. C., 319; 11 S. E., 192.

Right of bail.

See § 20, Art. 1, Const. 1895.

Sec. 16. All persons shall, before conviction, be bailable by sufficient sureties, except for capital offences, when the proof is evident or the presumption great; and excessive bail shall not, in any case, be required, nor corporal punishment inflicted.

Habeas Corpus.

See § 23, Art. 1, Const. 1895.

Sec. 17. The privilege of the writ of *Habeas Corpus* shall not be suspended, except when, in case of insurrection, rebellion or invasion, the public safety may require it.

Not triable twice for the same offense.

See § 17, Art. 1, Const. 1895.

Sec. 18. No person, after having been once acquitted by a jury, shall again, for the same offence, be put in jeopardy of his life or liberty.

Where defendant was placed on trial Mch. 2, 1896, after the Constitution of 1895 took effect, for an offence committed Nov. 27th, 1895, when the Constitution of 1868 was in force, the plea of former jeopardy must be determined under the Constitution of 1895.—State v. Richardson, 47 S. C., 166; 25 S. E., 220. Where defendant was acquitted, the State could not appeal.—State v. Gathers, 15 S. C., 370. New trial may be had after arrest of judgment on motion of defendant.—State v. Stephens, 13 S. C., 285. The Constitution of 1868 only exempted prisoner from a second trial, where there had been an acquittal.—State v. Wyse, 33 S. C., 582; 12 S. E., 556; State v. Syphrett, 27 S. C., 29; 2 S. E., 624; State v. Shirer, 20 S. C., 406. What amounts to an acquittal.—State v. Briggs, 27 S. C., 85; 2 S. E., 854; State v. McKee, 1 Bail., 651; State v. Stephens, 13 S. C., 286; and other cases cited in note to Sec. 59, Criminal Code.

Punishments.

See § 17, Art. 1, Const. 1895, and note.

Sec. 19. All offences less than felony, and in which the punishment does not exceed a fine of one hundred dollars, or imprisonment for thirty days, shall be tried summarily before a Justice of the Peace, or other officer authorized by law, on information, under oath, without indictment or intervention of a Grand Jury, saving to the defendant the right of appeal; and no person shall be held to answer for any higher crime or offence unless on presentment of a Grand Jury, except in cases arising in the land and naval service, or in the militia when in actual service in time of war or public danger.

Violation Dispensary Law.—State v. Pickett, 47 S. C., 101; 25 S. E., 46.

Municipal Courts, appeals from.—City Council of Anderson v. Fowler, 25 S. E., 900; 48 S. C., 8; City Council of Charleston v. Brown, 42 S. C., 184; 20 S. E., 56. Appeals from Trial Justices.—Beaufort v. Ohlandt, 24 S. C., 161. Could not sentence to hard labor.—State v. Williams, 40 S. C., 373; 19 S. E., 5.

Waiver of presentment of grand jury.—State v. Faile, 43 S. C., 52; 20 S. E., 798.

Under this Section the powers were conferred on Trial Justices.—State v. Fillebrown, 2 S. C., 404; State v .Harper, 6 S. C., 464; State v. Sims, 16 S. C., 492; State v. Padgett, 18 S. C., 319; State v. Penny, 19 S. C., 222.

Trial Justices had no jurisdiction where punishment was not limited.—State v. Jenkins, 26 S. C., 121; 1 S. E., 439; State v. Cooler, 30 S. C., 105; 8 S. E., 692.

Construed in connection with Art. IV., Secs. 1 and 22, in State v. Glenn, 14 S. C., 118.

Jurisdiction of Trial Justices in cases between landlord and tenant.—Frazee v. Beattie, 26 S. C., 348; 2 S. E., 125.

Imprisonment for debt.

See § 24, Art. 1, Const. 1895.

Sec. 20. No person shall be imprisoned for debt, except in cases of fraud; and a reasonable amount of property, as a homestead, shall be exempted from seizure or sale for the payment of any debts or liabilities, except for the payment of such obligations as are provided for in this Constitution.

Imprisonment under bastardy law constitutional.—State v. Brewer, 38 S. C., 263; 16 S. E., 1001. For failure to pay license tax.—City of Charleston v. Oliver, 16 S. C., 47. For violation of labor contract.—State v. Williams, 32 S. C., 583; 10 S. E., 551.

Order committing executor to jail until he pays ascertained balance due by him is imprisonment for debt.—Golson v. Holman, 28 S. C., 353; 4 S. E., 811.

Abolishing imprisonment for debt held not to impair the obligation of prior contracts.—Ware v. Miller, 9 S. C., 13.

The right of homestead was defined and restricted in Art. 2, Sec. 32.—Duncan v. Barnett, 11 S. C., 33; Pelzer v. Campbell, 15 S. C., 594; Bank v. Harlin, 18 S. C., 434; Elliott v. Mackorell, 19 S. C., 242; Norton v. Bradham, 21 S. C., 375; Munro v. Jeter, 24 S. C., 35; Simonds v. Haithcock, 24 S. C., 210. Does not apply to taxes.—Charleston v. Oliver, 16 S. C., 47.

Obligation of contracts.

See § 8, Art. 1, Const. 1895.

Sec. 21. No bill of attainder, *ex post facto* law, nor any law impairing the obligation of contracts, shall ever be enacted; and no conviction shall work corruption of blood or forfeiture of estate.

See cases noted under subdivision 1, Sec. 10, Art. I., of United States Constitution, *ante*.

Right of search.

See § 16, Art. 1, Const. 1895.

Sec. 22. All persons have a right to be secure from unreasonable searches or seizures of their persons, houses, papers or possessions. All warrants shall be supported by oath or affirmation, and the order of the warrant to a civil officer to make search or seizure in suspected places, or to arrest one or more suspected persons, or to seize their property, shall be accompanied with a special designation of the persons or objects of search, arrest or seizure; and no warrant shall be issued but in the cases and with the formalities prescribed by the laws.

A warrant must be supported by oath.—State v. Wimbush, 9 S. C., 309. See also Rogers v. Marlboro County, 32 S. C., 555; 11 S. E., 383.

Held not to prevent the use, as evidence against defendant, of papers taken from his room.—State v. Atkinson, 40 S. C., 363; 18 S. E., 1021.

Right of way.

See § 17, Art. 1, Const. 1895.

Sec. 23. Private property shall not be taken or applied for public use, or for the use of corporations, or for private use, without the consent of the owner or a just compensation being made therefor: *Provided, however,* That laws may be made securing to persons or corporations the right of way over the lands of either persons or corporations, and, for works of internal improvement, the right to establish depots, stations, turnouts, etc.; but a just compensation shall, in all cases, be first made to the owner.

Insufficient provision for compensation.—Fort v. Goodwin, 36 S. C., 445; 15 S E., 723.

Betterment law.—Lamb v. Pinckney, 21 S. C., 471.

Law as to liability of railroads for fires.—McCandless v. Railroad Co., 38 S. C., 103; 16 S. E., 429; Mobile Ins. Co. v. Railroad Co., 41 S. C., 408; 19 S. E., 858.

Application to corporations.—R. R. Co. v. Gibbes, 27 S. C., 385; 4 S. E., 49.

Police power as to lots in city.—City Council v. Werner, 38 S. C., 488; 17 S. E., 33.

Acquirement of right of way by railway companies.—Ross v. Ry. Co., 33 S. C., 477; 12 S. E., 101; Tompkins v. R. R. Co., 37 S. C., 382; 16 S. E., 149.

As to acquirement of right of way by business corporations.—Ex parte Bacot, 36 S. C., 125; 15 S. E., 125.

Changing the grade of a street, after it has been once established, held not a "taking" within the meaning of this Section.—Garraux v. City Council of Greenville, 53 S. C., 575; 31 S. C., 597; see also Mauldin v. Greenville, 42 S. C., 293; 20 S. E., 842.

The exemption of certain sections of a County from the operation of the general stock law is not a taking of property for either public or private use.—Goodale v. Sowell, 62 S. C., 516; 40 S. E., 970.

The proviso did not affect rights of way existing before 1868.—Guignard v. Kinsler, 4 S. C., 330. Nor was it violated by giving right of way to the nearest highway.—State v. Stackhouse, 14 S. C., 417, since held unconstitutional under the Constitution of 1895.—Beaudrot v. Murphy, 53 S. C., 118; 30 S. E., 825; see also York v. Fewell, 21 S. C., 109. As to opening new road by County, see State v. Brown, 14 S. C., 383.

Suspension of laws.

See § 13, Art. 1, Const. 1895.

Sec. 24. The power of suspending the laws, or the execution of the laws, shall never be exercised but by the General Assembly, or by authority derived therefrom; to be exercised in such particular cases only as the General Assembly shall expressly provide for.

Martial law.

See § 27, Art. 1, Const. 1895.

Sec. 25. No person shall, in any case, be subject to martial law, or to any pains or penalties by virtue of that law, except those employed in the army or navy of the United States, and except the militia in actual service, but by authority of the General Assembly.

Departments of Government distinct.

See § 14, Art. 1, Const. 1895.

Sec. 26. In the government of this Commonwealth, the Legislative, Executive and Judicial powers of the Government shall be forever separate and distinct from each other, and no person or persons exercising the functions of one of said departments shall assume or discharge the duties of any other.

Held not to prevent issuance of mandamus to State officer to perform a legal duty.—State ex rel. Wallace v. Hayne, 8 S. C., 367; see also McLaughlin v. County Commissioners, 7 S. C., 375; Mauldin v. Greenville, 42 S. C., 293; 20 S. E., 842.

Redress of grievance.

See § 3, Art. 1, Const. 1895.

Sec. 27. The General Assembly ought frequently to assemble for the redress of grievances and for making new laws as the common good may require.

Right to bear arms.

See § 26, Art. 1, Const. 1895.

Sec. 28. The people have a right to keep and bear arms for the common defence. As in times of peace, armies are dangerous to liberty, they ought not to be maintained without the consent of the General Assembly. The military power ought always to be held in an exact subordination to the civil authority and be governed by it.

Quartering of soldiers.

See § 26, Art. 1, Const. 1895.

Sec. 29. In time of peace no soldier shall be quartered in any house without the consent of the owner; and, in time of war, such quarter shall not be made but in a manner prescribed by law.

Non-combatants.

Sec. 30. No person who conscientiously scruples to bear arms shall be compelled so to do, but he shall pay an equivalent for personal service.

Freedom of elections.

See § 10, Art. 1, Const. 1895.

Sec. 31. All elections shall be free and open, and every inhabitant of this Commonwealth possessing qualifications provided for in this Constitution, shall have an equal right to elect officers and be elected to fill public office.

A person could not hold two incompatible offices.—State v. Buttz, 9 S. C., 186. Cited in dissenting opinion.—Butler v. Ellerbe, 44 S. C., 287; 22 S. E., 425.

Property qualification.

Sec. 32. No property qualification shall be necessary for an election to or the holding of any office, and no office shall be created, the appointment to which shall be for a longer time than good behavior. After the adoption of this Constitution, any person who shall fight a duel, or send or accept a challenge for that purpose, or be an aider or abettor in fighting a duel, shall be deprived of holding any office of honor or trust in this State, and shall be otherwise punished as the law shall prescribe.

Duellists disqualified.

See § 11, Art. 1, Const. 1895.

Right of suffrage.

Sec. 33. The right of suffrage shall be protected by laws regulating elections, and prohibiting, under adequate penalties, all undue influences from power, bribery, tumult or improper conduct.

See § 9, Art. 1, Const. 1895.

Cited in dissenting opinion.—Butler v. Ellerbe, 44 S. C., 287; 22 S. E., 425.

Apportionment of representation.

Sec. 34. Representation shall be apportioned according to population, and no person in this State shall be disfranchised or deprived of any of the rights or privileges now enjoyed, except by the law of the land or the judgment of his peers.

See § 2, Art. 1, Const. 1895.

Forfeiture of residence.

Sec. 35. Temporary absence from the State shall not forfeit a residence once obtained.

See § 12, Art. 1, Const. 1895.

Taxation of property.

Sec. 36. All property subject to taxation shall be taxed in proportion to its value. Each individual of society has a right to be protected in the enjoyment of life, liberty, and property, according to standing laws. He should, therefore, contribute his share to the expense of his protection, and give his personal service when necessary.

See § 6, Art. 1, Const. 1895.

Compared with Art. 2, Sec. 33.—State v. Hayne, 4 S. C., 422; a license tax on business sustained.—*Ib.*

Act requiring property owners to remove trash from adjoining streams an unwarranted tax on property.—State v. Tucker, 35 S. E., 218; 56 S. C., 516. See also Thomas v. Town of Moultrieville, 29 S. E., 647; 52 S. C., 181. Application to corporations.—R. R. Co. v. Gibbes, 27 S. C., 385; 4 S. E., 49; State v. C. & D. R. R. Co., 54 S. C., 565; 32 S. E., 691.

Sale for non-payment of taxes.—Ex parte Lynch, 16 S. C., 32.

Imposts, taxes or duties.

Sec. 37. No subsidy, charge, impost tax, or duties shall be established, fixed, laid, or levied, under any pretext whatsoever, without the consent of the people or their representatives lawfully assembled.

See § 7, Art. 1, Const. 1895.

Considered in connection with Art. II., Sec. 33.—State v. Hayne, 4 S. C., 422.

Excessive fines.

Sec. 38. Excessive fines shall not be imposed, nor cruel and unusual punishment inflicted, nor shall witnesses be unreasonably detained.

See § 19, Art. 1, Const. 1895.

Ex parte Keeler, 45 S. C., 537; 23 S. E., 865.

Titles of nobility and distinctions of race or color prohibited.

Sec. 39. No title of nobility or hereditary emolument shall ever be granted in this State. Distinction on account of race or color, in any case whatever, shall be prohibited, and all classes of citizens shall enjoy equally all common, public, legal, and political privileges.

Freedom of navigable waters.

Sec. 40. All navigable waters shall remain forever public highways, free to the citizens of the State and the United States, without tax, impost or toll imposed; and no tax, toll, impost, or wharfage shall be imposed, demanded, or received from the owner of any merchandise or commodity, for the use of the shores, or any wharf erected on the shores, or in or over the waters of any navigable stream, unless the same be authorized by the General Assembly.

See § 28, Art. 1, Const. 1895.

Steamboat Co. v. R. R. Co., 46 S. C., 333; 24 S. E., 337.

Reserved rights.

Sec. 41. The enumeration of rights in this Constitution shall not be construed to impair or deny others retained by the people, and all powers not herein delegated remain with the people.

Dispensary law constitutional.—State ex rel. George v. City Council of Aiken, 42 S. C., 222; 20 S. E., 221; overruling McCollough v. Brown, 41 S. C., 220; 19 S. E., 458.

License law sustained.—Information v. Oliver, 21 S. C., 319. Taxation for public purposes only.—Feldman v. City Council, 23 S. C., 57. Does not reserve legislative powers granted in Art. II., Sec. 1.—State v. Hayne, 4 S. C., 1.

ARTICLE II.

Legislative Department.

Legislature.

See § 1, Art. 3, Const. 1895.

Section 1. The Legislative power of this State shall be vested in two distinct branches, the one to be styled the "Senate," and the other the "House of Representatives," and both together the "General Assembly of the State of South Carolina."

As to change of venue, Art. 5, Sec. 2, is not exhaustive.—Utsey v. R. R. Co., 38 S. C., 399; 17 S. E., 141.

Considered in Floyd v. Perrin, 30 S. C., 1; 8. S. E., 14; Mauldin v. Greenville, 42 S. C., 293; 20 S. E., 842; State v. City Council of Aiken, 42 S. C., 222; 20 S. E., 221, overruling McCollough v. Brown, 41 S. C., 220; 19 S. E., 458. See also Pelzer v. Campbell, 15 S. C., 582.—Ex parte Lynch, 16 S. C., 32; State v. Gaillard, 11 S. C., 312; State v. Hayne, 4 S. C., 420; State v. Co. Treas., 4 S. C., 520.

Delegation of Legislative power.—State v. Columbia, 17 S. C., 80; Port Royal Mining Co. v. Hagood, 30 S. C., 519; 9 S. E., 686.

Representatives.

See § 2, Art. 3, Const. 1895.

Sec. 2. The House of Representatives shall be composed of members chosen by ballot every second year, by the citizens of this State, qualified as in this Constitution is provided.

Judicial districts.

See § 3, Art. 3, Const. 1895.

Sec. 3. The Judicial Districts shall hereafter be designated as Counties, and the boundaries of the several Counties shall remain as they are now established, except the County of Pickens, which is hereby divided into two Counties, by a line leaving the southern boundary of the State of North Carolina where the White Water River enters this State, and thence down the centre of said river, by whatever names known, to Ravenel's Bridge, on Seneca River, and thence along the centre of the road leading to Pendleton Village, until it intersects the line of the County of Anderson; and the territory lying east of said line shall be known as the County of Pickens; and the territory lying west of said line shall be known as the County of Oconee: *Provided,* That the General Assembly shall have the power at any time to organize new Counties by changing the boundaries of any of the old ones; but no new County shall be hereafter formed of less extent than six hundred and twenty-five square miles, nor shall any existing Counties be reduced to a less extent than six hundred and twenty-five square miles. Each County shall constitute one Election District.

Amended: 1875, XV., 1014. See amendments, *post.*—Segars v. Parrott, 54 S. C., 23; 31 S. E., 677.

Apportionment of Representatives.

See § 3, Art. 3, Const. 1895.

Sec. 4. The House of Representatives shall consist of one hundred and twenty-four members, to be apportioned among the several Counties according to the number of inhabitants contained in each. An enumeration of the inhabitants, for this purpose, shall be made in eighteen hun-

dred and sixty-nine, and again in eighteen hundred and seventy-five, and shall be made in the course of every tenth year thereafter, in such manner as shall be by law directed; and Representatives shall be assigned to the different Counties in the above mentioned proportion, by Act of the General Assembly at the session immediately succeeding every enumeration: *Provided,* That until the apportionment, which shall be made upon the next enumeration shall take effect, the representation of the several Counties, as herein constituted, shall be as follows:

Abbeville five, Anderson three, Barnwell six, Beaufort seven, Charleston eighteen, Chester three, Clarendon two, Colleton five, Chesterfield two, Darlington four, Edgefield seven, Fairfield three, Georgetown three, Greenville four, Horry two, Kershaw three, Lancaster two, Laurens four, Lexington two, Marion four, Marlboro two, Newberry three, Oconee two, Orangeburg five, Pickens one, Richland four, Spartanburg four, Sumter four, Union three, Williamsburg three, York four.

Amended: being struck out and new Section inserted, 1886, XIX., 499. See amendments, *post.*

Cited in Williams v. Benet, 35 S. C., 150; 14 S. E., 311; Sullivan v. Speights, 14 S. C., 361.

Duty of Governor as to enumeration.

Sec. 5. If the enumeration herein directed shall not be made in the course of the year appointed for the purpose, it shall be the duty of the Governor to have it effected as soon thereafter as shall be practicable.

Amended by being struck out: 1886, XIX., 499. See amendments, *post.*

Assignment of Representatives.

See § 4, Art. 3, Const. 1895.

Sec. 6. In assigning Representatives to the several Counties, the General Assembly shall allow one Representative to every one hundred and twenty-fourth part of the whole number of inhabitants in the State: *Provided,* That if in the apportionment of Representatives any County shall appear not to be entitled, from its population, to a Representative, such County shall nevertheless send one Representative; and if there be still a deficiency of the number of Representatives required by Section fourth of this Article, such deficiency shall be supplied by assigning Representatives to those Counties having the largest surplus fractions.

When to take effect.

See § 5, Art. 3, Const. 1895.

Sec. 7. No apportionment of Representatives shall be construed to take effect, in any manner, until the general election which shall succeed such apportionment.

Senators.

See § 6, Art. 3, Const. 1895.

Sec. 8. The Senate shall be composed of one member from each County, to be elected, for the term of four years, by the qualified voters of the State, in the same manner in which members of the House of Representatives are chosen; except the County of Charleston, which shall be allowed two Senators.

Cited in Williams v. Benet, 35 S. C., 150; 14 S. E., 311.

Two classes.

See § 8, Art. 3, Const. 1895.

Sec. 9. Upon the meeting of the first General Assembly which shall be chosen under the provisions of this Constitution, the Senators shall be divided, by lot, into two classes, as nearly equal as may be; the seats of the Senators of the first class to be vacated at the expiration of two years after the Monday following the general election, and of those of the second class at the expiration of four years; so that, except as above provided, one-half of the Senators may be chosen every second year.

Cited in Simpson v. Willard, 14 S. C., 198.

Eligibility.

See § 7, Art. 3, Const. 1895.

Sec. 10. No person shall be eligible to a seat in the Senate or House of Representatives who at the time of his election is not a citizen of the United States; nor any one who has not been for one year next preceding his election a resident of this State, and for three months next preceding his election a resident of the County whence he may be chosen, nor any one who has been convicted of an infamous crime. Senators shall be at least twenty-five, and Representatives at least twenty-one years of age.

Time of election.

See § 8, Art. 3, Const. 1895.

Sec. 11. The first election for Senators and Representatives under the provisions of this Constitution shall be held on the fourteenth, fifteenth and sixteenth days of April, of the present year; and the second election shall be held on the third Wednesday in October, eighteen hundred and seventy, and forever thereafter on the same day in every second year in such manner and at such places as the General Assembly may hereafter provide.

Amended, 1873, XV., 467. See amendments, *post*.
Cited in dissenting opinion.—Butler v. Ellerbe, 44 S. C., 289; 22 S. E., 425. Time for election of State officers.—State v. Sims, 18 S. C., 462.

Meetings of Legislature.

See § 9, Art. 3, Const. 1895.

Sec. 12. The first session of the General Assembly after the ratification of this Constitution shall be convened on the second Tuesday of May of the present year in the city of Columbia (which shall remain the seat of Government until otherwise determined by the concurrence of two-thirds of both branches of the whole representation) and thereafter on the fourth Tuesday in November annually. Should the casualties of war or contagious diseases render it unsafe to meet at the seat of government, then the Governor may, by proclamation, appoint a more secure and convenient place of meeting.

Term of office.

See § 10, Art. 3, Const. 1895.

Sec. 13. The terms of office of the Senators and Representatives chosen at a general election, shall begin on the Monday following such election.

Quorum.

See § 11, Art. 3, Const. 1895.

Sec. 14. Each House shall judge of the election returns and qualifications of its own members; and a majority of each House shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may compel the attendance of absent members, in such manner and under such penalties as may be provided by law.

Cited in Williams v. Benet, 35 S. C., 150; 14 S. E., 311. Sixty-three members a quorum of the House of Representatives.—State ex rel. Wallace v. Hayne, 8 S. C., 367.

Officers.

See § 12, Art. 3, Const. 1895.

Sec. 15. Each House shall choose its own officers, determine its rules of proceeding, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member, but not a second time for the same cause.

Right to arrest and punish.

See § 13, Art. 3, Const. 1895.

Sec. 16. Each House may punish by imprisonment, during its sitting, any person not a member, who shall be guilty of disrespect to the House by any disorderly or contemptuous behavior in its presence; or who, during the time of its sitting, shall threaten harm to body or estate of any member for anything said or done in either House, or who shall assault any of them therefor, or who shall assault or arrest any witness or other person ordered to attend the House, in his going thereto or returning therefrom, or who shall rescue any person arrested by order

of the House: *Provided,* That such time of imprisonment shall not in any case extend beyond the session of the General Assembly.

Sec. 17. The members of both Houses shall be protected in their persons and estates during their attendance on, going to, and returning from, the General Assembly, and ten days previous to the sitting, and ten days after the adjournment thereof. But these privileges shall not be extended so as to protect any member who shall be charged with treason, felony, or breach of the peace.

Privileges of members.

See § 14, Art. 3, Const. 1895.

Sec. 18. Bills for raising revenue shall originate in the House of Representatives, but may be altered, amended, or rejected by the Senate; and all other bills may originate in either House, and may be amended, altered, or rejected by the other.

Revenue Bills.

See § 15, Art. 3, Const. 1895.

Sec. 19. The style of all laws shall be, "Be it enacted by the Senate and House of Representatives of the State of South Carolina, now met and sitting in General Assembly, and by the authority of the same."

Style of laws.

See § 16, Art. 3, Const. 1895.

Sec. 20. Every Act or Resolution having the force of law shall relate to but one subject, and that shall be expressed in the title.

But one subject.

See § 17, Art. 3, Const. 1895.

See also Sec. 17, Art. 3, Const. of 1895. Acts violative of this Section.—State v. Crosby, 51 S. C., 247; 28 S. E., 529; Floyd v. Perrin, 30 S. C., 1; 8 S. E., 14; Utley v. Cavender, 31 S. C., 282; 9 S. E., 957; Charleston v. Oliver, 16 S. C., 47.

Construed with Sec. 3, Art. 5, as to General Statutes of 1882.—State v. McDaniel, 19 S. C., 114; City Council v. Weller, 34 S. C., 357; 13 S. E., 630; Kaminitsky v. R. R. Co., 25 S. C., 53.

Act sustained.—Connor v. Railway Co., 23 S. C., 427.

Also construed in Morton, Bliss & Co. v. Comptroller General, 4 S. C., 430; State v. County Treasurer, 4 S. C., 520; Bond Debt Cases, 12 S. C., 203.

Sec. 21. No bill shall have the force of law until it shall have been read three times, and on three several days, in each House, has had the great seal of State affixed to it, and has been signed in the Senate House by the President of the Senate and the Speaker of the House of Representatives.

Must be read three times.

See § 18, Art. 3, Const. 1895.

An Act must have had three readings in each House.—State v. Hagood, 13 S. C., 53; State v. Platt, 2 S. C., 150. But this does not require three readings of amendments, &c.—State v. Brown, 33 S. C., 151; 11 S. E., 641.

Sec. 22. No money shall be drawn from the Treasury, but in pursuance of an appropriation made by law; and a regular statement and account of the receipts and expenditures of all public moneys shall be published annually, in such manner as may be by law directed.

Drafts on the Treasury.

See § 9, Art. 10, Const. 1895.

Cited in dissenting opinion.—Butler v. Ellerbe, 44 S. C., 296; 22 S. E., 425; State v. Corbin, 16 S. C., 534.

Sec. 23. Each member of the first General Assembly under this Constitution shall receive six dollars per diem while in session; and the further sum of twenty cents for every mile of the ordinary route of travel in going to and returning from the place where such session is held; after which they shall receive such compensation as shall be fixed by law; but no General Assembly shall have the power to increase the compensation of its own members. And when convened in extra session they shall receive the same mileage and per diem compensation as are fixed by law for the regular session, and none other.

Pay of members.

See § 19, Art. 3, Const. 1895.

Sec. 24. In all elections by the General Assembly or either House thereof, the members shall vote *"viva voce,"* and their votes, thus given,

Votes *viva voce.*

See § 20, Art. 3, Const. 1895.

shall be entered upon the journal of the House to which they respectively belong.

State v. Hagood, 13 S. C., 62.

Adjournments.

See § 21, Art. 3, Const. 1895.

Sec. 25. Neither House during the session of the General Assembly, shall, without the consent of the other adjourn for more than three days, nor to any other place than that in which the Assembly shall be at the time sitting.

Journals.

See § 22, Art. 3, Const. 1895.

Protests.

Sec. 26. Each House shall keep a journal of its own proceedings, and cause the same to be published immediately after its adjournment, excepting such parts as in its judgment may require secrecy; and the yeas and nays of the members of either House, on any question, shall at the desire of any two members present, be entered on the journals. Any member of either House shall have liberty to dissent from and protest against, any Act or Resolution which he may think injurious to the public or to an individual, and have the reasons of his dissent entered on the journals.

State v. Hagood, 13 S. C., 62; State v. Platt, 2 S. C., 150, overruled in State ex rel. Groeschel v. Town Council of Chester, 39 S. C., 307; 17 S. E., 752; see also State v. Smalls, 11 S. C., 262.

Open doors.

See § 23, Art. 3, Const. 1895.

Sec. 27. The doors of each House shall be open, except on such occasions as in the opinion of the House may require secrecy.

Ineligibility.

See § 24, Art. 3, Const. 1895.

Sec. 28. No person shall be eligible to a seat in the General Assembly whilst he holds any office of profit or trust under this State, the United States of America, or any of them, or under any other power, except officers in the militia, magistrates or Justices of inferior Courts, while such Justices receive no salary. And if any member shall accept or exercise any of the said disqualifying offices, he shall vacate his seat: *Provided,* That this prohibition shall not extend to the members of the first General Assembly.

Failure to elect.

Refusal to qualify.

See § 25, Art. 3, Const. 1895.

Writs of election.

Sec. 29. If any election district shall neglect to choose a member or members on the day of election, or if any person chosen a member of either House shall refuse to qualify and take his seat, or shall resign, die, depart the State, accept any disqualifying office, or become otherwise disqualified to hold his seat, a writ of election shall be issued by the President of the Senate, or Speaker of the House of Representatives, as the case may be, for the purpose of filling the vacancy thereby occasioned, for the remainder of the term for which the person so refusing to qualify, resigning, dying, departing the State, or becoming disqualified, was elected to serve, or the defaulting election district ought to have chosen a member or members.

Sec. 30. Members of the General Assembly, and all officers before they enter upon the execution of the duties of their respective offices, and all members of the bar, before they enter upon the practice of their profession, shall take and subscribe the following oath:

Oath of office.

See § 26, Art. 3, Const. 1895.

"I do solemnly swear (or affirm as the case may be) that I am duly qualified according to the Constitution of the United States and of this State to exercise the duties of the office to which I have been elected (or appointed), and that I will faithfully discharge to the best of my abilities the duties thereof; that I recognize the supremacy of the Constitution and laws of the United States over the Constitution and laws

of any State; and that I will support, protect, and defend the Constitution of the United States and the Constitution of South Carolina as ratified by the people on the sixteenth day of April, 1868. So HELP ME GOD." (And the President of this Convention is authorized to fill the blanks in this Section whenever he shall receive satisfactory information of the day on which this Constitution shall be ratified.)

McCoy v. Curtis, 14 S. C., 375.

Cause of removal.

See § 27, Art. 3, Const. 1895.

Sec. 31. Officers shall be removed for incapacity, misconduct, or neglect of duty, in such manner as may be provided by law, when no mode of trial or removal is provided in this Constitution.

State v. Courtenay, 23 S. C., 186.

The homestead.

See § 28, Art. 3, Const. 1895.

Sec. 32. The family homestead of the head of each family residing in this State, such homestead consisting of dwelling house, out-building and lands appurtenant, not to exceed the value of one thousand dollars, and yearly product thereof, shall be exempt from attachment, levy or sale on any mesne or final process issued from any Court. To secure the full enjoyment of said homestead exemption to the person entitled thereto, or to the head of any family, the personal property of such person of the following character, to wit, household furniture, beds and bedding, family library, arms, carts, wagons, farming implements, tools, neat cattle, work animals, swine, goats, and sheep, not to exceed in value in the aggregate the sum of five hundred dollars, shall be subject to like exemption as said homestead, and there shall be exempt in addition thereto all necessary wearing apparel: *Provided,* That no property shall be exempt from attachment, levy or sale, for taxes, or for payment of obligations contracted for the purchase of said homestead, or the erection of improvements thereon: *Provided, further,* That the yearly products of said homestead shall not be exempt from attachment, levy or sale for the payment of obligations contracted in the production of the same. It shall be the duty of the General Assembly at their first session to enforce the provisions of this Section by suitable legislation.

This Section was amended Dec. 13, 1880, XVII., 213, 320. See amendments, *post.*

It applies where debtor is head of a family residing in this State at time of attempted levy.—Gray v. Putnam, 51 S. C., 97; 27 S. E., 149; so contra, where he is not the head of a family until after levy.—Pender v. Lancaster, 14 S. C., 30; Chafee v. Rainey, 21 S. C., 20; Rollins v. Evans, 23 S. C., 327.

Lands of husband appurtenant to dwelling on lands of wife.—McClenaghan v. McEachern, 47 S. C., 446; 25 S. E., 296; Trimmier v. Winsmith, 41 S. C., 109; 19 S. E., 691.

Homestead in lands held in common, after partition.—Riley v. Gaines, 14 S. C., 457.

Homestead in dower lands.—Lanham v. Glover, 46 S. C., 65; 24 S. E., 49.

Homestead in lands held by equitable title.—Munro v. Jeter, 24 S. C., 36; ex parte Kurz, 24 S. C., 471.

Homestead in mortgaged lands.—People's Bank v. Brice, 47 S. C., 134; 24 S. E., 1038.

Not allowed in money prior to amendment of 1880.—Union Bank v. Northrop, 19 S. C., 476; see also Lawrence v. Grambling, 19 S. C., 465.

Widow and children entitled to homestead in lands of deceased husband.—Brown v. Williamson, 37 S. C., 181; 15 S. E., 926.

Childless widow.—Moore v. Parker, 13 S. C., 489; Bradley v. Rodelsperger, 17 S. C., 11.

Each child not entitled to a separate homestead.—Bank v. Senn, 25 S. C., 572.

Obligation contracted in production of property.—Berry v. Berry, 55 S. C., 303; 33 S. E., 363.—Purchase money.—Edwards v. Edwards, 14 S. C., 20.

Exemption in personal property could not be extended.—Duncan v. Barnett, 11 S. C., 336.

Right to, how determined.—Charles v. Charles, 13 S. C., 387; ex parte Lewie, 17 S. C., 156; Scruggs v. Foot, 19 S. C., 279; Myers v. Ham, 20 S. C., 527.

Does not apply where debt was contracted prior to 1868.—Agnew v. Adams, 17 S. C., 370; Withers v. Jenkins, 21 S. C., 370. The existing homestead law at the time of the contraction of the debt governs.—Gray v. Putnam, 51 S. C., 97; 28 S. E., 149; Norton v. Bradham, 21 S. C., 378.

Created no new estate, a mere right of exemption.—Elliott v. Mackorell, 19 S. C., 242; ex parte Ray, 20 S. C., 249; Chalmers v. Turnipseed, 21 S. C., 136. See also note to Sec. 2626, Civil Code, and cases there cited.

Assessments.

See § 29, Art. 3, Const. 1895.

Sec. 33. All taxes upon property, real or personal, shall be laid upon the actual value of the property taxed, as the same shall be ascertained by an assessment made for the purpose of laying such tax.

Only one assessment permitted.—Germania Savings Bank v. Town of Darlington, 50 S. C., 337; 27 S. E., 846. See also State v. Tucker, 56 S. C., 516; 35 S. E., 216.

As to railroad companies.—R. R. Co. v. Gibbes, 27 S. C., 385; 4 S. E., 49; State v. R. R. Co., 54 S. C., 573; 32 S. E., 691

Does not apply to license tax on occupations.—Charleston v. Oliver, 16 S. C., 47; Information v. Oliver, 21 S. C., 319; State v. Hayne, 4 S. C., 421.

ARTICLE III.

Executive Department.

The Governor.

See Art. 4, § 1, Const. 1895.

Section 1. The Supreme Executive authority of this State shall be vested in a Chief Magistrate, who shall be styled "The Governor of the State of South Carolina."

Election of.

See Art. 4, § 2, Const. 1895.

Sec. 2. The Governor shall be elected by the electors duly qualified to vote for members of the House of Representatives, and shall hold his office for two years, and until his successor shall be chosen and qualified, and shall be re-eligible. He shall be elected at the first general election held under this Constitution for members of the General Assembly, and at each general election thereafter, and shall be installed during the first session of the said General Assembly after his election, on such day as shall be provided for by law. The other State officers elect shall, at the same time, enter upon the performance of their duties.

Qualification on re-election.—Ex parte Norris, 8 S. C., 408; ex parte Smith, *Ib.*, 515.

Eligibility of.

See Art. 4, § 3, Const. 1895.

Sec. 3. No person shall be eligible to the office of Governor who denies the existence of the Supreme Being; or who at the time of such election has not attained the age of thirty years, and who, except at the first election under this Constitution, shall not have been a citizen of the United States and a citizen and resident of this State for two years next preceding the day of election. No person while Governor shall hold any other office or commission (except in the militia) under this State, or any other power, at one and the same time.

He may be *ex officio* member of certain Boards.—State v. Porterfield, 47 S. C., 75; 25 S. E., 39; State v. Town Council of Chester, 39 S. C., 307; 17 S. E., 752.

Returns of election.

See Art. 4, § 4, Const. 1895.

Sec. 4. The returns of every election of Governor shall be sealed up by the managers of elections in their respective Counties, and transmitted, by mail, to the seat of government, directed to the Secretary of State, who shall deliver them to the Speaker of the House of Representatives at the next ensuing session of the General Assembly, and a du-

plicate of said returns shall be filed with the Clerks of the Courts of said Counties, whose duty it shall be to forward to the Secretary of State a certified copy thereof, upon being notified that the returns previously forwarded by mail have not been received at his office. It shall be the duty of the Secretary of State, after the expiration of seven days from the day upon which the votes have been counted, if the returns thereof from any County have not been received, to notify the Clerk of the Court of said County, and order a copy of the returns filed in his office to be forwarded forthwith. The Secretary of State shall deliver the returns to the Speaker of the House of Representatives, at the next ensuing session of the General Assembly; and during the first week of the session, or as soon as the General Assembly shall have organized by the election of the presiding officers of the two Houses, the Speaker shall open and publish them in the presence of both Houses. The person having the highest number of votes shall be Governor; but if two or more shall be equal, and highest in votes, the General Assembly shall during the same session, in the House of Representatives, choose one of them Governor *viva voce*. Contested elections for Governor shall be determined by the General Assembly in such manner as shall be prescribed by law.

Construed in ex parte Smith, 8 S. C., 516.

Lieutenant Governor President of the Senate.

See Art. 4, § 5, Const. 1895.

Sec. 5. A Lieutenant Governor shall be chosen at the same time, in the same manner, continue in office for the same period, and be possessed of the same qualifications as the Governor, and shall *ex officio* be President of the Senate.

To have no vote unless, &c.

See Art. 4, § 6, Const. 1895.

Sec. 6. The Lieutenant Governor, while presiding in the Senate, shall have no vote unless the Senate be equally divided.

President *pro tempore*.

See Art. 4, § 7, Const. 1895.

Sec. 7. The Senate shall choose a President *pro tempore*, to act in the absence of the Lieutenant Governor, or when he shall exercise the office of Governor.

Vacation of seats.

See Art. 4, § 8, Const. 1895.

Sec. 8. A member of the Senate, or of the House of Representatives, being chosen and acting as Governor or Lieutenant Governor, shall thereupon vacate his seat, and another person shall be elected in his stead.

In case of removal or resignation.

See Art. 4, § 9, Const. 1895.

Sec. 9. In case of the removal of the Governor from his office, or his death, resignation, removal from the State, or inability to discharge the powers and duties of the said office, the same shall devolve on the Lieutenant Governor, and the General Assembly, at its first session after the ratification of this Constitution, shall, by law provide for the case of removal, death, resignation, or inability, both of the Governor and Lieutenant Governor, declaring what officer shall then act as Governor, and such officer shall act accordingly, until such disability shall have been removed, or a Governor shall have been elected.

Commander-in-Chief.

See Art. 4, § 10, Const. 1895.

Sec. 10. The Governor shall be Commander-in-Chief of the militia of the State, except when they shall be called into the actual service of the United States.

Reprieves and pardons.

See Art. 4, § 11, Const. 1895.

Sec. 11. He shall have power to grant reprieves and pardons after conviction (except in cases of impeachment), in such manner, on such terms, and under such restrictions as he shall think proper; and he shall have power to remit fines and forfeitures, unless otherwise directed

by law. It shall be his duty to report to the General Assembly, at the next regular session thereafter, all pardons granted by him, with a full statement of each case, and the reasons moving him thereunto.

Governor may grant conditional pardon.—State v. Barnes, 32 S. C., 14; 10 S. E., 611. See also, under former Constitution, Rowe v. State, 2 Bay, 565; State v. Williams, 1 N. & McC., 26.

To execute the laws.

See Art. 4, § 12, Const. 1895.

Sec. 12. He shall take care that the laws be faithfully executed, in mercy.

Compensation.

See Art. 4, § 13, Const. 1895.

Sec. 13. The Governor and Lieutenant Governor shall, at stated times, receive for their services a compensation, which shall be neither increased nor diminished during the period for which they shall have been elected.

Reports of officers

See Art. 4, § 14, Const. 1895.

Sec. 14. All officers in the Executive Department shall, when required by the Governor, give him information in writing upon any subject relating to the duties of their respective offices.

Give information to the Legislature.

See Art. 4, § 15, Const. 1895.

Sec. 15. The Governor shall, from time to time, give to the General Assembly information of the condition of the State, and recommend for their consideration such measures as he shall judge necessary or expedient.

Extra sessions.

See Art. 4, § 16, Const. 1895.

Sec. 16. He may on extraordinary occasions, convene the General Assembly; and should either House remain without a quorum for five days, or in case of disagreement between the two Houses with respect to the time of adjournment, may adjourn them to such time as he shall think proper; not beyond the time of the annual session then next ensuing.

Commissions.

See Art. 4, § 17, Const. 1895

Sec. 17. He shall commission all officers of the State.

McCoy v. Curtis, 14 S. C., 375.

Seal of State.

See Art. 4, § 18, Const. 1895.

Sec. 18. There shall be a seal of the State, for which the General Assembly, at its first session, shall provide, and which shall be used by the Governor officially, and shall be called "The Great Seal of the State of South Carolina."

Grants, &c., how issued.

See Art. 4, § 19, Const. 1895.

Sec. 19. All grants and commissions shall be issued in the name and by the authority of the State of South Carolina, sealed with the great seal, signed by the Governor, and countersigned by the Secretary of State.

Oath of office.

See Art. 4, § 20, Const. 1895.

Sec. 20. The Governor and the Lieutenant Governor, before entering upon the duties of their respective offices, shall take and subscribe the oath of office as prescribed in Article two, Section thirty, of this Constitution.

Residence of Governor.

See Art. 4, § 21, Const. 1895.

Sec. 21. The Governor shall reside at the capital of the State; but during the sittings of the General Assembly he shall reside where its sessions are held, except in case of contagion.

Bills to be signed.

See Art. 4, § 23, Const. 1895.

Veto.

Sec. 22. Every bill or joint resolution which shall have passed the General Assembly, except on a question of adjournment, shall, before it becomes a law, be presented to the Governor, and, if he approve, he shall sign it; if not, he shall return it, with his objections to the House in which it shall have originated; which shall enter the objections at large on its Journals, and proceed to consider it. If, after such reconsideration, two-thirds of that House shall agree to pass it, it shall be sent, together with the objections, to the other House, by which it shall be reconsidered, and, if approved by two-thirds of that House, it shall have

the same effect as if it had been signed by the Governor; but, in all such cases the vote of both Houses shall be taken by yeas and nays, and the names of the persons voting for and against the bill or joint resolution shall be entered on the Journals of both Houses respectively. If a bill or joint resolution shall not be returned by the Governor, within three days after it shall have been presented to him, Sundays excepted, it shall have the same force and effect, as if he signed it, unless the General Assembly, by their adjournment, prevent its return, in which case it shall not have such force and effect unless returned within two days after their next meeting.

State v. Hagood, 13 S. C., 58, 59, 69; State v. Mancke, 18 S. C., 85; State v. Platt, 2 S. C., 150; Corwin v. Comptroller General, 6 S. C., 690; Arnold v. McKellar, 9 S. C., 335.

Comptroller General, Treasurer, and Secretary of State.

See Art. 4, § 24, Const. 1895.

Sec. 23. There shall be elected by the qualified voters of the State, a Comptroller General, a Treasurer, and a Secretary of State, who shall hold their respective offices for the term of four years, and whose duties and compensation shall be prescribed by law.

Amended, making term two years, 1875, XV., 1009. See amendments, *post.* Duties of Comptroller General.—State v. Corbin, 16 S. C., 538.

ARTICLE IV.

JUDICIAL DEPARTMENT.

Judicial Department.

See Art. 5, § 1, Const. 1895.

Section 1. The judicial power of this State shall be vested in a Supreme Court, in two Circuit Courts, to wit: a Court of Common Pleas, having civil jurisdiction, and a Court of General Sessions, with criminal jurisdiction only; in Probate Courts, and in Justices of the Peace. The General Assembly may also establish such municipal and other inferior Courts as may be deemed necessary.

Right of appeal from inferior Courts.—City Council v. Fowler, 48 S. C., 8; 25 S. E., 900; City Council v. Weller, 34 S. C., 357; 13 S. E., 629; City Council v. Brown, 42 S. C., 184; 20 S. E., 56.

Proceedings in bastardy criminal in their nature.—State v. Brewer, 38 S. C., 263; 16 S. E., 1001. Jurisdiction in, given Trial Justices.—State v. Glenn, 14 S. C., 118.

What is a Court?—Whaley v. Campbell, 42 S. C., 528; 20 S. E., 415.

The continued existence of the Supreme Court.—Middleton v. Taber, 46 S. C., 347; 24 S. E., 282.

The Court of Common Pleas is one throughout the State.—Ex parte Furniture Co., 49 S. C., 28; 27 S. E., 9.

Court of General Sessions.—State v. Wilder, 13 S. C., 346. Cited in County v. Miller, Clerk, 16 S. C., 249. As to Trial Justices, see note to Sec. 22.

Supreme Court.

See Art. 5, § 2, Const. 1895.

Sec. 2. The Supreme Court shall consist of a Chief Justice and two Associate Justices, any two of whom shall constitute a quorum. They shall be elected by joint vote of the General Assembly, for the term of six years, and shall continue in office until their successors shall be elected and qualified. They shall be so classified that one of the Justices shall go out of office every two years.

Where there is a vacancy in the office of Chief Justice, and one Associate Justice was disqualified to hear a case, the acting Justice and remaining Justice constitute a quorum of the Court.—Williams v. Benet, 35 S. C., 150; 14 S. E., 311; Sullivan v. Speights, 14 S. C., 358; Aultman v. Utsey, 35 S. C., 596; 14 S. E., 351.

Election to fill vacancy.—Simpson v. Willard, 14 S. C., 194.

Term of office.

See Art. 5, § 3, Const. 1895.

Sec. 3. The Chief Justice elected under this Constitution shall continue in office for six years, and the General Assembly immediately after the said election shall determine which of the two Associate Justices elect shall serve for the term of two years and which for the term of four years; and having so determined the same, it shall be the duty of the Governor to commission them accordingly.

Williams v. Benet, 35 S. C., 150; 14 S. E., 311; Simpson v. Willard, 14 S. C., 194.

Jurisdiction.

See Art. 5, § 4, Const. 1895.

Sec. 4. The Supreme Court shall have appellate jurisdiction only in cases of Chancery, and shall constitute a Court for the correction of errors at law, under such regulations as the General Assembly may by law prescribe: *Provided,* The said Court shall always have power to issue writs of injunction, *mandamus, quo warranto, habeas corpus,* and such other original and remedial writs as may be necessary to give it a general supervisory control over all other Courts in the State.

Original jurisdiction in mandamus.—State v. McIver, 2 S. C., 25; State v. Gaillard, 11 S. C., 309; State v. Hayne, 8 S. C., 367.

Quo Warranto.—Alexander v. McKenzie, 2 S. C., 81.

Compared with jurisdiction under new Constitution of 1895, Art. V., Sec. 4.—Mortgage Co. v. Faulkner, 45 S. C., 508; 23 S. E., 516; Pollock v. Ass'n. 51 S. C., 431; 29 S. E., 77; Finley v. Cartwright, 55 S. C., 199; 33 S. E., 359.

Prohibition issues only to Courts.—Hunter v. Moore, 39 S. C., 394; 17 S. E., 797. This Section did not give jurisdiction in prohibition.—State v. Columbia, 16 S. C., 412; see also State v. R. R. Co., 1 S. C., 46.

Jurisdiction in *certiorari.*—State v. Fort, 24 S. C., 517; ex parte Childs, 12 S. C., 117.

Supreme Court cannot review finding of fact by Circuit Court in law cases.—Redfearn v. Douglass, 35 S. C., 569; 15 S. E., 244; State v. Washington, 13 S. C., 453; State v. Belcher, *Ib.,* 459; Warren v. LaGrone, 12 S. C., 51.

Appellate jurisdiction in chancery.—State v. Duncan, 22 S. C., 87; Sullivan v. Thomas, 3 S. C., 531.

No power to dissolve injunction granted on Circuit.—State v. Westmoreland, 27 S. C., 625; 7. S. E., 256. It has power to issue injunction itself.—Salinas v. Aultman, 49 S. C., 383; 27 S. E., 407.

Sessions.

See Art. 5, § 5, Const. 1895.

Sec. 5. The Supreme Court shall be held at least once in each year, at the seat of government, and at such other place or places in the State as the General Assembly may direct.

Disqualifications.

See Art. 5, § 6, Const. 1895.

Sec. 6. No Judge shall preside on the trial of any cause in the event of which he may be interested, or where either of the parties shall be connected with him by affinity or consanguinity, within such degrees as may be prescribed by law, or in which he may have been counsel, or have presided in any inferior Court, except by consent of all the parties. In case all or any of the Judges of the Supreme Court shall be thus disqualified from presiding in any cause or causes, the Court or the Judges thereof shall certify the same to the Governor of the State, and he shall immediately commission, specially, the requisite number of men learned in the law for the trial and determination thereof. The same course shall be pursued in the Circuit and inferior Courts as is prescribed in this section for cases of the Supreme Court.

Williams v. Benet, 35 S. C., 150; 14 S. E., 311; Trimmier v. Winsmith, 23 S. C., 451.

Judicial officers prohibited to practice law.—Byrne v. Stewart, 3 DeS., 136.

Reporter and Clerk.

See Art. 5, § 7, Const. 1895.

Sec. 7. There shall be appointed by the Judges of the Supreme Court a Reporter and Clerk of said Court, who shall hold their offices for two years, and whose duties and compensation shall be prescribed by law.

Sec. 8. When a judgment or decree is reversed or affirmed by the Supreme Court, every point made and distinctly stated in writing in the cause, and fairly arising upon the record of the case, shall be considered and decided; and the reasons therefor shall be concisely and briefly stated in writing, and preserved with the records of the case.

Judgments and decrees.

See Art. 5, § 8, Const. 1895.

Ex parte Dial, 14 S. C., 586.

Sec. 9. The Judges of the Supreme Court and Circuit Courts shall, at stated times, receive a compensation for their services, to be fixed by law, which shall not be diminished during their continuance in office. They shall not be allowed any fees or perquisites of office, nor shall they hold any other office of trust or profit under this State, the United States, or any other power.

Compensation.

See Art. 5, § 9, Const. 1895.

Sec. 10. No person shall be eligible to the office of Judge of the Supreme Court or Circuit Courts who is not at the time of his election a citizen of the United States, and has not attained the age of thirty years, and been a resident of this State for five years next preceding his election, or from the adoption of this Constitution.

Eligibility.

See Art. 5, § 10, Const. 1895.

Sec. 11. All vacancies in the Supreme Court or other inferior tribunals shall be filled by elections as herein prescribed: *Provided,* That if the unexpired term does not exceed one year, such vacancy may be filled by Executive appointment. All Judges, by virtue of their office, shall be conservators of the peace throughout the State.

Vacancies.

See Art. 5, § 11, Const. 1895.

Proviso does not indicate that a vacancy in the office of the Probate Judge means the unexpired term of the office by whose resignation the vacancy has been occasioned.—Smith v. McConnell, 44 S. C., 491; 22 S. E., 721.

Vacancies in Supreme Court.—Williams v. Benet, 35 S. C., 150; 14 S. E., 311; Simpson v. Willard, 14 S. C., 194.

Vacancies in Circuit Court.—Whipper v. Reed, 9 S. C., 5.

Vacancies in Probate Court.—Whitmire v. Langston, 11 S. C., 381; Smith v. McConnell, 44 S. C., 491; 22 S. E., 721.

Sec. 12. In all cases decided by the Supreme Court, a concurrence of two of the Judges shall be necessary to a decision.

Decisions.

See Art. 5, § 12, Const. 1895.

Sec. 13. The State shall be divided into convenient Circuits, and for each Circuit a Judge shall be elected by joint ballot of the General Assembly, who shall hold his office for a term of four years, and during his continuance in office he shall reside in the Circuit of which he is Judge.

Circuits.

See Art. 5, § 13, Const. 1895.

While holding Court in one Circuit, Judge cannot try case pending in another.—Ex parte Parker, 6 S. C., 472; State v. Black, 34 S. C., 194; 13 S. E., 364.

Term of Circuit Judge.—Simpson v. Willard, 14 S. C., 194.

Election of Circuit Judge by joint ballot.—State v. Shaw, 9 S. C., 94.

Sec. 14. Judges of the Circuit Court shall interchange Circuits with each other, in such manner as may be determined by law.

Interchanging.

See Art. 5, § 14, Const. 1895.

Sec. 15. The Courts of Common Pleas shall have exclusive jurisdiction in all cases of divorce, and exclusive original jurisdiction in all civil cases and actions *ex delicto,* which shall not be cognizable before Justices of the Peace, and appellate jurisdiction in all such cases as may be provided by law. They shall have power to issue writs of *mandamus,* prohibition, *scire facias,* and all other writs which may be necessary for carrying their powers fully into effect.

Common Pleas.

See Art. 5, § 15, Const. 1895.

Cited in State v. Glenn, 14 S. C., 130; Chamblee v. Tribble, 23 S. C., 77.

Exclusive jurisdiction.—City Council v. Weller, 34 S. C., 357; 13 S. E., 629; McCreery v. Davis, 44 S. C., 222; 22 S. E., 178.

Appellate jurisdiction in cases from Probate Court.—Ex parte White, 33 S. C., 442; 12 S. E., 5.

Prohibition, writs of.—State v. Kirkland, 41 S. C., 29; 19 S. E., 215; State v. Co. Treas., 4 S. C., 520. *Certiorari.*—State v . Fort, 24 S. C., 517.

Construed with Sec. 22.—City Council v. Ashley, 33 S. C., 25; 11 S. E., 386. No jurisdiction over County claims.—Jennings v. Abbeville, 24 S. C., 546. Concurrent jurisdiction with Justices Courts.—Burge v. Willis, 5 S. C., 212.

Times of holding.

See Art. 5, § 15, Const. 1895.

Sec. 16. The Court of Common Pleas shall sit in each Judicial District in this State at least twice in every year, at such stated times and places as may be appointed by law. It shall have jurisdiction in all matters of Equity, but the Courts heretofore established for that purpose shall continue as now organized until the first day of January, one thousand eight hundred and sixty-nine, for the disposition of causes now pending therein, unless otherwise provided by law.

Stated times construed.—Hardin v. Trimmier, 30 S. C., 391; 9 S. E., 342. It is one Court throughout the State.—Ex parte Furniture Co., 49 S. C., 28; 27 S. E., 9. Equity powers.—Thorpe v. Thorpe, 15 S. C., 154; Jordan v. Moses, 10 S. C., 431.

Preservation of Records.

See Art. 5, § 17, Const. 1895.

Sec. 17. The General Assembly shall provide by law for the preservation of the records of the Courts of Equity, and also for the transfer to the Court of Common Pleas and Probate Courts for final decision of all causes that may remain undetermined. It shall be the duty of the Judges of the Supreme and Circuit Courts to file their decisions within sixty days from the last day of the term of Court at which the causes were heard.

Failure to file decree in sixty days does not affect its validity.—Gary v. Burnett, 16 S. C., 632; Koon v. Munro, 11 S. C., 140.

Jurisdiction.

See Art. 5, § 18, Const. 1895.

Sec. 18. The Court of General Sessions shall have exclusive jurisdiction over all criminal cases which shall not be otherwise provided for by law. It shall sit in each County in the State at least three times in each year, at such stated times and places as the General Assembly may direct.

Jurisdiction.—State v. Jenkins, 26 S. C., 121; 1 S. E., 437; State v. Pickett, 47 S. C., 105; 25 S. E., 46; State v. Glenn, 14 S. C., 128, 130; State v. McKettrick, 14 S. C., 351; State v. Sims, 16 S. C., 491; State v. Padgett, 18 S. C., 319; State v. McIver, 2 S. C., 1; State v. Williams, 11 S. C., 288; State v. Harper, 6 S. C., 464; State v. Williams, 13 S. C., 546.

County Commissioners.

Sec. 19. The qualified electors of each County shall elect three persons for the term of two years, who shall constitute a Board of County Commissioners, which shall have jurisdiction over roads, highways, ferries, bridges, and in all matters relating to taxes, disbursements of money for County purposes, and in every other case that may be necessary to the internal improvement and local concerns of the respective Counties: *Provided,* That in all cases there shall be the right of appeal to the State Courts.

This Section repealed by amendment Dec. 20, 1890, XX., 649.

Jurisdiction.—Aiken Co. v. Murray, 35 S. C., 508; 14 S. E., 954; Chick v. Newberry, 27 S. C., 419; 3 S. E., 387; Floyd v. Perrin, 30 S. C., 1; 8 S. E., 14; Walpole v. City Council, 32 S. C., 547; 11 S. E., 391; Lancaster Co. v. R. R. Co., 28 S. C., 134; State v. Railroad, 13 S. C., 316; State v. Brown, 14 S. C., 382; County v. Miller, Clerk, 16 S. C., 248; Duke v. Williamsburg, 21 S. C., 416; Beaufort v. Ohlandt, 24 S. C., 162; Jennings v. Abbeville, 24 S. C., 546; McLaughlin v. Co. Commissioners, 7 S. C., 375.

Sec. 20. A Court of Probate shall be established in each County, with jurisdiction in all matters testamentary and of administration, in business appertaining to minors and the allotment of dower in cases of idiocy and lunacy, and persons *non compotes mentis.* The Judge of said Court shall be elected by the qualified electors of the respective Counties for the term of two years.

Court of Probate.

See Art. 5, § 19, Const. 1895.

Amended, 1889, XX., 281, to make term four years. See amendment, *post.*

A person elected to fill vacancy occasioned by the resignation of the previous incumbent is entitled to hold for the full term of four years.—Smith v. McConnell, 44 S. C., 491; 22 S. E., 721.

Jurisdiction in matters of administration, &c.—Ex parte White, 33 S. C., 442; 12 S. E., 5; State v. Glenn, 14 S. C., 130; Poole v. Brown, 12 S. C., 556; Waller v. Cresswell, 4 S. C., 353; Caldwell v. Little, 15 S. C., 236.

Sale of land in aid of assets.—Scruggs v. Foot, 19 S. C., 274.

No jurisdiction in partition.—Herndon v. Moore, 18 S. C., 348; Davenport v. Caldwell, 10 S. C., 317.

Its jurisdiction in lunacy and idiocy concurrent with that of the Common Pleas.—Walker v. Russell, 10 S. C., 82.

Prior to amendment of 1889, Judge held office only two years.—Whitmire v. Langston, 11 S. C., 381.

Sec. 21. A competent number of Justices of the Peace and Constables shall be chosen in each County by the qualified electors thereof, in such manner as the General Assembly may direct; they shall hold their offices for a term of two years and until their successors are elected and qualified. They shall reside in the County, city or beat for which they are elected, and the Justices of the Peace shall be commissioned by the Governor.

Justices of the Peace.

See Art. 5, § 20, Const. 1895.

State v. Cohen, 13 S. C., 201; Tinsley v. Kirby, 17 S. C., 1.

Sec. 22. Justices of the Peace, individually, or two or more of them jointly, as the General Assembly may direct, shall have original jurisdiction in cases of bastardy, and in all matters of contract, and actions for the recovery of fines and forfeitures where the amount claimed does not exceed one hundred dollars, and such jurisdiction as may be provided by law in actions *ex delicto,* where the damages claimed do not exceed one hundred dollars; and prosecutions for assault and battery and other penal offences less than felony, punishable by fines only.

Jurisdiction.

See Art. 5, § 21, Const. 1895.

Jurisdiction of Trial Justices; actions of tort.—Dilliard v. Samuels, 25 S. C., 318; City Council v. Weller, 34 S. C., 357; 13 S. E., 628. Jurisdiction dependent on amount claimed.—Catawba Mills v. Hood, 42 S. C., 203; 20 S. E., 91. Criminal cases.—State v. Glenn, 14 S. C., 130; State v. Corley, 13 S. C., 4; State v. Penny, 19 S. C., 222; Rhodes v. R. R. Co., 6 S. C., 385; State v. Shumate, 1 S. C., 85.

Sec. 23. They may also sit as examining Courts and commit, discharge, or recognize (except in capital cases) persons charged with offences, subject to such regulations as the General Assembly may provide; they shall also have power to bind over to keep the peace, or for good behavior. For the foregoing purposes they shall have power to issue all necessary processes.

Powers.

See Art. 5, § 21. Const. 1895.

Sec. 24. Every action cognizable before Justices of the Peace instituted by summons or warrant, shall be brought before some Justice of the Peace in the County or city where the defendant resides, and in all such causes tried by them, the right of appeal shall be secured under such rules and regulations as may be provided by law.

Right of appeal.

See Art. 5, § 23, Const. 1895.

Beaufort v. Ohlandt, 24 S. C., 162.

Compensation.

See Art. 5, § 24, Const. 1895.

Sec. 25. The Judges of Probate, County Commissioners, Justices of the Peace, and Constables, shall receive for their services such compensation and fees as the General Assembly may from time to time by law direct.

Charge of Judge.

See Art. 5, § 25, Const. of 1895.

Sec. 26. Judges shall not charge juries in respect to matters of fact, but may state the testimony and declare the law.

Distinguished from provision in Constitution of 1895.—China v. Sumter, 51 S. C., 458; 29 S. E., 206; Norris v. Clinkscales, 47 S. C., 501; 25 S. E., 797; State v. Stello, 49 S. C., 496; 27 S. E., 659.

Charge referring to matters of fact erroneous.—State v. Cannon, 49 S. C., 550; 27 S. E., 526.

Stating the testimony not error.—Gable v. Rauch, 50 S. C., 95; 27 S. E., 555.

This Section does not affect the granting of new trials.—Wood v. Ry. Co., 19 S. C., 581. Does not prevent Judge examining witness.—Wilson v. R. R. Co., 52 S. C., 537; 30 S. E., 406.

Charge not erroneous.—Bradley v. Drayton, 48 S. C., 234; 26 S. E., 613; State v. Crawford, 39 S. C., 343; 17 S. E., 799; Durham Fertilizer Co. v. Pagett, 39 S. C., 69; 17 S. E., 563; State v. Way, 40 S. C., 294; 18 S. E., 676; State v. Jackson, 36 S. C., 487; 15 S. E., 559; State v. Turner, 36 S. C., 534; 15 S. E., 602; State v. Milling, 35 S. C., 16; 14 S. E., 284; State v. Moorman, 27 S. C., 22; 2 S. E., 621; Richards v. Munro, 30 S. C., 284; 9 S. E., 108; Rembert v. R. R. Co., 31 S. C., 309; 9 S. E., 968; State v. Glover, 27 S. C., 602; 4 S. E., 564; State v. Davis, 27 S. C., 609; 4 S. E., 567; State v. Robinson, 27 S. C., 615; 4 S. E., 570; State v. Howard, 32 S. C., 91; 10 S. E., 831; State v. Atkinson, 33 S. C., 100; 11 S. E., 693; Foggette v. Gaffney, 33 S. C., 303; 12 S. E., 260; Ebaugh v. Mullinax, 34 S. C., 364; 13 S. E., 613; Brice v. Miller, 35 S. C., 537; 15 S. E., 272; Sanders v. Bagwell, 37 S. C., 145; 15 S. E., 714; Obear v. Blalock, 40 S. C., 31; 18 S. E., 264; State v. Ezzard, 40 S. C., 312; 18 S. E., 1025; State v. Atkinson, 40 S. C., 363; 18 S. E., 1021; State v. Sims, 16 S. C., 495; State v. Summers, 19 S. C., 90; State v. Atterberry, 19 S. C., 597; Acker v. Anderson, 20 S. C., 495 State v. Jones, 21 S. C., 596.

Charge erroneous as on the facts.—State v. White, 15 S. C., 381; State v. Jenkins, 21 S. C., 595; State v. Smalls, 24 S. C., 591; State v. Addy, 28 S. C., 4; 4 S. E., 814; State v. Howell, 28 S. C., 250; 5 S. E., 617; State v. Norton, 28 S. C., 572; 6 S. E., 820; State v. Caddon, 30 S. C., 609; 8 S. E., 536; State v. Jacob, 30 S. C., 131; 8 S. E., 698; White v. R. R. Co., 30 S. C., 218; 9 S. E., 96; State v. Williams, 31 S. C., 238; 9 S. E., 853; Jackson v. Jackson, 32 S. C., 591; 11 S. E., 204; State v. Brown, 33 S. C., 151; 11 S. E., 641; State v. Milling, 35 S. C., 16; 14 S. E., 284.

This Section construed and applied.—Fripp v. Williams, 14 S. C., 502; Sullivan v. Blythe, 14 S. C., 621; Howard v. Wofford, 16 S. C., 148; Benedict v. Rose, 16 S. C., 629; Jones v. Cathcart, 17 S. C., 592; Lynn v. Thomson, 17 S. C., 129; Russell v. Arthur, 17 S. C., 478; State v. James, 31 S. C., 218; 9 S. E., 844; State v. Wyse, 32 S. C., 45; 10 S. E., 612; Amaker v. New, 33 S. C., 39; 11 S. E., 386; Greene v. Duncan, 37 S. C., 239; 15 S. E., 956; State v. Green, 5 S. C., 65; Redding v. R. R. Co., 5 S. C., 67.

Clerks of Courts.

See Art. 5, § 27, Const. 1895.

Sec. 27. There shall be elected in each County, by the electors thereof, one Clerk for the Court of Common Pleas, who shall hold his office for the term of four years, and until his successor shall be elected and qualified. He shall, by virtue of his office, be Clerk of all other Courts of Record held therein; but the General Assembly may provide by law for the election of a Clerk, with a like term of office, for each or any other of the Courts of Record, and may authorize the Judge of the Probate Court to perform the duties of Clerk for his Court, under such regulations as the General Assembly may direct. Clerks of Courts shall be removable for such cause, and in such manner as shall be prescribed by law.

Term.—Simpson v. Willard, 14 S. C., 209; McCoy v. Curtis, 14 S. C., 372; State v. Sims, 18 S. C., 463; Charles v. Wright, 4 S. C., 178; Reister v. Hemphill, 2 S. C., 178.

Sec. 28. There shall be an Attorney General for the State, who shall perform such duties as may be prescribed by law. He shall be elected by the qualified electors of the State for the term of four years, and shall receive for his services such compensation as shall be fixed by law.

Attorney General.

See Art. 5, § 28, Const. 1895.

Amended, making term two years, 1875, XV., 1009. See amendments, *post*.

Sec. 29. There shall be one Solicitor for each Circuit, who shall reside therein, to be elected by the qualified electors of the Circuit, who shall hold his office for the term of four years, and shall receive for his services such compensation as shall be fixed by law. In all cases where an Attorney for the State, of any Circuit, fails to attend and prosecute, according to law, the Court shall have power to appoint an Attorney *pro tempore*.

Solicitors.

See Art. 5, § 29, Const. 1895.

State v. Buttz, 9 S. C., 186.

Sec. 30. The qualified electors of each County shall elect a Sheriff and a Coroner, for the term of four years, and until their successors are elected and qualified; they shall reside in their respective Counties during their continuance in office, and be disqualified for the office a second time, if it should appear that they or either of them are in default for money collected by virtue of their respective offices.

Sheriffs and Coroners.

See Art. 5, § 30, Const. 1895.

Sec. 31. All writs and processes shall run, and all prosecutions shall be conducted in the name of the State of South Carolina; all writs shall be attested by the Clerk of the Court from which they shall be issued; and all indictments shall conclude "against the peace and dignity of the State."

Writs and processes.

See Art. 5, § 31, Const. 1895.

State v. Robinson, 27 S. C., 615; 4 S. E., 570; State v. McKettrick, 14 S. C., 350; State v. Hill, 19 S. C., 435.

Sec. 32. The General Assembly shall provide by law for the speedy publication of the decisions of the Supreme Court made under this Constitution.

Decisions of the Supreme Court.

See Art. 5, § 21, Const. 1895.

Sec. 33. The first General Assembly convened under this Constitution, at their first session, immediately after their permanent organization, shall ratify the amendment to the Constitution of the United States, known as the Fourteenth Article, proposed by the Thirty-Ninth Congress.

Constitutional amendment.

Sec. 34. All contracts, whether under seal or not, the consideration of which were for the purchase of slaves, are hereby declared null and void, and of no effect; and no suit, either at law or equity, shall be commenced or prosecuted for the enforcement of such contracts, and all proceedings to enforce satisfaction or payment on judgments or decrees rendered, recorded, enrolled, or entered up on such contracts, in any Court of this State, are hereby prohibited, and all orders heretofore made in this State, in relation to such contracts, whereby property is held subject to decision as to the validity of such contracts, are also hereby declared null and void, and of no effect.

Slave contracts.

Void as impairing obligation of contracts.—Calhoun v. Calhoun, 2 S. C., 283.

ARTICLE V.

Jurisprudence.

Arbitrators.

See Art. 6, § 1, Const. 1895.

Section 1. The General Assembly shall pass such laws as may be necessary and proper to decide differences by arbitrators, to be appointed by the parties who may choose that summary mode of adjustment.

Change of venue.

See Art. 6, § 2, Const. 1895.

Sec. 2. It shall be the duty of the General Assembly to pass the necessary laws for the change of venue in all cases, civil and criminal, over which the Circuit Courts have original jurisdiction, upon a proper showing, supported by affidavit, that a fair and impartial trial cannot be had in the County where such trial or prosecution was commenced.

State v. Sullivan, 39 S. C., 400; 17 S. E., 865; Willoughby v. N. E. Ry. Co., 46 S. C., 317; 24 S. E., 308; Utsey v. Railroad Co., 38 S. C., 399; 17 S. E., 141.

Codification of laws.

See Art. 6, §§ 3 and 5, Const. 1895.

Sec. 3. The General Assembly, at its first session after the adoption of this Constitution, shall make provision to revise, digest, and arrange, under proper heads, the body of our laws, civil and criminal, and form a penal code, founded upon principles of reformation, and have the same promulgated in such manner as they may direct; and a like revision, digest, and promulgation shall be made within every subsequent period of ten years. That justice may be administered in a uniform mode of pleading without distinction between law and equity, they shall provide for abolishing the distinct forms of action, and for that purpose shall appoint some suitable person or persons, whose duty it shall be to revise, simplify, and abridge the rules, practice, pleadings, and forms of the Courts now in use in this State.

New trials may be granted in equity cases as at law.—Covington v. Covington, 47 S. C., 263; 25 S. E., 193; Durant v. Philpot, 16 S. C., 126.

Code of Civil Procedure.—Rutherford v. Johnson, 49 S. C., 465; 27 S. E., 470; Utsey v. Railroad Co., 38 S. C., 399; 17 S. E., 143; Dunham v. Carson, 42 S. C., 383; 20 S. E., 197; Jerkowski v. Marco, 56 S. C., 245; 34 S. E., 386; ex parte Carolina Nat'l Bank, 56 S. C., 19; 33 S. E., 781.

Construed with Sec. 20, Art. 2.—State v. McDaniel, 19 S. C., 114; City Council v. Weller, 34 S. C., 357; 13 S. E., 628.

ARTICLE VI.

Eminent Domain.

Eminent domain.

See Art. 14, § 1, Const. 1895.

Section 1. The State shall have concurrent jurisdiction on all rivers bordering on this State, so far as such rivers shall form a common boundary to this and any other State bounded by the same; and they, together with all other navigable waters within the limits of the State, shall be common highways, and forever free, as well to the inhabitants of this State as to the citizens of the United States, without any tax or impost therefor, unless the same be expressly provided for by the General Assembly.

Land titles.

See Art. 14, § 2, Const. 1895.

Sec. 2. The title to all lands and other property, which have heretofore accrued to this State by grant, gift, purchase, forfeiture, escheats, or otherwise, shall vest in the State of South Carolina, the same as though no change had taken place.

Ultimate right of property.

See Art. 14, § 3, Const. 1895.

Sec. 3. The people of the State are declared to possess the ultimate property in and to all lands within the jurisdiction of the State; and all lands, the title to which shall fail from defect of heirs, shall revert or escheat to the people.

ARTICLE VII.

Impeachments.

Section 1. The House of Representatives shall have the sole power of impeachment. A vote of two-thirds of all the members elected shall be required for an impeachment, and any officer impeached, shall thereby be suspended from office until judgment in the case shall have been pronounced.

Impeachment.

See Art. 15, § 1, Const. 1895.

Sec. 2. All impeachments shall be tried by the Senate, and when sitting for that purpose they shall be under oath or affirmation. No person shall be convicted except by vote of two-thirds of all the members elected. When the Governor is impeached, the Chief Justice of the Supreme Court, or the senior Judge, shall preside, with a casting vote in all preliminary questions.

How tried.

See Art. 15, § 1, Const. 1895.

Sec. 3. The Governor and all other executive and judicial officers, shall be liable to impeachment; but judgment in such case shall not extend further than removal from office. The persons convicted shall nevertheless be liable to indictment, trial, and punishment according to law.

Who liable.

See Art. 15, § 3, Const. 1895.

Sec. 4. For any wilful neglect of duty, or other reasonable cause which shall not be sufficient ground of impeachment, the Governor shall remove any executive or judicial officer on the address of two-thirds of each House of the General Assembly: *Provided,* That the cause, or causes, for which said removal may be required, shall be stated at length in such address, and entered on the journals of each House: *And provided, further,* That the officer intended to be removed shall be notified of such cause or causes, and shall be admitted to a hearing in his own defence, before any vote for such address; and in all cases, the vote shall be taken by yeas and nays, and be entered on the journals of each House respectively.

Causes of impeachment.

See Art. 15, § 4, Const. 1895.

ARTICLE VIII.

Rights of Suffrage.

See Butler v. Ellerbe, 44 S. C., 256; 22 S. E., 425; where the question as to the constitutionality of the former registration law was attempted to be raised.

Section 1. In all elections by the people the electors shall vote by ballot.

The ballot.

See Art. 2, § 1, Const. 1895.

Sec. 2. Every male citizen of the United States, of the age of twenty-one years and upwards, not laboring under the disabilities named in this Constitution, without distinction of race, color, or former condition, who shall be a resident of this State at the time of the adoption of this Constitution, or who shall thereafter reside in this State one year, and in the County in which he offers to vote, sixty days next preceding any election, shall be entitled to vote for all officers that are now, or hereafter may be, elected by the people, and upon all questions submitted to the electors at any elections: *Provided,* That no person shall be allowed to vote or hold office who is now or hereafter may be disqualified therefor by the Constitution of the United States, until such disqualification shall be removed by the Congress of the United States: *Provided, further,* That no person, while kept in any alms-house or asylum, or of

Qualification of electors.

See Art. 2, §§ 3 and 4, Const. 1895.

unsound mind, or confined in any public prison, shall be allowed to vote or hold office.

Does not require voter to be a freeholder or taxpayer.—State v. Williams, 35 S. C., 344; 14 S. E., 819.

Registration. See Art. 2, § 8, Const. 1895.

Sec. 3. It shall be the duty of the General Assembly to provide from time to time for the registration of all electors.

Residence. See Art. 2, § 7, Const. 1895.

Sec. 4. For the purpose of voting no person shall be deemed to have lost his residence by reason of absence while employed in the service of the United States, nor while engaged upon the waters of this State or the United States, or of the high seas, nor while temporarily absent from the State.

Soldiers and sailors. See Art. 2, § 7, Const. 1895.

Sec. 5. No soldier, seaman, or marine in the army or navy of the United States shall be deemed a resident of this State in consequence of having been stationed therein.

Exemption from arrest. See Art. 2, § 14, Const. 1895.

Sec. 6. Electors shall, in all cases, except treason, felony, or breach of the peace, be privileged from arrest and civil process during their attendance at elections, and in going to and returning from the same.

Eligibility to office. See Art. 2, § 2, Const. 1895.

Sec. 7. Every person entitled to vote at any election shall be eligible to any office which now is or hereafter shall be elective by the people in the County where he shall have resided sixty days previous to such election, except as otherwise provided in this Constitution or the Constitution and laws of the United States.

State v. Buttz, 9 S. C., 156.

Disqualification. See Art. 2, § 6, Const. 1895.

Sec. 8. The General Assembly shall never pass any law that will deprive any of the citizens of this State of the right of suffrage except for treason, murder, robbery, or duelling, whereof the persons shall have been duly tried and convicted.

Amended, 1882, XVIII., 3. See amendments, *post*.

Presidential Electors.

Sec. 9. Presidential electors shall be elected by the people.

Who elected.

Sec. 10. In all elections held by the people under this Constitution, the person or persons who shall receive the highest number of votes shall be declared elected.

Ex parte Norris, 8 S. C., 485; ex parte Smith, *Ib.*, 515.

Not applicable to.

Sec. 11. The provisions of this Constitution concerning the term of residence necessary to enable persons to hold certain offices therein, shall not be held to apply to officers chosen by the people at the first election, or by the General Assembly at its first session.

Former slaves not disfranchised.

Sec. 12. No person shall be disfranchised for felony or other crimes committed while such person was a slave.

ARTICLE IX.

Finance and Taxation.

Appropriation of unexpended balance in the State Treasury at the end of the fiscal year violates no provision of this Article.—State v. Leapheart, 11 S. C., 459.

How taxes may be levied.—Morton, Bliss & Co. v. Comptroller General, 4 S. C., 431.

Assessment and taxation. See Art. 10, § 1, Const. 1895.

Section 1. The General Assembly shall provide by law for a uniform and equal rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, real,

personal, and possessory, except mines and mining claims, the proceeds of which alone shall be taxed; and also excepting such property as may be exempted by law for municipal, educational, literary, scientific, religious, or charitable purposes.

Germania Savings Bank v. Town of Darlington, 50 S. C., 337; 27 S. E., 846; R. R. Co. v. Gibbes, 27 S. C., 385; 4 S. E., 49; 24 S. C., 69; State v. R. R. Co., 54 S. C., 573; 32 S. E., 691; State v. Tucker, 56 S. C., 522; 35 S. E., 215; ex parte Lynch, 16 S. C., 32; ex parte Hayne, 4 S. C., 423.

Poll tax.

See Art. 11, § 6, Const. 1895.

Sec. 2. The General Assembly may provide annually for a poll tax not to exceed one dollar on each poll, which shall be applied exclusively to the public school fund. And no additional poll tax shall be levied by any municipal corporation.

Rogers v. Marlboro Co., 32 S. C., 555; 11 S. E., 383; ex parte Hayne, 4 S. C., 423.

Annual tax.

See Art. 10, § 2, Const. 1895.

Sec. 3. The General Assembly shall provide for an annual tax sufficient to defray the estimated expenses of the State for each year; and whenever it shall happen that such ordinary expenses of the State for any year shall exceed the income of the State for such year, the General Assembly shall provide for levying a tax for the ensuing year sufficient, with other sources of income, to pay the deficiency of the preceding year, together with the estimated expenses of the ensuing year.

Ex parte Hayne, 4 S. C., 424; State v. Leaphart, 11 S. C., 459.

Object to be stated.

See Art. 10, § 3, Const. 1895.

Sec. 4. No tax shall be levied except in pursuance of a law, which shall distinctly state the object of the same; to which object such tax shall be applied.

State v. Leaphart, 11 S. C., 459; Duke v. Williamsburg, 21 S. C., 416; State v. Cardoza, 5 S. C., 311; Morton, Bliss & Co. v. Comptroller General, 4 S. C., 520; McLaughlin v. Charleston Co., 7 S. C., 375; Bond Debt Cases, 12 S. C., 200.

Exemptions.

See Art. 10, § 4, Const. 1895.

Sec. 5. It shall be the duty of the General Assembly to enact laws for the exemption from taxation of all public schools, colleges, and institutions of learning, all charitable institutions in the nature of asylums for the infirm, deaf and dumb, blind, idiotic and indigent persons, all public libraries, churches, and burying grounds; but property of associations and societies, although connected with charitable objects, shall not be exempt from State, County or municipal taxation: *Provided,* That this exemption shall not extend beyond the buildings and premises actually occupied by such schools, colleges, institutions of learning, asylums, libraries, churches, and burial grounds, although connected with charitable objects.

Germania Savings Bank v. Town of Darlington, 50 S. C., 337; 27 S. E., 856.

Valuation of lands.

Sec. 6. The General Assembly shall provide for the valuation and assessment of all lands and the improvements thereon prior to the assembling of the General Assembly of one thousand eight hundred and seventy, and thereafter on every fifth year.

State ex rel. Ross v. Kelly, 45 S. C., 457; 23 S. E., 281; ex parte Lynch, 16 S. C., 32; State v. Hayne, 4 S. C., 424.

Public debts.

See Art. 10, § 11, Const. 1895, & 16th amendment, *post.*

Sec. 7. For the purpose of defraying extraordinary expenditures, the State may control public debts; but such debts shall be authorized by law for some single object, to be distinctly specified therein; and no such law shall take effect until it shall have been passed by a vote of two-thirds of the members of each branch of the General Assembly, to be

recorded by yeas and nays on the journals of each House respectively; and every such law shall levy a tax annually sufficient to pay the annual interest of such debt.

Amended by sixteenth amendment.

Act for redemption of Brown consol bonds, 1892, XXI., 94, not for defraying extraordinary expenses.—Robertson v. Tillman, 39 S. C., 298; 17 S. E., 678.

Sufficient Act.—Bond Debt Cases, 12 S. C., 202; State v. Hagood, 13 S. C., 62; Whaley v. Gaillard, 21 S. C., 561; Morton, Bliss & Co. v. Comptroller General, 4 S. C., 430; State v. Leaphart, 11 S. C., 459.

License tax.—State v. Hayne, 4 S. C., 424.

Municipal taxes.

See Art. 8, § 6, Const. 1895; See Art. 10, § 5, Const. 1895.

Sec. 8. That the corporate authorities of Counties, Townships, School Districts, Cities, Towns, and Villages may be vested with power to assess and collect taxes for corporate purposes; such taxes to be uniform in respect to persons and property within the jurisdiction of the body imposing the same. And the General Assembly shall require that all the property except that heretofore exempted within the limits of municipal corporations, shall be taxed for the payment of debts contracted under authority of law.

Bonds in aid of railroads.—Congaree Const. Co. v. Columbia Township, 49 S. C., 535; 27 S. E., 570; Coleman v. Broad River Township, 50 S. C., 321; 27 S. E., 774; Floyd v. Perrin, 30 S. C., 1; 8 S. E., 14; State v. Neeley, 30 S. C., 587; 9 S. E., 664; State v. Railroad, 13 S. C., 317.

Municipal Bonds: Germania Savings Bank v. Town of Darlington, 50 S. C., 337; 27 S. E., 856. Same assessment made for State and County taxes. State ex rel Ross v. Kelly, 45 S. C., 457; 23 S. E., 281.

Uniform taxes: Mauldin v. City Council of Greenville, 42 S. C., 293; 20 S. E., 842

Power of municipality to grant exemption from taxation. State ex rel Bartless v. Town Council of Beaufort, 39 S. C., 5; 17 S. E., 355. Rose v. Charleston, 3 S. C., 369.

Power to require license tax. White v. Town Council of Rock Hill, 34 S. C., 242; 13 S. E., 416; State v. Morehead, 42 S. C., 211; 20 S. E., 544; State v. Columbia, 6 S. C., 1.

Taxation by school districts. State v. Bacon, 31 S. C., 120; 9 S. E., 765.

The Legislature may itself impose a tax on a municipality for any public purpose affecting it.—State ex rel. Dickinson v. Neeley, 30 S. C., 587; 9 S. E., 664. County taxes. Duke v. Williamsburg, 21 S. C., 416.

Incorporations.

See Art. 8, § 1, Const. 1895.

Sec. 9. The General Assembly shall provide for the incorporation and organization of cities and towns, and shall restrict their powers of taxation, borrowing money, contracting debts, and loaning their credit.

Germania Savings Bank v. Town of Darlington, 50 S. C., 337; 27 S. E., 856; R. R. Co. v. Columbia, 54 S. C., 279; 32 S. E., 408; State ex rel Ross v. Kelly, 45 S. C., 457; 23 S. E., 281; State ex rel Bartless v. Town Council of Beaufort, 39 S. C., 5; 17 S. E., 355.

Evidences of State indebtedness.

See Art. 10, § 7, Const. 1895.

Sec. 10. No scrip, certificate, or other evidence of State indebtedness shall be issued, except for the redemption of stock, bonds, or other evidences of indebtedness previously issued, or for such debts as are expressly authorized in this Constitution.

Act of 1892, XXI., 24 for redemption of Brown consol bonds sustained. Robertson v. Tillman, 39 S. C., 298; 17 S. E., 678.

Certificates in payment of claims for printing. 5 S. C., 297; 317.

Receipts and expenditures.

See Art. 10, § 8, Const. 1895.

Sec. 11. An accurate statement of the receipts and expenditures of the public money shall be published with the laws of each regular session of the General Assembly, in such manner as may, by law, be directed.

Sec. 12. No money shall be drawn from the Treasury but in pursuance of appropriations made by law.

Drafts on the Treasury.

See Art. 10, § 9, Const. 1895.

State v. Baldwin, 14 S. C., 138.

Sec. 13. The fiscal year shall commence on the first day of November in each year.

Fiscal year.

See Art. 10, § 8, Const. 1895.

Sec. 14. Any debt contracted by the State shall be by loan on State bonds of amounts not less than fifty dollars each, on interest, payable within twenty years after the final passage of the law authorizing such debt. A correct registry of all bonds shall be kept by the Treasurer in numerical order, so as always to exhibit the number and amount unpaid, and to whom severally made payable.

State bonds.

Amended 1889, XIX., 528. See amendments, *post*.

Bond debt cases, 12 S. C., 203; State v. Leaphart, 11 S. C., 459.

Sec. 15. Suitable laws shall be passed by the General Assembly for the safe keeping, transfer and disbursement of the State, County and School funds, and all officers and other persons charged with the same, shall keep an accurate entry of each sum received, and of each payment and transfer; and shall give such security for the faithful discharge of such duties as the General Assembly may provide. And it shall be the duty of the General Assembly to pass laws making embezzlement of such funds a felony, punishable by fine and imprisonment proportioned to the amount of deficiency or embezzlement, and the party convicted of such felony shall be disqualified from ever holding any office of honor or emolument in this State: *Provided, however,* That the General Assembly, by a two-thirds vote, may remove the disability upon payment in full of the principal and interest of the sum embezzled.

State, County and school funds.

See Art. 10, § 12, Const. 1895.

Sec. 16. No debt contracted by this State in behalf of the late rebellion, in whole or in part, shall ever be paid.

Rebel debts.

Sec. 17. Any bonded debt hereafter incurred by any County, municipal corporation or political division of this State shall never exceed eight per centum of the assessed value of all the taxable property therein.

County and municipal bonds, § 17, Art. 9, amended.

1884, XVIII., 689.

Germania Bank v. Town of Darlington, 50 S. C., 337; 27 S. E., 846; State ex rel Morse v. Cornwell, 40 S. C., 26; 18 S. E., 184; Floyd v. Perrin, 30 S. C., 1; 8 S. E., 14; State v. Tolly, 37 S. C., 551; 16 S. E., 195.

ARTICLE X.

EDUCATION.

Section 1. The supervision of public instruction shall be vested in a State Superintendent of Education, who shall be elected by the qualified electors of the State in such manner and at such time as the other State officers are elected; his powers, duties, term of office and compensation shall be defined by the General Assembly.

Superintendent of Education.

See Art. 11, § 1, Const. 1895.

Sec. 2. There shall be elected biennially, in each County, by the qualified electors thereof, one School Commissioner, said Commissioners to constitute a State Board of Education, of which the State Superintendent shall, by virtue of his office, be Chairman; the powers, duties, and compensation of the members of said Board shall be determined by law.

School Commissioners.

See Art. 11, § 3, Const. 1895.

Pettigrew v. Bell, 34 S. C., 104; 12 S. E., 1023.

Free schools.

See Art. 11, § 5, Const. 1895.

Sec. 3. The General Assembly shall, as soon as practicable after the adoption of this Constitution, provide for a liberal and uniform system of free public schools throughout the State, and shall also make provision for the division of the State into suitable School Districts. There shall be kept open at least six months in each year one or more schools in each School District.

Construed, State v. Rice, 32 S. C., 97; 10 S. E., 833; Holler v. Rock Hill School District, 60 S. C., 41; 38 S. E., 220.

Compulsory attendance.

Sec. 4. It shall be the duty of the General Assembly to provide for the compulsory attendance, at either public or private schools, of all children between the ages of six and sixteen years, not physically or mentally disabled, for a term equivalent to twenty-four months at least: *Provided,* That no law to that effect shall be passed until a system of public schools has been thoroughly and completely organized and facilities afforded to all the inhabitants of the State for the free education of their children.

School tax.

See Art. 11, § 6, Const. 1895.

Sec. 5. The General Assembly shall levy at each regular session after the adoption of this Constitution an annual tax on all taxable property throughout the State for the support of public schools, which tax shall be collected at the same time and by the same agents as the general State levy, and shall be paid into the Treasury of the State. There shall be assessed on all taxable polls in the State an annual tax of one dollar on each poll, the proceeds of which tax shall be applied solely to educational purposes: *Provided,* That no person shall ever be deprived of the right of suffrage for the non-payment of said tax. No other poll or capitation tax shall be levied in the State, nor shall the amount assessed on each poll exceed the limit given in this section. The School Tax shall be distributed among the several School Districts of the State, in proportion to the respective number of pupils attending the public schools. No religious sect or sects shall have exclusive right to, or control of any part of the school funds of the State, nor shall sectarian principles be taught in the public schools.

Amended, 1878, XVI., 639. See amendments, *post.*

County Commissioners may suc for. Aiken County v. Murray, 35 S. C., 508; 14 S. E., 954.

Normal school.

Sec. 6. Within five years after the first regular session of the General Assembly, following the adoption of this Constitution, it shall be the duty of the General Assembly to provide for the establishment and support of a State Normal School, which shall be open to all persons who may wish to become teachers.

Blind, deaf, and dumb.

See Art. 12, § 1, Const. 1895.

Sec. 7. Educational institutions for the benefit of all the blind, deaf and dumb, and such other benevolent institutions, as the public good may require, shall be established and supported by the State, subject to such regulations as may be prescribed by law.

Reform school.

See Art. 12, § 6, Const. 1895.

Sec. 8. Provisions shall be made by law, as soon as practicable, for the establishment and maintenance of a State Reform School for juvenile offenders.

State University.

Agricultural College.

See Art. 11, § 8, Const. 1895.

Sec. 9. The General Assembly shall provide for the maintenance of the State University, and as soon as practicable, provide for the establishment of an Agricultural College, and shall appropriate the land given to this State, for the support of such a college, by the Act of Congress,

passed July second, one thousand eight hundred and sixty-two, or the money or scrip, as the case may be, arising from the sale of said lands, or any lands which may hereafter be given or appropriated for such purpose, for the support and maintenance of such college, and may make the same a branch of the State University, for instruction in Agriculture, the Mechanic Arts, and the Natural Sciences connected therewith.

Sec. 10. All the public schools, colleges, and universities of this State, supported in whole or in part by the public funds, shall be free and open to all the children and youths of the State, without regard to race or color.

Open to all.

See Art. 11, § 7, Const. 1895.

Holler v. School District of Rock Hill, 60 S. C., 41; 38 S. E., 220.

Sec. 11. The proceeds of all lands that have been or hereafter may be given by the United States to this State for educational purposes, and not otherwise appropriated by this State or the United States, and of all lands or other property given by individuals, or appropriated by the State for like purpose and of all estates of deceased persons who have died without leaving a will or heir, shall be securely invested and sacredly preserved as a State School Fund, and the annual interest and income of said fund, together with such other means as the General Assembly may provide, shall be faithfully appropriated for the purpose of establishing and maintaining free public schools, and for no other purposes or uses whatever.

School fund.

Escheated lands belonging to school fund cannot be given by the Legislature to any person. Harvey v. Harvey, 25 S. C., 283.

ARTICLE XI.

Charitable and Penal Institutions.

Section 1. Institutions for the benefit of the insane, blind, deaf, and dumb, and the poor, shall always be fostered and supported by this State, and shall be subject to such regulations as the General Assembly may enact.

Charitable and penal institutions.

See Art. 12, § 1, Const. 1895.

Sec. 2. The Directors of the Penitentiary shall be elected or appointed, as the General Assembly may direct.

Penitentiary.

See Art. 12, § 5, Const. 1895.

Sec. 3. The Directors of the benevolent and other State institutions, such as may be hereafter created, shall be appointed by the Governor, by and with the consent of the Senate; and upon all nominations made by the Governor, the question shall be taken by yeas and nays, and entered upon the journals.

Directors.

See Art. 12, § 4, Const. 1895.

Sec. 4. The Governor shall have power to fill all vacancies that may occur in the offices aforesaid until the next session of the General Assembly, and until a successor or successors shall be appointed and confirmed.

Vacancies.

See Art. 12, § 8, Const. 1895.

Sec. 5. The respective Counties of this State shall make such provision as may be determined by law, for all those inhabitants who by reason of age and infirmities, or misfortunes, may have a claim upon the sympathy and aid of society.

Poor laws.

See Art. 12, § 3, Const. 1895.

Duke v. Williamsburg, 21 S. C., 417.

Sec. 6. The Physician of the Lunatic Asylum, who shall be Superintendent of the same, shall be appointed by the Governor, with the advice

Lunatic Asylum.

See Art. 12, § 2, Const. 1895.

and consent of the Senate. All other necessary officers and employes shall be appointed by the Governor.

ARTICLE XII.

Corporations.

Corporations.

See Art. 9, § 2, Const. 1895.

Section 1. Corporations may be formed under general laws; but all such laws may from time to time be altered or repealed.

R. R. Co. v. Gibbes, 27 S. C., 385; 4 S. E., 49.

Taxation of.

Sec. 2. The property of corporations now existing or hereafter created, shall be subject to taxation, except in cases otherwise provided for in this Constitution.

Right of way.

See Art. 9, § 20, Const. 1895.

Sec. 3. No right of way shall be appropriated to the use of any corporation until full compensation therefor shall be first made, or secured by a deposit of money to the owner, irrespective of any benefit from any improvement proposed by such corporation, which compensation shall be ascertained by a jury of twelve men, in a Court of record, as shall be prescribed by law.

Debts.

See Art. 9, § 18, Const. 1895.

Sec. 4. Dues from corporations shall be secured by such individual liability of the stockholders and other means, as may be prescribed by law.

Includes damages for personal injuries. Flenniken v. Marshall, 43 S. C., 80; 20 S. E., 788.

Personal responsibility.

Sec. 5. All general laws and special Acts passed pursuant to this Section, shall make provisions therein for fixing the personal liability of stockholders under proper limitations; and shall prevent and punish fraudulent misrepresentations as to the capital, property, and resources of such corporation; and shall also regulate the public use of all franchises which have heretofore been, or hereafter may be, created or granted, by or under the authority of this State, and shall limit all tolls, imposts, and other charges and demands under such laws.

Regulating use of franchise: Kaminitsky v. R. R. Co., 25 S. C., 53. Liability of stockholders, Bird v. Calvert, 22 S. C., 297.

Banking corporations.

See Art. 9, § 9, Const. 1895.

Sec. 6. The General Assembly shall grant no charter for banking purposes, nor renew any banking corporations now in existence, except upon the condition that the stockholders shall be liable to the amount of their respective share or shares of stock in any such banking institution, for all its debts and liabilities, upon note, bill, or otherwise; and upon the further condition that no director or other officer of said corporation shall borrow any money from said corporation; and if any director or other officer shall be convicted upon indictment of directly or indirectly violating this Section, he shall be punished by fine or imprisonment, at the discretion of the Court. The books, papers, and accounts of all banks shall be open to inspection, under such regulations as may be prescribed by law.

The provision as to liability of stockholders is not self-executing.—Parker v. Bank, 53 S. C., 592; 31 S. E., 673.

ARTICLE XIII.

Militia.

Militia.

See Art. 13, § 1, Const. 1895.

Section 1. The Militia of this State shall consist of all able-bodied male citizens of the State between the ages of eighteen and forty-five years, except such persons as are now, or may hereafter be, exempted by the laws of the United States, or who may be adverse to bearing arms, as provided for in this Constitution; and shall be organized, armed, equipped and disciplined as the General Assembly may by law provide.

May be called out.

See Art. 13, § 3, Const. 1895.

Sec. 2. The Governor shall have power to call out the militia to execute the laws, repel invasion, repress insurrection, and preserve the public peace.

Adjutant and Inspector General.

See Art. 13, § 4, Const. 1895.

Sec. 3. There shall be an Adjutant and Inspector General elected by the qualified electors of the State, at the same time and in the same manner as other State officers, who shall rank as a Brigadier General, and whose duties and compensation shall be prescribed by law. The Governor shall appoint, by and with the advice and consent of the Senate, such other staff officers as the General Assembly may direct.

ARTICLE XIV.

Miscellaneous.

Qualifications for office.

See Art. 2, § 2, Const. 1895.

Section 1. No person shall be elected or appointed to any office in this State, unless he possess the qualifications of an elector.

Minor cannot be appointed regular constable, but may serve as special deputy. McConnell v. Kennedy, 29 S. C., 180; 7 S. E., 76.

Lotteries.

See Art. 17, § 7, Const. 1895.

Sec. 2. Lotteries, and the sale of lottery tickets, for any purpose whatever, are prohibited, and the General Assembly shall prevent the same by penal laws.

State Library.

See Art. 17, § 2, Const. 1895.

Sec. 3. The State Library shall be subject to such regulations as the General Assembly may prescribe.

Claims.

Sec. 4. The General Assembly may direct, by law, in what manner claims against the State may be established and adjusted.

Campbell v. Sanders, 42 S. C., 532; 20 S. E., 415; ex parte Childs, 12 S. C., 111.

Divorces.

See Art. 17, § 3, Const. 1895.

Sec. 5. Divorces from the bonds of matrimony shall not be allowed but by the judgment of a Court, as shall be prescribed by law.

McCreery v. Davis, 44 S. C., 222; 22 S. E., 178.

Disqualification for office.

See Art. 17, § 4, Const. 1895.

Sec. 6. No person who denies the existence of the Supreme Being shall hold any office under this Constitution.

Printing.

See Art. 17, § 5, Const. 1895.

Sec. 7. The printing of the laws, journals, bills, legislative documents and papers for each branch of the General Assembly, with the printing required for the Executive and other departments of the State, shall be let, on contract, in such manner as shall be prescribed by law.

Woman's property.

See Art. 17, § 9, Const. 1895.

Sec. 8. The real and personal property of a woman, held at the time of her marriage, or that which she may thereafter acquire, either by gift, grant, inheritance, devise, or otherwise, shall not be subject to levy and sale for her husband's debts; but shall be held as her separate property, and may be bequeathed, devised, or alienated by her the same as

if she were unmarried: *Provided,* That no gift or grant from the husband to the wife shall be detrimental to the just claims of his creditors.

See note to Secs. 2665 and 2667 of Civil Code.

Did not repeal Act 1795, V. 257, prescribing mode of release of estates of inheritance by married women. Brown v. Pechman, 49 S. C., 546; 27 S. E., 520; 53 S. C., 1; 30 S. E., 586.

Did not affect vested rights.—Garrett v. Weinberg, 48 S. C., 28; 26 S. E., 3; Bouknight v. Epting, 11 S. C., 71; Shuler v. Bull, 15 S. C., 421; Pelzer v. Campbell, 15 S. C., 590.

Rights of married women. Townsend v. Brown, 16 S. C., 92; Wallace v. Johnson, 17 S. C., 454; Witte Bros. v. Clark, 17 S. C., 327; Howard v. Henderson, 18 S. C., 191; Aultman v. Rush, 26 S. C., 517; 2 S. E., 402; Brown v. Prevost, 28 S. C., 123; 5 S. E., 274; Sibley v. Parks, 28 S. C., 607; 5 S. E., 809; Dial v. Agnew, 28 S. C., 454; 6 S. E., 295; Brown v. Thomson, 27 S. C., 500; 4 S. E., 345; Gwynn v. Gwynn, 27 S. C., 525; 4 S. E., 229; Bridges v. Howell, 27 S. C., 425; 3 S. E., 790; Kincaid v. Anderson, 33 S. C., 260; Rabb v. Flenniken, 29 S. C., 278; 7 S. E., 597; Hogan v. Hoover, 33 S. C., 219; 11 S. E., 725; ex parte Middleton, 42 S. C., 178; 20 S. E., 34.

Gifts from husband to wife. State v. Pitts, 12 S. C., 183; Gerald v. Gerald, 28 S. C., 442; 6 S. E., 290; Ferguson v. Harrison, 41 S. C., 340; 19 S. E., 619; McGee v. Wells, 52 S. C., 477; 30 S. E., 602.

Removal of causes.

See Const. 1895, Art. 17, § 6.

Sec. 9. The General Assembly shall provide for the removal of all causes, which may be pending when this Constitution goes into effect, to Courts created by the same.

A contract of wife to renounce dower should be entirely free from doubt, clear, positive and express in terms.—Moon v. Bruce, 63 S. C., 126; 40 S. E., 1030.

Election of State officers.

Sec. 10. The election for all State officers shall take place at the same time as is provided for that of members of the General Assembly, and the election for those officers whose terms of service are for four years, shall be held at the time of each alternate general election.

Smith v. McConnell, 44 S. C., 491; 22 S. E., 721; Pettigrew v. Bell, 34 S. C., 104; 12 S. E., 1023; McCoy v. Curtis, 14 S. C., 372; State v. Sims, 18 S. C., 460.

ARTICLE XV.

Amendment and Revision of the Constitution.

Amendments to the Constitution.

See Art. 16, § 1, Const. 1895.

Section 1. Any amendment or amendments to this Constitution, may be proposed in the Senate or House of Representatives. If the same be agreed to by two-thirds of the members elected to each House, such amendment or amendments shall be entered on the journals respectively, with the yeas and nays taken thereon; and the same shall be submitted to the qualified electors of the State at the next general election thereafter for Representatives, and if a majority of the electors qualified to vote for members of the General Assembly, voting thereon, shall vote in favor of such amendment or amendments, and two-thirds of each branch of the next General Assembly shall, after such an election, and before another, ratify the same amendment or amendments, by yeas and nays, the same shall become part of the Constitution: *Provided,* That such amendment or amendments shall have been read three times, on three several days in each House.

If two or more.

See Art. 16, § 2, Const. 1895.

Sec. 2. If two or more amendments shall be submitted at the same time, they shall be submitted in such manner that the electors shall vote for or against each of such amendments separately.

Sec. 3. Whenever two-thirds of the members elected to each branch of the General Assembly shall think it necessary to call a Convention to revise, amend, or change this Constitution, they shall recommend to the electors to vote at the next election for Representatives for or against a Convention; and if a majority of all the electors voting at said election shall have voted for a Convention, the General Assembly shall, at their next session, provide by law for calling the same; and such Convention shall consist of a number of members, not less than that of the most numerous branch of the General Assembly.

Conventions.

See Art. 16, § 3, Const. 1895.

AMENDMENTS.

In construing an amendment the section amended must be considered. Norris v. Clinkscales, 47 S. C., 488; 25 S. E., 797.

ARTICLE 16.

To the end that the public debt of South Carolina may not hereafter be increased, without the due consideration and free consent of the people of the State, the General Assembly is hereby forbidden to create any further debt or obligation, either by the loan of the credit of the State, by guaranty, endorsement, or otherwise, except for the ordinary and current business of the State, without first submitting the question as to the creation of any such new debt, guarantee, endorsement, or loan of its credit, to the people of this State at a general State election; and unless two-thirds of the qualified voters of this State, voting on the question, shall be in favor of a further debt, guaranty, endorsement, or loan of its credit, none such shall be created or made.

Prohibiting creation of debt without consent of the people.

See Art. 10, § 11, Const. 1895; 1873, XV., 466.

Robertson v. Tillman, 39 S. C., 298; 17 S. E., 678; Whaley v. Gaillard, 21 S. C., 580.

AMENDMENT TO ARTICLE 2, SECTION 11.

Strike out all that portion of Section 11, Article 2, following the words "eighteen hundred and seventy," occurring in the fourth and fifth lines, and insert the following: "And forever thereafter, on the first Tuesday following the first Monday in November, in every second year, in such manner and at such places as the Legislature may provide."

Amendment changing election from October to November.

1873, XV., 467.

AMENDMENT TO ARTICLE 3, SECTION 23.

Strike out of Section 23 or Article 3 the word "four," occurring in the third line, and insert the word "two," so that the Section of the Constitution will read, when amended, as follows:

"**Sec. 23.** There shall be elected by the qualified voters of the State a Comptroller General, Secretary of State, Treasurer, Attorney General, Adjutant and Inspector General, and Superintendent of Education, who shall hold their respective offices for the term of two years, and whose duties and compensation shall be prescribed by law."

Art. 3, § 23, as to term of office, amended.

1875, XV., 1009.

AMENDMENT TO ARTICLE 2, SECTION 3.

"Toxaway" substituted for "White Water."

1875, XV., 1014.

That Section 3 of Article 2 of the Constitution of the State be amended by striking out the words "White Water River," in the fifth line of said Section, and inserting in the place thereof the words "Toxaway River."

ARTICLE 10, SECTION 5, AMENDED.

Tax of two mills for public schools.

1878, XVI., 639.

"The Boards of County Commissioners of the several Counties shall levy an annual tax of not less than two mills on the dollar upon all the taxable property in their respective Counties, which levy shall not be increased unless by special enactment of the General Assembly, for the support of public schools in their respective Counties, which tax shall be collected at the same time and by the same officers as the other taxes for the same year, and shall be held in the County Treasuries of the respective Counties, and paid out exclusively for the support of public schools, as provided by law. There shall be assessed on all taxable polls in the State an annual tax of one dollar on each poll, the proceeds of which tax shall be applied solely to educational purposes: *Provided,* That no person shall ever be deprived of the right of suffrage for the non-payment of said tax. No other poll or capitation tax shall be levied in the State, nor shall the amount assessed on each poll exceed the limit given in this Section. The school tax shall be distributed among the several school districts of the Counties in proportion to the respective number of pupils attending the public schools. No religious sect or sects shall have exclusive right to or control of any part of the school funds of the State, nor shall sectarian principles be taught in the public schools."

Poll tax.

ARTICLE 2, SECTION 32, AMENDED.

"That Section 32, Article 2, of the Constitution of this State be, and is hereby, stricken out, and the following inserted in lieu thereof:

Art. 2, § 32, as to homestead, amended.

1880, XVII., 320.

"The General Assembly shall enact such laws as will exempt from attachment and sale under any mesne or final process issued from any Court to the head of any family residing in this State a homestead in lands, whether held in fee or any lesser estate, not to exceed in value one thousand dollars, with the yearly products thereof; and every head of a family residing in this State, whether entitled to a homestead exemption in lands or not, personal property not to exceed in value the sum of five hundred dollars: *Provided,* That in case any woman having a separate estate shall be married to the head of a family who has not of his own sufficient property to constitute a homestead as hereinbefore provided, said married woman shall be entitled to a like exemption as provided for the head af a family: *Provided further,* That there shall not be an allowance of more than one thousand dollars worth of real estate and more than five hundred dollars worth of personal property to the husband and wife jointly: *Provided,* That no property shall be exempt from attachment, levy or sale for taxes, or for payment of obligations contracted for the purchase of said homestead or the erection of improvements thereon: *Provided further,* That the yearly products of

said homestead shall not be exempt from attachment, levy or sale, for the payment of obligations contracted in the production of the same. It shall be the duty of the General Assembly at their first session to enforce the provisions of this Section by suitable legislation."

Allows homestead out of any lands debtor may own. Swandale v. Swandale, 25 S. C., 389. Obligations contracted for the purchase of the homestead. Willingham v. Willingham, 55 S. C., 445; 33 S. E., 500.

AMENDMENT TO ARTICLE 8, SECTION 8.

Burglary, larceny, perjury, forgery or any other infamous crime added to disqualifications as electors.

1882, XVIII., 3.

That Section 8, Article 8, of the Constitution be amended by inserting therein after the word "murder" the following words: "burglary, larceny, perjury, forgery or any other infamous crime." So that the Section when amended shall read as follows:

"Sec. 8. The General Assembly shall never pass any law that will deprive any of the citizens of this State of the right of suffrage, except for treason, murder, burglary, larceny, perjury, forgery or any other infamous crime, or dueling, whereof the person shall have been duly tried and convicted."

AMENDMENT TO ARTICLE 2, SECTION 11.

Biennial elections to be fixed by the Legislature.

1882, XVIII., 4.

That Section 11, Article 2, of the Constitution of this State be, and the same is hereby, stricken out and the following inserted in lieu thereof:

"The general election for Senators and Representatives shall be held in every second year, in such manner, at such time and at such places as the Legislature may provide."

AMENDMENT TO ARTICLE 2, SECTIONS 4 AND 5.

Sections 4 and 5 of the Constitution stricken out and this inserted as Section 4.

1886, XIX., 499.

Sections 4 and 5 of Article 2 stricken out and the following inserted as Section 4:

"That Article two (2) of the Constitution of the State of South Carolina be, and the same is hereby, amended so that in place of Sections 4 and 5 of said Article the following shall be substituted, and shall be known as Section 4 thereof, to wit:

Census.

"Sec. 4. The House of Representatives shall consist of one hundred and twenty-four members, to be apportioned among the several Counties according to the number of inhabitants contained in each; an enumeration of the inhabitants for this purpose shall be made in eighteen hundred and ninety-one, and shall be made in the course of every tenth year thereafter, in such manner as shall be by law directed: *Provided,* That the General Assembly may at any time in its discretion adopt the immediately preceding United States census as a true and correct enumeration of the inhabitants of the several Counties, and make the apportionment and assignment of Representatives among the several Counties according to said enumeration: *Provided, however,* This amendment shall not prevent the General Assembly from providing for an enumeration and apportionment prior to 1891 in the manner now provided for by law."

Apportionment under U. S. Census.

Proviso.

AMENDMENT TO ARTICLE 9, SECTION 14.

That Section 14, Article 9, of the Constitution of the State of South Carolina be amended so as to read as follows:

Character of bonds and stock to be issued by the State, and the manner of their registry.

1889, XIX., 538.

"Sec. 14. Any debt contracted by the State shall be by loan on State bonds or stock, of amounts not less than one hundred dollars each, bearing interest, payable semi-annually, and payable within fifty years after the final passage of the law authorizing such debt. A correct registry of all such bonds or stock shall be kept by the Treasurer in numerical order, so as always to exhibit the number and amount unpaid, and to whom severally made payable."

AMENDMENT TO ARTICLE 4, SECTION 20.

That Section 20 of Article 4 of the Constitution of this State is hereby stricken out and the following inserted in lieu thereof:

Term of Probate Judge changed from two to four years.

1889, XX., 281.

"Sec. 20. A Court of Probate shall be established in each County, with jurisdiction in all matters testamentary and of administration, in business appertaining to minors, and the allotment of dower, in cases of idiocy and lunacy and persons *non compos mentis*. The Judge of said Court shall be elected by the qualified electors of the respective Counties for the term of four years."

ARTICLE 4, SECTION 19, REPEALED.

Repeal of § 19 of Art. IV., of Constitution.

1889, XX., 288; 1890, XX., 650.

That the amendment to Article four (4) of the Constitution of the State of South Carolina, which was submitted by Joint Resolution of the last past General Assembly, approved December 23d, A. D. 1889, to the qualified electors of the State, at the general election next thereafter, to repeal Section nineteen (19) of Article 4 of the Constitution of South Carolina, relating to the Judicial Department, which provides for a Board of County Commissioners, and upon which a majority of the electors qualified to vote for members of the General Assembly of this State, voting thereon at the last past general election, voted in favor of the said amendment, be, and the same is hereby, ratified.

Approved December 20th, A. D. 1890.

ALPHABETICAL INDEX

TO

United States Constitution, State Constitutions of 1895 and 1868.

A

Able Bodied—

Male citizens between 18 and 45 compose the militia—Const. 1895, Art. XIII., Sec. 1; Const. 1868, Art. XIII., Sec. 1.

Abridged—

Privileges and immunities of citizens shall not be—Const. U. S., Art. 14A., Sec. 1; Const. 1895, Art. I., Sec. 5.

Freedom of speech or of press shall not be—Const. 1895, Art. I., Sec. 4; Const. 1868, Art. I., Sec. 7; Const. U. S., Art. 1A.

Right to assemble and petition for redress of grievances shall not be—Const. U. S., Art. 1A.; Const. 1895, Art. I., Sec. 4; Const. 1868, Art. I., Sec. 6.

Absence—

Temporary does not forfeit residence—Const. 1895, Art. I., Sec. 12; Const. 1868, Art. I., Sec. 35.

Absent Members—

Each House may compel attendance of—Const. U. S., Art. I., Sec. 5, Clause 1; Const. 1895, Art. III., Sec. 11; Const. 1868, Art. II., Sec. 14.

Accounts—

Of receipts and expenditures of public moneys shall be published, when—Const. U. S., Art. I., Sec. 9, Clause 7; Const. 1895, Art. X., Sec. 8; Const. 1868, Art. IX., Sec. 11.

Adoption of Children—

Special legislation as to prohibited—Const. 1895, Art. III., Sec. 34, Clause 6.

Amendments to Constitution—

Whenever two-thirds of both Houses deem it necessary, Congress shall propose—Const. U. S., Art. V.

On application of two-thirds of the States, Congress shall propose—Const. U. S., Art. V.

Shall be ratified by the Legislatures or Conventions of three-fourths of the States—Const. U. S., Art. V.

To State Constitution, how made—Const. 1895, Art. XVI., Secs. 1 and 2; Const. 1868, Art. XV., Secs. 1 and 2.

ANSWER—

For capital or infamous crime, persons shall be held to only on presentment of grand jury—Const. U. S., Art. 5A.

For any crime where punishment exceeds fine of $100 or 30 days imprisonment—Const. 1868, Art. I., Sec. 19; Const. 1895, Art. I., Sec. 17.

Until charge is fully explained to him, no one shall be held to—Const. U. S., Art. 6A.; Const. 1895, Art. I., Sec. 18; Const. 1868, Art. I., Sec. 13.

Exceptions as to Courts Martial—Const. U. S., Art. 5A.; Const. 1895, Art. I., Sec. 17; Const. 1868, Art. I., Sec. 19.

APPEALS—

To Supreme Court of United States—Const. U. S., Art. III., Sec. 2, Clause 2.

To Supreme Court of State—Const. 1895, Art. V., Sec. 4; Const. 1868, Art. IV., Sec. 4.

From Magistrates' Courts—Const. 1895, Art. V., Sec. 23.

From Justices of the Peace—Const. 1868, Art. IV., Sec. 24.

From Common Pleas—Const. 1895, Art. V., Sec. 15.

To Common Pleas—Const. 1895, Art. V., Sec. 15; Const. 1868, Art. IV., Sec. 15.

From Registration officers—Const. 1895, Art. II., Sec. 5.

From County Commissioners—Const. 1868, Art. IV., Sec. 19.

ACCUSATION—

In criminal prosecutions the accused shall be informed of the cause and nature of the—Const. U. S., Art. 6A.; Const. 1895, Art. I., Sec. 18; Const. 1868, Art. I., Sec. 13.

ACCUSED—

To be confronted with witnesses—Const. U. S., Art. 6A.; Const. 1895, Art. I., Sec. 18; Const. 1868, Art. I., Sec. 13.

To have public trial by jury—Const. U. S., Art. 6A.; Const. 1895, Art. I., Sec. 18; Const. 1868, Art. I., Sec. 13.

To have compulsory process for witnesses—Const. U. S., Art. 6A.; Const. 1895, Art. I., Sec. 18; Const. 1868, Art. I., Sec. 13.

To have assistance of counsel—Const. U. S., Art. 6A.; Const. 1895, Art. I., Sec. 18; Const. 1868, Art. I., Sec. 13.

To be heard in his own defence—Const. U. S., Art. 6A.; Const. 1895, Art. I., Sec. 18; Const. 1868, Art. I., Sec. 13.

To be informed of nature of accusation—Const. U. S., Art. 6A.; Const. 1895, Art. I., Sec. 18; Const. 1868, Art. I., Sec. 13.

To be tried in district where crime was committed—Const. U. S., Art. 6A.

ACQUITTAL, FORMER—

Bar to second trial. See "Jeopardy"—Const. 1868, Art. I., Sec. 18.

ACTS—
Or Joint Resolutions to relate to but one subject, to be expressed in the title—Const. 1895, Art. III., Sec. 17; Const. 1868, Art. II., Sec. 20.
Records or judicial proceedings of another State; full credit given; proof of—Const. U. S., Art. IV., Sec. 1.
Of Congress; Land Scrip Fund under—Const. 1895, Art. XI., Sec. 8.

ACTIONS—
At common law involving over twenty dollars to be tried by jury—Const. U. S., Art. 7A.
Civil, in Magistrates' Courts, to be tried in County where defendant resides—Const. 1895, Art. V., Sec. 23.
Ex delicto, jurisdiction of Common Pleas—Const. 1868, Art. IV., Sec. 15.
Pending, continued—Const. 1895, Art. XVII., Sec. 11, Clause 2.

ADJOURN—
From day to day, less than quorum of House may—Const. U. S., Art. I., Sec. 5, Clause 1; Const. 1895, Art. III., Sec. 11; Const. 1868, Art. II., Sec. 14.
For more than three days, or to place other than where sitting, neither house can, during session, without consent of other—Const. U. S., Art. I., Sec. 5, Clause 4; Const. 1895, Art. III., Sec. 21; Const. 1868, Art. II., Sec. 25.

ADJOURNMENT—
By President or Governor, to such time as he may think, in case of disagreement between the two Houses as to—Const. U. S., Art. II., Sec. 3; Const. 1895, Art. IV., Sec. 16; Const. 1868, Art. III., Sec. 16.
Exemption from arrest for ten days after—Const. 1895, Art. III., Sec. 14; Const. 1868, Art. II., Sec. 17.

ADJUTANT AND INSPECTOR GENERAL—
Election, rank, term, duties, compensation—Const. 1895, Art. XIII., Sec. 4; Const. 1868, Art. XIII., Sec. 3.
Election, term—Const. 1868, Art. 3A., Sec. 23.
Election, compensation not to be changed during term—Const. 1895, Art. IV., Sec. 24.

ADMIRALTY—
And maritime jurisdiction, the judicial power of the United States extends to all cases in—Const. U. S., Art. III., Sec. 2, Clause 1.

ADMISSION—
Of new States—Const. U. S., Art. IV., Sec. 3, Clause 1.

ADOPTION—
Of the Constitution; effect on debts and contracts—Const. U. S., Art. VI., Clause 1.
Of the Constitution; laws continued of force—Const. 1895, Art. XVII., Sec. 11, Clause 1.
Of the Constitution; actions, proceedings, &c., continued—Const. 1895, Art. XVII., Sec. 11, Clause 2.

ADOPTION—*(Continued)*
Of the Constitution; repeals inconsistent laws—Const. 1895, Art. XVII., Sec. 11, Clause 3.
Of the Constitution; forfeitures, fines, &c.—Const. 1895, Art. XVII., Sec. 11, Clause 4.
Of the Constitution; recognizances continued—Const. 1895, Art. XVII., Sec. 11, Clause 5.
Of the Constitution; indictments continued—Const. 1895, Art. XVII., Sec. 11, Clause 5.
Of the Constitution; officers hold over on—Const. 1895, Art. XVII., Sec. 11, Clause 6.
Of the Constitution; elections under—Const. 1895, Art. XVII., Sec. 11, Clause 7.
Of the Constitution; takes effect—Const. 1895, Art. XVII., Sec. 11, Clause 8.
Of the Constitution; repeals provisions of Constitution of 1868 not re-ordained—Const. 1895, Art. XVII., Sec. 11, Clause 9.

ADVICE AND CONSENT OF THE SENATE—
President has power to make treaties by and with—Const. U. S., Art. II., Sec. 2, Clause 2.
President has power to appoint Ambassadors, Ministers and Consuls by and with—Const. U. S., Art. II., Sec. 2, Clause 2.
President has power to appoint all other officers not otherwise provided for—Const. U. S., Art. II., Sec. 2, Clause 2.

AGENT—
No extra compensation to be granted—Const. 1895, Art. III., Sec. 30.
Resident, of foreign corporation—Const. 1895, Art. IX., Sec. 4.

AGREEMENT OR COMPACT—
None between States without consent of Congress—Const. U. S., Art. I., Sec. 10, Clause 3.

AGRICULTURAL COLLEGE—
To be established—Const. 1868, Art. X., Sec. 9.
Clemson—Const. 1895, Art. XI., Sec. 8.
Colored, Normal, Industrial, &c.—Const. 1895, Art. XI., Sec. 8.

AID AND COMFORT—
To enemies of United States, treason—Const. U. S., Art. III., Sec. 3, Clause 1.
To enemies of State, treason—Const. 1895, Art. I., Sec. 22.

ALIENS—
Lands held by, amount to be limited—Const. 1895, Art. III., Sec. 35.
Suits between citizens and—Const. U. S., Art. III., Sec. 2, Clause 1.

ALLIANCE OR CONFEDERATION—
No State shall enter into any—Const. U. S., Art. I., Sec. 10, Clause 1.

AMBASSADORS, &c.—
The President may appoint—Const. U. S., Art. II., Sec. 2, Clause 2.
Judicial power of United States extends to cases affecting—Const. U. S., Art. III., Sec. 2, Clause 1.

AFFIRMATION—
Senators sitting to try impeachments to be on oath or—Const. 1895, Art. XV., Sec. 2; Const. U. S., Art. I., Sec. 3, Clause 6; Const. 1868, Art. VII., Sec. 2.
To be taken by President of the United States; form of oath or—Const. U. S., Art. II., Sec. 1, Clause 7.
To be taken by members of General Assembly and all State officers; form of oath or—Const. 1868, Art. II., Sec. 30; Const. 1895, Art. III., Sec. 26.
To support the Constitution, all officers to be bound by oath or—Const. U. S., Art. VI., Clause 3.
No warrants to be issued but upon probable cause, and on oath or—Const. U. S., Art. 4A.; Const. 1868, Art. I., Sec. 22; 1895, Art. I., Sec. 16.

AGE—
Of Representatives in Congress—Const. U. S., Art. I., Sec. 2, Clause 2.
United States Senators—Const. U. S., Art. I., Sec. 3, Clause 3.
President—Const. U. S., Art. II., Sec. 1, Clause 4.
Electors—Const. 1895, Art. II., Sec. 3; Const. 1868, Art. VIII., Sec. 2.
Representative in Legislature—Const. 1895, Art. III., Sec. 7; Const. 1868, Art. II., Sec. 10.
State Senator—Const. 1895, Art. III., Sec. 7; Const. 1868, Art. II., Sec. 10.
Governor—Const. 1895, Art. IV., Sec. 3; Const. 1868, Art. III., Sec. 3.
Judges—Const. 1895, Art. V., Sec. 10; Const. 1868, Art. IV., Sec. 10.
School children—Const. 1895, Art. XI., Sec. 5; Const. 1868, Art. X., Sec. 4.

APPLICATION—
Of State authorities to United States for protection against invasion or domestic violence—Const. U. S., Art. IV., Sec. 4.
Of two-thirds of States for Convention to amend Constitution—Const. U. S., Art. V.

APPOINTMENT—
Of militia officers, &c., reserved to States—Const. U. S., Art. I., Sec. 18, Clause 16.
Of inferior officers, &c., may be vested in President—Const. U. S., Art. II., Sec. 2, Clause 2.

APPORTIONMENT—
Of representation and direct taxation among the States—Const. U. S., Art. I., Sec. 2, Clause 3; Const. U. S., Art. 14A., Sec. 2.
Of Representatives among Counties—Const. 1895, Art. III., Secs. 3-5. Const. 1868, Art. II., Sec. 4; Const. 1868, (Amend. 1886.)

Appropriation—
Money only to be drawn pursuant to—Const. U. S., Art. I., Sec. 9, Clause 7; Const. 1895, Art. X., Sec. 9; Const. 1868, Art. IX., Sec. 12; Const. 1868, Art. II., Sec. 22.
For raising and supporting armies—Const. U. S., Art. I., Sec. 8, Clause 12.
For repelling invasion, suppressing insurrections, &c.—Const. 1895, Art. III., Sec. 30.

Approval—
Of Bills by the President—Const. U. S., Art. I., Sec. 7, Clause 2.
Of Bills by the Governor—Const. 1895, Art. IV., Sec. 23; Const. 1868, Art. III., Sec. 22.

Arbitrators—
Settlement of disputes by—Const. 1895, Art. VI., Sec. 1; Const. 1868, Art. V., Sec. 1.

Armies—
Congress may raise and support—Const. U. S., Art. I., Sec. 8, Clause 12.
Congress may make rules and regulations for—Const. U. S., Art. I., Sec. 8, Clause 14.
Limitation on appropriations for—Const. U. S., Art. I., Sec. 8, Clause 12.
Not to be maintained without consent of Legislature—Const. 1895, Art. I., Sec. 26; Const. 1868, Art. I., Sec. 28.
Not to be brought into State, except when—Const. 1868, Art. VIII., Sec. 9.

Arms—
Right to keep and bear—Const. U. S., Art. 2A.; Const. 1895, Art. I., Sec. 26; Const. 1868, Art. I., Sec. 28
Not compelled to bear against conscience—Const. 1868, Art. I., Sec. 30.

Arrest—
Exemption of Congressmen from, when—Const. U. S., Art. I., Sec. 6, Clause 1.
Exemption of Legislators from, when—Const. 1895, Art. III., Sec. 14; Const. 1868, Art. II., Sec. 17.
Exemption of Electors from, when—Const. 1895, Art. II., Sec. 14; Const. 1868, Art. VIII., Sec. 6.
Exemption of militiamen from—Const. 1895, Art. XIII., Sec. 2.

Arsenals—
Authority of Congress over—Const. U. S., Art. I., Sec. 8, Clause 17.

Articles—
Exported from any State; no tax or duty on—Const. U. S., Art. I., Sec. 9, Clause 5.

Arts—
Promotion of by copyright and patent laws—Const. U. S., Art. I., Sec. 8, Clause 8.

ASSESSMENT FOR TAXES—
Uniform rate provided for—Const. 1895, Art. X., Sec. 1; Const. 1868, Art. IX., Sec. 1.
One only, of all property—Const. 1895, Art. X., Sec. 13.
Of lands every fifth year—Const. 1868, Art. IX., Sec. 6.

ASSESSED VALUE FOR TAXATION—
Limitation of indebtedness according to—Const. 1895, Art. X., Sec. 5; Const. 1868, Art. IX., Sec. 17.

ASSISTANCE OF COUNSEL—
Accused shall have—Const. U. S., Art. 6A.; Const. 1895, Art. I., Sec. 18; Const. 1868, Art. I., Sec. 13.

ASSOCIATE JUSTICES—
Election of—Const. 1895, Art. V., Sec. 2; Const. 1868, Art. IV., Sec. 2.
Classification of—Const. 1895, Art. V., Sec. 2; Const. 1868, Art. IV., Sec. 2.
Term of office—Const. 1895, Art. V., Sec. 2; Const. 1868, Art. IV., Sec. 2.
Present Justices to form part of Court—Const. 1895, Art. V., Sec. 3.
Additional Justice to be elected—Const. 1895, Art. V., Sec. 3.

ASSUMPTION—
Of debts incurred in aid or rebellion—Const. U. S., Art. 14A., Sec. 4; Const. 1868, Art. IX., Sec. 16.

ASYLUMS—
Certain property of exempt from taxation—Const. 1895, Art. X., Sec. 4; Const. 1868, Art. IX., Sec. 5.
Officers of Lunatic, appointment, &c.—Const. 1868, Art. XI., Sec. 6; Const. 1895, Art. XII., Sec. 2.

ATTAINDER—
No bill of, shall be passed—Const. U. S., Art. I., Sec. 9, Clause 3; Const. 1895, Art. I., Sec. 8; Const. 1868, Art. I., Sec. 21.
No State shall pass any bill of—Const. U. S., Art. I., Sec. 10, Clause 1.
Of treason shall not work forfeiture, &c.—Const. U. S., Art. III., Sec. 3, Clause 2; Const. 1895, Art. I., Sec. 8; Const. 1868, Art. I., Sec. 21.

ATTENDANCE—
Of absent members may be compelled—Const. U. S., Art. I., Sec. 5, Clause 1; Const. 1895, Art. III., Sec. 11; Const. 1868, Art. II., Sec. 14.

ATTORNEYS AT LAW—
Oath of—Const. 1895, Art. III., Sec. 26; Const. 1868, Art. II., Sec. 30.

ATTORNEY GENERAL—
Term of office; election—Const. 1895, Art. V., Sec. 28; Const. 1895, Art. IV., Sec. 24; Const. 1868, Art. III., Sec. 23; Const. 1868, Art. IV., Sec. 28; Const. 1868, (Amend. 1875.)
Compensation of—Const. 1895, Art. IV., Sec. 24; Const. 1895, Art. V., Sec. 28; Const. 1868, Art. III., Sec. 23; Const. 1868, Art. IV., Sec. 28.
Compensation not to be changed during term—Const. 1895, Art. IV., Sec. 24.
Duties of—Const. 1895, Art. V., Sec. 28; Const. 1868, Art. IV., Sec. 28.

AUTHORITY—

Supreme executive vested in Governor—Const. 1895, Art. IV., Sec. 1; Const. 1868, Art. III., Sec. 1.

AUTHORS—

Rights of, protected by copyright—Const. U. S., Art. I., Sec. 8, Clause 8.

AYES AND NOES—

To be called, when—Const. U. S., Art. I., Sec. 5, Clause 3; Const. 1895, Art. III., Sec. 22; Const. 1868, Art. II., Sec. 26.

Taken on vote after veto—Const. U. S., Art. I., Sec. 7, Clause 4; Const. 1895, Art. IV., Sec. 23; Const. 1868, Art. III., Sec. 22.

Recorded on bill to create public debt—Const. 1868, Art. IX., Sec. 7.

B

BAIL—

Excessive shall not be required—Const. U. S., Art. 8A.; Const. 1895, Art. I., Sec. 19; Const. 1868, Art. I., Sec. 16.

BALLOTS—

Election for President and Vice President by—Const. U. S., Art. 12A.

Election for Circuit Judges to be by—Const. 1868, Art. IV., Sec. 13.

All elections by people shall be by—Const. 1895, Art. II., Sec. 1; Const. 1868, Art. VIII., Sec. 1.

No to be counted in secret—Const. 1868, Art. VIII., Sec. 1; Const. 1895, Art. II., Sec. 1.

BANKS—

To be formed only under general laws—Const. 1895, Art. IX., Sec. 9.

Examination and inspection of—Const. 1895, Art. IX., Sec. 9; Const. 1868, Art. XII., Sec. 6.

Liability of stockholders—Const. 1868, Art. XII., Sec. 6.

Directors not to borrow from—Const. 1868, Art. XII., Sec. 6.

Taxation of shares in, for municipal purposes—Const. 1895, Art. X., Sec. 5.

BANKRUPTCY—

Congress may enact uniform laws on—Const. U. S., Art. I., Sec. 8, Clause 4.

BASIS—

Of Representation among the States—Const. U. S., Art. 14A., Sec. 2.

Of Representation among Counties—Const. 1895, Art. III., Sec. 4; Const. 1868, Art. II., Sec. 6.

BASTARDY—

Jurisdiction Justices of Peace as to—Const. 1868, Art. IV., Sec. 22.

BEAR ARMS—

Right to, shall not be infringed—Const. U. S., Art. 2A.; Const. 1895, Art. I., Sec. 26; Const. 1868, Art. I., Sec. 28.

BEHAVIOR—

Judges of U. S. Courts to hold offices during good—Const. U. S., Art. III., Sec. 1.

BENEVOLENT INSTITUTIONS—

To be supported by State—Const. 1895, Art. XII., Sec. 1; Const. 1868, Art. XI., Sec. 1; Const. 1868, Art. X., Sec. 7.

Exemption from taxation—Const. 1895, Art. X., Sec. 4; Const. 1868, Art. IX., Sec. 5.

Directors of, how appointed or elected—Const. 1895, Art. XII., Sec. 4; Const. 1868, Art. XI., Sec. 3.

BILLS—

Of attainder shall never be enacted—Const. U. S., Art. I., Sec. 9, Clause 3; Const. U. S., Art. I., Sec. 10, Clause 1; Const. 1895, Art. I., Sec. 8; Const. 1868, Art. I., Sec. 21.

Of rights—Const. 1895, Art. I., Secs. 1-28; Const. 1868, Art. I., Secs. 1-41.

Of credit, no State shall emit—Const. U. S., Art. I., Sec. 10, Clause 1.

For raising revenue, must originate in House—Const. U. S., Art. I., Sec. 7, Clause 1; Const. 1895, Art. III., Sec. 15; Const. 1868, Art. II., Sec. 18.

For raising revenue, may be amended in Senate—Const. U. S., Art. I., Sec. 7, Clause 1; Const. 1895, Art. III., Sec. 15; Const. 1868, Art. II., Sec. 18.

Printing of, contract for, to be let—Const. 1895, Art. XVII., Sec. 5.

Appropriation, Governor may veto part of—Const. 1895, Art. IV., Sec. 23.

Which have passed Senate and House to be presented to President—Const. U. S., Art. I., Sec. 7, Clause 2.

Which have passed Senate and House to be presented to Governor—Const. 1895, Art. IV., Sec. 23; Const. 1868, Art. III., Sec. 22.

Approval, or veto, of—Const. U. S., Art. I., Sec. 7, Clause 2; Const. 1895, Art. IV., Sec. 23; Const. 1868, Art. III., Sec. 22.

Reconsideration, and passage, over veto—Const. U. S., Art. I., Sec. 7, Clause 2; Const. 1895, Art. IV., Sec. 23; Const. 1868, Art. III., Sec. 22.

When to become law without approval—Const. U. S., Art. I., Sec. 7, Clause 2; Const. 1895, Art. IV., Sec. 23; Const. 1868, Art. III., Sec. 22.

To be read three times—Const. 1895, Art. III., Sec. 18; Const. 1868, Art. II., Sec. 21.

To have "great seal"—Const. 1895, Art. III., Sec. 18; Const. 1868, Art. II., Sec. 21.

To be signed by President of Senate—Const. 1895, Art. III., Sec. 18; Const. 1868, Art. II., Sec. 21.

To be signed by Speaker of the House—Const. 1895, Art. III., Sec. 18; Const. 1868, Art. II., Sec. 21.

BLIND—

Institutions for, to be supported, &c.—Const. 1895, Art. XII., Sec. 1; Const. 1895, Art. XI., Sec. 1; Const. 1895, Art. X., Sec. 7.

Board—
Of County Commissioners, term, duties, &c.—Const. 1868, Art. IV., Sec. 19.
Repealed—Const. 1868, (Amend. 1890.)
Of County Commissioners, to levy taxes—Const. 1868, Art. X., Sec. 5.
Of Canvassers to the duplicate election returns—Const. 1895, Art. IV., Sec. 4; Const. 1868, Art. III., Sec. 4.
Of Canvassers to forward original election returns—Const. 1895, Art. IV., Sec. 4; Const. 1868, Art. III., Sec. 4.
Of Pardons provided—Const. 1895, Art. IV., Sec. 11.
Of Registration provided—Const. 1895, Art. II., Sec. 8.
Of Public Institutions, to report to Governor—Const. 1895, Art. IV., Sec. 14.
Of Health provided for—Const. 1895, Art. VIII., Sec. 10.

Bonds—
Of municipalities, elections to issue—Const. 1895, Art. II., Sec. 13.
Of municipalities, how issued—Const. 1895, Art. VIII., Sec. 7.
Of municipalities, limitation as to amount—Const. 1895, Art. VIII., Sec. 7; Const. 1895, Art. X., Sec. 5; Const. 1868, Art. IX., 17.
Fictitious, by corporations, void—Const. 1895, Art. IX., Sec. 10.
To be issued only for value actually received—Const. 1895, Art. IX., Sec. 10.

Books of Registration—
Close of—Const. 1895, Art. II., Sec. 11.

Borrow Money—
Congress may, on credit of United States—Const. U. S., Art. I., Sec. 8, Clause 2.
Power of towns and cities to—Const. 1895, Art. VIII., Sec. 3; Const. 1868, Art. IX., Sec. 9.

Boundary Rivers—
Are public highways—Const. 1895, Art. XIV., Sec. 1; Const. 1868, Art. VI., Sec. 1.
State has concurrent jurisdiction over—Const. 1895, Art. XIV., Sec. 1; Const. 1868, Art. VI., Sec. 1.

Bounties—
Granted by United States not to be questioned—Const. U. S., Art. 14A.; Sec. 4.

Breach of Peace—
Senators and Representatives not exempt from arrest for—Const. U. S., Art. I., Sec. 6, Clause 1; Const. 1895, Art. III., Sec. 14; Const. 1868, Art. VIII., Sec. 6.

Bribery—
Right of suffrage to be protected from—Const. 1895; Art. I., Sec. 9; Const. 1868, Art. I., Sec. 33.
Conviction of, disfranchises voter—Const. 1895, Art. II., Sec. 6, Clause 1.
Conviction of, removal of officers on—Const. U. S., Art. II., Sec. 4.

BURYING GROUNDS—
Exempt from taxation—Const. 1895, Art. X., Sec. 4; Const. 1868, Art. IX., Sec. 5.

C

CAPITAL—
Of State, Columbia to be—Const. 1868, Art. II., Sec. 12; Const. 1895, Art. III., Sec. 9.
Of State, Governor shall reside at—Const. 1895, Art. IV., Sec. 21; Const. 1868, Art. III., Sec. 21.
Of United States, authority of Congress over—Const. U. S., Art. I., Sec. 8, Clause 17.
Cases, indictment by grand jury in—Const. U. S., Art. 5A.; Const. 1895, Art. I., Sec. 17; Const. 1868, Art. I., Sec. 19.
Cases, bail in—Const. 1895, Art. I., Sec. 20; Const. 1868, Art. I., Sec. 16.

CAPITATION—
And direct taxes proportionate to census enumeration—Const. U. S., Art. I., Sec. 9, Clause 4.
Tax on domestic animals—Const. 1895, Art. X., Sec. 1.
Tax on taxable polls for school purposes—Const. 1895, Art. XI., Sec. 6; Const. 1868, Art. X., Sec. 5; Const. 1868, Art. IX., Sec. 2; Const. 1868, A. 1878.
Tax only for school purposes under Constitution 1868—Const. 1868, Art. IX., Sec. 5; Const. 1868, A. 1878.
Tax, effect of non payment on suffrage—Const. 1895, Art. II., Sec. 4, Clause a; Const. 1868, Art. IX., Sec. 5; Const. 1868, A. 1878.

CAPTURES—
On land and water, power of Congress as to—Const. U. S., Art. I., Sec. 8, Clause 11.

CASTING VOTE—
When Senate equally divided—Const. U. S., Art. I., Sec. 3, Clause 4; Const. 1895, Art. IV., Sec. 6; Const. 1868, Art. III., Sec. 6.

CAUSES—
Removal of into Courts created—Const. 1895, Art. XVII., Sec. 6.
Removal of, from Courts of Equity to Common Pleas—Const. 1868, Art. IV., Sec. 17.
Of action pending, continuance of—Const. 1895, Art. 17, Sec. 11; Const. 1868, Art. IV., Sec. 16.

CENSUS—
When to be taken—Const. U. S., Art. I., Sec. 2, Clause 3; Const. 1895, Art. III., Sec. 3; Const. 1868, Art. II., Sec. 4.
Representation apportioned according to—Const. U. S., Art. I., Sec. 2, Clause 3; Const. 1895, Art. III., Sec. 3; Const. 1868, Art. II., Sec. 4.
Capitation and direct taxes apportioned according to—Const. U. S., Art. I., Sec. 9, Clause 4.
Duty of Governor when not taken, &c.—Const. 1868, Art. II., Sec. 5.
United States may be adopted by State—Const. 1895, Art. III., Sec. 3.

CERTIFICATE—

Of officer, proof of payment of taxes—Const. 1895, Art. II., Sec. 4.
Of registration to be issued to elector—Const. 1895, Art. II., Sec. 4.
Of registration, renewal of—Const. 1895, Art. II., Sec. 4.
Of registration, in municipal elections—Const. 1895, Art. II., Sec. 12.
Of State indebtedness, not to be issued, except—Const. 1895, Art. X., Sec. 7; Const. 1868, Art. IX., Sec. 10.
Of municipal indebtedness, when to be issued—Const. 1895, Art. VIII., Sec. 7.

CHALLENGE TO DUEL—

Sending or accepting, disfranchises—Const. 1895, Art. I., Sec. 11; Const. 1868, Art. I., Sec. 32.

CHANGE OF NAMES—

By special legislation prohibited—Const. 1895, Art. III., Sec. 34, Clause 1.

CHARGE—

None levied without consent of people, &c.—Const. 1895, Art. I., Sec. 7; Const. 1868, Art. I., Sec. 37.

CHARGES OF CARRIERS, &c.—

Extortion in to be prevented—Const. 1895, Art. IX., Sec. 13.
Limitation of—Const. 1868, Art. XII., Sec. 5.
Limitation of and discrimination in—Const. 1895, Art. IX., Sec. 5.

CHARITABLE INSTITUTIONS—

Property of, exempt from taxation—Const. 1895, Art. X., Sec. 4; Const. 1868, Art. IX., Sec. 5.
To be fostered and supported by State—Const. 1895, Art. XII., Sec. 1; Const. 1868, Art. XI., Sec. 1; Const. 1868, Art. X., Sec. 7.
Directors of, appointment, &c—Const. 1895, Art. XII., Sec. 4; Const. 1868, Art. XI., Sec. 3.
For the poor, maintained by Counties—Const. 1895, Art. XII., Sec. 3; Const. 1868, Art. XI., Sec. 5.
State Hospital for Insane, Superintendent, &c.—Const. 1895, Art. XII., Sec. 2.
State Lunatic Asylum, Superintendent, &c.—Const. 1868, Art. XI., Sec. 6.

CHARLESTON COUNTY—

Allowed two Senators under former Constitution—Const. 1868, Art. II., Sec. 8.
Court of Probate in—Const. 1895, Art. V., Sec. 19.

CHARTER—

Bill for special, how may be introduced—Const. 1895, Art. IX., Sec. 2.
Under General Laws—Const. 1895, Art. IX., Sec. 2; Const. 1868, Art. XII., Sec. 1.
For banking purposes—Const. 1895, Art. IX., Sec. 9; Const. 1868, Art. XII., Sec. 6.
Effect of Constitution on existing—Const. 1895, Art. IX., Sec. 16.

CHARTER—(*Continued.*)

Amendment of existing—Const. 1895, Art. IX., Sec. 17; Const. 1868, Art. XII., Sec. 1.

Foreign corporations to obtain domestic—Const. 1895, Art. IX., Sec. 8.

Corporations not to engage in business unauthorized by—Const. 1895, Art. IX., Sec. 12.

CHIEF JUSTICE—

Shall preside when President is tried upon impeachment—Const. U. S., Art. I., Sec. 3, Clause 6.

Shall preside when Governor is tried upon impeachment—Const. 1895, Art. XV., Sec. 2; Const. 1868, Art. VII., Sec. 2.

Election and term of office—Const. 1895, Art. V., Sec. 2; Const. 1868, Art. IV., Sec. 2.

Present, declared to be—Const. 1895, Art. V., Sec. 3.

May call Circuit Judges to assistance of Supreme Court—Const. 1895, Art. V., Sec. 12.

Compensation not to be increased or diminished—Const. 1895, Art. V., Sec. 9; Const. 1868, Art. IV., Sec. 9.

Who eligible as—Const. 1895, Art. V., Sec. 10; Const. 1868, Art. IV., Sec. 10.

CHIEF MAGISTRATE—

Supreme executive authority vested in—Const. 1895, Art. IV., Sec. 1; Const. 1868, Art. III., Sec. 1.

Styled "The Governor of the State of South Carolina"—Const. 1895, Art. IV., Sec. 1; Const. 1868, Art. III., Sec. 1.

CHILD—

Of either race not to attend school for the other—Const. 1895, Art. XI., Sec. 7.

Adoption of, &c., by special legislation—Const. 1895, Art. III., Sec. 34, Clause 6.

CHOOSING—

Electors, Congress may determine time of—Const. U. S., Art. II., Sec. 1, Clause 3.

CIRCUIT COURTS—

Judicial power vested in—Const. 1895, Art. V., Sec. 1; Const. 1868, Art. IV., Sec. 1.

Where Judge cannot sit, Governor to appoint substitute—Const. 1895, Art. V., Sec. 6; Const. 1868, Art. IV., Sec. 6.

Judges of, powers of at Chambers—Const. 1895, Art. V., Sec. 25; Const. 1895, Art. V., Sec. 9; Const. 1868, Art. IV., Sec. 9.

Judges, eligibility of—Const. 1895, Art. V., Sec. 10; Const. 1868, Art. IV., Sec. 10.

Judges, vacancies in, how filled—Const. 1895, Art. V., Sec. 11; Const. 1868, Art. IV., Sec. 11.

Judges, how elected, residence—Const. 1895, Art. V., Sec. 13; Const. 1868, Art. IV., Sec. 13.

Judges, shall interchange Circuits—Const. 1895, Art. V., Sec. 14; Const. 1868, Art. IV., Sec. 14.

CIRCUIT COURTS—*(Continued)*

Judges, shall file decisions within 60 days—Const. 1895, Art. V., Sec. 17; Const. 1868, Art. IV., Sec. 17.

Judges, must be elector of Circuit—Const. 1895, Art. V., Sec. 13.

Judges, one to retire when called to aid of Supreme Court—Const. 1895, Art. V., Sec. 12.

Judges, when disqualified to sit in Supreme Court—Const. 1895, Art. V., Sec. 12.

Judges, term of office—Const. 1895, Art. V., Sec. 13.

Judges, term of office—Const. 1895, Art. V., Sec. 13; Const. 1868, Art. IV., Sec. 13.

Judges, Clerk of, term, &c.—Const. 1895, Art. V., Sec. 27; Const. 1868, Art. IV., Sec. 27.

Judges, Clerk of to attest process of—Const. 1895, Art. V., Sec. 31; Const. 1868, Art. IV., Sec. 31.

CITIZEN—

Of United States, only natural born eligible as President—Const. U. S., Art. II., Sec. 1, Clause 4.

Of United States, for nine years eligible as Senator—Const. U. S., Art. I., Sec. 3, Clause 3.

Of United States, for seven years, eligible as Representative—Const. U. S., Art. I., Sec. 2, Clause 2.

Of United States, is citizen of State of residence—Const. U. S., XIVA., Sec. 1.

Of United States, no State shall abridge rights and privileges of—Const. U. S., Art. XIVA., Sec. 1.

Of United States, not to be deprived of property without due process of law—Const. U. S., Art. XIVA., Sec. 1.

Of United States, entitled to equal protection of laws—Const. U. S., Art. XIVA., Sec. 1.

Of each State entitled to privileges and immunities of citizens of the several States—Const. U. S., Art. IV., Sec. 2, Clause 1.

Or subject of foreign State, jurisdiction of courts as to—Const. U. S., Art. XIA.

Of United States and of this State an elector, &c.—Const. 1895, Art. II., Sec. 3; Const. 1868, Art. VIII., Sec. 2.

CITIES—

None to be organized except by consent of electors—Const. 1895, Art. 8, Sec. 2.

No County line shall be cut through—Const. 1895, Art. VII., Sec. 14.

Incorporation of—Const. 1895, Art. VIII., Sec. 1; Const. 1868, Art. IX., Sec. 9.

Powers of taxation, &c., restricted—Const. 1895, Art. VIII., Sec. 3; Const. 1868, Art. IX., Sec. 9.

May be vested with power of taxation—Const. 1895, Art. VIII., Sec. 6; Const. 1868, Art. IX., Sec. 8.

Taxation by to be uniform—Const. 1895, Art. VIII., Sec. 6.

May acquire and operate water and light plants—Const. 1895, Art. VIII., Sec. 5.

CITIES—*(Continued.)*
Graduated license taxes imposed by—Const. 1895, Art. VIII., Sec. 6.
Bonded debt of—Const. 1895, Art. VIII., Sec. 7; Const. 1868, Art. IX., Sec. 17.
Special charter to cease when reorganized—Cons. 1895, Art. VIII., Sec. 1.
When and how factories may be exempted from taxation by—Const. 1868, Art. VIII., Sec. 8.

CIVIL—
Actions before Magistrates, to be tried where defendant resides—Const. 1895, Art. V., Sec. 23.
Officers of United States, removal of—Const. U. S., Art. II., Sec. 4.
Officers of State, removal of—Const. 1895, Art. IV., Sec. 22; Const. 1868, Art. III., Sec. 27.

CLAFLIN COLLEGE—
State College for negro race—Const. 1895, Art. XI., Sec. 8.

CLAIMS—
Against State, how adjusted—Const. 1895, Art. XVII., Sec. 2; Const. 1868, Art. XIV., Sec. 4.
Of State or of United States not prejudiced—Const. U. S., Art IV., Sec. 3, Clause 2.

CLASSIFICATION—
Of Senators, 3 classes in United States Senate—Const. U. S., Art. I, Sec. 3, Clause 2.
Of Senators, 2 classes in State Senate—Const. 1895, Art. III., Sec. 8; Const. 1868, Art. II., Sec. 9.
Of Justices of Supreme Court—Const. 1895, Art. IV., Sec. 2; Const. 1868, Art. IV., Sec. 2.

CLEMSON AGRICULTURAL COLLEGE—
Maintenance of—Const. 1895, Art. XI., Sec. 8.
Land Scrip for—Const. 1895, Art. II., Sec. 8.

CLERK OF COURT—
Of Common Pleas, term, duties, &c.—Const. 1895, Art. V., Sec. 27; Const. 1868, Art. IV., Sec. 27.
Of Common Pleas, duty as to election returns—Const. 1895, Art. IV., Sec. 4; Const. 1868, Art. III., Sec. 4.
Of Common Pleas, to keep list of registered electors—Const. 1895, Art. II., Sec. 4.
Of Common Pleas, removal of—Const. 1895, Art. V., Sec. 27; Const. 1868, Art. IV., Sec. 27.
Shall attest writs and process—Const. 1895, Art. V., Sec. 31; Const. 1868, Art. IV., Sec. 31.
Of Supreme Court, appointment of—Const. 1895, Art. V., Sec. 7; Const. 1868, Art. IV., Sec. 7.
Of Supreme Court, term of office of, &c.—Const. 1895, Art. V., Sec. 7; Const. 1868, Art. IV., Sec. 7.

CODE—

Of Laws, to be prepared, &c., every ten years—Const. 1895, Art. VI., Sec. 5; Const. 1868, Art. V., Sec. 3.

Adoption of—Const. 1895, Art. VI., Sec. 5.

Commissioner, duties, term, compensation—Const. 1895, Art. VI., Sec. 5.

COIN—

Gold and silver only legal tender—Const. U. S., Art. I., Sec. 10, Clause 1.

Congress may coin money, &c.—Const. U. S., Art. I., Sec. 8, Clause 5.

Of United States, counterfeiting—Const. U. S., Art. I., Sec. 8, Clause 6.

COLLEGES—

Property of, exempt from taxation—Const. 1895, Art. X., Sec. 4; Const. 1868, Art. X., Sec. 5.

Supported by public funds open to all—Const. 1868, Art. X., Sec. 10.

Clemson Agricultural—Const. 1895, Art. XI., Sec. 8.

Colored Normal, Industrial, Agricultural and Mechanical—Const. 1895, Art. XI., Sec. 8.

University of South Carolina—Const. 1895, Art. XI., Sec. 8.

Winthrop Normal and Industrial—Const. 1895, Art. XI., Sec. 8.

COLOR—

Rights of citizens of U. S. to vote not to be abridged because of—Const. U. S., Art. 15A., Sec. 1.

Distinctions on account of prohibited—Const. 1868, Art. I., Sec. 39.

Schools open to person of—Const. 1868, Art. X., Sec. 10.

Marriage of whites with persons of, prohibited—Const. 1895, Art. III., Sec. 33.

Separate schools for persons of—Const. 1895, Art. X., Sec. 7.

Separate college for persons of—Const. 1895, Art. X., Sec. 8.

COMBINATIONS—

Illegal, in restraint of trade, &c.—Const. 1895, Art. IX., Sec. 13.

COMFORT—

And aid to enemies, treason—Const. U. S., Art. III., Sec. 3, Clause 1; Const. 1895, Art. I., Sec. 22.

COMMERCE—

With foreign nations and Indian tribes—Const. U. S., Art. I., Sec. 8, Clause 3.

No preference between ports in regulating—Const. U. S., Art. I., Sec. 9, Clause 6.

No duties on between States—Const. U. S., Art. I., Sec. 9, Clause 6.

COMMISSIONS—

To fill vacancies during recess; expiration—Const. U. S., Art. II., Sec. 2, Clause 3.

Of all officers, to be by President—Const. U. S., Art. II., Sec. 3.

Of all officers to be by Governor—Const. 1895, Art. IV., Sec. 17; Const. 1868, Art. III., Sec. 17.

To be in name of State, sealed, &c.—Const. 1895, Art. IV., Sec. 19; Const. 1868, Art. III., Sec. 19.

COMMISSIONER, CODE—
Election; duties—Const. 1895, Art. VI., Sec. 5.
Report of, to lay on desks of members—Const. 1895, Art. VI., Sec. 5.
Committee to inquire as to work by—Const. 1895, Art. VI., Sec. 5.

COMMON DEFENSE—
Promotion of (Preamble)—Const. U. S.
Congress to provide for—Const. U. S., Art. I., Sec. 8, Clause 1.
Right to bear arms for—Const. 1868, Art. I., Sec. 28; Const. 1895, Art. I., Sec. 26.

COMMON GOOD—
Frequent meetings of General Assembly for—Const. 1895, Art. I., Sec. 3; Const. 1868, Art. I., Sec. 27.
Right to consult for—Const. 1868, Art. I., Sec. 6.

COMMON LAW—
Trial by jury in actions at—Const. U. S., Art. 7A.; Const. 1895, Art. I., Sec. 25; Const. 1868, Art. I., Sec. 11.
New trials in actions at—Const. U. S., Art. 7A.
And equity, uniform system of pleading—Const. 1895, Art. VI., Sec. 3; Const. 1868, Art. V., Sec. 3.
Liability of carriers of passengers—Const. 1895, Art. IX., Sec. 3.

COMMUTATIONS—
President may grant—Const. U. S., Art. II., Sec. 2.
Governor may grant—Const. 1895, Art. IV., Sec. 11; Const. 1868, Art. III., Sec. 11.

COMPACT—
None between States without consent of Congress—Const. U. S., Art. I., Sec. 10, Clause 3.

COMPANY—
Company, certain connect or cross lines of others—Const. 1895, Art. IX., Sec. 6.
Company, to receive, transport or transmit, freight and messages without delay—Const. 1895, Art. IX., Sec. 6.
Company, consolidation with, or control of parallel lines—Const. 1895, Art. IX., Sec. 7.

COMPANIES—
Regulation of certain—Const. 1895, Art. IX., Sec. 13.
[See *Corporations.*]

COMPENSATION—
Of Senators and Representatives—Const. U. S., Art. I., Sec. 6, Clause 1; Const. 1895, Art. III., Sec. 9; Const. 1895, Art. III., Sec. 19; Const. 1868, Art. II., Sec. 23.
Of President, no change of during term—Const. U. S., Art. II., Sec. 1, Clause 6.
Of Governor, no change of during term—Const. 1895, Art. IV., Sec. 13; Const. 1868, Art. III., Sec. 13.

COMPENSATION—*(Continued.)*
Of Judges, no change of during term—Const. U. S., Art. III., Sec. 1; Const. 1895, Art. V., Sec. 9; Const. 1868, Art. IV., Sec. 9.
Of Secretary of State, no change of during term—Const. 1895, Arts. IV. and V., Sec. 24.
Of Comptroller General, no change of during term—Const. 1895, Arts. IV. and V., Sec. 24.
Of Attorney General, no change of during term—Const. 1895, Arts. IV. and V., Sec. 24.
Of Adjutant and Inspector General, no change of during term—Const. 1895, Arts. IV. and V., Sec. 24.
Of State Superintendent of Education, no change of during term—Const. 1895, Arts. IV. and V., Sec. 24.
Of State Treasurer, no change of during term—Const. 1895, Arts. IV. and V., Sec. 24.
Of Attorney General—Const. 1895, Arts. IV. and V., Sec. 24; Const. 1895, Art. V., Sec. 28; Const. 1868, Art. IV., Sec. 28.
Of Adjutant and Inspector General—Const. 1895, Art. IV., Sec. 24; Const. 1895, Art. V., Sec. 24; Const. 1895, Art. XIII., Sec. 4; Const. 1868, Art. XIII., Sec. 3.
Of Lieutenant Governor—Const. 1895, Art. IV., Sec. 13; Const. 1868, Art. III., Sec. 13.
Of Code Commissioner—Const. 1895, Art. VI., Sec. 5.
No extra to be allowed—Const. 1895, Art. III., Sec. 30.
Private property not to be taken without just—Const. U. S., Art. 5A.; Const. 1895, Art. I., Sec. 17; Const. 1868, Art. I., Sec. 23.
Of County officers; special legislation prohibited—Const. 1895, Art. III., Sec. 34, Clause 10.

COMPTROLLER GENERAL—
Election, duties, term, &c.—Const. 1895, Art. IV., Sec. 24; Const. 1868, Art. III., Sec. 23.
Compensation—Const. 1868, Art. III., Sec. 23; Const. 1895, Art. IV., Sec. 24; Const. 1895, Art. V., Sec. 24.

COMPULSORY PROCESS—
Accused may have to obtain witnesses—Const. U. S., Art. 6A.; Const. 1895, Art. I., Sec. 18; Const. 1868, Art. I., Sec. 13.

CONCURRENT JURISDICTION—
State to have on boundary rivers—Const. 1895, Art. XIV., Sec. 1; Const. 1868, Art. VI., Sec. 1.

CONFEDERATE SOLDIERS—
Pensions for indigent—Const. 1895, Art. XIII., Sec. 5.
Over 50 years of age, exempt from poll tax—Const. 1868, Art. XI., Sec. 6.

CONFEDERATION—
No State shall enter into any alliance or—Const. U. S., Art. I., Sec. 10, Clause 1.
Debts of, contracted before adoption Constitution—Const. U. S., Art. VI., Clause 1.

CONFESSION IN COURT—
Conviction for treason on—Const. U. S., Art. III., Sec. 3, Clause 1; Const. 1895, Art. I., Sec. 22.

CONGRESS OF THE UNITED STATES—
Legislative powers vested in—Const. U. S., Art. I., Sec. 1.
Shall consist of a Senate and House of Representatives—Const. U. S., Art. I., Sec. 1.
Shall assemble once a year—Const. U. S., Art. I., Sec. 4, Clause 2.
Shall assemble on first Monday of December—Const. U. S., Art. I., Sec. 4, Clause 2.
May alter regulations for elections, &c.—Const. U. S., Art. I., Sec. 4, Clause 1.
Each House shall be judge of the elections, returns and qualifications of its members—Const. U. S., Art. I., Sec. 5, Clause 1.
A majority shall constitute a quorum—Const. U. S., Art. I., Sec. 5, Clause 1.
A smaller number may adjourn from day to day—Const. U. S., Art. I., Sec. 5, Clause 1.
A smaller number may compel attendance of absent members—Const. U. S., Art. I., Sec. 5, Clause 1.
Each House may determine its rules, &c.—Const. U. S., Art. I., Sec. 5, Clause 2.
Each House may punish disorderly behavior—Const. U. S., Art. I., Sec. 5, Clause 2.
Each House may expel members, when—Const. U. S., Art. I., Sec. 5, Clause 2.
Each House shall keep a journal of proceedings—Const. U. S., Art. I., Sec. 5, Clause 3.
Neither House during session of Congress to adjourn without consent of other for more than three days—Const. U. S., Art. I., Sec. 5, Clause 4.
Compensation of members of—Const. U. S., Art. I., Sec. 6, Clause 1.
Exemption of members from arrest—Const. U. S., Art. I., Sec. 6, Clause 1.
Members not to be appointed to offices created, or of which emoluments have been increased during term—Const. U. S., Art. I.. Sec. 6, Clause 2.
Bills to raise revenue must originate in House—Const. U. S., Art. I., Sec. 7, Clause 1.
Proceedings on veto of Bill—Const. U. S., Art. I., Sec. 7, Clause 2.
Power to tax, &c.—Const. U. S., Art. I., Sec. 8, Clause 1.
Power to borrow money, &c.—Const. U. S., Art. I., Sec 8, Clause 2.
Power to regulate commerce—Const U. S., Art. I., Sec. 8, Clause 3.
Power to regulate naturalization—Const. U. S., Art. I., Sec. 8, Clause 4.
Power to enact bankruptcy law—Const. U. S., Art. I., Sec. 8, Clause 4.
Power to coin money, &c.—Const. U. S., Art. I., Sec. 8, Clause 5.
Power to fix standard of weights and measures—Const. U. S., Art. I., Sec. 8, Clause 5.
Power to punish counterfeiting—Const. U. S., Art. I., Sec. 8, Clause 6.

CONGRESS OF THE UNITED STATES—*(Continued.)*

Power to establish post offices and post roads—Const. U. S., Art. I., Sec. 8, Clause 7.

Power to promote progress of science and arts—Const. U. S., Art. I., Sec. 8, Clause 8.

Power to constitute inferior Courts—Const. U. S., Art. I., Sec. 8, Clause 9.

Power to punish piracies, felonies on high seas, and offences against laws of nations—Const. U. S., Art. I., Sec. 8, Clause 10.

Power to declare war—Const. U. S., Art. I., Sec. 8, Clause 11.

Power to grant letters of marque and reprisal—Const. U. S., Art. I., Sec. 8, Clause 11.

Power to regulate captures on land and water—Const. U. S., Art. I., Sec. 8, Clause 11.

Power to raise and support armies, &c.—Const. U. S., Art. I., Sec. 8, Clause 12.

Power to raise and support navy—Const. U. S., Art. I., Sec. 8, Clause 13.

Power to regulate and govern army and navy—Const. U. S., Art. I., Sec. 8, Clause 14.

Power to call out militia, when, &c.—Const. U. S., Art. I., Sec. 8, Clause 15.

Power to organize, arm and equip militia—Const. U. S., Art. I., Sec. 8, Clause 16.

To exercise legislation over District of Columbia—Const. U. S., Art. I., Sec. 8, Clause 17.

To exercise legislation over forts, dockyards, &c.—Const. U. S., Art. I., Sec. 8, Clause 17.

To make necessary laws under Constitution—Const. U. S., Art. I., Sec. 8, Clause 18.

To consent to acceptance by officers of presents and honors from foreign States—Const. U. S., Art. I., Sec. 9, Clause 8.

To determine time for presidential elections—Const. U. S., Art. II., Sec. 1, Clause 3.

President may convene extra session of—Const. U. S., Art. II., Sec. 3.

To prescribe proof of records of States—Const. U. S., Art. IV., Sec. 1.

Admission of new States by—Const. U. S., Art. IV., Sec. 3, Clause 1.

Power over territory and property of United States—Const. U. S., Art. IV., Sec. 3, Clause 2.

Proposal of amendments to Constitution by—Const. U. S., Art. V.

Disqualification for membership in, and removal of—Const. U. S., Art. 14A., Sec. 3.

To enforce 13th amendment—Const. U. S., Art. 13A., Sec. 2.

To enforce 14th amendment—Const. U. S., Art. 14A., Sec. 5.

To enforce 15th amendment—Const U. S., Art. 15A., Sec. 2.

CONGRESSIONAL DISTRICTS—

General Assembly may form—Const. 1895, Art. VII., Sec. 13.

CONSENT—

No State shall be deprived of equal suffrage in the Senate without its—Const. U. S., Art. V.

CONSENT—(*Continued.*)
Of Congress, no officer shall accept gifts, honors, &c., from foreign States without—Const. U. S., Art. I., Sec. 9, Clause 8.
Of Congress, no State shall levy import tax without—Const. U. S., Art. I., Sec. 10, Clause 2.
Of Congress, no State shall levy tonnage tax without—Const. U. S., Art. I., Sec. 10, Clause 3.
Of Congress, No State shall keep troops, &c., without—Const. U. S., Art. I., Sec. 10, Clause 3.
Of Congress, No State shall enter alliance, &c., without—Const. U. S., Art. I., Sec. 10, Clause 3.
Of Congress, No State shall engage in war, &c., without—Const. U. S., Art. I., Sec. 10, Clause 3.
Of Congress, required for creation of new State—Const. U. S., Art. IV., Sec. 3, Clause 1.
Of Legislature to exercise of jurisdiction by Congress over forts, dock-yards, &c.—Const. U. S., Art. I., Sec. 8, Clause 17.
Of Legislature to creation of a new State, when—Const. U. S., Art. IV., Sec. 3, Clause 1.
Of other House; adjournments without—Const. U. S., Art. I., Sec. 5, Clause 4; Const. 1895, Art. III., Sec. 23; Const. 1868, Art. II., Sec. 25.
Of owner; before quartering soldiers in house—Const. U. S., Art. III., A.; Const. 1895, Art. I., Sec. 26; Const. 1868, Art. I., Sec. 29.
Of Senate, to treaties—Const. U. S., Art. II., Sec. 2, Clause 2.
Of Senate, to appointment of certain officers—Const. U. S., Art. II., Sec. 2, Clause 2.

CONSTABLES—
Appointment, &c.—Const. 1895, Art. V., Sec. 20.
Election, &c.—Const. 1868, Art. IV., Sec. 21.
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Of United States, adoption—Const. U. S., Art. VII., Clause 2.
Of United States, ratification of—Const. U. S., Art. VII.
Of United States, supreme law—Const. U. S., Art. VI., Clause 2; Const. 1868, Art. I., Sec. 4.
Of United States, Congress to enact necessary laws, under—Const. U. S., Art. I., Sec. 8, Clause 18.
Of United States, citizen at time of adoption, eligible as President—Const. U. S., Art. II., Sec. 1, Clause 4.
Of United States, jurisdiction of Courts in cases arising under—Const. U. S., Art. III., Sec. 2, Clause 1.
Of United States, construction of—Const. U. S., Art. IV., Sec. 3, Clause 2.
Of United States, amendments to—Const. U. S., Art. V.
Of United States, Judges to be bound by—Const. U. S., Art. VI., Clause 2.
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Of United States, debts prior to adoption of—Const. U. S., Art. VI., Clause 1.
Of United States, rights reserved to people—Const. U. S., Art. 9A.
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Of United States, oath to support, &c.—Const. U. S., Art. II., Sec. 1, Clause 7; Const. U. S., Art. VI., Clause 3; Const. 1895, Art. III., Sec. 26; Const. 1868, Art. II., Sec. 30.
Of United States, disqualification for office, after oath to support—Const. U. S., Art. 14A., Sec. 3.
Of United States, paramount allegiance to—Const. 1868, Art. I., Sec. 4.
Of United States, ratification 14th amendment—Const. 1868, Art. IV., Sec. 33.
Of 1895, takes effect when—Const. 1895, Art. XVII., Sec. 11.
Of 1895, ratified—Const. 1895, Art. XVII., Sec. 11.
Of 1895, oath to support—Const. 1895, Art. III., Sec. 26.
Of 1895, construction of—Const. 1895, Art. I., Sec. 29.
Of 1868, repeal of—Const. 1895, Art. XVII., Sec. 11.
Of 1868, oath to support—Const. 1868, Art. II., Sec. 30.
Of 1868, how amended—Const. 1868, Art. XV., Secs. 1-3.
Of 1895, how amended—Const. 1895, Art. XVI., Secs. 1-3.

CONSTITUTIONAL QUESTIONS—
When Circuit Judges are to assist in determining—Const. 1895, Art. V., Sec. 12.

CONTEMPT—
Punishment for, not to extend to imprisonment in penitentiary—Const. 1895, Art. I., Sec. 19.
Punishment for in Congress—Const. U. S., Art. I., Sec. 5, Clause 2.
Punishment for in General Assembly—Const. 1895, Art. III., Secs. 12 and 13; Const. 1868, Art. II., Secs. 15 and 16.

CONTRACTS—
No law to impair obligation of—Const. U. S., Art. I., Sec. 10, Clause 1; Const. 1895, Art. I., Sec. 8; Const. 1868, Art. I., Sec. 21.
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CONTROVERSIES—
Arbitration of—Const. 1895, Art. VI., Sec. 1; Const. 1868, Art. V., Sec. 1.
To which United States is a party—Const. U. S., Art. III., Sec. 2, Clause 1.
To which a State is a party—Const. U. S., Art. III., Sec. 2, Clause 1.
To which a foreign State is a party—Const. U. S., Art. III., Sec. 2, Clause 1.
To which foreign citizens are parties—Const. U. S., Art. III., Sec. 2, Clause 1.
Between citizens of different States—Const. U. S., Art. III., Sec. 2, Clause 1.
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CONVENING EXTRA SESSIONS—
Of Congress, or either House of—Const. U. S., Art. II., Sec. 3.
Of General Assembly—Const. 1895, Art. IV., Sec. 16; Const. 1868, Art. III., Sec. 16.

CONVENTION—
Adoption of Constitution in—Const. U. S., Art. VII.; Const. 1895, Art. XVII., Sec. 9.
Adoption of Constitution in (Preamble)—Const. 1868.
To amend Constitution—Const. U. S., Art. V.; Const. 1895, Art. XVI., Sec. 3; Const. 1868, Art. XV., Sec. 3.

CONVICTION—
Not to work corruption of blood or forfeiture—Const. 1895, Art. I., Sec. 8; Const. 1868, Art. I., Sec. 21.
On impeachment, by two-thirds vote—Const. U. S., Art. I., Sec. 3, Clause 6; Const. 1895, Art. XV., Sec. 2; Const. 1868, Art. VII., Sec. 2.

COPYRIGHTS—
Congress may provide for—Const. U. S., Art. I., Sec. 8, Clause 8.

CORONER—
Election, term, qualifications, &c.—Const. 1895, Art. V., Sec. 30; Const. 1868, Art. IV., Sec. 30.

CORPORAL PUNISHMENT—
Prohibited—Const. 1895, Art. I., Sec. 10; Const. 1868, Art. I., Sec. 16.

CORPORATE FRANCHISES—
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Term defined—Const. 1895, Art. IX., Sec. 1.
When subject to provisions Constitution 1895—Const. 1895, Art. IX., Sec. 16; Const. 1895, Art. IX., Sec. 17.
Domestic only can build or operate railroad—Const. 1895, Art. IX, Sec. 8.
Foreign cannot build or operate railroad—Const. 1895, Art. IX., Sec. 8.
Foreign may acquire domestic charters—Const. 1895, Art. IX., Sec. 8.
Foreign, service of process on—Const. 1895, Art. IX., Sec. 4.
Foreign, resident agent in State—Const. 1895, Art. IX., Sec. 4.
Foreign, business office in State—Const. 1895, Art. IX., Sec. 4.
Controlled by aliens, right to hold land—Const. 1895, Art. III., Sec. 35.
Acquisitions of rights of way by—Const. 1895, Art. IX., Sec. 20; Const. 1868, Art. XII., Sec. 3.
Formation under general laws—Const. 1895, Art. IX., Sec. 2; Const. 1868, Art. XII., Sec. 1.
Property of, subject to taxation—Const. 1868, Art. XII., Sec. 2; Const. 1895, Art. IX., Sec. 3.
Liability of stockholders—Const. 1895, Art. IX., Sec. 18: Const. 1868, Art. XII., Sections 4-6.
Banking, no special charters for—Const. 1895, Art. IX., Sec. 9.

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Banking, organized under general laws—Const. 1895, Art. 9, Sec. 9; Const. 1868, Art. XII., Sec. 6.

Banking, liability of stockholders in—Const. 1868, Art. XII., Sec. 6 and 4; Const. 1895, Art. IX., Sec. 18.

Banking, liability of Directors in—Const. 1868, Art. XII., Sec. 6.

Banking, inspection of books, &c.—Const. 1868, Art. XII., Sec. 6.

Banking, inspection and examination—Const. 1895, Art. IX., Sec. 9.

Cannot relieve themselves of common law liability as carriers of passengers—Const. 1895, Art. IX., Sec. 3.

Certain, are common carriers—Const. 1895, Art. IX., Sec. 3.

Discrimination in charges by carriers—Const. 1895, Art. IX., Sec. 5.

Discrimination in connections by carriers—Const. 1895, Art. IX., Sec. 6.

Consolidation with competing lines by carriers—Const. 1895, Art IX., Sec. 7.

Railroad, owning, operating and leasing lines—Const. 1895, Art. IX., Sec. 8.

Railroad, regulation of carriers—Const. 1895, Art. IX., Sec. 14.

Railroad, rights of employes; fellow servants—Const. 1895, Art. IX., Sec. 15.

Controlling interests in other corporations—Const. 1895, Art. IX., Sec. 19.

Confined to business authorized by charter—Const. 1895, Art. IX., Sec. 12.

Fictitious issue of stock by—Const. 1895, Art. IX., Sec. 10.

Cumulative stock in, voting in elections—Const. 1895, Art. IX., Sec. 11.

Combinations by, in restraint of trade—Const. 1895, Art. IX., Sec. 13.

May buy public lands—Const. 1895, Art. III., Sec. 31.

Donation of public lands to, prohibited—Const. 1895, Art. III., Sec. 31.

Grant of easement for right of way to railroads—Const. 1895, Art. III., Sec. 31.

Punishment for offences by officers of—Const. 1868, Art. XII., Sec. 5; Const. 1868, Art. XII., Sec. 6.

Exemption of factories by cities and towns from taxation—Const. 1895, Art. VIII., Sec. 8.

Special acts incorporating municipal—Const. 1895, Art. III., Sec. 34, Clause 3.

Special acts incorporating private—Const. 1895, Art. III., Sec. 34, Clause 4.

Special acts incorporating School Districts—Const. 1895, Art. III., Sec. 34, Clause 5.

COUNSEL—

Right of accused to assistance of—Const. U. S., Art. VI. A; Const. 1895, Art. I., Sec. 18; Const. 1868, Art. I., Sec. 13.

COUNTERFEITING—

Congress shall provide for punishment of—Const. U. S., Art. I., Sec. 8, Clause 6.

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Bodies politic and corporate—Const. 1895, Art. VII., Sec. 9.

Bonded debt of, limited—Const. 1895, Art. X., Sec. 5; Const. 1895, Art. IX., Sec. 7.

Each one election district—Const. 1895, Art. III., Sec. 3; Const. 1895, Art. VII., Sec. 9; Const. 1868, Art. II., Sec. 3.

Each entitled to one Representative—Const. 1895, Art. III., Sec. 4; Const. 1868, Art. II., Sec. 6.

Each entitled to one Senator—Const. 1895, Art. III., Sec. 6; Const. 1868, Art. II., Sec. 8.

Appointment of Representatives among—Const. 1895, Art. III., Sec. 3; Const. 1868, Art. II., Sec. 4.

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Creation of new; petition for—Const. 1895, Art. VII., Sec. 1.

Creation of new; election as to—Const. 1895, Art. VII., Sec. 1 and 2.

Creation of new; inhabitants—Const. 1895, Art. VII., Sec. 3.

Creation of new; area—Const. 1895, Art. VII., Sec. 3; Const. 1868, Art. II., Sec. 3.

Creation of new; property—Const. 1895, Art. VII., Sec. 3.

Creation of new; indebtedness—Const. 1895, Art. VII., Sec. 6.

Alteration of County lines—Const. 1895, Art. VII., Sec. 7.

Removal of County seat—Const. 1895, Art. VII., Sec. 8.

Consolidation of two or more—Const. 1895, Art. VII., Sec. 10.

No County line to run through city or town—Const. 1895, Art. VII., Sec. 14.

Boundaries of—Const. 1895, Art.VII., Sec. 12; Const. 1868, Art. II., Sec. 3.

County Courts may be established—Const. 1895, Art. V., Sec. 1.

County Courts, election as to—Const. 1895, Art. V., Sec. 1.

Funds of, safe keeping of—Const. 1895, Art. X., Sec. 12; Const. 1895, Art. IX., Sec. 15.

Liability for damages in case of lynching—Const. 1895, Art. VI., Sec. 6.

Power to assess and levy taxes—Const. 1895, Art. X., Sec. 5; Const. 1868, Art. IX., Sec. 8.

Power to issue bonds, &c.—Const. 1895, Art. X., Sec. 6.

Arrangements into Circuits and Congressional Districts—Const. 1895, Art. VII., Sec. 13.

Old, minimum size—Const. 1895, Art. VII., Sec. 4; Const. 1895, Art. II., Sec. 3.

Residence of one year in, requisite to vote—Const. 1895, Art. II., Sec. 4.

Residence of 60 days in, requisite to vote—Const. 1868, Art. VIII., Sec. 2.

Shall provide for poor—Const. 1895, Art. XII., Sec. 3; Const. 1868, Art. XI., Sec. 5.

Division into School Districts—Const. 1895, Art. XI., Sec. 5; Const. 1868, Art. X., Sec. 3.

Name and County seat, election on—Const. 1895, Art. VII., Sec. 1.

Salaries of officers not to be paid out of school funds—Const. 1895, Art. XI., Sec. 4.

Shall levy school tax—Const. 1895, Art. XI., Sec. 6.

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Shall be open and public—Const. 1895, Art. I., Sec. 15; Const. 1868, Art. I., Sec. 15.

Shall retain jurisdiction of causes pending—Const. 1895, Art. V., Sec. 34.

Congress may constitute inferior—Const. U. S., Art. I., Sec. 8, Clause 9.

Judicial power vested in—Const. U. S., Art. III., Sec. 1.

Judges of, to hold during good behavior—Const. U. S., Art. III., Sec. 1.

Judges of, compensation not to be changed during term—Const. U. S., Art. III., Sec. 1; Const. 1895, Art. V., Sec. 9; Const. 1868, Art. IV., Sec. 9.

Appointment to offices may be vested in—Const. U. S., Art. II., Sec. 2, Clause 2.

Supreme Court, established—Const. U. S., Art. III., Sec. 1; Const. 1895, Art. V., Sec. 2; Const. 1868, Art. IV., Sec. 2.

Supreme Court, judicial power vested in—Const. U. S., Art. III., Sec. 1; Const. 1895, Art. V., Sec. I; Const. 1868, Art. IV., Sec. 1.

Supreme Court, composed of—Const. 1895, Art. V., Sec. 2; Const. 1868, Art. IV., Sec. 2.

Supreme Court, quorum of—Const. 1895, Art. V., Sec. 2; Const. 1868, Art. IV., Sec. 2.

Supreme Court, jurisdiction of—Const. 1895, Art. V., Sec. 4; Const. 1868, Art. IV., Sec. 4.

Supreme Court, held twice a year at capital—Const. 1895, Art. V., Sec. 5; Const. 1868, Art. IV., Sec. 5.

Supreme Court, vacancies in certain cases—Const. 1895, Art. V., Sec. 6; Const. 1895, Art. V., Sec. 11; Const. 1868, Art. IV., Sec. 6; Const. 1868, Art. IV., Sec. 11.

Supreme Court, Clerk and Reporter of—Const. 1895, Art. V., Sec. 7; Const. 1868, Art. IV., Sec. 7.

Supreme Court, decisions of—Const. 1895, Art. V., Sec. 8; Const. 1895, Art. V., Sec. 17; Const. 1868, Art. IV., Sec. 8; Const. 1868, Art. IV., Sec. 17.

Supreme Court, Circuit Judges called to assistance of—Const. 1895, Art. V., Sec. 12.

Supreme Court, concurrence of three justices necessary to reversal—Const. 1895, Art. V., Sec. 12.

Supreme Court, concurrence of two justices necessary to reversal—Const. 1868, Art. IV., Sec. 12.

Supreme Court, determination of Constitutional questions—Const. 1895, Art. V., Sec. 12.

Supreme Court, powers of Justices at Chambers—Const. 1895, Art. V., Sec. 25.

Supreme Court, to have supervisory control over all—Const. 1868, Art. IV., Sec. 4.

Supreme Court, qualification of Judges on—Const. 1895, Art. V., Sec. 10; Const. 1868, Art. IV., Sec. 10.

Circuit, judicial power vested in—Const. 1895, Art. V., Sec. 1; Const. 1868, Art. IV., Sec. 1.

Circuit, special terms and Judges—Const. 1895, Art. V., Sec. 6.

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Circuit Judges, no change in compensation during term—Const. 1895, Art. V., Sec. 9; 1868, Art. IV., Sec. 9.

Circuit Judges, powers at chambers—Const. 1895, Art. V., Sec. 25.

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Circuit Judges to interchange Circuits—Const. 1895, Art. V., Sec. 14; Const. 1868, Art. IV., Sec. 14.

Circuit Judges to file decisions, when—Const. 1895, Art. V., Sec. 17; Const. 1868, Art. IV., Sec. 17.

Circuit, petit juries in—Const. 1895, Art. V., Sec. 22.

Circuit, may sentence to hard labor—Const. 1895, Art. V., Sec. 33.

Common Pleas established—Const. 1895, Art. V., Sec. 1; Const. 1868, Art. IV., Sec. 1.

Common Pleas, jurisdiction in all civil cases—Const. 1895, Art. V., Sec. 15; Const. 1868, Art. IV., Sec. 15.

Common Pleas, jurisdiction to issue writs—Const. 1895, Art. V., Sec. 15; Const. 1868, Art. IV., Sec. 15.

Common Pleas, jurisdiction on appeal—Const. 1895, Art. V., Sec. 15; Const. 1868, Art. IV., Sec. 15.

Common Pleas, to sit at least twice a year—Const. 1895, Art. V., Sec. 16; Const. 1868, Art. IV., Sec. 16.

Common Pleas, jurisdiction in equity causes—Const. 1868, Art. IV., Sec. 16.

Common Pleas, transfer to, of equity causes-Const. 1868, Art IV, Sec. 17.

General Sessions, establishment—Const. 1895, Art. V., Sec. 1; Const. 1868, Art. IV., Sec. 1.

General Sessions, jurisdiction and sessions—Const. 1895, Art. V., Sec. 18; Const. 1868, Art. IV., Sec. 18.

General Sessions, Solicitor *pro tem.* in—Const. 1895, Art. V., Sec. 29; Const. 1868, Art. IV., Sec. 29.

Probate, in Charleston County—Const. 1895, Art. V., Sec. 19.

Probate, jurisdiction—Const. 1895, Art. V., Sec. 19; Const. 1868, Art. IV., Sec. 20.

Probate, jurisdiction (amendment)—Const. 1868, 1889.

Probate Judge may also act as Clerk—Const. 1895, Art. V., Sec. 27; Const. 1868, Art. IV., Sec. 27.

Probate, judicial power vested in—Const. 1868, Art. IV., Sec. 1.

Probate, removal of equity causes to—Const. 1868, Art. IV., Sec. 17.

Probate Judge, election, &c.—Const. 1868, Art. IV., Sec. 20.

Probate Judge, election (amendment)—Const. 1868, 1889.

Probate Judge, compensation—Const. 1868, Art. IV., Sec. 25; Const. 1868, Art. V., Sec. 24.

County, establishment, &c.—Const. 1895, Art. V., Sec. 1.

Justices of the Peace—Const. 1868, Art. IV., Secs. 21-25.

Magistrates—Const. 1895, Art. V., Secs. 20-23.

Municipal, may be established—Const. 1895, Art. V., Sec. 1; Const. 1895, Art. IV., Sec. 1.

Inferior, may be established—Const. 1895, Art. V., Sec. 1; Const. 1868., Art. IV., Sec. 1.

CREDIT—

No State shall emit bills of—Const. U. S., Art. I., Sec. 10, Clause 1.
Of United States, Congress may borrow money on—Const. U. S., Art. I., Sec. 8, Clause 2.
Of State shall not be pledged for private benefit—Const. 1895, Art. X., Sec. 6.
Of State shall not be pledged for sectarian institutions—Const. 1895, Art. XI., Sec. 9.
Of State, loans on—Const. 1895, Art. X., Sec. 11.
Of State, loans on (amendment)—Const. 1868, Art. XVI.
Full faith and, given records of other States—Const. U. S., Art. IV., Sec. 1.

CRIME—

Indictment by grand jury for infamous, &c.—Const. U. S., Art. 5A.
Indictment by grand jury for higher, &c.—Const. 1895, Art. I., Sec. 17; Const. 1868, Art. I., Sec. 19.
Charge for, to be fully described to accused—Const. U. S., Art. 6A; Const. 1895, Art. I., Sec. 18; Const. 1868, Art. I., Sec. 13.
Committed by slave not to disfranchise—Const. 1868, Art. VIII., Sec. 12.
Involuntary servitude as punishment for—Const. 1868, Art. I., Sec. 2; Const. U. S., Art. 13A., Sec. 1.
Conviction for certain, to disfranchise—Const. 1895, Art. II., Sec. 6, Clause 1; Const. 1868, Art. VIII., Sec. 8; Const. 1868 (Am. 1882.)
Impeachment for—Const. U. S., Art. II., Sec. 4; Const. 1895, Art. XV., Sec. 4; Const. 1868, Art. VII., Sec. 4.
Trial for, by jury, except on impeachments—Const U. S., Art. III., Sec. 2, Clause 3.
Trial for, by jury—Const. 1895, Art. V., Sec. 22; Const. 1895, Art. I., Sec. 18; Const. 1895, Art. I., Sec. 25; Const. 1868, Art. I., Sec. 14; Const. 1868, Art. I., Sec. 11.
Trial for, place of—Const. U. S., Art. III., Sec. 2, Clause 3; Const. 1895, Art. V., Sec. 31.
Trial for, place of, change of—Const. 1895, Art. VI., Sec. 2; Const. 1868, Art. V., Sec. 2.
Punishment for in military and naval service—Const. U. S., Art. 5A.; Const. 1895, Art. I., Sec. 17; Const. 1868, Art. I., Sec. 19.
Prosecutions for, speedy trial in—Const. U. S., Art. 6A.; Const. 1895, Art. I., Sec. 18; Const. 1868, Art. I., Sec. 13.
Prosecutions for, confronting with witnesses in—Const. U. S., Art. 6A.; Const. 1895, Art. I., Sec. 18; Const. 1868, Art. I., Sec. 13.
Prosecutions for, compulsory process for witnesses—Const. U. S., Art. 6A.; Const 1895, Art. I., Sec. 18; Const. 1868, Art. I., Sec. 13.
Prosecutions for, assistance of counsel in—Const. U. S., Art. 6A.; Const. 1895, Art. I., Sec. 18; Const. 1868, Art. I., Sec. 13.
Prosecutions for, criminate himself on—Const. U. S., Art. V. A.; Const. 1895, Art. I., Sec. 17; Const. 1868, Art. I., Sec. 13.
Cruel and unusual punishments for—Const. U. S., Art. 8A.; Const. 1895, Art. I., Sec. 19; Const. 1868, Art. I., Sec. 38.

CRIME—*(Continued.)*
Excessive fines for—Const. U. S., Art. 8A.; Const. 1895, Art. I., Sec. 19; Const. 1868, Art. I., Sec. 38.
Against election laws, protection against—Const. 1895, Art. II., Sec. 5; Const. 1895, Art. I., Sec. 9; Const. 1868, Art. I., Sec. 33.

D

DANGER—
Imminent, when State may engage in war because of—Const. U. S., Art. I., Sec. 10, Clause 3.

DAY—
Election, Congress may determine—Const. U. S., Art. II., Sec. 1, Clause 3; Const. 1895, Art. III., Sec. 8; Const. 1868, Art. II., Sec. 11.
Election (amendment)—Const. 1868, 1873.
To day, adjourning from—Const. U. S., Art. I., Sec. 5, Clause 1; Const. 1895, Art. III., Sec. 11; Const. 1868, Art. II., Sec. 14.

DEAF AND DUMB—
Institutions for, exempt from taxation—Const. 1895, Art. X., Sec. 4; Const. 1895, Art. IX., Sec. 5.
Institutions for, establishment of—Const. 1895, Art. XII., Sec. 1; Const. 1868, Art. X., Sec. 7; Const. 1868, Art. XI., Sec. 1.

DEATH—
Of President; succession of Vice President—Const. U. S., Art. II., Sec. 1, Clause 5.
Of President; Congress to provide in case of—Const. U. S., Art. II., Sec. 1, Clause 5.
Of Governor; succession of Lieutenant Governor—Const. 1895, Art. IV., Sec. 9; Const. 1868, Art. III., Sec. 9.

DEBT—
Of United States, incurred in War Between States—Const. U. S., Art. XIV., Sec. 4.
Of United States, Congress may pay—Const. U. S., Art. I., Sec. 8, Clause 1.
Of United States, incurred prior to Constitution—Const. U. S., Art. VI., Clause 1.
Incurred in aid of Rebellion—Const. U. S., Art. XIV., Sec. 4; Const. 1868, Art. IX., Sec. 16.
On slave contracts—Const. 1868, Art. IV., Sec. 34.
Legal tender in payment of—Const. U. S., Art. I., Sec. 10, Clause 1.
Imprisonment for, prohibited—Const. 1895, Art. I., Sec. 24; Const. 1868, Art. I., Sec. 20.
Of State; loan on bonds—Const. 1895, Art. X., Sec. 11; Const. 1868, Art. IX., Sec. 14.
Of State; loan on bonds (amendment)—Const. 1868, 1889.
Of State; how increased (amendment)—Const. 1868; 1889; Const. 1895, Art. X., Sec. 11.

DEBT—*(Continued.)*

Of State, evidence of, issuance of—Const. 1895, Art. X., Sec. 7; Const. 1868, Art. IX., Sec. 10.

Municipal, bonded, limitation, &c.—Const. 1895, Art. VIII., Sec. 7; Const. 1868, Art. IX., Sec. 17.

Municipal, bonded, limitation, &c. (amendment)—Const. 1895; 1901.

Municipal, bonded, election as to—Const. 1895, Art. VIII., Sec. 7; Const. 1895, Art. II., Sec. 13.

DECISIONS—

Of Courts, when to be filed—Const. 1895, Art. V., Sec. 17; Const. 1868, Art. IV., Sec. 17.

Of Supreme Court, to be published—Const. 1895, Art. V., Sec. 32; Const. 1868, Art. IV., Sec. 32.

DECLARATION OF RIGHTS—

In 1895—Const. 1895, Art. I.

In 1868—Const. 1868, Art. I.

DECLARATION OF WAR—

By Congress—Const. U. S., Art. I., Sec. 8, Clause 11.

DEFENDANT—

Rights of on trial—Const. 1895, Art. I., Sec. 18; Const. 1868, Art. I., Sec. 13; Const. U. S., Art. 6A.

Place of trial—Const. U. S., Art. III., Sec. 2, Clause 3; Const. 1895, Art. V., Sec. 23.

[See *Accused, Crime, &c.*]—Const. 1895, Art. VI., Sec. 2.

DEFENSE—

Common, right to bear arms for—Const. 1895, Art. I., Sec. 26; Const. 1868, Art. I., Sec. 28.

Common, right to bear arms for (Am.)—Const. U. S., Art. 2A.

Common, Congress to provide for—Const. U. S., Art. I., Sec. 8, Clause 1.

In criminal prosecutions, rights of—Const. U. S., Art. 6A.; Const. 1895, Art. I., Sec. 18; Const. 1868, Art. I., Sec. 13.

[See *Accused, Crime, prosecutions for.*]

DEFICIENCIES—

To be provided for by taxation—Const. 1895, Art. X., Sec. 2; Const. 1868, Art. IX., Sec. 3.

DELAY—

When State may engage in war without—Const. U. S., Art. I., Sec. 10, Clause 3.

DELEGATED—

To United States, rights—Const. U. S., Art. 10A.

To State—Const. 1868, Art. I., 41.

DENIAL—

Of rights retained by people—Const. U. S., Art. 9A.; Const. 1868, Art. I., Sec. 41.

DEPARTMENTS—

Of government to be kept separate—Const. 1895, Art. I., Sec. 14; Const. 1868, Art. I., Sec. 26.

Heads of, appointment of officers by—Const. U. S., Art. II., Sec. 2, Clause 2.

Heads of, information from—Const. U. S., Art. II., Sec. 2, Clause 1.

Clerks in, women may be—Const. 1895, Art. XVII., Sec. 1.

DETECTIVE AGENCIES—

Armed representatives of, importation of—Const. 1895, Art. VIII., Sec. 9.

DIRECT TAX—

To be in proportion to census—Const. U. S., Art. I., Sec. 9, Clause 4.

Apportionment of among States—Const. U. S., Art. I., Sec. 2, Clause 3; Const. U. S., Art. 14A., Sec. 2.

Unclaimed proceeds invested as school fund—Const. 1895, Art. XI.. Sec. 11.

DIRECTORS—

Of Penitentiary elected by Legislature, &c.—Const. 1895, Art. XII., Sec. 5; Const. 1868, Art. XI., Sec. 2.

Of other State institutions—Const. 1895, Art. XII., Sec. 4; Const. 1868, Art. XI., Sec. 3.

Of banks, shall not borrow from—Const. 1868, Art. XII., Sec. 6.

Of corporations, election of—Const. 1895, Art. IX., Sec. 11.

DISABILITY—

Of President and Vice President, provisions—Const. U. S., Art. II., Sec. 1, Clause 5.

Of Governor, provisions in case of—Const. 1895, Art. IV., Sec. 9; Const. 1868, Art. III., Sec. 9.

To hold office, political action—Const. U. S., Art. XIV A., Sec. 3.

To hold office, embezzlement—Const. 1895, Art. X., Sec. 12.

To hold office, removal of—Const. U. S., Art. 14A., Sec. 3; Const. 1895, Art. X., Sec. 12.

DISCRIMINATION—

By carriers, &c., in charges—Const. 1895, Art. IX., Secs. 5 and 13.

By carriers, in service—Const. 1895, Art. IX., Sec. 6.

DISFRANCHISEMENT OF VOTERS—

Under Constitution of 1895—Const. 1895, Art. II., Sec. 6, Clause 1.

Under Constitution of 1868—Const. 1868, Art. I., Sec. 34; Const. 1868, Art. VIII., Sec. 12.

DISORDERLY BEHAVIOR—

Each House may punish its members for—Const. U. S., Art. I., Sec. 5, Clause 2; Const. 1895, Art. III., Sec. 12; Const. 1868, Art. II., Sec. 15.

DISPARAGE—

Rights retained by people—Const. U. S., Art. 9A.; Const. 1868, Art. I., Sec. 41.

DISQUALIFICATION—
Of members of Congress to hold offices created by Congress during their term, &c.—Const. U. S., Art. I., Sec. 6, Clause 2.
Of executive officers to be members of Congress—Const. U. S., Art. I., Sec. 6, Clause 2.
Of officers of one department to assume functions of any other—Const. 1868, Art. I., Sec. 26.
To hold office, because of participation in War Between the States.—Const. U. S., Art. 14A., Sec. 3.
As to personal rights, impartial—Const. 1868, Art. I., Sec. 12.
As to voting—Const. 1895, Art. II., Sec. 6; Const. 1868, Art. VIII., Sec. 8.
As to voting (amendment)—Const. 1868; 1882.
Because of participation in duel, &c.—Const. 1895, Art. I., Sec. 11; Const. 1868, Art. I., Sec. 32.

DISTINCTION ON ACCOUNT OF RACE, &c.—
Prohibited—Const. 1868, Art. I., Sec. 39.

DISTRICTS, CONGRESSIONAL—
Arrangement of—Const. 1895, Art. VII., Sec. 13.

DISTRICT OF COLUMBIA—
Congress to exercise legislative power over—Const. U. S., Art. I., Sec. 8, Clause 17.

DIVORCES—
Shall not be allowed—Const. 1895, Art. XVII., Sec. 3.
Jurisdiction of Common Pleas—Const. 1868, Art. IV., Sec. 15.
Only by judgment of Court—Const. 1868, Art. XIV., Sec. 5.

DOCKYARDS—
Jurisdiction of Congress over—Const. U. S., Art. I., Sec. 8, Clause 17.
DOMESTIC TRANQUILITY—
To insure (preamble)—Const. U. S.

DOMESTIC VIOLENCE—
The United States shall protect each State against—Const. U. S., Art. IV., Sec. 4.

DOORS—
Of Each House shall be open, except—Const. 1895, Art. III., Sec. 23; Const. 1868, Art. II., Sec. 27.

DUEL—
Fighting or aiding in, disqualifies, &c.—Const. 1895, Art. I., Sec. 11; Const. 1868, Art. I., Sec. 32.
Fighting or aiding in, disfranchises—Const. 1868, Art. VIII., Sec. 8.

DUE PROCESS OF LAW—
Life, liberty and property protected by—Const. U. S., Art. 5A.; Const. U. S., Art. XIV. A., Sec. 1; Const. 1895, Art. I., Sec. 5; Const. 1868, Art. I., Sec. 36.

DUTIES, IMPOSTS AND EXCISES—

Power of Congress to lay and collect—Const. U. S., Art. I., Sec. 8, Clause 1.

None on exports from States—Const. U. S., Art. I., Sec. 9, Clause 5.

In another State; vessel clearing in one not liable to—Const. U. S., Art. I., Sec. 9, Clause 6.

No State shall lay without consent of Congress—Const. U. S., Art. I., Sec. 10, Clause 2.

Disposition of proceeds; for use of United States—Const. U. S., Art. I., Sec. 10, Clause 2..

Control of Congress over—Const. U. S., Art. I., Sec. 10, Clause 2.

Levied only by consent of people—Const. 1895, Art. I., Sec. 7; Const. 1868, Art. I., Sec. 37.

E

EDUCATION—

State Superintendent of, election, term, &c.—Const. 1895, Art. XI., Sec. 1; Const. 1868, Art. X., Sec. 1.

State Board of, composition, duties, &c.—Const. 1395, Art. XI., Sec. 2; Const. 1868, Art. X., Sec. 2.

Free public schools, provision for—Const. 1895, Art. XI., Sec. 5; Const. 1868, Art. X., Sec. 3.

Free public schools, separate for each race—Const. 1895, Art. XI., Sec. 7.

Free public schools, open to all races—Const. 1868, Art. XI., Sec. 10.

Free public schools, tax to maintain—Const. 1895, Art. XI., Sec. 6; Const. 1868, Art. X., Sec. 5; Const. 1868 (Am. 1878.)

Free public schools, compulsory attendance—Const. 1868, Art. X., Sec. 4.

Land Scrip Funds, from United States—Const. 1868, Art. X., Sec. 11; Const. 1895, Art. XI., Sec. 8.

Gifts for school purposes, use of—Const. 1895, Art. XI., Sec. 10.

State school fund—Const. 1895, Art. XI., Sec. 11.

State profits from Dispensary used for—Const. 1895, Art. XI., Sec. 12.

School officers, General Assembly to provide—Const. 1895, Art. XI., Sec. 3.

School Commissioners—Const. 1868, Art. X., Sec. 2.

State Normal School—Const. 1868, Art. X., Sec. 6; Const. 1895, Art. XI., Sec. 8.

Reform school for juvenile offenders—Const. 1895, Art. XII., Sec. 4; Const. 1868, Art. X., Sec. 8.

Agricultural College—Const. 1868, Art. X., Sec. 9.

Agricultural College, Clemson—Const. 1895, Art. XI., Sec. 8.

State University—Const. 1868, Art. X., Sec. 9.

University of South Carolina—Const. 1895, Art. XI., Sec. 8.

Winthrop Normal and Industrial College—Const. 1895, Art. XI., Sec. 8.

Sectarian schools not to receive public funds—Const. 1895, Art. XI., Sec. 9; Const. 1868 (Am. 1878.)

To be impartially offered all—Const. 1868, Art. I., Sec. 12.

ELECTION—
Of President and Vice President, day for—Const. U. S., Art. II., Sec. 1, Clause 3.
Of Senators and Representatives—Const. U. S., Art. I., Sec. 4, Clause 1; Const. 1895, Art. III., Sec. 8; Const. 1868, Art. II., Sec. 11.
Of Senators and Representatives (amendment)—Const. 1868; 1873; Const. 1868; 1882.
Of Governor and Lieutenant Governor—Const. 1895, Art. IV., Secs. 2 and 4; Const. 1868, Art. III., Secs. 2 and 4.
Of State officers—Const. 1868, Art. XIV., Sec. 10; Const. 1895, Art. IV., Sec. 24.
Of Attorney General—Const. 1895, Art. V., Sec. 28; Const. 1868, Art. IV., Sec. 28.
Of Solicitor—Const. 1895, Art. V., Sec. 29; Const. 1868, Art. IV., Sec. 29.
Of Clerk of Court—Const. 1895, Art. V., Sec. 27; Const. 1868, Art. IV., Sec. 27.
Of Sheriff and Coroner—Const. 1895, Art. V., Sec. 30; Const. 1868, Art. IV., Sec. 30.
Of State Superintendent of Education—Const. 1895; Art. XI., Sec. 1; Const. 1895, Art. IV., Sec. 24; Const. 1868, Art. X., Sec. 1.
Of Adjutant and Inspector General—Const. 1895, Art. XIII., Sec. 4; Const. 1895, Art. 4, Sec. 24; Const. 1868, Art. XIII., Sec. 3.
Of Secretary of State—Const. 1895, Art. IV., Sec. 24.
Of Comptroller General—Const. 1895, Art. IV., Sec. 24.
Of State Treasurer—Const. 1895, Art. IV., Sec. 24.
Of Code Commissioner—Const. 1895, Art. VI., Sec. 5.
Of Directors of State institutions—Const. 1895, Art. XII., Sec. 4; Const. 1868, Art. XI., Sec. 3.
Of Directors of Penitentiary—Const. 1895, Art. XI., Sec. 5; Const. 1868, Art. XI., Sec. 2.
Of County Commissioners—Const. 1868, Art. IV., Sec. 19.
Of Probate Judge—Const. 1868, Art. IV., Sec. 20.
Of Probate Judge (amendment)—Const. 1868; 1889.
Of Presidential Electors, as Legislature directs—Const. U. S., Art. II., Sec. 1, Clause 2.
Of Presidential Electors by people—Const. 1868, Art. VIII., Sec. 9.
As to new Counties—Const. 1895, Art. VII., Secs. 1 and 2.
As to alteration of County lines—Const. 1895, Art. VII., Sec. 7.
As to removal of County seat—Const. 1895, Art. VII., Sec. 8.
As to consolidation of Counties—Const. 1895, Art. VII., Sec. 10.
As to exemption of factories from taxation—Const. 1895, Art. VIII., Sec. 8.
As to municipal bonds—Const. 1895, Art. VIII., Sec. 7.
As to increase of State debt—Const. 1895, Art. X., Sec. 11; Const. 1868, Art. XVI.
Of Justices of Supreme Court—Const. 1895, Art. V., Sec. 2; Const. 1868, Art. IV., Sec. 2.
Of Circuit Judges—Const. 1895, Art. V., Sec. 13; Const. 1868, Art. IV., Sec. 13.

ELECTION—*(Continued.)*
Shall be free and open—Const. 1895, Art. I., Sec. 10; Const. 1868, Art. X., Sec. 1.
Shall be by ballot—Const. 1895, Art. II., Sec. 1; Const. 1868, Art. VIII., Sec. 1.
Shall never be held in secret—Const. 1895, Art. II., Sec. 1.
In General Assembly, *viva voce*—Const. 1895, Art. III., Sec. 20; Const. 1868, Art. II., Sec. 24.
No property qualification required to vote—Const. 1868, Art. I., Sec. 32.
What property qualification required to vote—Const. 1895, Art. II., Sec. 4, Clause *d;* Const. 1895, Art. I., Sec. 11.
To be protected from improper influences—Const. 1895, Art. I., Sec. 9; Const. 1868, Art. I., Sec. 33.
Apportionment to take effect at succeeding—Const. 1895, Art. III., Sec. 5; Const. 1868, Art. II., Sec. 7.
Who may vote at—Const. 1895, Art. II., Sec. 3; Const. 1868, Art. VIII., Sec. 2.
Registration of voters prior to—Const. 1895, Art. II., Sec. 8; Const. 1868, Art. VIII., Sec. 3.
Plurality of votes elects—Const. 1868, Art. VIII., Sec. 10.
Manner of holding—Const. 1895, Art. II., Sec. 8.
Ascertaining results—Const. 1895, Art. II., Sec. 8.
Primary, regulations, &c.—Const. 1895, Art. II., Sec. 10.
Municipal—Const. 1895, Art. II., Sec. 12.
Special as to municipal indebtedness—Const. 1895, Art. II., Sec. 13.
As to Constitutional Convention—Const. 1895, Art. XVI., Sec. 3; Const. 1868, Art. XV., Sec. 3.
As to Constitutional amendments—Const. 1895, Art. XVI., Sec. 1; Const. 1895, Art. XV., Sec. 1.
District, each County an—Const. 1895, Art. III., Sec. 3; Const. 1895, Art. VII., Sec. 9; Const. 1868, Art. II., Sec. 3.
ELECTORS—
Qualifications of—Const. U. S., Art. I., Sec. 2, Clause 1; Const. 1895, Art. II., Sec. 4; Const. 1868, Art. VIII., Sec. 2.
Qualifications of in municipalities—Const. 1895, Art. II., Sec. 12; Const. 1895, Art. II., Sec. 13; Const. 1868, Art. VIII., Sec. 2.
Privileged from arrest, &c.—Const. 1895, Art. II., Sec. 14; Const. 1868, Art. VIII., Sec. 6.
Residence not forfeited by absence, when—Const. 1868, Art. IV.; Const. 1895, Art. II., Sec. 7.
Must have paid all taxes—Const. 1895, Art. II., Sec. 4.
Eligible to office—Const. 1895, Art. II., Sec. 2; Const. 1868, Art. VIII., Sec. 7.
Provisions for registration of—Const. 1895, Art. II., Secs. 4 and 8; Const. 1868, Art. VIII., Sec. 3.
Disfranchisement of by conviction for crime, &c.—Const. 1895, Art. II., Sec. 6; Const. 1868, Art. VIII., Sec. 8 (amended 1882).
Presidential, chosen by people—Const. 1868, Art. VIII., Sec. 9.
Presidential, how chosen, number—Const. U. S., Art. II., Sec. 1, Clause 2.

ELECTORS—*(Continued.)*
Presidential, qualifications of—Const. U. S., Art. II., Sec. 1, Clause 2.
Presidential, time of choosing, &c.—Const. U. S., Art. II., Sec. 1, Clause 3.
Presidential, when to cast their votes—Const. U. S., Art. II., Sec. 1, Clause 3.
Presidential, how to vote—Const. U. S., Art. 12A.
Presidential, form of ballots, &c.—Const. U. S., Art. 12A.
Presidential, returns of vote by—Const. U. S., Art. 12A.
Presidential disqualification—Const. U. S., Art. XIV. A., Sec. 3; Const. U. S., Art. II., Sec. 1, Clause 2.

ELECTRIC PLANT—
Grant of right to construct—Const. 1895, Art. VIII., Sec. 4.

EMANCIPATION OF SLAVE—
Claim for loss by, void—Const. U. S., Art. 14A., Sec. 4.

EMBEZZLEMENT OF PUBLIC FUNDS—
To be made a felony—Const. 1895, Art. X., Sec. 12; Const. 1868, Art. IX., Sec. 15.
Removal of officer, because of—Const. 1895, Art. IV., Sec. 22.

EMINENT DOMAIN—
Jurisdiction of ways and waters—Const. 1895, Art. XIV., Sec. 1; Const. 1868, Art. VI., Sec. 1.
Title to lands acquired by State—Const. 1895, Art. XIV., Sec. 2; Const. 1868, Art. VI., Sec. 2.
Ultimate right of property—Const. 1895, Art. XIV., Sec., 3; Const. 1868, Art. VI., Sec. 3.
Acquirement of rights of way under—Const. 1895, Art. IX., Sec. 20; Const. 1868, Art. XII., Sec. 3; Const. 1868, Art. I., Sec. 23.
Taking private property for public use—Const. 1895, Art. I., Sec. 17; Const. 1868, Art. I., Sec. 23.

EMIT BILLS OF CREDIT—
No State shall—Const. U. S., Art. I., Sec. 10, Clause 1.

EQUITY—
Common Pleas jurisdiction in—Const. 1895, Art. V., Sec. 15; Const. 1868, Art. IV., Sec. 16.
Cases, Supreme Court has appellate jurisdiction in—Const. 1868, Art. IV., Sec. 4; Const. 1895, Art. V., Sec. 4.
Records, transfer and preservation of—Const. 1868, Art. IV., Sec. 17.
Cases, judicial power of United States in—Const. U. S., Art. III., Sec. 2, Clause 1.

ESCHEATS—
Disposition of funds from—Const. 1895, Art. XI., Sec. 11.
Accrued to State—Const. 1895, Art. XIV., Secs. 2 and 3; Const. 1895, Art XVII., Sec. 11, Clause 4; Const. 1868, Art. VI., Sec. 3.

ESTABLISHMENT—
Of Constitution, by ratification—Const. U. S., Art. VII.
Of religion, none by Congress—Const. U. S., Art. 1A., Sec. 1.
Of religion, none by State—Const. 1895, Art. I., Sec. 4; Const. 1868, Art. I., Sec. 10.

EVIDENCE—
No one required to give, against himself—Const. U. S., Art. 5A.; Const. 1895, Art. I., Sec. 17; Const. 1868, Art. I., Sec. 13.
Of State indebtedness, issuance of—Const. 1895, Art. X., Sec. 7; Const. 1868, Art. IX., Sec. 10.

EXCESSIVE—
Bail or fines prohibited—Const. U. S., Art. 8A.; Const. 1895, Art. I., Sec. 19; Const. 1868, Art. I., Sec. 38.

EXCISES—
Power of Congress to lay and collect—Const. U. S., Art. I., Sec. 8, Clause 1.
Shall be uniform throughout United States—Const. U. S., Art. I., Sec. 8, Clause 1.

EXCLUSIVE—
Legislative power of Congress—Const. U. S., Art. I., Sec. 8, Clause 17.
Jurisdiction of inferior Courts—Const. 1895, Art. V., Sec. 18.
Jurisdiction of General Sessions—Const. 1868, Art. IV., Sec. 18.
Jurisdiction of Common Pleas—Const. 1868, Art. IV., Sec. 15.

EXPENDITURES OF PUBLIC MONEYS—
Punishment of statement as to—Const. U. S., Art. I., Sec. 9, Clause 7; Const. 1895, Art. X., Sec. 8; Const. 1868, Art. I., Sec. 22; Const. 1868, Art. IX., Sec. 11.

EXPENSES—
Of State Government annually provided for—Const. 1895, Art. X., Sec. 2; Const. 1868, Art. IX., Sec. 3.

EXPORTATIONS—
From any State, no tax on—Const. U. S., Art. I., Sec. 9, Clause 5.

EXPORTS—
Congress to control tax on—Const. U. S., Art. I., Sec. 10, Clause 2.

EX POST FACTO LAWS—
Shall not be passed by Congress—Const. U. S., Art. I., Sec. 9, Clause 3.
Shall not be passed by State—Const. U. S., Art. I., Sec. 10, Clause 1; Const. 1895, Art. I., Sec. 8; Const. 1868, Art. I., Sec. 14; Const. 1868, Art. I., Sec. 21.

EXTRAORDINARY—
Occasions, convening Congress on—Const. U. S., Art. II., Sec. 3.
Occasions, convening General Assembly on—Const. 1895, Art. IV., Sec. 16; Const. 1868, Art. III., Sec. 16.
Expenditures; public debt for—Const. 1868, Art. IX., Sec. 7.

EXECUTIVE—
Power vested in President—Const. U. S., Art. II., Sec. 1, Clause 1.
Power vested in Governor—Const. 1895, Art. IV., Sec. 1; Const. 1868, Art. III., Sec. 1.
And judicial officers, oath—Const. U. S., Art. VI., Sec. 3; Const. 1895, Art. III., Sec. 26; Const. 1868, Art. II., Sec. 30.
Departments; President may require information—Const. U. S., Art. II., Sec. 2, Clause 1.
Departments, Governor may require information—Const. 1895, Art. IV., Sec. 14; Const. 1868, Art. III., Sec. 14.
Departments, appointments in—Const. U. S., Art. II., Sec. 2, Clause 2.
Of State, application of for protection, &c.—Const. U. S., Art. IV., Sec. 4.
Department, distinct from others—Const. 1895, Art. I., Sec. 14; Const. 1868, Art. I., Sec. 26.
Officers liable to impeachment—Const. 1895, Art. XV., Sec. 3; Const. 1868, Art. VII., Sec. 3.
Officers liable to removal—Const. 1895, Art. XV., Sec. 4; Const. 1868, Art. VII., Sec. 4.

EXEMPTIONS—
Of homestead, from levy and sale—Const. 1895, Art. III., Sec. 28; Const. 1868, Art. II., Sec. 32.
Of homestead, from levy and sale (amendment)—Const. 1868; 1880.
From taxation of certain property—Const. 1895, Art. X., Sec. 4; Const. 1868, Art. IX., Sec. 5.
From taxation of factories in towns, &c.—Const. 1895, Art. VIII., Sec. 8.

EXPEL A MEMBER—
Either House may, by two-thirds vote—Const. U. S., Art. I., Sec. 5, Clause 2; Const. 1895, Art. III., Sec. 12; Const. 1868, Art. II., Sec. 15.

EMOLUMENTS—
Not to be accepted by officers from foreign powers—Const. U. S., Art. I., Sec. 9, Clause 8.

EMPLOYES—
Of railroads, rights and remedies—Const. 1895, Art. IX., Sec. 15.
Of railroads, contracts to waive rights void—Const. 1895, Art. IX., Sec. 15.
Of railroads, injury by death of—Const. 1895, Art. IX., Sec. 15.
Of railroads, assumption of risks—Const. 1895, Art. IX., Sec. 15.
Of railroads, fellow servants, &c.—Const. 1895, Art. IX., Sec. 15.

ENEMIES—
Treason to assist, &c—Const. U. S., Art. III., Sec. 3, Clause 1; Const. 1895, Art. I., Sec. 22.

ENGAGEMENTS—
Contracted before adoption of Constitution—Const. U. S., Art. VI., Clause 1.

ENUMERATION—
Of inhabitants, every ten years—Const. U. S., Art. I., Sec. 2, Clause 3; Const. 1895, Art. III., Sec. 3; Const. 1868, Art. II., Sec. 4.
Of inhabitants, duty of Governor—Const. 1868, Art. II., Sec. 5.
Of inhabitants, State may adopt that by U. S.—Const. 1895, Art. III., Sec. 3.
Of certain rights, not to impair others—Const. U. S., Art. 9A.; Const. 1868, Art. I., Sec. 41.

EQUALITY—
Of all men declared—Const. 1868, Art. I., Sec. 1.

EQUAL—
Protection of laws, rights of any person to—Const. U. S., Art. 14A., Sec. 1; Const. 1895, Art. I., Sec. 5; Const. 1868, Art. I., Sec. 36.
Privileges by all races, &c.—Const. 1868, Art. I., Sec. 39.
Suffrage in the Senate, each State has—Const. U. S., Art. V.

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FAITH AND CREDIT—
Given Acts, records and judicial proceedings—Const. U. S., Art. IV., Sec. 1.

FELONY—
On high seas, power of Congress as to—Const. U. S., Art. I., Sec. 8, Clause 10.
To embezzle certain funds—Const. 1895, Art. X., Sec. 12; Const. 1868, Art. IX., Sec. 15.
Offences less than, &c., how tried—Const. 1895, Art. I., Sec. 17; Const. 1868, Art. I., Sec. 19.
Arrests for, Congressmen liable to—Const. U. S., Art. I., Sec. 6, Clause 1.
Arrests for, Legislators liable to—Const. 1895, Art. III., Sec. 14; Const. 1868, Art. II., Sec. 17.
Arrests for, Electors liable to—Const. 1895, Art. II., Sec. 14; Const. 1868, Art. VIII., Sec. 6.
Committed while slave not to disfranchise—Const. 1868, Art. VIII., Sec. 12.

FINANCE AND TAXATION—
Provisions as to—Const. 1895, Art. X., Secs. 1-13; Const. 1868, Art. IX., Secs. 1-17.

FINES—
Excessive, shall not be imposed—Const. U. S., Art. 8A.; Const. 1895, Art. I., Sec. 19; Const. 1868, Art. I., Sec. 38.

FISCAL YEAR—
Commencement of—Const 1895, Art. X., Sec. 10; Const. 1868, Art. IX., Sec. 13.

Foreign—
Coin, Congress to regulate value—Const. U. S., Art. I., Sec. 8, Clause 5.
Nations, Congress to regulate trade with—Const. U. S., Art. I., Sec. 8, Clause 3.
Power, agreement by State with—Const. U. S., Art. I., Sec. 10, Clause 3.

Foreign Corporations—
Cannot build, operate, &c., railroads—Const. 1895, Art. IX., Sec. 8.
Regulations as to—Const. 1895, Art. IX., Sec. 8.
[See *Corporations.*]

Forfeiture of Estate—
By conviction for treason, &c.—Const. U. S., Art. III., Sec. 3, Clause 2.
No conviction shall work—Const. 1895, Art. I., Sec. 8; Const. 1868, Art. I., Sec. 21.

Forfeitures—
Accruing shall come to State—Const. 1895, Art. XVII., Sec. 11, Clause 4.

Formation—
Of new States, provisions as to—Const. U. S., Art. IV., Sec. 3, Clause 1.
Of new Counties, provisions as to—Const. 1895, Art. VII., Secs. 1-6; Const. 1868, Art. II., Sec. 3.
Of Saluda County, provisions as to—Const. 1895, Art. VII., Sec. 12.
Of municipal corporations, provisions as to—Const. 1895, Art. VIII., Secs. 1 and 2; Const. 1868, Art. IX., Sec. 9.
Of corporations, provisions as to—Const. 1895, Art. IX., Sec. 2; Const. 1868, Art. XII., Sec. 1.

Form of Government—
Republican, guaranteed States—Const. U. S., Art. IV., Sec. 4.

Forts—
Jurisdiction of Congress over—Const. U. S., Art. I., Sec. 8, Clause 17.

Fourteenth Amendment—
To be ratified by State—Const. 1868, Art. IV., Sec. 33.

Fraud—
No imprisonment for debt, except for—Const. 1895, Art. I., Sec. 24; Const. 1868, Art. I., Sec. 20.
At primary elections punished—Const. 1895, Art. II., Sec. 10.

Freedom—
Not to be abridged; of press or speech—Const. U. S., Art. IA; Const. 1895, Art. I., Sec. 4; Const. 1868; Art. I., Sec. 7.
Not to be abridged; of conscience—Const. U. S., Art. IA; Const. 1895, Art. I., Sec. 4; Const. 1868, Art. I., Sec. 9.

Freeholders—
Must petition for election to issue bonds—Const 1895, Art. II., Sec. 13.

FREE SCHOOLS—
The General Assembly shall provide—Const. 1895, Art. XI., Sec. 5; Const. 1868, Art. X., Sec. 3.
Age of pupils attending—Const. 1895, Art. XI., Sec. 5; Const. 1868, Art. X., Sec. 4.
Compulsory attendance on—Const. 1868, Art. X., Sec. 4.
School Districts—Const. 1895, Art. XI., Sec. 5; Const. 1868, Art. X., Sec. 3.
Tax for support of—Const. 1895, Art. XI., Sec. 6; Const. 1868, Art. X., Sec. 5.
Funds from United States for—Const. 1868, Art. X., Sec. 11.
Open to all—Const. 1868, Art. X., Sec. 10.
Separate for each race—Const. 1895, Art. XI|, Sec. 7.
Lands given or escheated to State to be for—Const. 1895, Art. XI., Sec. 11; Const. 1868, Art. X., Sec. 11.
Income from Dispensary to be used for—Const. 1895, Art. XI., Sec. 12.

FREE STATE—
Militia necessary to security of—Const. U. S., Art. II. A.; Const. 1895, Art. I., Sec. 26.

FUGITIVES—
From justice, surrender of—Const. U. S., Art. IV., Sec. 2, Clause 2.
From slavery, surrender of—Const. U. S., Art. IV., Sec. 2, Clause 3.

FUNDS—
Unclaimed, for use of schools—Const 1895, Art. XI., Sec. 11; Const. 1868, Art. X., Sec. 11.
From Dispensary, for use of schools—Const. 1895, Art. XI., Sec. 12.
From U. S., for Agricultural College—Const. 1895, Art. XI., Sec. 8; Const. 1868, Art. X., Sec. 9.
Account of public, to be published—Const. 1895, Art. X., Sec. 8; Const. 1868, Art. II., Sec. 22; Const. 1868, Art. IX., Sec. 11.

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GAMBLING—
By officers, disqualifies, &c.—Const. 1895, Art. XVII., Sec. 8.

GAME—
Special legislation as to protecting—Const. 1895, Art. III., Sec. 34, Clause 7.

GAS WORKS—
Grant of right to erect—Const. 1895, Art. VIII., Sec. 4.

GENERAL ASSEMBLY—
Shall frequently assemble—Const. 1895, Art. I., Sec. 3; Const. 1868, Art. I., Sec. 27.
May authorize suspension of laws—Const. 1895, Art. I., Sec. 13; Const. 1868, Art. I., Sec. 24.

General Assembly—*(Continued.)*

May consent to maintenance of army—Const. 1895, Art. I., Sec. 26; Const. 1868, Art. I., Sec. 28.

May declare martial law—Const. 1895, Art. I., Sec. 27; Const. 1868, Art. I., Sec. 25.

May authorize erection of wharves and collection of tolls—Const. 1895, Art. I., Sec. 28; Const. 1868, Art. I., Sec. 40.

Shall provide for registration of voters—Const. 1895, Art. II., Sec. 4, Clause f; Const. 1895, Art. II., Sec. 8; Const. 1868, Art. VIII., Sec. 3

Shall provide for appeals in registration cases—Const. 1895, Art. II., Sec. 5.

Shall provide for correction of illegal registration—Const. 1895, Art. II., Sec. 5.

Shall provide for correction of illegal voting—Const. 1895, Art. II., Sec. 5.

Shall provide for punishment of offenses against elections laws—Const. 1895, Art. II., Sec. 5.

Shall provide for holding elections—Const. 1895, Art. II., Sec. 8.

Shall provide for polling precincts—Const. 1895, Art. II., Sec. 9.

Shall provide for regulation of primary elections—Const. 1895, Art. II., Sec. 10.

Shall require petition of freeholders before election as to bonded indebtedness—Const. 1895, Art. II., Sec. 13.

Consists of Senate and House of Representatives—Const. 1895, Art. III, Sec. 1; Const. 1868, Art. II., Sec. 1.

Session of 1895 postponed—Const. 1895, Art. III., Sec. 9.

Sessions when and where held—Const. 1895, Art. III., Sec. 9; Const. 1868, Art. II., Sec. 12.

Members of, compensation—Const. 1895, Art. III., Sec. 9; Const. 1895, Art. III., Sec. 19; Const. 1868, Art. II., Sec. 23.

Members of, when protected—Const. 1895, Art. III., Sec. 14; Const. 1868, Art. II., Sec. 17.

Members of, cannot increase own compensation—Const. 1895, Art. III., Sec. 19; Const. 1868, Art. II., Sec. 23.

Members of, same compensation in extra session—Const. 1895, Art. III., Sec. 19; Const. 1868, Art. II., Sec. 23.

Elections, in *viva voce*—Const. 1895, Art. III., Sec. 20; Const. 1868, Art. II., Sec. 24.

Elections in to be entered on Journal—Const. 1895, Art. III., Sec. 20; Const. 1868, Art. II., Sec. 24.

Who are eligible as members—Const. 1895, Art. VI., Sec. 7; Const. 1868, Art. II., Sec. 14.

Who are ineligible as members—Const. 1895, Art. III., Sec. 24; Const. 1868, Art. II., Sec. 28.

May grant right of way over public lands—Const. 1895, Art. III., Sec. 31.

May confirm title to public lands—Const. 1868, Art. III., Sec. 31.

When may grant pensions—Const. 1895, Art. III., Sec. 32; Const. 1895, Art. XIII., Sec. 5.

Shall not authorize payment of salary beyond term of officers—Const. 1895, Art. III., Sec. 32.

GENERAL ASSEMBLY—*(Continued.)*
Shall not retire officer on part pay, &c.—Const. 1895, Art. III., Sec. 32.
Shall not enact special laws for certain purposes—Const. 1895, Art. III., Sec. 34.
Shall limit right of aliens to hold lands—Const. 1895, Art. III., Sec. 35.
Shall enact homestead laws—Const. 1868, Art. III., Sec. 28; Const. 1868, Art. II., Sec. 32; Const. 1868; am. 1880.
Shall possess legislative powers—Const. 1895, Art. III., Sec. 1; Const. 1868, Art. II., Sec. 1.
Shall choose its own officers, punish its members, &c.—Const. 1895, Art. III., Sec. 12; Const. 1868, Art. II., Sec. 15.
Shall judge of elections of its members—Const. 1895, Art. III., Sec. 11; Const. 1868, Art. II., Sec. 14.
Shall judge of qualifications of its members—Const. 1895, Art. III., Sec. 11; Const. 1868, Art. II., Sec. 14.
Shall determine its own rules—Const. 1895, Art. III., Sec. 12; Const. 1868, Art. II., Sec. 15.
Revenue Bills in regulated—Const. 1895, Art. III., Sec. 15; Const. 1868, Art. II., Sec. 18.
Style of laws enacted by—Const. 1895, Art. III., Sec. 16; Const. 1868, Art. II., Sec. 19.
Bills in to be read three times—Const. 1895, Art. III., Sec. 18; Const. 1868, Art. II., Sec. 21.
Bills to relate to one subject, expressed in title—Const. 1895, Art. III., Sec. 17; Const. 1868, Art. II., Sec. 20.
Adjournment by Governor, when—Const. 1895, Art. IV., Sec. 16; Const. 1868, Art. V., Sec. 16.
Adjournment of either House of—Const. 1895, Art. III., Sec. 21; Const. 1868, Art. II., Sec. 25.
Journal to be kept in each House—Const. 1895, Art. III., Sec. 22; Const. 1868, Art. II., Sec. 26.
Doors of each House to be open, except—Const. 1895, Art. III., Sec. 23; Const. 1868, Art. II., Sec. 27.
Vacancies in, how filled—Const. 1895, Art. III., Sec. 25; Const. 1868, Art. II., Sec. 29.
May be convened in extra session—Const. 1895, Art. IV., Sec. 16; Const. 1868, Art. III., Sec. 16.
How to vote on vetoed Act—Const. 1895, Art. IV., Sec. 23; Const. 1868, Art. III., Sec. 22.
Must open election returns for Governor—Const. 1895, Art. IV., Sec. 4; Const. 1868, Art. III., Sec. 4.
Shall elect Governor, when—Const. 1895, Art. IV., Sec. 4; Const. 1868, Art. III., Sec. 4.
Shall prescribe how contested elections for Governor shall be determined—Const. 1868, Art. III., Sec. 4; Const. 1895, Art. IV., Sec. 4.
Shall provide Board of Pardons—Const. 1895, Art. IV., Sec. 11.
Report to, of pardons granted—Const. 1895, Art. IV., Sec. 11; Const. 1868, Art. III., Sec. 11.
Shall elect Circuit Judges—Const. 1895, Art. V., Sec. 13; Const. 1868, Art. IV., Sec. 13.

GENERAL ASSEMBLY—*(Continued.)*
Shall elect Justices of Supreme Court—Const. 1895, Art. V., Sec. 2; Const. 1868, Art. IV., Sec. 2.
Shall provide for interchange of Judges on Circuits—Const. 1895, Art. V., Sec. 14; Const. 1868, Art. IV., Sec. 14.
Shall provide for preservation of equity records—Const. 1868, Art. IV., Sec. 17.
Shall provide for publication Supreme Court decisions—Const. 1895, Art. V., Sec. 32; Const. 1868, Art. IV., Sec. 32.
Shall prescribe jurisdiction of Magistrates—Const. 1895, Art. V., Sec. 21.
Shall provide for Justices of the Peace—Const. 1868, Art. IV., Sec. 21.
Shall provide Clerks for Courts of Record—Const. 1895, Art. V., Sec. 27; Const. 1868, Art. IV., Sec. 27.
May fix compensation of officers—Const. 1895, Art. V., Sec. 24.
May establish County Courts—Const. 1895, Art. V., Sec. 1.
May provide for County Solicitor—Const. 1895, Art. V., Sec. 29.
May establish inferior Courts—Const. 1895, Art. V., Sec. 1; Const. 1868, Art. IV., Sec. 1.
May regulate sessions of Supreme Court—Const. 1895, Art. V., Sec. 5; Const. 1868, Art. IV., Sec. 5.
Shall provide for arbitration of disputes—Const. 1895, Art. VI., Sec. 1; Const. 1868, Art. V., Sec. 1.
Shall provide for change of venue—Const. 1895, Art. VI., Sec. 2; Const. 1868, Art. V., Sec. 2.
Shall provide for codification of laws—Const. 1895, Art. VI., Sec. 5; Const. 1868, Art. V., Sec. 3.
May establish new Counties, when, &c.—Const. 1895, Art. VII., Secs. 1 and 2; Const. 1868, Art. II., Sec. 3.
May alter County lines, when, &c.—Const. 1895, Art. VII., Sec. 7; Const. 1868, Art. II., Sec. 3.
May consolidate Counties, when, &c.—Const. 1895, Art. VII., Sec. 10.
May establish or change townships—Const. 1895, Art. VII., Sec. 11.
May provide township government—Const. 1895, Art. VII., Sec. 11.
May provide special provisions as to municipal government—Const. 1895, Art. VII., Sec. 11.
May arrange Congressional Districts—Const. 1895, Art. VII., Sec. 13.
May provide and change polling precincts—Const. 1895, Art. VII., Sec. 13.
Shall provide for incorporation of municipalities—Const. 1895, Art. VIII., Sec. 1; Const. 1868, Art. IX., Sec. 9.
Shall restrict taxation by municipalities—Const. 1895, Art. VIII., Sec. 3; Const. 1868, Art. IX., Sec. 9.
Shall not grant certain franchises without consent of local authorities—Const. 1895, Art. VIII., Sec. 4.
Shall create Boards of Health—Const. 1895, Art. VIII., Sec. 10.
Shall regulate traffic in liquors—Const. 1895, Art. VIII., Sec. 11.
May authorize sale by State and County officers—Const. 1895, Art. VIII., Sec. 11.
Shall provide for organization of corporations—Const. 1895, Art. IX., Sec. 2; Const. 1868, Art. XII., Sec. 1.

GENERAL ASSEMBLY—*(Continued.)*

Special charters granted by two-thirds vote—Const. 1895, Art. IX., Sec. 2.

Special charters for banks, &c., no—Const. 1895, Art. IX., Sec. 9.

Special charters for banks, &c., conditions—Const. 1868, Art. XII., Sec. 6.

Shall not license foreign corporations to build or operate railroads—Const. 1895, Art. IX., Sec. 8.

Shall provide for voting cumulative stock—Const. 1895, Art. IX., Sec. 11.

Shall legislate to prevent illegal trusts, &c.—Const. 1895, Art. IX., Sec. 13.

Shall never remit forfeiture of franchise, except—Const. 1895, Art. IX., Sec. 17.

May extend rights railroad employes to others—Const. 1895, Art. IX., Sec. 15.

Shall enforce Constitutional provisions as to corporations—Const. 1895, Art. IX., Sec. 21.

Shall provide for uniform taxation and assessment—Const. 1895, Art. X., Sec. 1; Const. 1868, Art. IX., Sec. 1.

Shall provide for annual State expenses—Const. 1895, Art. X., Sec. 2; Const. 1868, Art. IX., Sec. 3.

Shall provide for annual poll tax—Const. 1895, Art. XI., Sec. 6; Const. 1868, Art. IX., Sec. 2.

Shall exempt certain property from taxation—Const. 1895, Art. X., Sec. 4; Const. 1868, Art. IX., Sec. 5.

Shall provide for assessment of all property—Const. 1895, Art. X., Sec. 13.

Shall provide for assessment of property—Const. 1868, Art. IX., Sec. 6.

Shall require all property taxed, purposes—Const. 1895, Art. X., Sec. 5; Const. 1868, Art. IX., Sec. 8.

May authorize municipal bonds issued, when—Const. 1895, Art. X., Sec. 6.

Forbidden to create debt except, &c.—Const. 1895, Art. X., Sec. 11; Const. 1868, Art. XVI.

Shall provide for safe keeping of public funds—Const. 1895, Art. X., Sec. 12; Const. 1868, Art. IX., Sec. 15.

Shall make embezzlement public funds felony—Const. 1895, Art. X., Sec. 12; Const. 1868, Art. IX., Sec. 15.

Shall prescribe duties, &c., Superintendent of Education—Const. 1895, Art. XI., Sec. 1; Const. 1868, Art. X., Sec. 1.

Shall provide for all school officers, &c.—Const. 1895, Art. XI., Sec. 3.

Shall provide for free schools—Const. 1895, Art. XI., Sec. 5; Const. 1868, Art. X., Sec. 3.

Shall provide for compulsory school attendance—Const. 1868, Art. X., Sec. 4.

Shall provide separate schools for each race—Const. 1895, Art. XI., Sec. 7.

Shall define enrollment in schools—Const. 1895, Art. XI., Sec. 6.

Shall provide for maintenance of colleges—Const. 1895, Art. XI., Sec. 8; Const. 1868, Art. X., Sec. 9.

GENERAL ASSEMBLY—*(Continued.)*

Shall apportion school funds—Const. 1895, Art. XI., Secs. 11 and 12; Const. 1868, Art. X., Sec. 11.

Shall provide for State Normal School—Const. 1895, Art. XI., Sec. 8; Const. 1868, Art. X., Sec. 6.

Shall provide for State Reformatory—Const. 1895, Art. XII., Sec. 7; Const. 1868, Art. X., Sec. 8.

Shall provide for Directors Penitentiary—Const. 1895, Art. XII., Sec. 5; Const. 1868, Art. XI., Sec. 2.

Shall provide for Directors other institutions—Const. 1895, Art. XII., Sec. 4.

Shall direct appointment of staff officers—Const. 1895, Art. XIII., Sec. 4; Const. 1868, Art. XIII., Sec. 3.

Shall direct equipment of Militia—Const. 1895, Art. XIII., Sec. 1; Const. 1868, Art. XIII., Sec. 1.

Shall pension certain soldiers—Const. 1895, Art. XIII., Sec. 5.

May impost toll, &c., on navigable waters—Const. 1895, Art. XIV., Sec. 1; Const. 1868, Art. VI., Sec. 1.

May ask removal of officers, when—Const. 1895, Art. XV., Sec. 4; Const. 1868, Art. VII., Sec. 4.

May provide for calling Constitutional Convention—Const. 1895, Art. XVI., Sec. 3; Const. 1868, Art. XV., Sec. 3.

May direct how claims against State shall be established—Const. 1895, Art. XVII., Sec. 2; Const. 1868, Art. XIV., Sec. 4.

Shall provide for removal of causes—Const. 1895, Art. XVII., Sec. 6; Const. 1868, Art. XIV., Sec. 9.

Shall prohibit lotteries—Const. 1895, Art. XVII., Sec. 7; Const. 1868, Art. XIV., Sec. 2.

Shall provide for special Judges—Const. 1895, Art. V., Sec. 6.

Shall arrange Judicial Circuits—Const. 1895, Art. V., Sec. 13; Const. 1868, Art. IV., Sec. 13.

Shall protect religious denominations—Const. 1868, Art. I., Sec. 10.

Shall provide "seal of State"—Const. 1868, Art. III., Sec. 18.

Shall ratify 14th amendment—Const. 1868, Art. IV., Sec. 33.

Shall not subject persons to punishment, without trial—Const. 1868, Art. I., Sec. 14.

Shall not deprive electors of suffrage, except, &c.—Const. 1868, Art. VIII., Sec. 8.

GENERAL LAWS—

Required on certain subjects—Const. 1895, Art. III., Sec. 34.

GENERAL SESSIONS, COURT OF—

Judicial power vested in—Const. 1895, Art. V., Sec. 1; Const. 1868, Art. IV., Sec. 1.

Jurisdiction of—Const. 1895, Art. V., Sec. 18; Const. 1868, Art. IV., Sec. 18.

GENERAL WELFARE—

Promotion of (Preamble)—Const. U. S.

Congress may provide for—Const. U. S., Art. I., Sec. 8, Clause 1.

GIFTS—
For educational purposes, to be so used—Const. 1895, Art. XI., Sec. 10.
Used for educational purposes—Const. 1895, Art. XI., Sec. 11.

GOLD AND SILVER COIN—
No State shall make anything but, legal tender—Const. U. S., Art. I., Sec. 10, Clause 1.

GOOD BEHAVIOR—
Judges of United States Court to hold during—Const. U. S., Art. III., Sec. 1.

GOVERNMENT—
Guarantee of Republican form of—Const. U. S., Art. IV., Sec. 4.
Form of, modified by people—Const. 1895, Art. I., Sec. 1; Const. 1868, Art I., Sec. 3.
People may petition the—Const. 1895, Art. I., Sec. 4; Const. 1868, Art. I., Sec. 6.
Departments of distinct—Const. 1895, Art. I., Sec. 14; Const. 1868, Art. I., Sec. 26.
Paramount allegiance due United States—Const. 1868, Art. I., Sec. 4.

GOVERNOR—
Supreme Executive authority vested in—Const. 1895, Art. IV., Sec. 1; Const. 1868, Art. III., Sec. 1.
Who may be; qualifications, &c.—Const. 1895, Art. IV., Sec. 3; Const. 1868, Art. III., Sec. 3.
When may change place for meeting Legislature—Const. 1895, Art. III., Sec. 9; Const. 1868, Art. II., Sec. 12.
Elected by—Const. 1895, Art. IV., Sec. 2; Const. 1868, Art. III., Sec. 2.
Term of office—Const. 1895, Art. IV., Sec. 2; Const. 1868, Art. III., Sec. 2.
When elected—Const. 1895, Art. IV., Sec. 2; Const. 1868, Art. III., Sec. 2.
Installation of—Const. 1895, Art. IV., Sec. 2; Const. 1868, Art. III., Sec. 2.
Returns of election for—Const. 1895, Art. IV., Sec. 4; Const. 1868, Art. III., Sec. 4.
Contested election for, how determined—Const. 1895. Art. IV., Sec. 4; Const. 1868, Art. III., Sec. 4.
Vacancy in office, how filled—Const. 1895, Art. IV., Sec. 9; Const. 1868, Art. III., Sec. 9.
Commander-in-Chief of Militia, except—Const. 1895, Art. IV., Sec. 10; Const. 1868, Art. III., Sec. 10.
May grant reprieves, pardons, &c.—Const. 1895, Art. IV., Sec. 11; Const. 1868, Art. III., Sec. 11.
May remit fines and forfeitures—Const. 1895, Art. IV., Sec. 11; Const. 1868, Art. III., Sec. 11.
To see laws executed, in mercy—Const. 1895, Art. IV., Sec. 12; Const. 1868, Art. III., Sec. 12.
Compensation of—Const. 1895, Art. IV., Sec. 13; Const. 1868, Art. III., Sec. 13.

GOVERNOR—*(Continued.)*

Executive officers and Boards to report to—Const. 1895, Art. IV., Sec. 14; Const. 1868, Art. III., Sec. 14.
Appoints Magistrates—Const. 1895, Art. V., Sec. 20.
May order election for new County—Const. 1895, Art. VII., Sec. 1.
May apply for protection against domestic violence or invasion—Const. 1895, Art. VIII., Sec. 9; Const. U. S., Art. IV., Sec. 4.
To give information to Legislature—Const. 1895, Art. IV., Sec. 15; Const. 1868, Art. III., Sec. 15.
To make recommendations to Legislature—Const. 1895, Art. IV., Sec. 15; Const. 1868, Art. III., Sec. 15.
May convene extra session of Legislature—Const. 1895, Art. IV., Sec. 16; Const. 1868, Art. III., Sec. 16.
May adjourn session of Legislature, when—Const. 1895, Art. IV., Sec. 16; Const. 1868, Art. III., Sec. 16.
Shall commission all officers—Const. 1895, Art. IV., Sec. 17; Const. 1868, Art. III., Sec. 17.
Signs grants and commissions—Const. 1895, Art. IV., Sec. 19; Const. 1868, Art. III., Sec. 19.
Oath of office of—Const. 1895, Art. IV., Sec. 20; Const. 1868, Art. III., Sec. 20.
Residence of—Const. 1895, Art. IV., Sec. 21; Const. 1868, Art. III., Sec. 21.
To sign bills and joint resolutions approved—Const. 1895, Art. IV., Sec. 23; Const. 1868, Art. III., Sec. 22.
May veto bills and joint resolutions—Const. 1895, Art. IV., Sec. 23; Const. 1868, Art. III., Sec. 22.
Shall suspend and remove officers, when—Const. 1895, Art. IV., Sec. 22.
Shall appoint special Judges, when—Const. 1895, Art. V., Sec. 6; Const. 1868, Art. IV., Sec. 6.
May appoint Judges to fill vacancies, when—Const. 1895, Art. V., Sec. 11; Const. 1868, Art. IV., Sec. 11.
Is Chairman State Board of Education—Const. 1895, Art. XI., Sec. 2.
Shall appoint officers State Hospital for Insane—Const. 1895, Art. XII., Sec. 2; Const. 1868, Art. XI., Sec. 6.
Shall fill vacancies in offices State penal and charitable institutions—Const. 1868, Art. XI., Sec. 4; Const. 1895, Art. XII., Sec. 8.
May call out Militia, when—Const. 1895, Art. XIII., Sec. 3; Const. 1868, Art. XIII., Sec. 2.
Shall appoint staff officers—Const. 1895, Art. XIII., Sec. 4; Const. 1868, Art. XIII., Sec. 3.
Impeachment of—Const. 1895, Art. XV., Secs. 2 and 3; Const. 1868, Art. VII., Secs. 2 and 3.
May remove officers, when—Const. 1895, Art. XV., Sec. 4; Const. 1895, Art. IV., Sec. 22; Const. 1868, Art. VII., Sec. 4.

GRADED SCHOOL DISTRICTS—

Not abolished—Const. 1895, Art. XI., Sec. 5.
Indebtedness of—Const. 1895, Art. XI., Sec. 5.

GRAND JURY—
Indictment by necessary in graver crimes—Const. U. S., Art. 5A.; Const. 1895, Art. I., Sec. 17; Const. 1868, Art. I., Sec. 19.
Consists of eighteen—Const 1895, Art. V., Sec. 22.
Twelve must agree to indictment—Const. 1895, Art. V., Sec. 22.

GRANTS—
How issued—Const. 1895, Art. IV., Sec. 19; Const. 1868, Art. III., Sec. 19.
Of public lands, when forbidden—Const. 1895, Art. III., Sec. 31.
Of corporate franchises, subject to Constitution—Const. 1895, Art. IX., Sec. 16.

GREAT SEAL OF STATE—
Provided—Const. 1895, Art. IV., Sec. 18; Const. 1868, Art. III., Sec. 18.
To be used by the Governor—Const. 1895, Art. IV., Sec. 19; Const. 1868, Art. III., Sec. 19.

GUARANTEE—
Of Republican form of government—Const. U. S., Art. IV., Sec. 4.

H

HABEAS CORPUS—
Not to be suspended, except, &c.—Const. U. S., Art. I., Sec. 9, Clause 2; Const. 1895, Art. I., Sec. 23; Const. 1868, Art. I., Sec. 17.
Jurisdiction of Supreme Court in—Const. 1895, Art. V., Sec. 4; Const. 1868, Art. IV., Sec. 4.
Jurisdiction of Common Pleas in—Const. 1895, Art. V., Sec. 15; Const. 1868, Art. IV., Sec. 15.

HEADS OF DEPARTMENTS—
Power of appointment to office—Const. U. S., Art. II., Sec. 2, Clause 2.
President may require opinion of—Const. U. S., Art. II., Sec. 2, Clause 1.
Governor may require information of—Const. 1895, Art. IV., Sec. 14; Const. 1868, Art. III., Sec. 14.

HIGH CRIMES AND MISDEMEANORS—
Impeachment for—Const. U. S., Art. II., Sec. 4.

HIGHWAYS—
Navigable waters are—Const. 1895, Art. XIV., Sec. 1; Const. 1895, Art. I., Sec. 28; Const. 1868, Art. VI., Sec. 1; Const. 1868, Art. I., Sec. 40.
Special laws as to, forbidden—Const. 1895, Art. III., Sec. 34, Clause 2.

HOMESTEAD—
To be exempted—Const. 1868, Art. I., Sec. 20.
Established, &c.—Const. 1868, Art. XI., Sec. 32.
Established (amended)—Const. 1868, (1880); Const. 1895, Art. III., Sec. 28.
Husband and wife must join in conveyance or mortgage of—Const. 1895, Art. III., Sec. 28.

HOUSE—

Each shall judge of election and qualification of its members—Const. U. S., Art. I., Sec. 5, Clause 1; Const. 1895, Art. III., Sec. 11; Const. 1868, Art. II., Sec. 14.

Majority of each House shall constitute quorum—Const. U. S., Art. I., Sec. 5, Clause 1; Const. 1895, Art. III., Sec. 11; Const. 1868, Art. II., Sec. 14.

Each, chooses its own officers—Const. 1895, Art. III., Sec. 12; Const. 1868, Art. II., Sec. 15.

Each determines its own rules—Const. U. S., Art. I., Sec. 5, Clause 2; Const. 1895, Art. III., Sec. 12; Const. 1868, Art. II., Sec. 15.

Each, punishes its members—Const. U. S., Art. I., Sec. 5, Clause 2; Const. 1895, Art. III., Sec. 12; Const. 1868, Art. II., Sec. 15.

Each, may expel a member, when—Const. U. S., Art. I., Sec. 5, Clause 2; Const. 1895, Art. III., Sec. 12; Const. 1868, Art. II., Sec. 15.

Each, may punish for contempt—Const. 1895, Art. III., Sec. 13; Const. 1868, Art. II., Sec. 16.

Each, shall keep a journal—Const. U. S., Art. I., Sec. 5, Clause 3; Const. 1895, Art. III., Sec. 22; Const. 1868, Art. II., Sec. 26.

Each, shall publish same—Const. U. S., Art. I., Sec. 5, Clause 3; Const. 1895, Art. III., Sec. 22; Const. 1868, Art. II., Sec. 26.

Each, doors open, except—Const. 1895, Art. III., Sec. 23; Const. 1868, Art. II., Sec. 27.

Neither, shall adjourn without consent of other, more than three days—Const. 1868, Art. II., Sec. 25; Const. U. S., Art. I., Sec. 5, Clause 4; Const. 1895, Art. III., Sec. 21.

Either, privileges of members—Const. U. S., Art. I., Sec. 6, Clause 1; Const. 1895, Art. III., Sec. 14; Const. 1868, Art. II., Sec. 17.

Of Representatives, a branch of Congress—Const. U. S., Art. I., Sec. 1.

Of Representatives, a branch of Legislature—Const. 1895, Art. III., Sec. 1; Const. 1868, Art. II., Sec. 1.

Of Representatives, composed of—Const. U. S., Art. I., Sec. 2, Clause 1; Const. 1895, Art. III., Sec. 2; Const. 1868, Art. II., Sec. 2.

Of Representatives, qualifications of members—Const. U. S., Art. I., Sec. 2, Clause 2: Const. 1895, Art. III., Sec. 7; Const. 1868, Art. II., Sec. 10.

Of Representatives, elected biennially—Const. U. S., Art. I., Sec. 2, Clause 1; Const. 1895, Art. III., Sec. 2; Const. 1868, Art. II., Sec. 2.

Of Representatives, vacancies in, how filled—Const. U. S., Art. I., Sec. 2, Clause 4; Const. 1895, Art. III., Sec. 25; Const. 1868, Art. II., Sec. 29.

Of Representatives, has sole power of impeachment—Const. U. S., Art. I., Sec. 2, Clause 5; Const. 1895, Art. XV., Sec. 1; Const. 1868, Art. VII., Sec. 1.

Of Representatives, certain office holders shall not be members—Const. U. S., Art. I., Sec. 6, Clause 2; Const. 1895, Art. III., Sec. 24; Const. 1868, Art. II., Sec. 28.

Of Representatives, members shall not be appointed to offices created, or the emoluments of which have been increased during their membership—Const. U. S., Art. I., Sec. 6, Clause 2.

HOUSE—*(Continued.)*
Of Representatives, all Bills to raise revenue shall originate in—Const. U. S., Art. I., Sec. 7, Clause 1; Const. 1895, Art. III., Sec. 15; Const. 1868, Art. II., Sec. 18.
Of Representatives, number, apportionment—Const. U. S., Art. I., Sec. 2, Clause 3; Const. 1895, Art. III., Sec. 3; Const. 1868, Art. II., Sec. 4.
Of Representatives, may propose amendments to Constitution—Const. 1895, Art. XVI., Sec. 1; Const. 1868, Art. XV., Sec. 1.
Of Representatives, election for members—Const. 1895, Art. III., Sec. 8; Const. 1868, Art. II., Sec. 11; Const. 1868 (Am. 1873.)
Of Representatives, yeas and nays, when had—Const. U. S., Art. I., Sec. 5, Clause 3; Const. 1895, Art. III., Sec. 22; Const. 1868, Art. II., Sec. 26.
Of Representatives, disqualification for—Const. U. S., Art. 14A., Sec. 3.
Of Representatives, vote for President counted in presence of—Const. U. S., Art. 12A.
Of Representatives, election of President by—Const. U. S., Art. 12A.
Of Representatives, vote for Governor published in presence of—Const. 1895, Art. IV., Sec. 4; Const. 1868, Art. III., Sec. 4.
Of Representatives, Governor elected by—Const. 1895, Art. IV., Sec. 4; Const. 1868, Art. III., Sec. 4.

HUSBAND AND WIFE—
Must join in conveyance or mortgage of homestead—Const. 1895, Art. III., Sec. 28.
Gifts between, not to prejudice creditors—Const. 1868, Art. XIV., Sec. 8.
Power married women as to property—Const. 1895, Art. XVII., Sec. 9; Const. 1868, Art. XIV., Sec. 8.
Divorces prohibited—Const. 1895, Art. XVII., Sec. 3.
Divorces regulated—Const. 1868, Art. XIV., Sec. 5.

I

IMMINENT DANGER—
When State may engage in war because of—Const. U. S., Art. I., Sec. 10, Clause 3.

IMMUNITIES—
Shall not be abridged—Const. U. S., Art. 14A., Sec. 1; Const. 1895, Art. I., Sec. 5.
Of members of Congress from arrest, &c.—Const. U. S., Art. I., Sec. 6, Clause 1.
Of members of Legislature from arrest, &c.—Const. 1895, Art. III., Sec. 14; Const. 1868, Art. II., Sec. 17.
From quartering soldiers in time of peace—Const. U. S., Art. 3A.; Const. 1895, Art. I., Sec. 26; Const. 1868, Art. I., Sec. 29.
From being twice in jeopardy—Const. U. S., Art. 5A.; Const. 1895, Art. I., Sec. 17; Const. 1868, Art. I., Sec. 18.

IMPEACHMENT—

Officers liable to—Const. U. S., Art. II., Sec. 4; Const. 1895, Art. XV., Sec. 3; Const. 1868, Art. VII., Sec. 3.
House of Representatives has sole power of—Const. U. S., Art. I., Sec. 2, Clause 5; Const. 1895, Art. XV., Sec. 1; Const. 1868, Art. VII., Sec. 1.
House of Representatives may by two-thirds vote—Const. U. S., Art. I., Sec. 2, Clause 5; Const. 1895, Art. XV., Sec. 1; Const. 1868, Art. VII., Sec. 1.
No jury trial on—Const. U. S., Art. III., Sec. 2, Clause 3.
No pardon in case of—Const. U. S., Art. II., Sec. 2, Clause 1; Const. 1895, Art. IV., Sec. 11; Const. 1868, Art. III., Sec. 11.
Removal of officers upon—Const. U. S., Art. II., Sec. 4; Const. 1895, Art. XV., Sec. 3; Const. 1868, Art. VII., Sec. 3.
Extent of judgment on—Const. U. S., Art. I., Sec. 3, Clause 7; Const. 1895, Art. XV., Sec. 3; Const. 1868, Art. VII., Sec. 3.
Does not prevent indictment also—Const. U. S., Art. I., Sec. 3, Clause 7; Const. 1895, Art. XV., Sec. 3; Const. 1868, Art. VII., Sec. 3.
Tried by Senate—Const. U. S., Art. I., Sec. 3, Clause 6; Const. 1895, Art. XV., Sec. 2; Const. 1868, Art. VII., Sec. 2.
When Chief, or Senior, Justice shall preside—Const. U. S., Art. I., Sec. 3, Clause 6; Const. 1895, Art. XV., Sec. 2; Const. 1868, Art. VII., Sec. 2.
Two-thirds vote necessary to conviction—Const. U. S., Art. I., Sec. 3, Clause 6; Const. 1895, Art. XV., Sec. 2; Const. 1868, Art. VII., Sec. 2.

IMPLEMENTS AND TOOLS—

Exempt from levy and sale—Const. 1895, Art. III., Sec. 28; Const. 1868, Art. II., Sec. 32.

IMPORTATION OF SLAVES—

Not prohibited prior to 1808—Const. U. S., Art. I., Sec. 9, Clause 1.
Tax or duty on—Const. U. S., Art. I., Sec. 9, Clause 1.

IMPORTS ON EXPORTS—

No State shall tax, without consent, &c.—Const. U. S., Art. I., Sec. 10, Clause 2.
Use of produce of tax on—Const. U. S., Art. I., Sec. 10, Clause 2.
Tax on, subject to control of Congress—Const. U. S., Art. I., Sec. 10, Clause 2.

IMPORTS AND EXCISES—

Congress may lay—Const. U. S., Art. I., Sec. 8, Clause 1.
Shall be uniform throughout United States—Const. U. S., Art. I., Sec. 8, Clause 1.
Only with consent of people—Const. 1868, Art. I., Sec. 37.
For wharfage, &c.—Const. 1895, Art. I., Sec. 28; Const. 1868, Art. I., Sec. 40.

IMPRISONMENT—
Only by law of land—Const. U. S., Art. 14A., Sec. 1, Clause 3; Const. 1895, Art. I., Sec. 5; Const. 1868, Art. I., Sec. 14.
For debt prohibited, except for fraud—Const. 1895, Art. I., Sec. 24; Const. 1868, Art. I., Sec. 20.
Of strangers by House for contempt—Const. 1895, Art. III., Sec. 13; Const. 1868, Art. II., Sec. 16.

INABILITY—
Of President to act; who does, &c.—Const. U. S., Art. II., Sec. 1, Clause 5.
Of Governor to act; who does, &c.—Const. 1895, Art. IV., Sec. 9; Const. 1868, Art. III., Sec. 9.

INCAPACITY—
Removal of officers for—Const. 1895, Art. III., Sec. 27; Const. 1868, Art. II., Sec. 31.

INCOME—
From sale of liquors, used for schools—Const. 1895, Art. XI., Sec. 12.
From school funds—Const. 1895, Art. XI., Sec. 11; Const. 1868, Art. X., Sec. 11.

INCORPORATIONS—
See *Corporations*—Const. 1895, Art. IX.; Const. 1868, Art. XII.
Special charters for educational and charitable when required by will, &c.—Const. 1895, Art. III., Sec. 34, Clause 13.

INCREASE OF PUBLIC DEBT—
Only with consent of people—Const. 1895, Art. X., Sec. 11.
Only with consent of people (Amend.)—Const. 1868, Art. XVI.
Under Constitution of 1868.—Const. 1868, Art. IX., Sec. 7.

INDIAN TRIBES—
Congress to regulate commerce with—Const. U. S., Art. I., Sec. 8, Clause 3.

INDICTMENT—
Necessary to trial for higher crimes—Const. U. S., Art. 5A.; Const. 1895, Art. I., Sec. 17; Const. 1868, Art. I., Sec. 19.
Cumulative to impeachment—Const. U. S., Art. I., Sec. 3, Clause 7; Const. 1895, Art. XV., Sec. 3; Const. 1868, Art. VII., Sec. 3.
How to conclude—Const. 1895, Art. V,, Sec. 31; Const. 1868, Art. IV., Sec. 31.
For libel, jury judge of law and facts on—Const. 1895, Art. I., Sec. 21; Const. 1868, Art. I., Sec. 8.

INFAMOUS CRIMES—
Indictment for—Const. U. S., Art. 5A.

INFERIOR COURTS—
Congress may establish—Const. U. S., Art. I., Sec. 8, Clause 9.
General Assembly may establish—Const. 1895, Art. V., Sec. 1; Const. 1868, Art. IV., Sec. 1.

INFERIOR COURTS—*(Continued.)*

Jurisdiction of—Const. 1895, Art. V., Sec. 1.
Juries in—Const. 1895, Art. V., Sec. 22.
May impose sentence at hard labor—Const. 1895, Art. V., Sec. 33.
Judges of, receiving no compensation—Const. 1868, Art. II., Sec. 28.
Judges of, hold during good behavior—Const. U. S., Art. III., Sec. 1.
Judges of, compensation unchangeable during term—Const. U. S., Art. III., Sec. 1.

INFERIOR OFFICERS—

Appointment of—Const. U. S., Art. II., Sec. 2, Clause 2.

INFLUENCES—

Elections to be protected against undue—Const. 1895. Art. I., Sec. 9; Const. 1868, Art. I., Sec. 33.

INFORMATION—

Permitted for smaller offences—Const. 1895, Art. I., Sec. 17; Const. 1868. Art. I., Sec. 19.

INHABITANTS—

United States Senator must be, of State—Const. U. S.. Art. I., Sec. 3, Clause 3.
Representative shall be inhabitant of State in which chosen—Const. U. S., Art. I., Sec. 2, Clause 2.
Governor must be, of State—Const. 1895, Art. IV., Sec. 3; Const. 1868, Art. III., Sec. 3.
Every, possessing qualification, elegible—Const. 1895, Art. I., Sec. 10; Const. 1868, Art. I., Sec. 31.
Census of—Const. U. S., Art. I., Sec. 2, Clause 3; Const. 1895, Art. III., Sec. 3; Const. 1868, Art. II., Sec. 4.

INJUNCTION—

Supreme Court may issue writs of—Const. 1895, Art. V., Sec. 4; Const. 1868, Art. IV., Sec. 4.
Common Pleas may issue writs of—Const. 1895, Art. V., Sec. 15; Const. 1868, Art. IV., Sec. 15.

INSANE—

Institutions for, to be fostered—Const. 1895, Art. XII., Sec. 1; Const. 1868, Art. XI., Sec. 1.
State Hospital for; officers, &c.—Const. 1895, Art. XII., Sec. 2.
State Lunatic Asylum for, officers, &c.—Const. 1868, Art. XI., Sec. 6.

INSTITUTIONS—

State; appointment, &c., of officers—Const. 1895, Art. XII., Sec. 4; Const. 1868, Art. XI., Sec. 3.
State, vacancies in offices of—Const. 1895, Art. XII., Sec. 8; Const. 1868, Art. XI., Sec. 4.
State, Boards of, report to Governor—Const. 1895, Art. IV., Sec. 14.
State, for deaf, blind, dumb and insane—Const. 1895, Art. XII., Sec. 1; Const. 1868, Art. XI., Sec. 1.

INSTITUTIONS—*(Continued.)*

Certain exempted from taxation—Const. 1895, Art. X., Sec. 4; Const. 1868, Art. IX., Sec. 5.

Sectarian, not to receive public funds—Const. 1895, Art. XI., Sec. 9; Const. 1868, Art. X., Sec. 5; Const. 1868 (Am. 1878.)

INSURRECTION—

Disqualification, for participation in—Const. U. S., Art. XIV., Sec. 3.

Debts contracted in aid of, void—Const. U. S., Art. XIV., Sec. 4; Const. 1868, Art. IX., Sec. 16.

Calling forth Militia to suppress—Const. U. S., Art. I., Sec. 8, Clause 15; Const. 1895, Art. XIII., Sec. 3; Const. 1868, Art. XIII., Sec. 2.

Calling on U. S. for help to suppress—Const. U. S., Art. IV., Sec. 4.

Calling for help to suppress—Const. 1895, Art. VIII., Sec. 9.

INTERNAL IMPROVEMENTS—

Rights of way and private property for—Const. 1895, Art. I., Sec. 17; Const. 1895, Art. IX., Sec. 20; Const. 1868, Art. I., Sec. 23; Const. 1868, Art. XII., Sec. 3.

In municipalities—Const 1895, Art. VIII., Secs. 4 and 5.

In Counties—Const. 1868, Art. IV., Sec. 19.

In Counties, &c., bonds for—Const. 1895, Art. X., Sec. 6.

INVASION—

U. S. shall protect State against—Const. U. S., Art. IV., Sec. 4.

Congress may call out Militia to repel—Const. U. S., Art. I., Sec. 8, Clause 15.

Governor may call out Militia to repel—Const. 1895, Art. XIII., Sec. 3; Const. 1868, Art. XIII., Sec. 2.

When State may engage in war, because of—Const. U. S., Art. I., Sec. 10, Clause 3.

Suspension writ *habeas corpus* in case of—Const. U. S., Art. I., Sec. 9, Clause 2; Const. 1895, Art. I., Sec. 23; Const. 1868, Art. I., Sec. 17.

INVENTORS—

Protection of by patents, &c.—Const. U. S., Art. I., Sec. 8, Clause 8.

INVOLUNTARY SERVITUDE—

To exist only as punishment for crime—Const. U. S., Art. 13A., Sec. 1; Const. 1868, Art. I., Sec. 2.

J

JEOPARDY—

Former, as defence—Const. U. S., Art. 5A.; Const. 1895, Art. I., Sec. 17; Const. 1868, Art. I., Sec. 18.

JOINT RESOLUTION—

To be read three times—Const. 1895, Art. III., Sec. 18.

To be signed by President of Senate—Const. 1895, Art. III., Sec. 18.

To be signed by Speaker of House—Const. 1895, Art. III., Sec. 18.

To have great seal of State affixed—Const. 1895, Art. III., Sec. 18.

JOINT RESOLUTIONS—*(Continued.)*

Governor must sign or veto—Const. 1895, Art. IV., Sec. 23; Const. 1868, Art. III., Sec. 22.

Governor must return in three days, unless—Const. 1895, Art. IV., Sec. 23; Const. 1868, Art. III., Sec. 22.

Shall relate to but one subject, expressed in title—Const. 1895, Art. IV., Sec. 17; Const. 1868, Art. III., Sec. 20.

May be read by title only on first and third readings—Const. 1895, Art. IV., Sec. 18.

JOURNAL—

Each House must keep a—Const. U. S., Art. I., Sec. 5, Clause 3; Const. 1895, Art. III., Sec. 22; Const. 1868, Art. II., Sec. 26.

Yeas and nays, when to be entered on—Const. U. S., Art. I., Sec. 5, Clause 3; Const. 1895, Art. III., Sec. 22; Const. 1868, Art. II., Sec. 26.

Dissent and protest to be entered on—Const. 1895, Art. III., Sec. 22; Const. 1868, Art. II., Sec. 26.

Record of votes to be entered on, in elections—Const. 1895, Art. III., Sec. 20; Const. 1868, Art. II., Sec. 24.

Record of votes to be entered on, on vetoed Bills—Const. 1895, Art. IV., Sec. 23; Const. 1868, Art. III., Sec. 22.

Record of votes to be entered on, on public debt—Const. 1868, Art. IX., Sec. 7.

Record of votes to be entered on, on nominations—Const. 1868, Art. XI., Sec. 3.

JUDGES—

Bound by the Constitution, law and treaties of U. S.—Const. U. S., Art. VI., Clause 2.

Of U. S. Courts, hold during good behavior—Const. U. S., Art. III., Sec. 1.

Compensation not changed during term—Const. U. S., Art. III., Sec. 1; Const. 1895, Art. V., Sec. 9; Const. 1868, Art. IV., Sec. 9.

Allowed no fees or perquisites—Const. 1895, Art. V., Sec. 9; Const. 1868, Art. IV., Sec. 9.

Hold no other office—Const. 1895, Art. V., Sec. 9; Const. 1868, Art. IV., Sec. 9.

Qualifications of—Const. 1895, Art. V., Sec. 10; Const. 1868, Art. IV., Sec. 10.

Filling vacancy, holds for unexpired term—Const. 1895, Art. V., Sec. 11; Const. 1868, Art. IV., Sec. 11.

Are conservators of the peace—Const. 1895, Art. V., Sec. 11; Const. 1868, Art. IV., Sec. 11.

Disqualifications in certain cases—Const. 1895, Art. V., Sec. 6; Const. 1868, Art. IV., Sec. 6.

Temporary vacancy filled by special Judge—Const. 1895, Art. V., Sec. 6; Const. 1868, Art. IV., Sec. 6.

Who heard case below, disqualified on appeal—Const. 1895, Art. V., Sec. 12.

JUDGES—(*Continued.*)
Of Probate Court, may act as Clerk—Const. 1895, Art. V., Sec. 27; Const. 1868, Art. IV., Sec. 27.
To file decisions within 60 days—Const. 1895, Art. V., Sec. 17; Const. 1868, Art. IV., Sec. 17.
Circuit, election, residence, term—Const. 1895, Art. V., Sec. 13; Const. 1868, Art. IV., Sec. 13.
Circuit, shall interchange Circuits—Const. 1895, Art. V., Sec. 14; Const. 1868, Art. IV., Sec. 14.
Circuit, shall not charge on facts—Const. 1895, Art. V., Sec. 26; Const. 1868, Art. IV., Sec. 26.
Circuit, when to sit on Supreme Court—Const. 1895, Art. V., Sec. 12.
Powers at Chambers—Const. 1895, Art. V., Sec. 25.
Of Probate, election, term—Const. 1868, Art. IV., Sec. 20; Const. 1868 (Am. 1889.)
Of Probate, compensation—Const. 1868, Art. IV., Sec. 25.

JUDGMENT—
In cases of impeachment, extent—Const. U. S., Art. I., Sec. 3, Clause 7; Const. 1895, Art. XV., Sec. 3; Const. 1868, Art VII., Sec. 3.
Of Supreme Court to be in writing, &c.—Const. 1895, Art. V., Sec. 8; Const. 1868, Art. IV., Sec. 8.
Reversed by concurrence of three Judges on appeal—Const. 1895, Art V., Sec. 12.

JUDICIAL CIRCUITS—
Division of State into—Const. 1895, Art. V., Sec. 13; Const. 1868, Art. IV., Sec. 13.
General Assembly may arrange—Const. 1895, Art. VII., Sec. 13.

JUDICIAL DISTRICTS—
To be called Counties—Const. 1868, Art. II., Sec. 3.

JUDICIAL OFFICERS—
Oath to support Constitution—Const. U. S., Art. VI., Clause 3.

JUDICIAL POWER—
Vested in Supreme Court—Const. U. S., Art. III., Sec. 1; Const. 1895, Art. V., Sec. 1; Const. 1868, Art. IV., Sec. 1.
Vested in inferior Courts—Const. U. S., Art. III, Sec. 1; Const. 1895, Art. V., Sec. 1; Const. 1868, Art. IV., Sec. 1.
Vested in Common Pleas—Const. 1895, Art. V., Sec. 1; Const. 1868, Art. IV., Sec. 1.
Vested in General Sessions—Const. 1895, Art. V., Sec. 1; Const. 1868, Art. IV., Sec. 1.
Vested in Probate Court—Const. 1868, Art. IV., Sec. 1.
Vested in Justices of the Peace—Const. 1868, Art. IV., Sec. 1.
Congress may establish inferior Courts—Const. U. S., Art. I., Sec. 8, Clause 9; Const. U. S., Art. III., Sec 1.
General Assembly may establish inferior Courts—Const. 1895, Art. 5, Sec. 1; Const. 1868, Art. IV., Sec. 1.

JUDICIAL POWER—*(Continued.)*
Of the United States, extends to, what cases—Const. U. S., Art. III., Sec. 2; Const. U. S., Art. XI. A.
Vested in a separate department—Const. 1895, Art. I., Sec. 14; Const. 1895, Art. V., Sec. 1; Const. 1868, Art. I., Sec. 26; Const. 1868, Art. IV., Sec. 1.
[See *Courts.*]

JUDICIAL PROCEEDINGS—
Faith and credit given in other States.—Const. U. S., Art. IV., Sec. 1; Congress to prescribe manner of proving—Const. U. S., Art. IV., Sec. 1.

JUNCTION—
Of two or more, to form new, State—Const. U. S., Art. IV., Sec. 3, Clause 1.

JURISDICTION—
Erection of new, in, of another State—Const. U. S., Art. IV., Sec. 3, Clause 1.
Of Supreme Court—Const. U. S., Art. III., Sec. 2, Clause 2; Const. 1895, Art. V., Sec. 4; Const. 1868, Art. IV., Sec. 4.
Of Common Pleas—Const. 1895, Art. V., Sec. 15; Const. 1868, Art. IV., Secs. 15 and 16.
Of General Sessions—Const. 1895, Art. V., Sec. 1; Const. 1895, Art. V., Sec. 18; Const. 1868, Art. IV., Secs. 1 and 18.
Of Probate Court—Const. 1895, Art. V., Sec. 19; Const. 1868, Art. IV., Sec. 20; (amendment) Const. 1868, 1889.
Of Magistrates—Const. 1895, Art. V., Sec. 21.
Of Justices of the Peace—Const. 1868, Art. IV., Sec. 22.
Of County Commissioners—Const. 1868, Art. IV., Sec. 19; (repealed) Const. 1868, 1900.

JURISPRUDENCE—
In Constitution of 1868, Art. V.; Const. 1895, Art. VI.

JURY—
Trial by in criminal cases—Const. U. S., Art. III., Sec. 2, Clause 3; Const. U. S., Art. VI. A.; Const. 1895, Art. I., Sec. 18; Const. 1895, Art. V., Sec. 22; Const. 1868, Art. I., Sec. 13.
Trial by in actions at law—Const. U. S., Art. VII. A.; Const. 1895, Art. I., Sec. 25; Const. 1868, Art. I., Sec. 11.
In inferior Courts consist of six—Const. 1895, Art. V:. Sec. 22.
In Circuit Courts consist of twelve—Const 1895, Art. V., Sec. 22.
Qualification of—Const. 1895, Art. V., Sec. 22.
Judges not to charge on facts—Const. 1895, Art. V., Sec. 26; Const. 1868, Art. IV., Sec. 26.
In prosecutions for libel—Const. 1895, Art. I., Sec. 21; Const. 1868, Art. I., Sec. 8.
May decide as to competing lines, &c.—Const. 1895. Art. IX., Sec. 7.
Special legislation as to summoning and empanelling—Const. 1895. Art. III., Sec. 34, Clause 8.

JUSTICE—
To be administered without delay—Const. 1895, Art. I., Sec. 15; Const. 1868, Art. I., Sec. 15.
To be administered without distinction—Const. 1895, Art. VI., Sec. 3.
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JUSTICES OF SUPREME COURT—
Chief, and Associate; election, term—Const. 1895, Art. V., Sec. 2; Const. 1868, Art. IV., Sec. 2.
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Classification as to term of—Const. 1868, Art. IV., Sec. 3.
When disqualified; substitutes—Const. 1895, Art. V., Sec. 6; Const. 1868, Art. IV., Sec. 6.
Compensation, not subject to change—Const. 1895, Art. V., Sec. 9; Const. 1868, Art. IV., Sec. 9.
Who eligible as—Const. 1895, Art. V., Sec. 10; Const. 1868, Art. IV., Sec. 10.
To preside on impeachment of President—Const. U. S., Art. I., Sec. 3, Clause 6.
To preside on impeachment of Governor—Const. 1895, Art. XV., Sec. 2; Const. 1868, Art. VII., Sec. 2.
Concurrence of three necessary to reversal—Const. 1895, Art. V., Sec. 12.
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Affirmance by divided Court—Const. 1895, Art. V., Sec. 12.
May call Circuit Judges to aid—Const. 1895, Art. V., Sec. 12.
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Offences triable by—Const. 1868, Art. I., Sec. 19.
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How chosen, residence term—Const. 1868, Art. IV., Sec. 21.
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LABOR—
Surrender of fugitives from—Const. U. S., Art. IV., Sec. 2, Clause 3.

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Amount to be held by aliens limited—Const. 1895, Art. III., Sec. 35.
Script, proceeds of, how used—Const. 1895, Art. XI., Sec. 8; Const. 1868, Art. X., Sec. 9; Const. 1868; Art. X., Sec. 11.
Public sale of—Const. 1895, Art. III., Sec. 31

LAND—(*Continued.*)

Public, donation of, prohibited—Const. 1895, Art. III., Sec. 31.
Title to certain vested in State—Const. 1895, Art. XIV., Sec. 2; Const. 1868, Art. VI., Sec. 2.
Ultimate right of property in—Const. 1895, Art. XIV., Sec. 3; Const. 1868, Art. VI., Sec. 3.
Title to, on failure of heirs, reverts to State—Const. 1895, Art. XIV., Sec. 3; Const. 1868, Art. VI., Sec. 3.
And naval forces, government of—Const. U. S., Art. I., Sec. 8, Clause 14.

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e Constitutions, laws and treaties supreme—Const. U. S., Art. VI. Sec. 2.
Of nations, punishment violations of—Const. U. S., Art. I., Sec. 8, Clause 10.
And fact, appellate jurisdiction as to—Const. U. S., Art. III., Sec. 2, Clause 2; Const. 1895, Art. V., Art. 4; Const. 1868, Art. IV., Sec. 4.
Ex post facto, prohibited—Const. U. S., Art. I., Sec. 9, Clause 3; Const. U. S., Art. I., Sec. 10, Clause 6; Const. 1895, Art. I., Sec. 8; Const. 1868, Art. I., Sec. 14; Const. 1868, Art. I., Sec. 21.
Impairing obligation of contracts, prohibited—Const. U. S., Art. I., Sec. 10, Clause 6; Const. 1895, Art. I., Sec. 8; Const. 1868, Art. I., Sec. 21.
Granting title of nobility, &c., prohibited—Const. 1895, Art. I., Sec. 8; Const. U. S., Art. I., Sec. 9, Clause 6; Const. 1868, Art. I., Sec. 39.
Granting hereditary emolument prohibited—Const. 1895, Art. I., Sec. 8; Const. 1868, Art. I., Sec. 39.
Martial, no person subject to, except—Const. 1895, Art. I., Sec. 27; Const. 1868, Art. I., Sec. 25.
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Suspension of—Const. 1895, Art. I., Sec. 13; Const. 1868, Art. I., Sec. 24.
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Style of—Const. 1895, Art. III., Sec. 16; Const. 1868, Art. II., Sec. 19.
Certain special prohibited—Const. 1895, Art. III., Sec. 34.
Governor shall have executed—Const. 1895, Art. IV., Sec. 12; Const. 1868, Art. III., Sec. 12.
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Now of force, continued, &c.—Const. 1895, Art. XVII., Sec. 10; Const. 1895, Art. XVII., Sec. 11, Clause 1.
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LAWS—*(Continued.)*
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LEGAL TENDER—
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LEGISLATION—
Congress shall exercise over District of Columbia, and other places—Const. U. S., Art. I., Sec. 8, Clause 17.
Congress shall enforce amendment by—Const. U. S., Art. XIII. A., Sec. 2; Const. U. S., XIV. A., Sec. 5; Const. U. S., Art. XV. A., Sec. 2.

LEGISLATIVE—
Powers vested in Congress—Const. U. S., Art. I., Sec. 1.
Powers vested in General Assembly—Const. 1895, Art. III., Sec. 1; Const. 1868, Art. II., Sec. 1.
Department separate—Const. 1895, Art. I., Sec. 14; Const. 1868, Art. I., Sec. 26.
Documents, printing—Const. 1895, Art. XVII., Sec. 5; Const. 1868, Art. XIV., Sec. 7.

LEGISLATURES—
May apply for protection against invasion, &c.—Const. U. S., Art. IV., Sec. 4.
Of two-thirds of States, application to call Constitutional Convention—

Const. U. S., Art. V.
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LETTERS OF MARQUE AND REPRISAL—
Congress may grant—Const. U. S., Art. I., Sec. 8, Clause 11.
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LIABILITY—
Of stockholders—Const. 1895, Art. IX., Sec. 18; Const. 1868, Art. XII., Sec. 5.
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LIBEL—
Juries to be judges of law and fact in—Const. 1895, Art. I., Sec. 21;
Juries to be judges of law and fact in—Const. 1868, Art. I., Sec. 8.
Truth may be given in evidence—Const. 1895, Art. I., Sec. 21; Const. 1868, Art. I., Sec. 8.

LIBERTY—
No one shall be deprived of, but by laws, &c.—Const. U. S., Art. V.; Const. U. S., XIV. A., Sec. 1; Const. 1895, Art. I., Sec. 5; Const. 1868, Art. I., Sec. 14.
Each individual to be protected in enjoyment—Const. 1868, Art. I., Sec. 36.

LIBERTY—*(Continued.)*

Former jeopardy of—Const. 1895, Art. I., Sec. 17; Const. 1868, Art. I., Sec. 18.

Of conscience—Const. 1895, Art. I., Sec. 4; Const. 1868, Art. I., Sec. 9.

Of speech and press—Const. 1895, Art. I., Sec. 4; Const. 1868, Art. I., Sec. 7, U. S., I. A.

LICENSE TAX—

On occupations and business—Const. 1895, Art. X., Sec. 1.

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LIEUTENANT GOVERNOR—

Qualifications, term of office, &c.—Const. 1895, Art. IV., Sec. 5; Const. 1868, Art. III., Sec. 5.

President of Senate—Const. 1895, Art. IV., Sec. 5; Const. 1868, Art. III., Sec. 5.

No vote in Senate, unless a tie—Const. 1895; Art. IV., Sec. 6; Const. 1868, Art. III., Sec. 6.

Member Legislature acting as, vacates seat—Const. 1895, Art. IV., Sec. 8; Const. 1868, Art. III., Sec. 8.

When to be Governor—Const. 1895, Art. IV., Sec. 9; Const. 1868, Art. III., Sec. 9.

Compensation unchanged during term—Const. 1895, Art. IV., Sec. 13; Const. 1868, Art. III., Sec. 13.

Oath of office—Const. 1895, Art. IV., Sec. 20; Const. 1868, Art. III., Sec. 20.

LIFE—

Not to be taken without due process of law—Const. U. S., Art. V. Const. U. S., Art. XIV. A., Sec. 1; Const. 1895, Art. I., Sec. 5; Const. 1868, Art. I., Sec. 14.

Each individual protected in enjoyment of—Const. 1868; Art. I., Sec. 36.

Former jeopardy of—Const. U. S., Art. V. A.; Const. 1895, Art. I., Sec. 17; Const. 1868, Art. I., Sec. 18.

LIGHTS—

Plants in cities, towns, &c, for—Const. 1895, Art. VIII., Sec. 5.

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Sale and manufacture of—Const. 1895, Art. VIII., Sec. 11.

State, County and Municipal officers, sale by—Const. 1895, Art. VIII., Sec. 11.

General Assembly may license sale—Const. 1895, Art. VIII., Sec. 11.

Municipalities cannot license sale—Const. 1895, Art. VIII., Sec. 11.

LOAN OF CREDIT—

Of State forbidden—Const. 1895, Art. X., Sec. 11.

LOSS OF SLAVE—

Claim for void—Const. U. S., Art. XIV. A., Sec. 4.

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MAGAZINES—
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MAJORITY—
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Of all States necessary to choose President—Const. U. S., Art. XII. A.
Of all Senators to choice of Vice-President—Const. U. S., Art. XII. A.

MAINS—
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MANDAMUS—
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States to train—Cons. U. S., Art. I., Sec. 8, Clause 16.
States to appoint officers—Const. U. S., Art. I., Sec. 8, Clause 16.
Necessary to security of State, &c.—Const. U. S., Art. II.; Const. 1895, Art. I., Sec. 26.
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Who compose, organization, &c.—Const. 1895, Art. XIII., Sec. 1; Const. 1868, Art. XIII., Sec. 1.
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To support Constitution—Const. U. S., Art. VI., Clause 3; Const. 1895, Art. III., Sec. 26; Const. 1868, Art. II., Sec. 30.
Of Senators trying impeachment—Const. U. S., Art. I., Sec. 3, Clause 6; Const. 1895, Art. XV., Sec. 2; Const. 1868, Art. VII., Sec. 2.

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Disqualification for Governor—Const. 1895, Art. IV., Sec. 3; Const. 1868, Art. III., Sec. 3.
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Under United States, persons holding not to accept presents or honors, unless, &c.—Const. U. S., Art. I., Sec. 9, Clause 8.

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Removal for incapacity, &c.—Const. 1895, Art. XV., Sec. 4; Const. 1895, Art. III., Sec. 27; Const. 1868, Art. II., Sec. 31; Const. 1868, Art. VII., Sec. 4.
Removal on impeachment—Const. 1868, Art. VII., Sec. 1; Const. 1895, Art. XV., Sec. 1; Const. U. S., Art. II., Sec. 4.
Permitting prisoner lynched—Const. 1895, Art. VI., Sec. 6.
Gambling and betting disqualifies, &c.—Const. 1895, Art. XVII., Sec. 8.
In Militia hold for good behavior—Const. 1895, Art. I., Sec. 11.
In Militia, appointed by States—Const. U. S., Art. I., Sec. 8, Clause 16.
Deceased, salary of—Const. 1895, Art. III., Sec. 32.
Chosen by each House—Const. 1895, Art. III., Sec. 12; Const. 1868, Art. II., Sec. 15.
Chosen by House of Representatives—Const. U. S., Art. I., Sec. 2, Clause 5.
Chosen by Senate—Const. U. S., Art. I., Sec. 5, Clause 3.
Oath of all—Const. U. S., Art. VI., Clause 3; Const. 1895, Art. III., Sec. 26; Const. 1868, Art. II., Sec. 30.
Election of—Const. 1895, Art. I., Sec. 10; Const. 1895, Art. II., Sec. 2; Const. 1868, Art. I., Sec. 31; Const. 1868, Art. XIV., Sec. 10.
Commissioned by Governor—Const. 1895, Art. IV., Sec. 17; Const. 1868, Art. III., Sec. 17.
Commissioned by President—Const. U. S., Art. II., Sec. 2.
State, when to enter upon duties—Const. 1895, Art. IV., Sec. 2; Const. 1868, Art. III., Sec. 2.
To keep accounts, &c.—Const. 1895, Art. X., Sec. 12; Const. 1868, Art. IX., Sec. 15.
Embezzlement by, a felony—Const. 1895, Art. X., Sec. 12; Const. 1868, Art. IX., Sec. 15.
Present hold over, &c.—Const. 1895, Art. XVII., Sec. 11.
See also Compensation, *ante*.

OPINION—
May be required by President—Const. U. S., Art. II., Sec. 2, Clause 1.
May be required by Governor—Const. 1895, Art. IV., Sec. 14; Const. 1868, Art. III., Sec. 14.

ORIGINAL JURISDICTION—
Of Supreme Court—Const. U. S., Art. III., Sec. 2, Clause 2; Const. 1895, Art. V., Sec. 4; Const. 1868, Art. IV., Sec. 4.

OVERT ACT—

Of treason, two witnesses required to—Const. U. S., Art. III., Sec. 3, Clause 1; Const. 1895, Art. I., Sec. 22.

P

PARDON—

President may grant, except, &c.—Const. U. S., Art. II., Sec. 2, Clause 1.

Governor may grant, except, &c.—Const. 1895, Art. IV., Sec. 11; Const. 1868, Art. III., Sec. 11.

Board of, to be provided—Const. 1895, Art. IV., Sec. 11.

Report of—Const. 1895, Art. IV., Sec. 11; Const. 1868, Art. III., Sec. 11.

Pardon removes certain disqualifications—Const. 1895, Art. II., Sec. 6, Clause 1; Const. 1895, Art. VI., Sec. 6.

Pardon does not remove disqualification of officer after conviction for embezzlement—Const. 1868, Art. IX., Sec. 15; Const. 1895, Art. X., Sec. 12.

PASSENGERS—

Carriers of, liability—Const. 1895, Art. IX., Sec. 3.

PATENTS—

Congress may pass laws securing—Const. U. S., Art. I., Sec. 8, Clause 8.

PEACE—

Arrest for breach of—Const. U. S., Art. I., Sec. 6, Clause 1; Const. 1895, Art. III., Sec. 14; Const. 1895, Art. XIII., Sec. 2; Const. 1868, Art. II., Sec. 17.

No State shall keep troops, &c., in time of—Const. U. S., Art. I., Sec. 10, Clause 3.

Quartering troops, without consent, in time of—Const. U. S., Art. 3A.; Const. 1895, Art. I., Sec. 26; Const. 1868, Art. I., Sec. 29.

Maintaining armies, without consent, in time of—Const. 1895, Art. I., Sec. 26; Const. 1868, Art. I., Sec. 28.

PENAL INSTITUTIONS—

State Reformatory for juvenile offenders—Const. 1895, Art. XII., Sec. 27; Const. 1868, Art. X., Sec. 8.

Directors of Penitentiary; election, &c.—Const. 1895, Art. XII., Sec. 5; Const. 1868, Art. XI., Sec. 2.

Directors of—Const. 1895, Art. XII., Sec. 4.

Control of convicts in Penitentiary—Const. 1895, Art. XII., Sec. 9.

PENITENTIARY—

[See *Penal Institutions*]

PENSIONS—

Validity of certain not to be questioned—Const. U. S., Art. 14A., Sec. 4.

For certain sailors, soldiers and widows—Const. 1895, Art. XIII., Sec. 5.

Not to be granted, except, &c.—Const. 1895, Art. III., Sec. 32.

PEOPLE—

Political power vested in—Const. 1895, Art. I., Sec. 1; Const. 1868, Art. I., Sec. 3.

Have right to assemble and petition—Const. 1895, Art. I., Sec. 4; Const. 1868, Art. I., Sec. 6; Const. U. S., Art. 1A.

Have right to keep and bear arms—Const. U. S., Art. 2A.; Const. 1895, Art. I., Sec. 26; Const. 1868, Art. I., Sec. 28.

Secured against unreasonable search, &c.—Const. U. S., Art. 4A.; Const. 1895, Art. I., Sec. 16; Const. 1868, Art. I., Sec. 22.

Powers not delegated remain with—Const. U. S., Art. 10A.; Const. 1868, Art. I., Sec. 41.

Rights of; retained, not disparaged, &c.—Const. U. S., Art. 9A; Const. 1868, Art. I., Sec. 41.

Possess the ultimate property in lands—Const. 1895, Art. XIV., Sec. 3; Const. 1868, Art. VI., Sec. 3.

PERFECT UNION—

To establish a more (Preamble)—Const. U. S.

PERSONS—

Security against unreasonable search, &c.—Const. U. S., Art. 4A.; Const. 1895, Art. I., Sec. 16; Const. 1868, Art. I., Sec. 22.

Migration or imporation of prior to 1808—Const. U. S., Art. I., Sec. 9, Clause 1.

Registration of all male, &c.—Const. 1895, Art. II., Sec. 4.

Registration of, coming of age, &c.—Const. 1895, Art. II., Sec. 11.

Registration of, who disqualified—Const. 1895, Art. II., Sec. 6.

PETIT JURY—

Consist of twelve—Const. 1895, Art. V., Sec. 22.

All must concur in finding—Const. 1895, Art. V., Sec. 22.

PETITION—

Right of—Const. U. S., Art. 1A.; Const. 1895, Art. I., Sec. 4; Const. 1868, Art. I., Sec. 6.

For election as to new County, &c.—Const. 1895, Art. VII., Sec. 1.

For election as to issue of bonds, &c.—Const. 1895, Art. II., Sec. 13.

PHYSICIAN—

Superintendent of State Hospital for Insane to be a—Const. 1895, Art. XII., Sec. 2.

Superintendent of State Lunatic Asylum to be—Const. 1868, Art. XI., Sec. 6.

PIRACIES—

Congress shall define and punish—Const. U. S., Art. I., Sec. 8, Clause 10.

PLACE—

Adjournment of either House to, &c.—Const. U. S., Art. I., Sec. 5, Clause 4; Const. 1895, Art. III., Sec. 21; Const. 1868, Art. II., Sec. 25.

Of choosing Senators—Const. U. S., Art. I., Sec. 4, Clause 1.

POLICE—
No armed force shall be brought into State—Const. 1895, Art. VIII., Sec. 9.

POLITICAL—
Divisions of State, limitation of indebtedness—Const. 1895, Art. X., Sec. 5.
Power vested in the people—Const. 1895, Art. I., Sec. 1; Const. 1868, Art. I., Sec. 3.
Rights of the people, equality—Const. 1868, Art. I., Sec. 1.
Rights of the people, no distinctions—Const. 1868, Art. I., Sec. 39.

POLLING PRECINCTS—
To be provided—Const. 1895, Art. II., Sec. 9.
Now existing continued—Const. 1895, Art. II., Sec. 9.
Four months residence necessary to vote—Const. 1895, Art. II., Sec. 4.

POLL TAX—
For school purposes provided—Const. 1895, Art. XI., Sec. 6; Const. 1868, Art. IX., Sec. 2; Const. 1868, Art. X., Sec. 5.
Fixed at one dollar—Const. 1895, Art. XI., Sec. 6; Const. 1868, Art. X., Sec. 5.
Non payment of, deprives of suffrage—Const. 1895, Art. II., Sec. 4.
Non-payment of, does not disfranchise—Const. 1868, Art. X., Sec. 5.
Confederate soldiers over 50 exempted—Const. 1895, Art. XI., Sec. 6.
How collected and disbursed—Const. 1895, Art. XI., Sec. 6.

POOR—
To be provided for by Counties—Const. 1895, Art. XII., Sec. 3.
Institutions for to be fostered—Const. 1895, Art. XII., Sec. 1; Const. 1868, Art. XI., Sec. 1.

POPULATION—
Representation apportioned according to—Const. U. S., Art. I., Sec. 2, Clause 3; Const. 1895, Art. III., Secs. 3 and 4; Const. 1895, Art. I., Sec. 2; Const. 1868, Art. II., Sec. 4; Const. 1868, Art. I., Sec. 34.

PORTS—
No preference to be given between of one State and another—Const. U. S. Art. I., Sec. 9, Clause 6.
No duties on trade between; of different States—Const. U. S., Art. I., Sec. 9, Clause 6.

POST OFFICES AND POST ROADS—
Congress shall establish—Const. U. S., Art. I., Sec. 8, Clause 7.

POWER—
Legislative vested in Congress—Const. U. S., Art. I., Sec. 1.
Legislative vested in General Assembly—Const. 1895, Art. III., Sec. 1; Const. 1868, Art. II., Sec. 1.
Political vested in people—Const. 1895, Art. I., Sec. 1; Const. 1868, Art. I., Sec. 3.
Military, subordinate to Civil—Const. 1895, Art. I., Sec. 26; Const. 1868, Art. I., Sec. 28.

POWER—(*Continued.*)

Of government separate—Const. 1895, Art. I., Sec. 14; Const. 1868, Art. I., Sec. 26.

Of suspending the laws in Legislature—Const. 1895, Art. I., Sec. 13; Const. 1868, Art. I., Sec. 24.

Judicial, vested in certain Courts—Const. U. S., Art. III., Sec. 1, Clause 1; Const. 1895, Art. V., Sec. 1; Const. 1868, Art. IV., Sec. 1.

Undue influences from prohibited—Const. 1895, Art. I., Sec. 9; Const. 1868, Art. I., Sec. 33.

Not delegated; reserved—Const. U. S., Art. 10A.; Const. 1868, Art. I., Sec. 41.

Congress shall make laws necessary to carry powers vested in government into effect—Const. U. S., Art. I., Sec. 8, Clause 18.

Of President devolved on Vice President—Const. U. S., Art. II., Sec. 1, Clause 5.

PRECINCT—

Polling, provided for—Const. 1895, Art. II., Sec. 9.

Each voter to vote at his own—Const. 1895, Art. II., Sec. 9.

Residence in, required—Const. 1895, Art. II., Sec. 4, Clause *a*.

PREFERENCE—

Between ports prohibited—Const. U. S., Art. I., Sec. 9, Clause 6.

PREJUDICE—

Nothing in Constitution shall, certain claims—Const. U. S., Art. IV., Sec. 3, Clause 2.

PRESENTS, &c.—

From foreign powers; officers not to accept, &c.—Const. U. S., Art. I., Sec. 9, Clause 8.

PRESENTMENT—

Of Grand Jury, necessary before trial, &c.—Const. U. S., Art. 5A.; Const. 1895, Art. I., Sec. 17; Const. 1868, Art. I., Sec. 19.

PRESIDENT OF THE SENATE—

Vice President to be—Const. U. S., Art. I., Sec. 3, Clause 4.

Lieutenant Governor to be—Const. 1895, Art. IV., Sec. 5; Const. 1868, Art. III., Sec. 5.

Only votes when Senate is equally divided—Const. U. S., Art. I., Sec. 3, Clause 4; Const. 1895, Art. IV., Sec. 6; Const. 1868, Art. III., Sec. 6.

Issues writs to fill vacancies—Const. 1895, Art. III., Sec. 25; Const. 1868, Art. II., Sec. 29.

Pro tempore, to be elected—Const. U. S., Art. I., Sec. 3, Clause 5; Const. 1895, Art. IV., Sec. 7; Const. 1868, Art. III., Sec. 7.

When to be Governor—Const. 1895, Art. IV., Sec. 9.

PRESIDENT OF THE UNITED STATES—

When Vice President shall be—Const. U. S., Art. II., Sec. 1, Clause 5.

Chief Justice to preside on trial of—Const. U. S., Art. I., Sec. 3, Clause 6.

PRESIDENT OF THE UNITED STATES—*(Continued.)*
Shall approve and sign Acts of Congress—Const. U. S., Art. I., Sec. 7, Clause 2.
May veto Acts of Congress—Const. U. S., Art. I., Sec. 7, Clause 2.
When Acts not approved must be returned by—Const. U. S., Art. I., Sec. 7, Clause 2.
Acts on Joint Resolutions as on Acts—Const. U. S., Art. I., Sec. 7, Clause 3.
Executive power vested in—Const. U. S., Art. II., Sec. 1, Clause 1.
Term of office, four years—Const. U. S., Art. II., Sec. 1, Clause 1.
Congress may provide for succession to—Const. U. S., Art. II., Sec. 1, Clause 5.
Compensation unchangeable during term—Const. U. S., Art. II., Sec. 1, Clause 6.
Oath to be taken by—Const. U. S., Art. II., Sec. 1, Clause 7.
Commander-in-Chief of military forces, &c.—Const. U. S., Art. II., Sec. 2, Clause 1.
May require opinions, &c., from Departments—Const. U. S., Art. II., Sec. 2, Clause 1.
May grant reprieves or pardons, &c.—Const. U. S., Art. II., Sec. 2, Clause 1.
May make treaties, with consent of Senate—Const. U. S., Art. II., Sec. 2, Clause 2.
Appoints diplomatic, consular, judicial and others officers—Const. U. S., Art. II., Sec. 2, Clause 2.
Fills vacancies in office, &c.—Const. U. S., Art. II., Sec. 2, Clause 3.
Messages to Congress—Const. U. S., Art. II., Sec. 3.
May convene extra sessions of Congress, &c.—Const. U. S., Art. II., Sec. 3.
May adjourn Congress, when—Const. U. S., Art. II., Sec. 3.
Receives Ambassadors, &c.—Const. U. S., Art. II., Sec. 3.
To see laws executed—Const. U. S., Art. II., Sec. 3.
Commissions all officers of U. S.—Const. U. S., Art. II., Sec. 3.
Removal, on impeachment—Const. U. S., Art. II., Sec. 4.
Who may be—Const. U. S., Art. II., Sec 1, Clause 4.
Manner of choosing, by Electors—Const. U. S., Art. II., Sec. 1, Clause 2; Const. U. S., Art. 12A.
Time for choosing Electors—Const. U. S., Art. II., Sec. 1, Clause 3.
Electors to be chosen by the people—Const 1868, Art. VIII., Sec. 9.
When and how elected by House of Representatives—Const. U. S., Art. 12A.

PRESS—
Freedom of not to be abridged—Const. U. S., Art. 1A.; Const. 1895, Art. I., Sec. 4; Const. 1868, Art. I., Sec. 7.

PREVIOUS CONDITION OF SERVITUDE—
Distinctions on account of—Const. U. S., Art. 15A., Sec. 1.

PRINTING—
Public, to be let on contract—Const. 1895, Art. XVII., Sec. 5; Const. 1868, Art. XIV., Sec. 7.

PRIVATE PROPERTY—

Not to be taken for public use, without, &c.—Const. U. S., Art. 5A.; Const. U. S., Art. 14A., Sec. 1; Const. 1895, Art. I., Sec. 17; Const. 1895, Art. IX., Sec. 20; Const. 1868, Art. I., Sec. 23; Const. 1868, Art. XII., Sec. 3.

Not to be taken for private use, without, &c.—Const. 1895, Art. I., Sec. 17; Const. 1868, Art. I., Sec. 23.

PRIVILEGES—

Of Senators and Representatives—Const. U. S., Art. I., Sec. 6, Clause 1; Const. 1895, Art. III., Sec. 14; Const. 1868, Art. II., Sec. 17.

And immunities of citizens in all States—Const. U. S., Art. IV., Sec. 2, Clause 1.

And immunities of citizens not to be abridged, &c.—Const. U. S., Art. 14A., Sec. 1; Const. 1895, Art. I., Sec. 5.

PRIZES—

Congress shall make rules concerning—Const. U. S., Art. I., Sec. 8, Clause 11.

PROBABLE CAUSE—

Warrants only to issue upon—Const. U. S., Art. 4A.; Const. 1895, Art. I., Sec. 16.

PROBATE COURTS—

To be established; jurisdiction, term of Judge—Const. 1868, Art. IV., Sec. 20; Const. 1868 (Am. 1889.)

Judicial power vested in—Const. 1868, Art. IV., Sec. 1.

Removal of equity causes to—Const. 1868, Art. IV., Sec. 17.

In Charleston County—Const. 1895, Art. V., Sec. 19.

Jurisdiction—Const. 1868, Art. IV., Sec. 20; Const. 1895, Art. V., Sec. 19.

Judge may act as Clerk—Const. 1895, Art. V., Sec. 27; Const. 1868, Art. IV., Sec. 27.

PROCESS—

Service of, on corporations—Const. 1895, Art. IX., Sec. 4.

Of law, due; deprivation of property, &c., without—Const. U. S., Art. 5A.; Const. U. S., Art. 14A., Clause 1; Const. 1895, Art. I., Sec. 5; Const. 1868, Art. I, Sec. 14.

For obtaining witnesses, accused to have—Const. U. S., Art. 6A.; Const. 1895, Art. I., Sec. 18; Const. 1868, Art. I., Sec. 13.

PROGRESS OF ARTS, &c.—

Congress has power to promote—Const. U. S., Art. I., Sec. 8, Clause 8.

PROHIBITION, WRIT OF—

Supreme Court may issue—Const. 1895, Art. V., Sec. 4; Const. 1868, Art. IV., Sec. 4.

Common Pleas—Const. 1895, Art. V., Sec. 15; Const. 1868, Art. IV., Sec. 15.

PROPERTY—

Of United States; power of Congress over—Const. U. S., Art. IV., Sec. 3, Clause 2.

PROPERTY—*(Continued.)*

Private, not to be taken, without consent, &c.—Const. U. S., Art. 5A.; Const. U. S., Art. 14A., Sec. 1; Const. 1895, Art. I., Sec. 17; Const. 1895, Art. I., Sec. 5; Const. 1895, Art. IX., Sec. 20; Const. 1868, Art. I., Sec. 23; Const. 1868, Art. XII., Sec. 3.

Qualification, for registration—Const. 1895, Art. II., Sec. 4.

Qualification, for office, none—Const. 1868, Art. I., Sec. 32.

Qualification, for office, what—Const. 1895, Art. I., Sec. 11.

To be taxed according to value—Const. 1895, Art. I., Sec. 6; Const. 1895, Art. III., Sec. 29; Const. 1868, Art. I., Sec. 36; Const. 1868, Art. II., Sec. 33.

Uniform and equal rate of assessment, &c., on—Const. 1895, Art. X., Sec. 1; Const. 1868, Art. IX., Sec. 1.

Certain exempted from taxation—Const. 1895, Art. X., Sec. 1; Const. 1895, Art. X., Sec. 4; Const. 1868, Art. IX., Sec. 1; Const. 1868, Art. IX., Sec. 5.

Certain may be exempted from taxation—Const. 1895, Art. VIII., Sec. 8.

Certain exempted from levy and sale—Const. 1895, Art. III., Sec. 28; Const. 1868, Art. II., Sec. 32.

All within municipal limits to be taxed—Const. 1895, Art. X., Sec. 5.

Of State, not for sectarian uses—Const. 1895, Art. XI., Sec. 9.

Of married women, how held—Const. 1895, Art. XVII., Sec. 9; Const. 1868, Art. XIV., Sec. 8.

Ultimate in lands, in people—Const. 1895, Art. XIV., Sec. 3; Const. 1868, Art. VI., Sec. 3.

One assessment of all, for taxation—Const. 1895, Art. X., Sec. 13.

PROSECUTIONS—

To be in name of State—Const. 1895, Art. V., Sec. 31; Const. 1868, Art. IV., Sec. 31.

For libel; truth may be given in evidence—Const. 1895, Art. I., Sec. 21; Const. 1868, Art. I., Sec. 8.

For libel; jury is judge of law and facts in—Const. 1895, Art. I., Sec. 21; Const. 1868, Art. I., Sec. 8.

Criminal, rights of accused in—Const. U. S., Art. 6A.; Const. 1895, Art. I., Sec. 18; Const. 1868, Art. I., Sec. 13.

PROTECTION OF GAME—

Special legislation as to prohibited—Const. 1895, Art. III., Sec. 34, Clause 7.

PROTECTION OF LAWS—

Not denied to any person—Const. U. S., Art. 14A., Sec. 1; Const. 1895, Art. I., Sec. 5; Const. 1868, Art. I., Sec. 36.

PROVISIONS OF CONSTITUTION—

Are mandatory, except, &c.—Const. 1895, Art. I., Sec. 29.

PUBLIC—

Debt of United States, not to be questioned—Const. U. S., Art. 14A., Sec. 4.

Debt, increase of, vote necessary—Const. 1895, Art. X., Sec. 11; Const. 1868, Art. XVI.

PUBLIC—*(Continued.)*

Debt, how contracted—Const. 1868, Art. IX., Sec. 7; Const. 1895, Art. X., Sec. 11.

Debt, evidences of—Const. 1895, Art. X., Sec. 8; Const. 1868, Art. IX., Sec. 10.

Debt, bonds for, description, &c.—Const. 1868, Art. IX., Sec. 14; Const. 1895, Art. X., Sec. 11.

Debt, limit of bonded—Const. 1895, Art. X., Sec. 5.

Debt, limit of bonded (amendment)—Const. 1868.

Institutions, Boards report to Governor—Const. 1895, Art. IV., Sec. 14.

Institutions, Directors in, appointment, &c.—Const. 1895, Art. XII., Sec. 4; Const. 1868, Art. XI., Sec. 3.

Money, accounts of, to be published—Const. 1895, Art. X., Sec. 8; Const. 1868, Art. II., Sec. 22; Const. 1868, Art. IX., Sec. 11.

Money, provisions for safe keeping—Const. 1895, Art. X., Sec. 12; Const. 1868, Art. IX., Sec. 15.

Printing, to be let on contract—Const. 1895, Art. XVII., Sec. 5; Const. 1868, Art. XIV., Sec. 7.

Safety; requiring suspension of *habeas corpus*—Const. U. S., Art. I., Sec. 9, Clause 2; Const. 1895, Art. I., Sec. 23; Const. 1868, Art. I., Sec. 17.

Schools, to be provided—Const. 1895, Art. XI., Sec. 5; Const. 1868, Art. X., Sec. 3.

Schools, to be open and free to all—Const. 1868, Art. X., Sec. 10.

Schools, separate for each race—Const. 1895, Art. XI., Sec. 7.

Schools, age of attendance—Const. 1895, Art. XI., Sec. 5; Const. 1868, Art. X., Sec. 4.

Schools, compulsory attendance—Const. 1868, Art. X., Sec. 4.

Schools, tax for—Const. 1895, Art. XI., Sec. 6; Const. 1895, Art. X., Sec. 5; Const. 1868, Art. X., Sec. 5; Const. 1868, Art. IX., Sec. 2.

Schools, trustees for, election, &c.—Const. 1895, Art. XI., Sec. 6.

Schools, officers—Const. 1895, Art. XI., Sec. 3; Const. 1868, Art. X., Sec. 2.

Schools, officers, compensation—Const. 1895, Art. XI., Sec. 4.

Schools, teachers, examination, &c.—Const. 1895, Art. XI., Sec. 2.

Schools, districts, area, &c.—Const. 1895, Art. XI., Sec. 5.

Schools, districts, may levy tax, &c.—Const. 1895, Art. X., Sec. 5; Const. 1895, Art. XI., Sec. 6.

Schools, districts, indebtedness—Const. 1895, Art. X., Sec. 5.

Trial, in criminal prosecutions—Const. U. S., Art. 6A.; Const. 1895, Art. I., Sec. 18; Const. 1868, Art. I., Sec. 13.

Use, taking property for—Const. U. S., Art. 5A.; Const. 1895, Art. I., Sec. 17; Const. 1868, Art. I., Sec. 23.

PUNISHMENT—

According to law; impeachment—Const. U. S., Art. I., Sec. 3, Clause 7; Const. 1895, Art. XV., Sec. 3; Const. 1868, Art. VII., Sec. 3.

Cruel and unusual, shall not be inflicted—Const. U. S., Art. 8A.; Const. 1895, Art. I., Sec. 19; Const. 1868, Art. I., Sec. 38.

PUNISHMENT—*(Continued.)*
Corporal, shall not be inflicted—Const. 1895, Art. I., Sec. 19; Const. 1868, Art. I., Sec. 16.
For contempt—Const. 1895, Art. I., Sec. 19.
May only follow trial by jury, &c.—Const. 1868, Art. I., Sec. 14.
Affecting right to indictment—Const. 1895, Art. I., Sec. 17; Const. 1868, Art. I., Sec. 19.
Affecting jurisdiction of Magistrate—Const. 1868, Art. V., Sec. 21.

Q

QUALIFICATIONS—
Of Electors—Const. U. S., Art. I., Sec. 2, Clause 1; Const. 1895, Art. II., Secs. 3 and 4; Const. 1868, Art. VIII., Sec. 2.
Property; for voting and holding office—Const. 1895, Art. I., Sec. 11; Const. 1895, Art. II., Sec. 4, Clause d; Const. 1868, Art. I., Sec. 32.
For office; religious test not to be required—Const. U. S., Art. VI., Clause 3.
For office; Atheist, has not—Const. 1895, Art. XVII., Sec. 4; Const. 1868, Art. XIV., Sec. 6.
For office—Const. 1895, Art. XVII., Sec. 1; Const. 1895, Art. II., Sec. 2; Const. 1895, Art. I., Sec. 11; Const. 1868, Art. XIV., Sec. 1; Const. 1868, Art. VIII., Sec. 2; Const. 1868, Art. I., Sec. 31; Const. 1868, Art. I., Sec. 32.
Of President—Const. U. S., Art. II., Sec. 1, Clause 4.
Of Vice President—Const. U. S., Art. 12A.
For registration prior to 1898—Const. 1895, Art. II., Sec. 4, Clause c.
For registration after 1898—Const. 1895, Art. II., Sec. 4, Clause d.
Of Congressmen—Const. U. S., Art. I., Sec. 2, Clause 2.
Of Senators—Const. U. S., Art. I., Sec. 3, Clause 3; Const. 1895, Art. III., Sec. 7; Const. 1868, Art. II., Sec. 10.
Of Legislators—Const. 1895, Art. III., Sec. 7; Const. 1868, Art. II., Sec. 10.
Of Governor—Const. 1895, Art. IV., Sec. 3; Const. 1868, Art. III., Sec. 3.
Of Lieutenant Governor—Const. 1895, Art. IV., Sec. 5; Const. 1868, Art. III., Sec. 3.
Of Justices and Circuit Judges—Const. 1895, Art. V., Sec. 10; Const. 1868, Art. IV., Sec. 10.
Of Jurors—Const. 1895, Art. V., Sec. 22.
Each House to judge, of its own members—Const. U. S., Art. I., Sec. 5, Clause 1; Const. 1895, Art. III., Sec. 11; Const. 1868, Art. II., Sec. 14.

QUARTERED—
In any house; soldiers, without consent—Const. U. S., Art. 3A.; Const. 1895, Art. I., Sec. 26; Const. 1868, Art. I., Sec. 29.

QUESTIONS—
Decisions of Constitutional—Const. 1895, Art. V., Sec. 12.
As to competing companies—Const. 1895, Art. IX., Sec. 7.

QUORUM—
Majority of each House to constitute—Const. U. S., Art. I., Sec. 5, Clause 1; Const. 1895, Art. III., Sec. 11; Const. 1868, Art. II., Sec. 14.
Of Senate for election of Vice President—Const. U. S., Art. 12A.

QUO WARRANTO—
Supreme Court may issue writs of—Const. U. S., Art. V., Sec. 4; Const. U. S., Art. IV., Sec. 4.

R

RACE—
Rights of citizens not to be abridged because of—Const. U. S., Art. 15A., Sec. 1.
Distinctions on account of prohibited—Const. 1868, Art. I., Sec. 39.
Schools open, without regard to—Const. 1868, Art. X., Sec. 10.
Separate schools for each—Const. 1895, Art. XI., Sec. 7.

RAILROADS—
Railroad Commission—Const. 1895, Art. IX., Sec. 14.
Rights of way for, obtaining—Const. 1868, Art. XII., Sec. 3; Const. 1868, Art. I., Sec. 23; Const. 1895, Art. I., Sec. 17; Const. 1895, Art. IX., Sec. 20.
Are common carriers; liability—Const. 1895, Art. IX., Sec. 3.
Discrimination in charges by—Const. 1895, Art. IX., Sec. 5.
Rates for transportation on—Const. 1895, Art. IX., Sec. 5.
Crossing or connecting tracks—Const. 1895, Art. IX., Sec. 6.
Discrimination in service on—Const. 1895, Art. IX., Sec. 6.
Consolidation with competing lines prohibited—Const. 1895, Art. IX., Sec. 7.
Foreign corporations cannot build or operate—Const. 1895, Art. IX., Sec. 8.
Rights of employes of—Const. 1895, Art. IX., Sec. 15.

RATIFICATION—
Of amendments to Constitution—Const. U. S., Art. V.; Const. 1895, Art. XVI., Sec. 1; Const. 1868, Art. XV., Sec. 1; Const. 1868, Art. IV., Sec. 33.
Of Constitution by States—Const. U. S., Art. VII.

RATIO—
Of representation in Congress—Const. U. S., Art. I., Sec. 2, Clause 3; Const. U. S., Art. 14A., Sec. 2.
Of representation in Legislature—Const. 1895, Art. III., Sec. 4; Const. 1868, Art. II., Sec. 6.

REBELLION—
Debts in aid of, void, not to be paid—Const. U. S., Art. 14A., Sec. 4; Const. 1868, Art. IX., Sec. 16.
Debts incurred in suppressing, valid—Const. U. S., Art. 14A., Sec. 4.
Disability for participation in—Const. U. S., Art. 14A., Sec. 3.
Suspension of *habeas corpus* in case of—Const. U. S., Art. I., Sec. 9, Clause 2; Const. 1895, Art. I., Sec. 23; Const. 1868, Art. I., Sec. 17.

RECEIPTS—

Evidence of payment of taxes—Const. 1895, Art. II., Sec. 4.
And expenditures; publishing statement of—Const. U. S., Art. I., Sec. 9, Clause 7; Const. 1895, Art. X., Sec. 8; Const. 1868, Art. IX., Sec. 11.

RECESS OF SENATE—

Filling vacancies occurring during—Const. U. S., Art. II., Sec. 2, Clause 3.

RECONSIDERATION—

Of vetoed Bill or Resolution—Const. U. S., Art. I., Sec. 7, Clause 2; Const. 1895, Art. IV., Sec. 23; Const. 1868, Art. III., Sec. 22.

RECORDS OF OTHER STATES—

Full faith and credit to be given—Const. U. S., Art. IV., Sec. 1
Congress shall prescribe manner of proving—Const. U. S., Art. IV., Sec. 1.

RECORD OF PERSONS REGISTERED—

To be kept—Const. 1895, Art. II., Sec. 4.

REDRESS OF GRIEVANCES—

Right of assembly and petition for—Const. U. S., Art. 1A.; Const. 1895, Art. I., Sec. 4; Const. 1868, Art. I., Sec. 6.

REFORMATORY—

For juvenile offenders—Const. 1895, Art. XII., Sec. 7; Const. 1868, Art. X., Sec. 8.

REGENTS—

For State Hospital for Insane—Const. 1895, Art. XII., Sec. 2.
For State Lunatic Asylum—Const. 1868, Art. XI., Sec. 6.

REGISTRATION OF ELECTORS—

Provided for—Const. 1868, Art. VIII., Sec. 3; Const. 1895, Art. II., Sec. 8.
Qualifications for prior to 1898—Const. 1895, Art. II., Sec. 4, Clause c.
Qualifications for after 1898—Const. 1895, Art. II., Sec. 4, Clause d.
Certificate of—Const. 1895, Art. II., Sec. 4, Clause f.
Record of Electors registered prior to 1898—Const. 1895, Art. II., Sec. 4, Clause c.
Had every ten years—Const. 1895, Art. II., Sec. 4, Clause b.
Appeals from registration officers—Const. 1895, Art. II., Sec. 5.
Who should not be registered—Const. 1895, Art. II., Sec. 6.
Books of, public records—Const. 1895, Art. II., Sec. 8.
Books of, when to be open—Const. 1895, Art. II., Sec. 8.
Books of, when to be closed—Const. 1895, Art. II., Sec. 11.
Board of, appointment—Const. 1895, Art. II., Sec. 8.
In municipal elections—Const. 1895, Art. II., Sec. 12.

REGULATIONS—
By Congress as to electing Senators, &c.—Const. U. S., Art. I., Sec. 4, Clause 1.
Of commerce or revenue; no preferences to ports of one State over another—Const. U. S., Art. I., Sec. 9, Clause 6.

RELIGION—
None to be established—Const. U. S., Art. 1A.; Const. 1895, Art. I., Sec. 4; Const. 1868, Art. I., Sec. 10.
Free exercise of—Const. U. S., Art. 1A.; Const. 1895, Art. I., Sec. 4; Const. 1868, Art. I., Sec. 9.

RELIGIOUS—
Test not required for office—Const. U. S., Art. 6, Clause 3.
Worship protected—Const. U. S., Art. 1A.; Const. 1895, Art. I., Sec. 4; Const. 1868, Art. I., Sec. 10.
Denomination, society or organization; schools, colleges, hospitals, orphanages or other institutions under control of, not to receive public aid—Const. 1895, Art. XI., Sec. 9.
Sect not to control school funds—Const. 1868, Art. X., Sec. 5; Const. 1868 (Am. 1878.)
Societies; certain property of exempt from taxation—Const. 1895, Art. X., Sec. 4; Const. 1868, Art. IX., Sec. 5.

REMEDY—
For wrongs—Const. 1895, Art. I., Sec. 15; Const. 1868, Art. I., Sec. 15.

REMOVAL—
Of President from office; succession—Const. U. S., Art. II., Sec. 1, Clause 1.
Of Governor from office; succession—Const. 1895, Art. IV., Sec. 9; Const. 1868, Art. III., Sec. 9.
From office; judgment of impeachment—Const. U. S., Art. I., Sec. 3, Clause 7; Const. 1895, Art. XV., Sec. 3; Const. 1868, Art. VII., Sec. 3.
From office, for wilful neglect, &c.—Const. 1895. Art. XV., Sec. 4; Const. 1868, Art. VII., Sec. 4.
From office, for embezzlement—Const. 1895, Art. X., Sec. 12; Const. 1868, Art. IX., Sec. 15.
From office, for permitting lynching—Const. 1895, Art. VI., Sec. 6.
From office, for incapacity, misconduct, &c.—Const. 1895, Art. III., Sec. 27; Const. 1868, Art. II., Sec. 31.
Of disqualification—Const. 1895, Art. X., Sec. 12; Const. 1868, Art. IX., Sec. 15; Const. 1868, Art. VIII., Sec. 2; Const. U. S., Art. XIV. A., Sec. 3.

REPRESENTATION—
Apportioned according to population, &c.—Const. U. S., Art. I., Sec. 2, Clause 3; Const. U. S., Art. XIV. A., Sec. 2; Const. 1895, Art. I., Sec. 34.
Equal in Senate, States to have—Const. U. S., Art. V.
Of any State, vacancies in, filling—Const. U. S., Art. I., Sec. 2, Clause 24.

REPRESENTATIVE—*(Continued.)*
Of any State, when reduced—Const. U. S., Art. XIV. A., Sec. 2.
Ratio of, in Congress—Const. U. S., Art. I., Sec. 2, Clause 3; Const. U. S., Art. XIV. A., Sec. 2.
Ratio of in Legislature—Const. 1895, Art. III., Sec. 4; Const. 1868, Art. II., Sec. 6.

REPRESENTATIVES—
Congress shall consist of Senate and House of—Const. U. S., Art. I., Sec. 1.
General Assembly shall consist of Senate and House of—Const. 1895, Art. III., Sec. 1; Const. 1868, Art. II., Sec. 1.
Qualifications of—Const. U. S., Art. I., Sec. 2, Clause 2; Const 1895, Art. III., Sec. 7; Const. 1868, Art. II., Sec. 10.
Apportionment of—Const U. S., Art. I., Sec. 2, Clause 3; Const. U. S., Art. XIV. A., Sec. 2; Const. 1895, Art. III., Secs. 3-4; Const. 1868, Art. II., Secs. 4-6.
Apportionment, when to take effect—Const. 1895, Art. III., Sec. 5; Const. 1868. Art. II., Sec. 7.
Terms of, begin when—Const. 1895, Art. III.. Sec. 10; Const. 1868, Art. II., Sec. 13.
When to be elected—Const. 1868, Art. II., Sec. 11; Const. U. S., Art. I., Sec. 4. Clause 1; Const. 1895. Art. III., Sec. 8
To be protected during session—Const. U. S., Art. I., Sec. 6, Clause 1; Const. 1895, Art. III., Sec. 14; Const. 1868, Art. II., Sec. 17.
Vacancies, how filled—Const. U. S., Art. I., Sec. 2, Clause 4; Const. 1895, Art. III., Sec. 25; Const. 1868, Art. II., Sec. 29.
Compensation—Const. U. S., Art. I., Sec. 6, Clause 1; Const. 1895, Art. III., Sec. 9; Const. 1895, Art. III., Sec. 19; Const 1868, Art. II, Sec. 23.
Who are disqualified to be—Const. U. S., Art. I., Sec. 6, Clause 2; Const. U. S., Art. XIV. A., Sec. 3; Const. 1895. Art. III. Sec. 24; Const. 1868. Art. II., Sec. 28.
Disqualified to accept certain offices—Const. U. S., Art. I., Sec. 6, Clause 2.
Disqualified to be Presidential elector—Const. U. S., Art. II., Sec. 1; Clause 2.
Oath of—Const. U. S., Art. VI., Clause 3; Const. 1895, Art. III., Sec. 26; Const. 1868, Art. II., Sec. 30.
[See *House of Representatives, ante.*]

REPORTER OF SUPREME COURT—
Appointment, term, &c.—Const. 1895, Art. V., Sec. 7; Const. 1868., Art. IV., Sec. 7.

REPRIEVES AND PARDONS—
President may grant—Const. U. S., Art. II., Sec. 2, Clause 1.
Governor may grant—Const. 1895, Art. IV., Sec. 11; Const. 1868, Art. III., Sec. 11.
Petition for; reference of—Const. 1895, Art. IV., Sec. 11.

REPRISAL—
Letters of Marque and, Congress may grant—Const. U. S., Art. I., Sec. 8, Clause 11.
Letters of Marque and, State cannot—Const. U. S., Art. I., Sec. 10, Clause 1.

REPUBLICAN—
Form of government guaranteed—Const. U. S., Art. IV., Sec. 4.

RESERVED RIGHTS—
Of the States and people not disparaged—Const. U. S., Art. IX. A.; Const. 1868, Art. I., Sec. 41.
Those not delegated by, or prohibited to—Const. U. S., Art. X. A, Const. 1868, Art. I., Sec. 41.

RESIDENCE—
Not lost by temporary absence—Const. 1895, Art. I., Sec. 12; Const. 1895, Art. II., Sec. 7; Const. 1868, Art. I., Sec. 35; Const. 1868, Art. VIII., Sec. 4.
Necessary to vote—Const. 1895, Art. II., Sec. 4; Const. 1868, Art. VIII., Sec. 2.
Change of, necessitates change of precinct—Const. 1895, Art. II., Sec. 9.
Of Governor—Const. 1895, Art. IV., Sec. 21; Const. 1868, Art. III., Sec. 21.
Of Circuit Judge—Const. 1895, Art. V., Sec. 13; Const. 1868, Art. IV., Sec. 13.
Of Solicitor—Const. 1895, Art. V., Sec. 29; Const. 1868, Art. IV., Sec. 29.
Of Sheriff and Coroner—Const. 1895, Art. V., Sec. 30; Const 1868, Art. IV., Sec 30.
Of Representative—Const. U. S., Art. I., Sec. 2, Clause 2.
Of Representative and Senator—Const. 1895, Art. III., Sec. 6; Const. 1868, Art. II., Sec. 10.
Of Senator—Const. U. S., Art. I., Sec. 3, Clause 3.
Of candidates for President and Vice-President—Const. U. S., Art. XII. A.

RESIGNATION—
Of President, succession on—Const. U. S., Art. II., Sec. 1, Clause 5.
Of members General Assembly, action on—Const. 1895, Art. III., Sec. 25; Const. 1868, Art. II., Sec. 29.
Of members of Senate, filling vacancies—Const. U. S., Art. I., Sec. 3, Clause 2.
Of members of Congress, filling vacancies—Const. U. S., Art. I., Sec. 2, Clause 4.
Of Governor, succession on—Const. 1895, Art. IV., Sec. 9; Const. 1868, Art. III., Sec. 9.

RESOLUTION—
To have but one subject, expressed in title—Const. 1895, Art. III., Sec. 17; Art. 1868, Art. II., Sec. 20.
To be presented to Governor for approval, &c.—Const. 1895, Art. IV., Sec. 23; Const. 1868, Art. III., Sec. 22.
To be presented to President for approval, &c.—Const. U. S., Art. I., Sec. 7, Clause 3.

RETURNS—
Election for Governor—Const. 1895, Art. V., Sec. 4; Const. 1868, Art. IV., Sec. 4.
REVENUE—
Bills to raise originate in House—Const. U. S., Art. I., Sec. 7, Clause 1; Const. 1895, Art. III., Sec. 15; Const. 1868, Art. II., Sec. 18.
Preference between ports forbidden in regulating—Const. U. S., Art. I., Sec. 9, Art. 6.
RIGHT—
Of petition not to be abridged—Const. U. S., Art. I. A.; Const. 1895, Art. I., Sec. 4; Const. 1868, Art. I., Sec. 6.
To keep and bear arms not to be infringed—Const. U. S., Art. II. A.; Const. 1895, Art. I., Sec. 26; Const. 1868, Art. I., Sec. 28
Not disparaged by enumeration of others—Const. U. S., Art. IX. A.; Const 1868, Art. I., Sec. 41.
Reserved, not delegated—Const. U. S., Art. X. A.; Const. 1868, Art. I., Sec. 41.
Of suffrage, to be protected—Const. 1895, Art. I., Sec. 9; Const. 1868, Art. I., Sec. 33.
Of suffrage, general provisions—Const. 1895, Art. II; Const. 1868, Art. VIII.
Of way, over public lands—Const. 1895, Art. III., Sec. 31.
Of way, securing; compensation, &c.—Const. 1895, Art. IX., Sec. 20; Const. 1895, Art. I., Sec. 17; Const. 1868, Art. I., Sec. 23; Const. 1868, Art. XII., Sec. 3.
To worship God according to conscience—Const. 1868, Art. I., Sec. 9; Const. 1895, Art. I., Sec. 4; Const. U. S., Art. I. A.
Of search, &c.—Const. U. S., Art. IV. A; Const. 1895, Art. I., Sec. 16; Const. 1868, Art. I., Sec. 22
Of accused—Const. U. S., Art. V. A.; Const. U. S., Art. VI. A; Const. 1895, Art. I., Sec 17; Const. 1895, Art I., Sec. 18; Const. 1868, Art. I., Secs. 13-19.
Declaration of—Const. 1895, Art. I.; Const. 1868, Art. I.
RIVERS—
On boundaries, jurisdiction over—Const. 1895, Art. XIV., Sec. 1; Const. 1868, Art. VI., Sec. 1.
Navigable are highways—Const. 1895, Art. XIV., Sec. 1; Const. 1868, Art. VI., Sec. 1; Const. 1895, Art. I., Sec. 28; Const. 1868, Art. I., Sec. 40.
ROADS AND HIGHWAYS—
Special legislation as to working—Const. 1895, Art. III., Sec. 34, Clause 2; Const. 1895, Art. III., Sec. 34, Clause 9.
RULES—
Each House may determine its—Const. U. S., Art. I., Sec. 5, Clause 2; Const. 1895, Art. III., Sec. 12; Const. 1868, Art. II., Sec. 15.
Respecting territory of the United States—Const U. S., Art. IV., Sec. 3, Clause 2.
Of common law, jury trial—Const. U. S., Art. VII.
Of common law, new trials according to—Const. U. S., Art. VII.

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SAILOR—
When not a resident—Const. 1868, Art. VIII., Sec. 5.
Residence not lost by—Const. 1868, Art. VIII., Sec. 4; Const. 1895, Art. II., Sec. 7.
Indigent; pensions for certain—Const. 1895, Art. XIII., Sec. 5.

SALARIES—
Of school officers and County Treasurers—Const. 1895, Art. XI., Sec. 4,
Of deceased officers—Const. 1895, Art. III., Sec. 32.
[See *Compensation.*]

SALUDA, COUNTY OF—
Creation of, provisions as to—Const. 1895, Art. VII., Sec. 12.

SCHOOLS—
Property of, exempt from taxation—Const. 1895, Art. X., Sec. 4; Const. 1868, Art. IX., Sec. 5.
Children, age for attendance—Const. 1895, Art. XI., Sec. 5; Const. 1868, Art. X., Sec. 4.
Children, compulsory attendance of—Const. 1868, Art. X., Sec. 4.
Free public to be provided—Const. 1895, Art. XI., Sec. 5; Const. 1868, Art. X., Sec. 3.
Officers for—Const. 1895, Art. XI., Sec. 3; Const. 1868, Art. X., Sec. 2.
Trustees, number; how elected—Const. 1895, Art. XI., Sec. 6.
Trustees; disbursements of funds by—Const. 1895, Art. XI., Sec. 6.
Funds for; apportionment—Const. 1895, Art. XI., Sec. 6; Const. 1895, Art. X., Sec. 5.
Funds for; proceeds of land sales, &c.—Const. 1895, Art. XI., Sec. 8; Const. 1868, Art. X., Sec. 11.
Funds for; proceeds of gifts, &c.—Const. 1895, Art. XI., Sec. 10.
Funds for; proceeds of gifts, escheats, &c.—Const. 1895, Art. XI., Sec. 11.
Funds for; income from sale of liquors—Const. 1895, Art. XI., Sec. 12.
Funds for, poll tax—Const. 1895, Art. XI., Sec. 6; Const. 1868, Art. X., Sec. 5; Const. 1868, Art. IX., Sec. 2.
Separate for each race—Const 1895, Art. XI., Sec. 7.
Open to all without regard to race—Const. 1868, Art. X., Sec. 10.
Districts; division of State into—Const. 1868, Art. X., Sec. 3; Const. 1895, Art. XI., Sec. 5.
Districts; special legislation creating—Const. 1895, Art. III., Sec. 34, Clause 4.
Districts; taxation by—Const. 1895, Art. XI., Sec. 6; Const. 1895, Art. X., Sec. 5; Const. 1868, Art. IX., Sec. 8.
Minimum term—Const. 1868, Art. X., Sec. 3.
Custody of, funds for—Const. 1868, Art. IX., Sec. 15; Const. 1895, Art. X., Sec. 12.
Assessment for taxes for—Const. 1895, Art. X., Sec. 13.

SCIENCE AND USEFUL ARTS—
Promotion of—Const. U. S., Art. I., Sec. 8, Clause 8.

SCIRE FACIAS, WRIT OF—
Common Pleas may issue—Const. 1895, Art. V., Sec. 15; Const. 1868, Art. IV., Sec. 15.

SCRIP—
Not to be issued except for debts contracted, &c.—Const. 1895, Art. X., Sec. 7; Const. 1868, Art. IX., Sec. 10.
Denomination, &c.—Const. 1895, Art. X., Sec. 11; Const. 1868, Art. IX., Sec. 14.
Land, for Agricultural Colleges—Const. 1895, Art. XI., Sec. 8; Const. 1868, Art. X., Sec. 9.

SEAL OF STATE—
To be procured—Const. 1868, Art. III., Sec. 18.
Same continued, described—Const. 1895, Art. IV., Sec. 18.
When to be used by Governor—Const. 1895, Art. IV., Sec. 19; Const. 1868, Art. III., Sec. 19.

SEARCHES AND SEIZURES—
Warrants for; requisites to, &c.—Const. U. S., Art. IV. A; Const. 1895, Art. I., Sec. 16; Const. 1868, Art. I., Sec. 22
Unreasonable, security against—Const U. S., Art. IV., (amended); Const. 1895, Art. I., Sec. 16; Const. 1868, Art. I., Sec. 22.

SEAT OF GOVERNMENT—
Power Congress over place selected as—Const. U. S., Art. I., Sec. 8, Clause 17.
City of Columbia to remain the—Const. 1895, Art. III., Sec. 9; Const. 1868, Art. II., Sec. 12.
Governor to reside at—Const. 1895, Art. IV., Sec. 21; Const. 1868, Art. III., Sec. 21.

SECESSION—
To be resisted by State—Const. 1868, Art. I., Sec. 5.

SECRETARY OF STATE—
Election returns, transmitted to, &c.—Const. 1895, Art. IV., Sec. 4; Const. 1868, Art. III., Sec. 4.
Countersigns, grants and commissions—Const. 1895, Art. IV., Sec. 19; Const. 1868, Art. III., Sec. 19.
Election, term and compensation—Const. 1895, Art. IV., Sec. 24; Const. 1868, Art. III., Sec. 23.
Further provisions as to compensation—Const. 1895, Art. V., Sec. 24.
Copy list of registered voters filed with—Const. 1895, Art. II., Sec. 4, Clause c.
Certificate as to registration given by—Const. 1895, Art. II., Sec. 4, Clause c.

SECURITIES OF UNITED STATES—
Counterfeiting; punishment—Const. U. S., Art. I., Sec. 8, Clause 6.

SECURITY OF A FREE STATE—
Well regulated militia necessary to—Const. U. S., Art. II. A.; Const. 1895, Art. I., Sec. 26.

SENATE—

A branch of Congress—Const. U. S., Art. I., Sec. 1.

A branch of General Assembly—Const. 1895, Art. III., Sec. 1; Const. 1868, Art. II., Sec. 1.

Composed of—Const. U. S., Art. I., Sec. 3, Clause 1; Const. 1895, Art. III., Sec. 6; Const. 1868, Art. II., Sec. 8.

Vacancies in filled by temporary appointment—Const. U. S., Art. I., Sec. 3, Clause 2.

Vacancies in filled by Legislature—Const. U. S., Art. I., Sec. 3, Clause 2.

Vacancies in filled by election—Const. 1895, Art. III., Sec. 25; Const. 1868, Art. II., Sec. 29.

Vice President is President of—Const. U. S., Art. I., Sec. 3, Clause 4;

Lieutenant-Governor is President of—Const. 1895, Art. IV., Sec. 5, Const. 1868, Art. III., Sec. 5.

Lieutenant Governor, when may vote in—Const. 1895, Art. IV., Sec. 6; Const. 1868, Art. III., Sec. 6.

President pro tem., chosen; duties—Const. U. S., Art. I., Sec. 3, Clause 5; Const. 1895, Art. IV., Sec. 7; Const. 1868, Art. III., Sec. 7

President pro tem., when to be governor—Const. 1895, Art. IV., Sec. 9.

President pro tem., vacancy in, filled—Const. 1895, Art. IV., Sec. 9.

Chooses its other officers—Const. U. S., Art. I., Sec. 3; Clause 5; Const. 1895, Art. III., Sec. 12; Const. 1868, Art. II., Sec. 15

Tries impeachments—Const. U. S., Art. I., Sec. 3, Clause 6; Const. 1895, Art. XV., Sec. 2; Const. 1868, Art. VII., Sec. 2.

Is judge of its elections, returns and qualifications—Const. U. S., Art. I., Sec. 5, Clause 1; Const. 1895, Art. III., Sec. 11; Const. 1868, Art. II., Sec. 14.

Determines its rules, punishes and expels members—Const. U. S., Art. I., Sec. 5., Clause 2; Const. 1895, Art. III., Sec. 12; Const. 1868, Art. II., Sec. 15.

Keeps a journal, &c.—Const. U. S., Art. I., Sec. 5, Clause 3; Const. 1895, Art. III., Sec. 22; Const. 1868, Art. II., Sec. 26.

Adjournment for more than three days—Const. U. S., Art. I., Sec. 5, Clause 4; Const. 1895, Art. III., Sec. 21; Const. 1868, Art. II., Sec. 25.

May amend or reject bills for revenue—Const. U. S., Art. I., Sec. 7, Clause 1; Const. 1895, Art. III., Sec. 15; Const. 1868, Art. II., Sec. 18.

Shall advise and consent to ratification of treaties—Const. U. S., Art. II., Sec. 2, Clause 2.

Shall advise and consent to appointment of officers—Const. U. S., Art. II., Sec. 2, Clause 2.

May be convened in extra session—Const. U. S., Art. II., Sec. 3; Const. 1895, Art. IV., Sec. 9; Const. 1895, Art. IV., Sec. 16; Const. 1895, Art. III., Sec. 16.

States to have equal suffrage in—Const. U. S., Art. V.

Proposal of Constitutional amendments in—Const. 1895, Art. XVI., Sec. I., Const. 1868, Art. XV., Sec. 1.

SENATORS—

Division into classes—Const. U. S., Art. I., Sec. 3, Clause 2; Const. 1895, Art. III., Sec. 8; Const. 1868, Art. II., Sec. 9.

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Qualifications, age, &c.—Const. U. S., Art. I., Sec. 3, Clause 3; Const. 1895, Art. III., Sec. 7; Const. 1868, Art. II., Sec. 10.

Disqualifications, office-holders—Const. U. S., Art. I., Sec. 6, Clause 2; Const. 1895, Art. III., Sec. 24; Const. 1868, Art. II., Sec. 28.

Disqualifications, aiding, &c., rebellion—Const. U. S., Art. XIV. A., Sec. 3.

Disqualifications to accept certain offices—Const. U. S., Art. I., Sec. 6, Clause 2.

Disqualifications, to be President electors—Const. U. S., Art. II., Sec. 1, Clause 2.

Place and time of choosing—Const. U. S., Art. I., Sec. 4, Clause 1.

Temporary appointment by Governor—Const. U. S., Art. I., Sec. 3, Clause 2.

Filling vacancies in by Legislature—Const. U. S., Art. I., Sec. 3, Clause 2.

Filling vacancies in by election—Const. 1895, Art. III., Sec. 25; Const. 1868, Art. II., Sec. 29.

Privileges of—Const. U. S., Art. I., Sec. 6, Clause 1; Const. 1895, Art. III., Sec. 14; Const. 1868, Art. II., Sec. 17.

Compensation of—Const. U. S., Art. I., Sec. 6, Clause 1; Const. 1895, Art. III., Sec. 9; Const. 1895, Art. III., Sec. 19; Const 1868, Art. II., Sec. 23.

Oath of—Const. U. S., Art. VI., Clause 3; Const. 1895, Art. III., Sec. 26; Const. 1868, Art. II., Sec. 30.

Election for—Const 1895, Art. III., Sec. 8; Const 1868, Art. II., Sec. 11.

Term commences—Const. 1895, Art. III., Sec. 10; Const. 1868, Art. II., Sec. 13.

SEIZURES AND SEARCHES—

Requisites to support warrant for—Const. U. S., Art. IV. A.; Const. 1895, Art. I., Sec. 16; Const. 1868, Art. I., Sec. 22.

Unreasonable; security against—Const. U. S., Art. XIV. A.; Const. 1895, Art. I., Sec. 16; Const. 1868, Art. I., Sec. 22

SERVANT—

Public, extra compensation—Const 1895, Art. III., Sec. 30.

Master and; railroad employes' rights—Const. 1895, Art. IX., Sec. 15.

SERVICE—

Fugitives from—Const. U. S., Art. IV., Sec. 2, Clause 3.

Of process on corporations—Const. 1895, Art. IX., Sec. 4.

SERVITUDE—

No involuntary, except for crime, &c.—Const. U. S., Art. XIII. A., Sec. 1; Const. 1895, Art. I., Sec. 2.

Distinction because of previous condition of—Const. U. S., Art. XV. A., Sec. 1.

SEXUAL INTERCOURSE—

Age of consent to—Const. 1895, Art. III., Sec. 33.

Miscegenation—Const. 1895, Art. III., Sec. 33.

Shares—
Of stock in banks; taxation of—Const. 1895, Art. X., Sec. 5.
Of stock in, cumulative, voting—Const. 1895, Art. IX., Sec. 11.
Of stock, in one corporation held by another—Const. 1895, Art. IX., Sec. 19.

Sheriff—
Election; term; residence; duties; second term—Const. 1895, Art. V., Sec. 30; Const. 1868, Art. IV., Sec. 30.
Permitting prisoner lynched, liability—Const. 1895, Art. VI., Sec. 6.

Ships of War—
State not to keep in time of peace without, &c.—Const. U. S., Art. I., Sec. 10, Clause 3.

Silver Coin—
Gold and, legal tender—Const. U. S., Art. I., Sec. 10, Clause 1.

Sinking Fund—
For redemption of municipal bonds—Const. U. S., Art. VIII., Sec. 7.

Slave—
Certain for loss or emancipation of—Const. U. S., Art. XIV. A., Sec. 4.
Contracts for, the purchase of, void—Const. 1868, Art. IV., Sec. 34.
Crime committed by, does not disfranchise—Const. 1868, Art. VIII., Sec. 12.

Slavery—
Prohibited—Const. U. S., Art. XIII. A., Sec. 1; Const. 1868, Art. I., Sec. 2.

Soldier—
Quartering in house, without consent prohibited—Const. U. S., Art. III. A.; Const. 1895, Art. I., Sec. 26; Const. 1868, Art. I., Sec. 29.
In army, when not a resident—Const. 1868, Art. VIII., Sec. 5.
In army, does not lose residence, &c.—Const. 1868, Art. VIII., Sec. 4; Const. 1895, Art. II., Sec. 7.

Solicitor—
Circuit; election, term, compensation, &c.—Const. 1895, Art. V., Sec. 29; Const. 1868, Art. IV., Sec. 29.
County; election, term, compensation, &c.—Const. 1895, Art. V., Sec. 29.
Pro tem.; appointment by Court—Const. 1895, Art. V., Sec. 29; Const. 1868, Art IV., Sec. 29.

Speaker—
House of Representatives shall choose—Const. U. S., Art. I., Sec. 2, Clause 5.
Bills and Joint Resolutions to be signed by—Const. 1895, Art. III., Sec. 18; Const. 1868, Art. II., Sec. 21.
Writs of elections issued by—Const. 1895, Art. III., Sec. 25; Const. 1868, II., Sec. 29.
Election returns delivered to—Const. 1895, Art. IV., Sec. 4; Const. 1868, Art. III., Sec. 4.

Special Legislation Prohibited—
As to change of names—Const. 1895, Art. III., Sec. 34, Clause 1.
As to roads and highways, working, &c.—Const. 1895, Art. III., Sec. 34, Clause 2.
As to road or other public duty—Const. 1895, Art. III., Sec. 34, Clause 9.
As to incorporation of municipalities—Const. 1895, Art. III., Sec. 34, Clause 3.
As to incorporation of private corporations—Const. 1895, Art. III., Sec. 34, Art. IV.
As to incorporations of school districts—Const. 1895, Art. III., Sec. 34, Clause 5.
As to adoption or legitimation of children—Const. 1895, Art. III., Sec. 34, Art. 6.
As to protection of game—Const. 1895, Art. III., Sec. 34, Clause 7.
As to summoning and empanelling jurors—Const. 1895, Art. III., Sec. 34, Clause 8.
As to compensation County officers—Const. 1895, Art. III., Sec. 34, Clause 10,
Where general law can be made applicable—Sec. 1895, Art. III., Sec. 34, Clause 11.

Special Legislation Permitted—
To carry out charitable gift—Const. 1895, Art. III., Sec. 34, Clause 13.

Speech—
Freedom of, not to be abridged—Const. U. S., Art. I. A.; Const. 1895, Art. I., Sec. 4; Const. 1868, Art. I., Sec. 7.

Speedy Trial—
Accused entitled to—Const. U. S., Art. VI. A.; Const. 1895, Art. I., Sec. 18; Const. 1868, Art. I, Sec. 13.

Standard of Weights and Measures—
Congress to fix the—Const. U. S., Art. I., Sec. 8, Clause 5.

State—
Of the Union; President to give information as to—Const. U. S., Art. II., Sec. 3.
Officers; oath of, to support Constitution, &c.—Const. U. S., Art. VI. Const. 1895, Art. III., Sec. 26; Const. 1868, Art. II., Sec. 30.
Filling vacancies in representation of the—Const. U. S., Art. I., Sec. 2, Clause 4
Shall not enter into alliance treaty or federation—Const. U. S., Art. I., Sec. 10, Clause 1.
Shall not grant letters of marque or reprisal—Const. U. S., Art. I., Sec. 10, Clause 1.
Shall not coin money—Const. U. S., Art. I., Sec. 10, Clause 1.
Shall not emit bills of credit—Const. U. S., Art. I., Sec. 10, Clause 1.
Shall not make anything but gold or silver legal tender—Const. U. S., Art. I., Sec. 10, Clause 1.
Shall not pass bill of attainder, *ex post facto*—Const. U. S., Art. I., Sec. 10, Clause 1.

STATE—*(Continued.)*
Law, impairing obligation of contracts—Const 1895, Art. I., Sec. 8; Const. 1868, Art. I., Sec. 21.
Shall not grant title of nobility; hereditary emoluments—Const. 1895, Art. I., Sec. 8; Const. 1868, Art. I., Sec. 39; Const. U. S, Art. I., Sec. 10, Clause 1.
Shall not lay duties on imports and exports without, &c.—Const. U. S., Art. I., Sec. 10, Clause 2.
Shall not lay duty of tonnage, keep troops, &c., or ships of war or engage in war, unless, &c.—Const. U. S., Art. I., Sec. 10, Art. 3.
Faith and credit given records of each—Const. U. S., Art. IV., Sec. 1.
Manner of proving records of each—Const. U. S., Art. IV., Sec. 1.
Citizens of; rights in other States—Const. U. S., Art. IV., Sec. 2, Clause 1.
Admission of new, by Congress—Const. U. S., Art. IV., Sec. 3, Clause 1.
Formation of new, in old—Const. U. S., Art. IV., Sec. 3, Clause 1.
Formation of new, by junction of old States—Const. U. S., Art. IV., Sec. 3, Clause 1.
Equal suffrage in Senate—Const. U. S., Art. V.
Ratification of amendments by—Const. U. S., Art. V.
Republican form of government guaranteed—Const. U. S., Art. IV., Sec. 4.
Protection against invasion, &c.—Const. U. S., Art. IV., Sec. 4.
Executive or Legislature may call for aid—Const. U. S., Art. IV., Sec. 4.
Ratifications of Constitution by—Const. 1894, Art. VII.
Choice of President in House by vote of—Const. U. S., Art. XII. A.
Powers not delegated reserved to—Const. U. S., Art. X. A.
Inter-State commerce, regulation—Const. U. S., Art. I., Sec. 8, Clause 3.
May obtain change of venue—Const. 1895, Art. VI., Sec. 2.
Government; provision for expense of—Const. U. S., Art. X., Sec. 2; Const. 1868, Art. IX., Sec. 3.
Credit of, not to be pledged for private benefit—Const. 1895, Art. X., Sec. 6.
Not to become a stockholder, &c.—Const. 1895, Art. X., Sec. 6.
Bonds, denomination of—Const. 1895, Art. X., Sec. 11; Const. 1895, Art. IX., Sec. 14.
Bonds shall be registered—Const. 1895, Art. X., Sec. 11; Const. 1895, Art. IX., Sec. 14.
Bonds, annual tax for interest on—Const. 1895, Art. X., Sec. 11.
Bonds, redemption by new scrip—Const. 1895, Art. X., Sec. 7; Const. 1868, Art. IX., Sec. 10.
Funds, safe keeping of, provision for—Const. 1895, Art. X., Sec. 12; Const. 1868, Art. IX., Sec. 15.
Funds, embezzlement of—Const. 1895, Art. X., Sec. 12; Const. 1868, Art. IX., Sec. 15.
Board of Education; composition, duties, &c.—Const. 1895, Art. XI., Sec. 2; Const. 1868, Art. X., Sec. 2.
Hospital for the Insane; officers, &c.—Const. 1895, Art. XII., Sec. 2.
Lunatic Asylum, officers, &c.—Const. 1868, Art. XI., Sec. 6.
Library, regulations as to—Const. 1868, Art. XIV., Sec. 3.

STATE—*(Continued.)*

Librarian, a woman eligible as—Const. 1895, Art. XVII., Sec. 1.
Normal Schools to be established—Const. 1895, Art. XI., Sec. 8; Const. 1868, Art. X., Sec. 6.
Reform School to be established—Const. 1895, Art. XII., Sec. 7; Const. 1868, Art. X., Sec. 8.
Treasurer, election, term, &c.—Const. 1895, Art. IV., Sec. 24; Const. 1868, Art. III., Sec. 23.
Treasurer, compensation not to be changed—Const. 1895, Art. IV., Sec. 24.
University to be maintained—Const. 1895, Art. XI., Sec. 8; Const. 1868, Art. X., Sec. 9.
Residence in necessary before voting, &c.—Const. 1895, Art. II., Sec. 4; Const. 1868, Art. VIII., Sec. 2.
Officers enter on duties, when—Const. 1895, Art. IV., Sec. 2; Const. 1868, Art. III., Sec. 2.
Concurrent jurisdiction on boundary rivers—Const. 1895, Art. XIV., Sec. 1; Const. 1868, Art. VI., Sec. 1.
Title to lands escheated, &c., vested in—Const. 1895, Art. XIV., Sec. 2; Const. 1868, Art. VI., Sec. 2.
Ultimate right of property in—Const. 1895, Art. XIV., Sec. 3; Const. 1868, Art. VI., Sec. 3.

STATEMENT—

Of account of public moneys published—Const. 1895, Art. X., Sec. 8; Const. 1868, Art. IX., Sec. 11.

STAFF OFFICERS—

In militia; how appointed—Const. 1895, Art. XIII., Sec. 4; Const. 1868, Art. XIII., Sec. 3.

STATUTES—

Public, unless it otherwise declares—Const. 1895, Art. VI., Sec. 4.
Indexing and arranging—Const. 1895, Art. VI., Sec. 5.
Revision and codification of—Const. 1895, Art. VI., Sec. 5; Const. 1868, Art. V., Sec. 3.

STREET RAILWAY—

Right to construct; how granted—Const. 1895, Art. VIII., Sec. 4.

STOCK—

Only to be issued for value; fictitious void—Const. 1895, Art. IX, Sec. 10.

STOCKHOLDERS—

Liability generally—Const. 1895, Art. IX., Sec. 18; Const. 1868, Art. XII., Secs. 4-5.
In banks, liability—Const. 1895, Art. IX., Sec. 18; Const. 1868, Art. XII., Sec. 6.

STUDENTS ATTENDING INSTITUTIONS OF LEARNING—

Residence of—Const. 1895, Art. II., Sec. 7.

SUFFRAGE—
States have equal in Senate—Const. U. S., Art. V.
Right of protected—Const. 1895, Art. I., Sec. 9; Const. 1895, Art. II., Sec. 15; Const. 1868, Art. I., Sec. 33.
Rights of; general provisions as to—Const 1895, Art. II; Const. 1868, Art. VIII.
[See *Vote.*]

SUITS—
At common law, jury trial in—Const. U. S., Art. VII. A.
At common law and in equity; jurisdiction—Const. U. S., Art. XI. A.

SUPERINTENDENT OF EDUCATION; STATE—
Election, term, compensation—Const. 1895, Art. IV., Sec. 24; Const. 1895, Art. XI., Sec. 1; Const. 1868, Art. III., Sec. 23; Const. 1868, Art. X., Sec. 1.
Duties and powers—Const 1895, Art. XI., Sec. 1; Const. 1868, Art. X., Sec. 1.
Secretary of State Board of Education—Const 1895, Art. XI., Sec. 2.
Chairman of State Board of Education—Const. 1868, Art. X., Sec. 2.

SUPPLEMENTARY TAXES FOR SCHOOLS—
Levy and collection of—Const. 1895, Art. XI., Sec. 6.
When levied—Const. 1895, Art. XI., Sec. 12.

SUPREME BEING—
No person denying shall hold office—Const. 1895, Art. XVII., Sec. 4; Const. 1868, Art. XIV., Sec. 6.

SUPREME COURT—
Judicial power vested in—Const. U. S., Art. III., Sec. 1; Const. 1895, Art. V., Sec. 1; Const. 1868, Art. IV., Sec. 1
Congress may constitute Courts inferior to—Const. U. S., Art. I., Sec. VIII., Clause 9.
Composed of—Const. 1895, Art. V., Sec. 2; Const. 1868, Art. IV., Sec. 2.
Quorum of—Const. 1895, Art. V., Sec. 2; Const. 1868, Art IV., Sec. 2.
Jurisdiction of—Const. U. S., Art. III., Sec. 2, Clause 2; Const. 1895, Art. V., Sec. 4; Const. 1868, Art. IV., Sec. 4.
Sessions twice a year—Const. 1895, Art. V., Sec. 5; Const. 1868, Art. IV., Sec. 5.
Clerk and Reporter of—Const. 1895, Art. V., Sec. 7; Const. 1868, Art. IV., Sec. 7.
Calling Circuit Judges to assist—Const. 1895, Art. V., Sec. 12.
When special Judges are to be appointed on—Const. 1895, Art. V., Sec. 6; Const. 1868, Art. IV., Sec. 6.
Decisions to decide each point—Const. 1895, Art. V., Sec. 8; Const. 1868, Art. IV., Sec. 8.
Decisions to be stated in writing—Const. 1895, Art. V., Sec. 8; Const. 1868, Art. IV., Sec. 8.
Decisions to be preserved in record—Const. 1895, Art. V., Sec. 8; Const. 1868, Art. IV., Sec. 8.

SUPREME COURT—*(Continued.)*

Decisions to be published—Const. 1895, Art. V., Sec. 32; Const. 1868, Art. IV., Sec. 32.

Judges, to hold during good behavior—Const. U. S., Art. III., Sec. 1.

Judges, compensation unchangeable during term—Const. U. S., Art. III., Sec. 1; Const. 1895, Art. V., Sec. 9; Const. 1868, Art. IV., Sec. 9.

Judges, disqualifications, &c.—Const. 1895, Art. V., Sec. 6; Const. 1868, Art. IV., Sec. 6.

Judges, eligibility—Const. 1895, Art. V., Sec. 10; Const. 1868, Art. IV., Sec. 10.

Judges, concurrence necessary to decision—Const. 1895, Art. V., Sec. 12; Const. 1868, Art. IV., Sec. 12.

Judges, vacancies, how filled—Const. 1895, Art. V., Sec. 11; Const. 1868, Art. IV., Sec. 11.

SUPREME LAW—

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Who are bailable by, before conviction—Const. 1895, Art. I., Sec. 20; Const. 1868, Art. I., Sec. 16.

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TAX—

Capitation or direct, proportionate to population—Const. U. S., Art. I., Sec. 9, Clause 4.

Capitation on domestic animals—Const. 1895, Art. X., Sec. 1.

Capitation on polls—Const. 1895, Art. XI., Sec. 6; Const. 1868, Art. IX., Sec. 2; Const. 1868, Art. X., Sec. 5.

On exports prohibited—Const. U. S., Art. I., Sec. 9, Clause 5.

Direct, apportioned among States—Const. U. S., Art. I., Sec. 2, Clause 3; Const. U. S., Art. 14A., Sec. 2.

Laid only by consent of people or representatives—Const. 1895, Art. I., Sec. 7; Const. 1868, Art. I., Sec. 37.

On incomes—Const. 1895, Art. X., Sec. 1.

None, except pursuant to law, &c.—Const. 1895, Art. X., Sec. 2; Const. 1868, Art. IX., Sec. 4.

For schools—Const. 1895, Art. XI., Sec. 6; Const. 1868, Art. X., Sec. 5.

For schools—Const. 1868 (Am. 1878.)

For interest on State debt—Const. 1895, Art. X., Sec. 11; Const. 1868, Art. IX., Sec. 7.

By municipalities, for corporate purposes—Const. 1895, Art. X., Sec. 5; Const. 1868, Art. IX., Sec. 8.

By municipalities, to be uniform, &c.—Const. 1895, Art. VIII., Sec. 6; Const. 1868, Art. IX., Sec. 8.

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Homestead; liable to levy for—Const. 1895, Art. III., Sec. 28; Const. 1868, Art. II., Sec. 32.
To be laid according to value—Const. 1895, Art. III., Sec. 29.
License or privilege; graduated—Const. 1895, Art. VIII., Sec. 6.
All taxes on same valuation—Const. 1895, Art. X., Sec. 13.
Congress has power to lay uniform—Const. U. S., Art. I., Sec. 8, Clause 1.

TAXATION—
To be in proportion to value—Const. 1895, Art. I., Sec. 6; Const. 1868, Art. I., Sec. 36.
To be uniform—Const. 1895, Art. X., Sec. 4; Const. 1868, Art. IX., Sec. 1.
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Certain property exempted from—Const. 1895, Art. X., Sec. 4; Const. 1868, Art. IX., Sec. 5.
Manufactures; how exempted from—Const. 1895, Art. VIII., Sec. 8.
By cities, &c., to be restricted—Const. 1868, Art. IX., Sec. 9; Const. 1895, Art. VIII., Sec. 3.
By cities, regulated, uniformity, &c.—Const. 1895, Art. VIII., Sec. 6; Const. 1895, Art. X., Sec. 5.
Of property of corporations—Const. 1895, Art. X., Sec. 5; Const. 1868, Art. XII., Sec. 2.
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TEACHERS—
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In public schools; examination of—Const. 1895, Art. XI., Sec. 2.
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Companies; common carriers—Const. 1895, Art. IX., Sec. 3.
Companies; discrimination by—Const. 1895, Art. IX., Secs. 5 and 6.
Companies; consolidation, &c.—Const. 1895, Art. IX., Sec. 7.
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TEMPORARY—
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TENDER IN PAYMENT OF DEBTS—
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Of four years; State Senators—Const. 1895, Art. III., Sec. 6; Const. 1868, Art. II., Sec. 8.

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Of four years; Attorney General—Const. 1868, Art. IV., Sec. 28.
Of four years; Solicitors—Const. 1868, Art. IV., Sec. 29; Const. 1895, Art. V., Sec. 29.
Of four years; Sheriff and Coroner—Const. 1895, Art. V., Sec. 30; Const. 1868, Art. IV., Sec. 30.
Of four years; Clerk of Court—Const. 1895, Art. V., Sec. 27; Const. 1868, Art. IV., Sec. 27.
Of four years; Circuit Judges—Const. 1895, Art. V., Sec. 13; Const. 1868, Art. IV., Sec. 13.
Of four years; Comptroller General—Const. 1868, Art. III., Sec. 23.
Of four years; Treasurer—Const. 1868, Art. III., Sec. 23.
Of four years; Secretary of State—Const. 1868, Art. III., Sec. 23.
Of four years; Probate Judge—Const. 1868 (Am. 1889.)
Of two years; Congressmen—Const. U. S., Art. I., Sec. 2, Clause 1.
Of two years; Legislators—Const. 1895, Art. III., Sec. 2; Const. 1868, Art. II., Sec. 2.
Of Governor; Const. 1895, Art. IV., Sec. 2; Const. 1868, Art. III., Sec. 2.
Of two years; Lieutenant Governor—Const. 1895, Art. IV., Sec. 5; Const. 1868, Art. III., Sec. 5.
Of two years; Attorney General—Const. 1895, Art. IV., Sec. 24; Const. 1895, Art. V., Sec. 28; Const. 1868 (Am. 1875.)
Of two years; Adjutant and Inspector General—Const. 1895, Art. IV., Sec. 24; Const. 1868 (Am. 1875.)
Of two years; Secretary of State—Const. 1895, Art. IV., Sec. 24; Const. 1868 (Am. 1875.)
Of two years; Comptroller General—Const. 1895, Art. IV., Sec. 24; Const. 1868 (Am. 1875.)
Of two years; Treasurer—Const. 1895, Art. IV., Sec. 24; Const. 1868 (Am. 1875.)
Of two years; Superintendent of Education—Const. 1895, Art. IV., Sec. 24; Const. 1868 (Am. 1875.)
Of six years; United States Senators—Const. U. S., Art. I., Sec. 3, Clause 1.
Of six years; Supreme Court Judges—Const. 1868, Art. IV., Sec. 3.
Of eight years; Supreme Court Judges—Const. 1895, Art. V., Sec. 2.
No Senator or Representative shall be appointed to office created, or the emoluments of which have been increased during his—Const. U. S., Art. I., Sec. 6, Clause 2.

TERRITORY—

Of the United States, disposition, rules respecting—Const. U. S., Art. IV., Sec. 3, Clause 2.

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No religious, required for office—Const. U. S., Art. 6, Clause 3.

TESTIMONY—

Of two witnesses to act of treason—Const. U. S., Art. III., Sec. 3, Clause 1; Const. 1895, Art. I., Sec. 22.

THREE-FOURTHS—
Of Legislatures, to ratify amendments to Constitution—Const. U. S., Art. V.

TICKETS—
Excursion or commutation allowed—Const. 1895, Art. IX., Sec. 9.

TIE—
Vice President votes only in case of—Const. U. S., Art. I., Sec. 3, Clause 4.
Lieutenant Governor votes only in case of—Const. 1895, Art. IV., Sec. 6; Const. 1868, Art. III., Sec. 6.

TIMES—
Places, and manner; Congressional and Senatorial elections—Const. U. S., Art. I., Sec. 4, Clause 1.

TITLE—
Of nobility not to be granted, by U. S.—Const. U. S., Art. I., Sec. 9, Clause 8.
Of nobility not to be granted, by any State—Const. U. S., Art. I., Sec. 10, Clause 1.
Of State not to be granted, by State—Const. 1895, Art. I., Sec. 8; Const. 1868, Art. I., Sec. 39.
Of nobility not to be accepted from foreign State, without consent, &c.—Const. U. S., Art. I., Sec. 9, Clause 8.
Ultimate right and, to land in State—Const. 1895, Art. XIV., Sec. 3; Const. 1868, Art. VI., Sec. 3.
To lands escheated, &c., vest in State—Const. 1895, Art. XIV., Sec. 2; Const. 1868, Art. VI., Sec. 2.
Confirmation of, to lands, by General Assembly—Const. 1895, Art. III., Sec. 31.

TONNAGE—
No State shall lay, without consent of Congress—Const. U. S., Art. I., Sec. 10, Clause 3.

TOWNS, CITIES, &C —
Organization and incorporation of—Const. 1895, Art. VIII., Sec. 1; Const. 1868, Art. IX., Sec. 9.
Special charters ceased on reorganization—Const. 1895, Art. VIII., Sec. 1.
Consent of resident electors necessary to organization—Const. 1895, Art. VIII., Sec. 2.
Power of taxation, &c., to be restricted—Const. 1895, Art. VIII., Sec. 3; Const. 1868, Art. IX., Sec. 9.
Taxation by—Const. 1895, Art. VIII., Sec. 5; Const. 1895, Art. X., Sec. 5; Const. 1868, Art. IX., Sec. 8.
Bonded indebtedness of; limitations, &c.—Const. 1895, Art. X., Sec. 5; Const. 1895, Art. VIII., Sec. 7; Const. 1868, Art. IX., Sec. 17.
May except manufactories taxation—Const. 1895, Art. VIII., Sec. 8.
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Municipal elections in, as to bonds, &c.—Const. 1895, Art. II., Sec. 13.

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Waterworks and light plants in—Const. 1895, Art. VIII., Sec. 5.
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Special provisions as to government, &c.—Const. 1895, Art. VII., Sec. 11.

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Bodies corporate; organization, &c.—Const. 1895, Art. VII., Sec. 11.
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Property of exempted from taxation—Const. 1895, Art. X., Sec. 4.
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Bonded debt; limitation—Const. 1895, Art. X., Sec. 5.
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Tranquility—
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Treason—
Defined—Const. U. S., Art. III., Sec. 3, Clause 1; Const. 1895, Art. I., Sec. 22.
Evidence necessary to convict of—Const. U. S., Art. III., Sec. 3, Clause 1; Const. 1895, Art. I., Sec. 22.
Congress may fix punishment for—Const. U. S., Art. III., Sec. 3, Clause 2.
Attainder of; works no corruption of blood—Const. U. S., Art. III., Sec. 3, Clause 2.
Attainder of; nor forfeiture; except, &c.—Const. U. S., Art. III., Sec. 3, Clause 2.
Impeachment for—Const. U. S., Art. II., Sec. 4.
Arrests for, no exemption from—Const. U. S., Art. I., Sec. 6, Clause 1; Const. 1895, Art. III., Sec. 14; Const. 1868, Art. II., Sec. 17.

Treasurer—
State; election, term and compensation—Const. 1895, Art. IV., Sec. 24; Const. 1868, Art. III., Sec. 23.
Further provision as to compensation—Const. 1895, Art. V., Sec. 24.

Treasury—
Money to be drawn only on appropriation—Const. U. S., Art. I., Sec. 9, Clause 7; Const. 1895, Art. X., Sec. 9; Const. 1868, Art. IX., Sec. 12; Const. 1868, Art. II., Sec. 22.

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President, with advice of Senate, may make—Const. U. S., Art. II., Sec. 2, Clause 2.
Judicial power extends to cases under—Const. U. S., Art. III., Sec. 2, Clause 1.
Supreme law of the land—Const. U. S., Art. VI., Clause 2.
No State shall enter into any—Const. U. S., Art. I., Sec. 10, Clause 1.

TRIAL—

At law, cumulative to impeachment—Const. U. S., Art. I., Sec. 3, Clause 7; Const. 1895, Art. XV., Sec. 3; Const. 1868, Art. VII., Sec. 3.

Of impeachment, by Senate—Const. U. S., Art. I., Sec. 3, Clause 6; Const. 1895, Art. XV., Sec. 2; Const. 1868, Art. VII., Sec. 2.

By jury; for crimes—Const. U. S., Art. III., Sec. 2, Clause 3.

By jury; to remain inviolate—Const. 1895, Art. I., Sec. 25; Const. 1868, Art. I., Sec. 11.

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By jury; in civil cases at common law—Const. U. S., Art. 7A.

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Justices declared Magistrates—Const. 1895, Art. V., Sec. 20.

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No State shall keep in time of peace, without, &c.—Const. U. S., Art. I., Sec. 10, Clause 3.

Bringing into State; prohibited, except, &c.—Const. 1895, Art. VIII., Sec. 9.

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And profit, holders of office of ineligible as Electors—Const. U. S., Art. II., Sec. 1, Clause 2.

And profit, holders of offices of ineligible as Legislators—Const. 1895, Art. III., Sec. 24; Const. 1868, Art. II., Sec. 28.

And profit, no person to hold two offices of—Const. 1895, Art. II., Sec. 2.

Fund, removal of officers for appropriating—Const. 1895, Art. IV., Sec. 22.

Illegal trusts and combinations prohibited—Const. 1895, Art. X., Sec. 5.

"TRUE VALUE IN MONEY"—

Defined—Const. 1895, Art. X., Sec. 5.

TRUSTEES—

Of corporations; how to be elected—Const. 1895, Art. IX., Sec. 11.

Of school districts; duties, &c.—Const. 1895, Art. XI., Sec. 6.

TRUTH—

May be shown on trial for libel—Const. 1895, Art. I., Sec. 21; Const. 1868, Art. I., Sec. 8.

U

UNION—
The establishment of a more perfect—Const. U. S. (Preamble.)
This State to remain a member of—Const. 1868, Art. I., Sec. 5.
Information as to state of—Const. U. S., Art. II., Sec. 3, Clause 1.
Admission of new States to the—Const. U. S., Art. IV., Sec. 3, Clause 1.
Paramount allegiance due the—Const. 1868, Art. I., Sec. 4.

UNIVERSITY—
State—Const. 1895, Art. XI., Sec. 8; Const. 1868, Art. X., Sec. 9.

UNREASONABLE SEARCHES AND SEIZURES—
Protection against—Const. U. S., Art. 4A.; Const. 1895, Art. I., Sec. 16; Const. 1868, Art. I., Sec. 22.

UNUSUAL PUNISHMENTS—
Not to be inflicted—Const. U. S., Art. 8A.; Const. 1895, Art. I., Sec. 19.

USE—
Taking private property for public—Const. U. S., Art. 5A.; Const. 1895, Art. I., Sec. 17; Const. 1868, Art. I., Sec. 23.
Taking private property for private—Const. 1895, Art. I., Sec. 17; Const. 1868, Art. I., Sec. 23.

USEFUL ARTS—
Congress may promote the progress of the—Const. U. S., Art. I., Sec. 8, Clause 8.

V

VACANCIES—
In representation of State in Congress—Const. U. S., Art. I., Sec. 2, Clause 4.
In representation of State in Senate—Const. U. S., Art. I., Sec. 3, Clause 2.
Of offices; filling during recess of Senate—Const. U. S., Art. II., Sec. 2, Clause 3.
Of General Assembly—Const. 1895, Art. III., Sec. 25; Const. 1868, Art. II., Sec. 29.
Of Supreme Courts and other tribunals—Const. 1895, Art. V., Sec. 11; Const. 1868, Art. IV., Sec. 11.
Of Directors, State institutions—Const. 1895, Art. XII., Sec. 8; Const. 1868, Art. XI., Sec. 4.
Caused by impeachment—Const. 1895, Art. XV., Sec. 1; Const. 1868, Art. VII., Sec. 1.
Caused by removal of officer—Const. 1895, Art. IV., Sec. 22.

VALIDITY—
Of public debt not to be questioned—Const. U. S., Art. 14A., Sec. 4.

VENUE—
In criminal trials—Const. U. S., Art. 6A.; Const. 1895, Art. VI., Sec. 2.
Before Magistrates—Const. 1895, Art. V., Sec. 23.

VENUE—*(Continued.)*
Change of, Magistrates' Courts—Const. 1895, Art. V., Sec. 23.
Change of, Circuit Courts—Const. 1895, Art. VI., Sec. 2; Const. 1868, Art. V., Sec. 2.

VESSELS—
Bound from one State to another; duties—Const. U. S., Art. I., Sec. 9, Clause 6.

VETO—
Proceedings on—Const. U. S., Art. I., Sec. 7, Clause 2; Const. 1895, Art. IV., Sec. 23; Const. 1868, Art. III., Sec. 22.

VICE PRESIDENT—
President of the Senate; vote—Const. U. S., Art. I., Sec. 3, Clause 4.
President *pro tempore* acts in absence of—Const. U. S., Art. I., Sec. 3, Clause 5.
Elected for four years—Const. U. S., Art. II., Sec. 1, Clause 1.
Number and manner of appointing Electors for—Const. U. S., Art. II., Sec. 1, Clause 2.
When to act as President—Const. U. S., Art. II., Sec. 1, Clause 5.
Succession to, Congress shall provide for—Const. U. S., Art. II., Sec. 1, Clause 5.
Impeachment of—Const. U. S., Art. II., Sec. 4.
Manner of choosing, by Electors—Const. U. S., Art. 12A.
Manner of choosing, by Senators—Const. U. S., Art. 12A.
Who eligible as—Const. U. S., Art. 12A.

VILLAGES—
See Towns, *ante*.

VOLUNTEER FORCES—
See Militia, *ante*.

VOTE—
Each Senator to have one—Const. U. S., Art. I., Sec. 3, Clause 1.
Vice President has one on tie—Const. U. S., Art. I., Sec. 3, Clause 4.
Lieutenant Governor has one on tie—Const. 1895, Art. III., Sec. 6; Const. 1868, Art. II., Sec. 6.
Not to be abridged or denied because of race, &c.—Const. U. S., Art. 15A., Sec. 1.
Not to be denied because of commission of crime while a slave—Const. 1868, Art. VIII., Sec. 12.
By ballot—Const. 1895, Art. II., Sec. 1; Const. 1868, Art. VIII., Sec. 1.
Qualifications requisite to—Const. 1895, Art. II., Sec. 4; Const. 1868, Art. VIII., Sec. 2.
Disqualifications to—Const. 1895, Art. II., Sec. 6; Const. 1868, Art. VIII., Sec. 8.
Residence, requisite, what deemed—Const. 1895, Art. II., Sec. 7; Const. 1868, Art. VIII., Secs. 4 and 5.
Two-thirds convicts on impeachment—Const. U. S., Art. I., Sec. 3 Clause 6; Const. 1895, Art. XV., Sec. 2; Const. 1868, Art. VII. Sec. 2.

VOTE—*(Continued.)*

Two-thirds necessary to impeach—Const. 1895, Art. XV., Sec. 1; Const. 1868, Art. VII., Sec. 2.

Two-thirds expels a member—Const. U. S., Art. I., Sec. 5, Clause 2; Const. 1895, Art. III., Sec. 12; Const. 1868, Art. II., Sec. 15.

Two-thirds passes bill, &c., over veto—Const. U. S., Art. I., Sec. 7, Clause 2; Const. 1895, Art. IV., Sec. 23; Const. 1868, Art. III., Sec. 22.

Two-thirds necessary to treaty—Const. U. S., Art. II., Sec. 2, Clause 2.

Two-thirds to propose Constitutional amendments—Const. U. S., Art. V.; Const. 1895, Art. XVI., Sec. 1; Const. 1868, Art. XV., Sec. 1.

Two-thirds to call Constitutional Convention—Const. U. S., Art. V.; Const. 1895, Art. XVI., Sec. 3; Const. 1868, Art. XV., Sec. 3.

Two-thirds of States elects President in House—Const. U. S., Art. 12A.

Two-thirds removes disabilities (political)—Const. U. S., Art. 14A., Sec. 3; Const. 1895, Art. X., Sec. 12; Const. 1868, Art. IX., Sec. 15.

Two-thirds required to create new County—Const. 1895, Art. VII., Sec. 2.

Two-thirds required to alter County lines—Const. 1895, Art. VII., Sec. 7.

Two-thirds required to remove County seat—Const. 1895, Art. VII., Sec. 8.

Two-thirds required to increase State debt—Const. 1895, Art. X., Sec. 11; Const. 1868, Art. IX., Sec. 7; Const. 1868, Art. XVI.

Two-thirds authorizes removal of officer—Const. 1895, Art. XV., Sec. 4; Const. 1868, Art. VII., Sec. 4.

W

WAR—

Congress may declare—Const. U. S., Art. I., Sec. 8, Clause 11.

Congress may make Rules and Articles of—Const. U. S., Art. I., Sec. 8, Clause 14.

No State shall engage in, unless, &c.—Const. U. S., Art. I., Sec. 10, Clause 3.

Against United States; treason, &c.—Const. U. S., Art. III., Sec. 3, Clause 1.

Against the State, treason—Const. 1895, Art. I., Sec. 22.

WARRANTS—

Necessary to arrest, search or seizure—Const. U. S., Art. 4A.; Const. 1895, Art. I., Sec. 16; Const. 1868, Art. I., Sec. 22.

WATER WORKS—

Grant of right to erect, &c.—Const. 1895, Art. VIII., Sec. 4.

Municipalities may acquire—Const. 1895, Art. VIII., Sec. 5.

WATERS—

Navigable, highways, free use of—Const. 1895, Art. I., Sec. 28; Const. 1868, Art. I., Sec. 40.

Navigable, highways, forever free—Const. 1895, Art. XIV., Sec. 1; Const. 1868, Art. VI., Sec. 1.

WEIGHTS AND MEASURES—
Congress shall fix standard of—Const. U. S., Art. I., Sec. 8, Clause 5.

WELFARE—
Promotion of the general (Preamble)—Const. U. S.

WHARVES—
No tax for use of—Const. 1895, Art. I., Sec. 28; Const. 1868, Art. I., Sec. 40.

WHITE—
Person and negro; intermarriage prohibited—Const. 1895, Art. III., Sec. 33.
Person and negro; separate schools—Const. 1895, Art. XI., Sec. 7.

WIDOWS—
Pensions for certain—Const. 1895, Art. XIII., Sec. 5.

WINTHROP NORMAL AND INDUSTRIAL COLLEGE—
Provision as to—Const. 1895, Art. XI., Sec. 8.

WITNESS—
No one compelled to be, against himself—Const. U. S., Art. 5A.; Const. 1895, Art. I., Sec. 17; Const. 1868, Art. I., Sec. 13.
To be faced by accused—Const. U. S., Art. 6A.; Const. 1895, Art. I., Sec. 18; Const. 1868, Art. I., Sec. 13.
Accused shall have compulsory process for—Const. U. S., Art. 6A.; Const. 1895, Art. I., Sec. 18; Const. 1868, Art. I., Sec. 13.
Not to be unreasonably detained—Const. 1895, Art. I., Sec. 19; Const. 1868, Art. I., Sec. 38.
Disqualification of to be without distinction—Const. U. S., Art. I., Sec. 12.
Two witnesses required in treason—Const. U. S., Art. III., Sec. 3, Clause 1; Const. 1895, Art. I., Sec. 22.

WOMAN—
Age of consent—Const. 1895, Art. III., Sec. 33.
Eligible to certain offices, &c.—Const. 1895, Art. XVII., Sec. 1.
Married; property of; power to contract—Const. 1895, Art. XVII., Sec. 9; Const. 1868, Art. XIV., Sec. 8.
Married; consent required to alienation, &c., of homestead—Const. 1895, Art. III., Sec. 28.

WRITS—
Certain may be issued at chambers—Const. 1895, Art. V., Sec. 25.
Certain may be issued by Supreme Court—Const. 1895, Art. V., Sec. 4; Const. 1868, Art. IV., Sec. 4.
Certain may be issued by Common Pleas—Const. 1895, Art. V., Sec. 15; Const. 1868, Art. IV., Sec. 15.
Of *habeas corpus,* suspension of—Const. U. S., Art. I., Sec. 9, Clause 2; Const. 1895, Art. I., Sec. 23; Const. 1868, Art. I., Sec. 17.
Issued in name of State; attested by clerk—Const. 1895, Art. V., Sec. 31; Const. 1868, Art. V., Sec. 31.

WRITS—*(Continued.)*
Certain continued—Const. 1895, Art. XVII., Sec. 11.
Of election to fill vacancies in Congress—Const. U. S., Art. I., Sec. 2, Clause 4.
Of election to fill vacancies in Legislature—Const. 1895, Art. III., Sec. 25; Const. 1868, Art. II., Sec. 29.

Y

YEAS AND NAYS—
Entry on Journal, on demand of members—Const. U. S., Art. I., Sec. 5, Clause 3; Const. 1895, Art. III., Sec. 22; Const. 1868, Art. II., Sec. 26.
Entry on Journal, after veto—Const. U. S., Art. I., Sec. 7, Clause 2; Const. 1895, Art. IV., Sec. 23; Const. 1868, Art. III., Sec. 22.
Recorded, on bill to create public debt—Const. 1868, Art. IX., Sec. 7.
In Senate on nominations—Const. 1868, Art. XI., Sec. 3.
On address of removal to be recorded—Const. 1895, Art. XV., Sec. 4; Const. 1868, Art. VII., Sec. 4.
On amendments to Constitution—Const. 1895, Art. XVI., Sec. 1; Const. 1868, Art. XV., Sec. 1.

Rules of Practice in the Courts.

Rules of Court generally. Effect on statutory rights. Knobloch v. Bank, 43 S. C., 233; 21 S. E., 13; Grollman v. Lipsitz, 43 S. C., 329; 21 S. E., 272; Columbia W. P. Co. v. Columbia Land Co., 42 S. C., 488; 20 S. E., 378; 540.

Will be enforced when invoked. Johnson v. Johnson, 44 S. C., 556; 22 S. E., 419; Trimmier v. Thompson, 39 S. C., 554; 17 S. E., 782; 851; Lysaght v. Berkeley Company, 41 S. C., 554; 19 S. E., 747; Rice v. Mahaffey, 9 S. C., 283.

The Court will not let form over-ride substance. Ex parte Clyde, 14 S. C., 385.

An order in a cause not a rule of court. Scott v. Alexander, 27 S. C., 15; 2 S. E., 706.

Not to act retrospectively. Archer v. Long, 42 S. C., 545; 20 S. E., 539.

Rules of the Supreme Court of South Carolina.

RULE I.

Return.

When filed.

Dismissal of appeal for default.

Notice to be given.

Motion to restore.

For the purpose of an appeal to this Court the appellant shall cause the return to be made and filed with the Clerk of this Court within twenty days after the record constituting said return has been completed: *Provided,* That upon an *ex parte* application to any one of the Circuit Judges, upon good cause shown, the time for filing the return may be extended, not, however, beyond twenty days. If he fails to do so within the time prescribed by this rule, the appellant shall be deemed to have waived the appeal, and upon an affidavit to that effect, and the certificate of the Clerk of this Court that no return has been filed—as above required or as hereinafter permitted—the respondent may obtain from the Clerk of this Court an order dismissing the appeal for want of prosecution, with costs, and the Court below may thereupon proceed as though there had been no notice of appeal: *Provided,* That no appeal shall be dismissed by the Clerk under this rule unless the respondent shall give the appellant ten days notice, in writing, of the motion to dismiss, and the appellant shall fail to file the return on or before the time fixed in the notice of said motion: *Provided, however,* That upon it being made to appear to the satisfaction of this Court that such default on the part of the appellant has arisen from some excusable neglect, he may on motion, upon at least four days' notice, apply to this Court for an order reinstating the appeal: *Provided, further,* That upon a proper

showing for that purpose the Court before whom the motion is made may prescribe a shorter time.

As amended January 25, 1897: The jurisdiction of the Supreme Court attaches on the filing of the Return. Pickens v. Sullivan, 31 S. C., 602; 9 S. E., 743; State v. James, 34 S. C., 579; 13 S. E., 899; ex parte Whaley, 8 S. C., 344. And until then the Circuit Court may adjudge it abandoned. State v. Johnson, 52 S. C., 505; 30 S. E., 592. If the Appellant fail to have the return filed within the twenty days the Respondent may either cause same to be filed, under Code Civil Procedure, Sec. 340, or move to dismiss the appeal under this rule. In order to dismiss under the rule it must be strictly shown by affidavit and certificate of Clerk that no return has been filed within time limited. Dial v. Levy, 38 S. C., 552; 16 S. E., 838.

The court divided as to whether the notice required by this rule applies to motions before the court, as well as to motions before the clerk. McClenaghan v. McEachen, 56 S. C., 350; 34 S. E., 627; the ten days' notice is required before the clerk, Hayes v. Sease, 49 S. C., 388; 27 S. C., 406. It is not necessary that affidavit of respondent's attorney show that the return has not been filed. Lamb v. Padgett, 45 S. C., 534; 23 S. E., 628.

Rule enforced and appeal dismissed for failure to file return in time limited. Agnew v. Adams, 24 S. C., 90; Nabors v. Latimer, 30 S. C., 607; 10 S. E., 390; Abney v. Cole, 30 S. C., 607; 10 S. E., 390; Calvo v. R. R. Co., 30 S. C., 608; 10 S. E., 389; Talbird v. Whipper, 31 S. C., 601; 9 S. E., 742 Crosswell v. Association, 49 S. C., 375; 27 S. E., 388.

Even after cause has been docketed. Pregnall v. Miller, 26 S. C., 612; 7 S. E., 71. The record constituting the return is complete when the exceptions are served, and the time within which to file the return commences then, though the case may not be settled. Dial v. Levy, 38 S. C., 552; 16 S. E., 838; Cummings v. Wingo, 28 S. C., 610; 7 S. E., 48; Tribble v. Poore, 28 S. C., 565; 6 S. E., 577; Swygert v. Swygert, 30 S. C., 609; 9 S. E., 657; Talbot v. Gladney, 30 S. C., 609; 9 S. E., 658; State v. Keels, 39 S. C., 553; 17 S. E., 724; 802; Lamb v. Padgett, 45 S. C., 534; 23 S. E., 628; DeSchamps v. Ins. Co.. 45 S. C., 536; 23 S. E., 737.

The record constituting the return is not complete during extension of time granted Appellant to serve exceptions. Cunningham v. Cauthen, 34 S. C., 575; 13 S. E., 322.

Appeal re-instated, Davis v. Pollock, 35 S. C., 584; 13 S. E., 897; Buerhaus v. DeSaussure, 39 S. C., 548; 17 S. E., 500; Geddes v. Hutchinson, 39 S. C., 550; 17 S. E., 560; McNair v. Craig, 34 S. C., 9; 12 S. E., 367; 664; Putney v. McDow, 52 S. C., 428; 30 S. E., 1005. Cummings v. Wingo, 30 S. C., 610; 7 S. E., 48; Stoddard v. Roland, 31 S. C., 600; 9 S. E., 741; Newman v. Clyburn, 40 S. C., 459; 19 S. E., 494.

Re-instated on condition. Dial v. Levy, 38 S. C., 552; 16 S. E., 838; Hughes v. Shingle Co., 47 S. C., 1; 128 S. E., 1023; Jacobs v. Gilreath, 44 S. C., 557; 21 S. E., 885.

Motions to re-instate appeals refused. State v. Moore, 26 S. C., 614; 7 S. E., 72. Beattie v. Latimer, 41 S. C., 552; 19 S. E., 748; Trimmier v. Thompson, 39 S. C., 554; 17 S. E., 782; 852; Harmon v. Lexington, 32 S. C., 583; 10 S. E., 552; Shley v. Thompson, 32 S. C., 582; 10 S. E., 550; Talbird v. Whipper, 31 S. C., 601; 9 S. E., 742; Harle v. Morgan, 31 S. C., 600; 9 S. E., 742; Pregnall v. Miller, 26 S. C., 612; 7 S. E., 71; Abney v. Cole, 30 S. C., 607; 10 S. E., 390; Calvo v. R. R. Co., 30 S. C., 608; 10 S. E., 389; Talbot v. Gladney, 30 S. C., 609; 9 S. E., 658; Ballew v. Anderson, 31 S. C., 602; State v. Keels, 39 S. C., 553; 17 S. E., 724; 802; Venable v. Charvous, 40 S. C., 545; 18 S. E., 943; Margenhoff v. Margenhoff, 40 S. C., 545; 18 S. E., 942; Tompkins v. R. R. Co., 40 S. C., 550; 18 S. E., 893; O'Leary v. Bradley, 40 S. C., 551; 18 S. E., 933; N. E. Mortgage Co. v. McMillan, 41 S. C., 541; 19 S. E., 692; 695.

When motion to re-instate must be made. Archer v. Long, 42 S. C., 545; 20 S. E., 539.

RULE II.

When the appeal is from a Judgment, the return spoken of in the foregoing Rule shall consist of copies of the Judgment Roll, the notice of appeal and exceptions, certified to by the Clerk of the Court below. When the appeal is from an Order, as allowed by the eleventh Section of the Code of Procedure, the return shall consist of copies of the Order appealed from, with the papers upon which the Court below acted in granting the Order, together with the notice of appeal and the exceptions: *Provided, however,* If the parties agree upon a statement of the case, as allowed by an Act entitled "An Act to facilitate and save expenses in appeals," approved the 5th of March, 1875, such statement, with the notice of appeal and exceptions, shall constitute the return.

Return. What to contain.

Code Civil Proc., § 345, s. d. 5.

Contents of Return. Sullivan v. Thomas, 3 S. C., 548.

Proviso that agreed case shall constitute return. Pregnall v. Miller, 26 S. C., 612; 7 S. E., 71. Gardner v. Mays, 26 S. C., 613; 7 S. E., 71; McNair v. Craig, 34 S. C., 9; 12 S. E., 367, 664; Davis v. Pollock, 35 S. C., 584; 13 S. E., 897.

A proposed case with amendments accepted is not such agreed case. Geddes v. Hutchinson, 39 S. C., 550; 17 S. E., 560.

"The Case must not only be agreed to but it must also be agreed that such case shall constitute the return. Nabors v. Latimer, 30 S. C., 607; 10 S. E., 390. The agreement of the parties is substituted for the rule of Court. Talbot v. Gladney, 30 S. C., 609; 9 S. E., 658; Swygert v. Swygert, 30 S. C., 609; 9 S. E., 658.

ADJUDICATIONS.

The return and "Case," or "Brief," for argument, move on separate and distinct lines. The respondent may have the appeal dismissed under Rule 1, because the return has not been filed, though the "Case," or "Brief," for argument, has been properly made up and served upon him; and he may have the appeal dismissed for default of appellant in not serving three printed copies of the Case or Brief on respondent, although the return has been filed in due time.

The agreed Statement, intended by the "Act to facilitate and save expenses in appeals," approved March 5th, 1875, (Code, Sec. 345,) to constitute the appeal, should be filed, and the Case, or Brief, for argument, served in the time required; otherwise the respondent is entitled to have the appeal dismissed. In other words, that Act does not dispense with the other requirements as to the return so made up, and the Case, or Brief, for the purpose of the argument.—Gardner et al v. Mays et al, 26 S. C., 613; 7 S. E., 71.

The "Case," or "Brief," as prepared for argument, is no part of the Judgment Roll. This is elaborately discussed and settled by the Court in the case of Tribble vs. Poore, 28 S. C., 565; 6 S. E., 577.

The return should be certified to in writing by the Clerk of the Circuit Court; or, in case of an agreed statement, signed in writing by the attorneys; though it is not necessary that the return itself should be in writing.—Dickson v. Screven et al, December 8th, 1884. Manuscript decision.

RULE III.

If said return be defective, either party may, on affidavit specifying the defect, and, after eight days' notice to the oppo-

Return. Remedy for defects.

site party, apply to one of the Justices of this Court for an order that the appellant cause a further return to be made without delay.

See Green v. Railroad Co., 6 S. C., 344; Redding v. Railroad Co., 5 S. C., 68; Hornesby v. Burdell, 9 S. C., 306; Ransom v. Anderson, *Ib.*, 441.

RULE IV.

Attorneys. Guardians *ad litem.*

The attorneys and guardians *ad litem* of the respective parties in the Court below, shall be deemed the attorneys and guardians of the same parties respectively in this Court, until others shall be retained or appointed, and notice thereof shall be served on the adverse party. When any party to a judgment, brought by appeal into this Court, shall die pending such appeal, any party in interest shall be entitled to move the Court for an order making the proper representative of such deceased person a party to such appeal; and when, by reason of such decease, the proper parties appellant are not before the Court, and due means to have the parties represented on the record of this Court are not taken at the next ensuing term, the respondent shall be entitled, on due proof of such facts, to move this Court to dismiss such appeal.

Representatives of deceased parties.

Practice as to substitution of legal representative. Aultman v. Utsey, 35 S. C., 596; 14 S. E., 289; 351.

RULE V.

Case or Brief.

The "Case" required to be served by the second Section of the Act in relation to appeals, approved December 9, 1878, shall set forth the following particulars:

What to contain.

1. The title of the action.

2. The times of commencement of action.

3. The names of all parties to the action, designating which of them are appellants and which are respondents.

4. The general nature and character of the pleadings, specifying such defendants as answered or demurred, and the general nature of each answer when several answers are filed.

5. When issues of fact are settled, the order settling the same.

6. The mode in which the case was tried, whether by the Court, by a jury, or by referees.

7. When error of law is alleged, the facts or conclusions of fact to which such error relates.

8. When error of fact is alleged, the evidence or fact on which the determination complained of was based.

9. The judgment, order, finding, ruling or decision complained of.

10. If error is alleged in the charge to the jury, the request to charge the charge and exceptions.

11. When the question to be determined involves the construction of any pleading, judgment, order, charge or instrument, the whole matter thereof shall be set forth; but if only some matter constituting a distinct and separate part thereof is involved in such construction, only such distinct and separate part need be stated in full, and the residue thereof may be briefly stated according to its general nature and effect.

12. All changes in parties.

13. The date of the judgment or order appealed from.

14. Copy of the exceptions.

Provided, however, If the parties agree upon a "statement of the case," as allowed by an Act entitled "An Act to facilitate and save expenses in appeals," approved March 5, 1875, such statement shall constitute said "Case." If the case is voluminous, an index to the pleading, exhibits, depositions and other principal matters shall be added.

Exceptions.

An exception for the purpose of an appeal must contain a statement of the proposition of law or fact which it is desired to review; and a mere reference to an exception taken to the report of the Master or Referee, or to the decree of a Judge of Probate, will not be sufficient, and an exception so taken will not be considered.

Case.

In the preparation of the "Case" for argument in this Court, where amendments have been proposed and allowed, the "Case" must be printed; or in a Case where printing is dispensed with, must be written, as it would read after the amendments allowed are incorporated; and it will not be sufficient to set out the proposed amendments with a statement as to which of them have been allowed.

Amended December 22, 1892.

If a Respondent in a case, in which such a practice is allowed, desires to sustain the judgment appealed from upon other grounds than those upon which it is rested by the Circuit Judge, he must give written notice thereof to the Attorney for Appellant stating the additional grounds upon which he proposes to rely; and said notice must be served in time to have the same

Amended December 17, 1896.

printed in the "Case" as prepared for argument in the Supreme Court.

In the preparation of the "Case" for argument in this Court, in which plats or diagrams are referred to which are larger than a page of the "Case," such plats or diagrams must not be attached to the "Case," but must be filed separately.

Amended June 4, 1900.

"Whenever an appeal shall be taken under the provisions of Section 345, Sub-Division I. of the Code of Procedure, and the party served with a case with exceptions, or his attorney, shall within ten days after the service of such case, propose any objection thereto or alteration thereof, and serve a copy on the party proposing the case with exceptions, or his attorney, then the party proposing the case, or his attorney, may within four days thereafter serve the opposite party, or his attorney, with the notice that the proposed case with the proposed objections or alterations will be submitted at a time and place to be specified in the notice (to be not less than four nor more than twenty days after the service of such notice) to the Judge, before whom the cause was tried for settlement: *Provided,* That the Judge before whom the cause was tried, or any Judge of this Court, may at any time on application within twenty days after the service of such notice, extend the time for settling such cause. Should the Judge before whom the cause was tried be disabled by death or any other cause from settling the case, the same may then be settled before any Judge presiding or next to preside in the Circuit in which the cause was tried."

As to the settlement of the case on appeal see Rule 50 of the Circuit Court. The rule refers only to the case for argument in the Supreme Court. Nott v. Thomson, 35 S. C., 590; 14 S. E., 23.

Where the case does not conform to the rule and fails to give an intelligent statement of the case and grounds of appeal it will be stricken from the docket. Shumate v. Powell, 5 S. C., 286. It must state enough of the facts to show the relevancy of the questions raised. Charles v. Jacobs, 6 S. C., 73; all proceedings had in the cause relative to the points raised by the appeal. Sullivan v. Thomas, 3 S. C., 531. For the Court can only consider such facts as are stated in the case. Sheriff v. Welborn, 14 S. C., 487; State v. Richardson, 47 S. C., 18; 24 S. E., 1028; Bowen v. Stribling, 47 S. C., 61; 24 S. E., 986; Moore v. Parker, 13 S. C., 489; State v. Coleman, 17 S. C., 473; Burnett v. Burnett, 17 S. C., 552; Avery v. Wilson, 47 S. C., 78; 25 S. E., 286; Sawyer v. Macauley, 18 S. C., 545; Sullivan v. Sullivan, 20 S. C., 511; Greenville v. Eichelberger, 44 S. C., 351; 22 S. E., 345; Quick v. Campbell, 45 S. C., 3; 22 S. E., 479; State v. Satterwhite 20 S. C., 538; Scott v. Alexander, 23 S. C., 125; Hubbard v. Camperdown, 25 S. C., 496; 1 S. E., 5; Archer v. Ellison, 28 S. C., 238; 5 S. E., 713; State v. Levelle, 34 S. C., 120; 13 S. E., 319; Sherard v. R. R. Co., 35 S. C., 467; 14 S E., 952; Kuker v. Purvis, 42 S. C., 10; 19 S. E., 1014; Young v. Green, 46 S. C., 12; 23 S. E., 981; In re Perry, 42 S. C., 183; 20 S. E., 84; Moore v. Perry, 42 S. C., 369; 20 S. E., 200; Whaley v. Bartlett, 42 S. C., 454; 20 S. E., 745; Meinhard v. Youngblood, 37 S. C., 223; 15 S. E., 947; State v. Leonard, 32 S. C., 201; 10 S. E., 1007; Connor v. Ashley, 41 S. C., 67; 19 S. E., 201; Shaw v. Cunningham,

16 S. C., 631; Stackhouse v. Wheeler, 17 S. C., 105. Lowrimore v. Mfg. Co., 60 S. C., 167; 38 S. E., 430; in re estate Neubert, Burkim v. Pinkhussohn, 58 S. C., 469; 36 S. E., 908; Mitchell v. Bates, 57 S. C., 44; 35 S. E., 420; Thompson v. Brown, 56 S. C., 304; 33 S. E., 454; Cudd v. Calvert, 54 S. C., 457; 32 S. E., 503; Moody v. Dickinson, 54 S. C., 526; 32 S. E., 563; Turpin v. Sudduth, 53 S. C., 295; 31 S. E., 245; 306; Devereaux v. McCready, 53 S. C., 387; 31 S. E., 294; Lesley v. Lesley, 53 S. C., 44; 30 S. E., 635; Gaines v. Drakeford, 51 S. C., 37; 27 S. E., 960; McCants v. McCants, 51 S. C., 503; 29 S. E., 387; Bratton v. Burris, 51 S. C., 45; 28 S. E., 13; State v. Moore, 49 S. C., 438; 27 S. E., 454; Thompson v. Brown, 48 S. C., 350; 26 S. E., 655. But only such testimony. as is necessary to understand the rulings and charge of the judge in a law case need be inserted in the case. Hines v. Jarrett, 26 S. C., 480; 2 S. E., 393. The dates should be affixed to all papers in the case. Ketchen v. Landecker, 32 S. C., 156; 10 S. E., 936. Fooshe v. Merriwether, 20 S. C., 339; Crane, Boyleston & Co. v. Lipscomb, 24 S. C., 435; Robert v. Pawley, 50 S. C., 491; 27 S. E., 913.

How matters omitted in case may be brought to the attention of the Court.—State v. Wilder, 13 S. C., 347.

Matter stated only in the exceptions, and not in case, cannot be considered.—Lites v. Addison, 27 S. C., 226; 3 S. E., 214; Welch v. Gleason, 28 S. C., 247; 5 S. E., 599; Daniel v. Hester, 29 S. C., 147; 7 S. E., 65; Hodges v. Tarrant, 31 S. C., 608; 9 S. E., 1038; Richards v. Munro, 30 S. C., 284; 9 S. E., 108; Brown v. McWhite, 30 S. C., 356; 9 S. E., 277; Fishburne v. Smith, 34 S. C., 330; 13 S. E., 525; Dobson v. Cothran, 34 S. C., 518; 13 S. E., 679; Rucker v. Smoke, 37 S. C., 377; 16 S. E., 40; Gentry v. R. R. Co., 38 S. C., 284; 16 S. E., 893; Whitney v. R. R. Co., 38 S. C., 365; 17 S. E., 147; Thackston v. R. R. Co., 40 S. C., 80; 18 S. E., 177; State v. Morrow, 40 S. C., 221; 18 S. E., 853; State v. Ezzard, 40 S. C., 312; 18 S. E., 1025; Geddes v. Hutchinson, 40 S. C., 402; 19 S. E., 9; Simmons v. Bank, 40 S. C., 177; 19 S. E., 502; Rose v. Bank, 41 S. C., 177; 19 S. E., 487; Batesburg v. Mitchell, 58 S. C., 564; 37 S. E., 36; Simon v. Sabb, 56 S. C., 38; 36 S. E., 799; State v. Scarborough, 56 S. C., 48; 33 S. E., 779; Sloan v. Courtenay, 54 S. C., 314; 32 S. E., 431; Smith v. Walke, 43 S. C., 381; 21 S. E., 249.

Clerk cannot dismiss for defects in case.—Easterby v. McIntosh, 51 S. C., 190; 28 S. E., 403. The Court will only dismiss for wilful disregard of rule in printing as proposed instead of as amended.—Crosswell v. Assn., 51 S. C., 221; 28 S. E., 402.

Appeal dismissed where case did not contain the judgment appealed from.—All v. Hiers, 59 S. C., 557; 38 S. E., 157.

The index is not essential to case.—Archer v. Long, 35 S. C., 587; 14 S. E., 24.

Nor need the order of settlement be printed in it.—Watson v. Neal, 35 S. C., 595; 14 S. E., 289.

Exceptions; sufficiency under Constitution of 1895, Art. V., Sec. 8.—State v. Meares, 60 S. C., 527; 39 S. E., 245; Garrett v. Weinberg, 59 S. C., 162; 37 S. E., 51, 225.

The exception must state clearly and specifically the proposition of law or fact sought to be reviewed; too general.—Swygert v. Wingard, 48 S. C., 321; 26 S. E., 653; Jumper v. Bank, 48 S. C., 430; 26 S. E., 725; Avery v. Wilson, 47 S. C., 78; 25 S. E., 286; Electric Co. v. Blacksburg Co., 46 S. C., 75; 24 S. E., 43; Howard v. Quattlebaum, 46 S. C., 95; 24 S. E., 93; Floyd v. Floyd, 46 S. C., 184; 24 S. E., 100; Lagrone v. Timmerman, 46 S. C., 372; 24 S. E., 290; State v. Derrick, 44 S. C., 345; 22 S. E., 337; Johnson v. Johnson, 44 S. C., 364; 22 S. E., 419; Marshall v. Creel, 44 S. C., 484; 22 S. E., 597; ex parte Moscato, 44 S. C., 335; 22 S. E., 308; Groesbeck v. Marshall, 44 S. C., 538; 22 S. E., 743; Vann v. Howle, 44 S. C., 546; 22 S. E., 735; Sims v. Jones, 43 S. C., 92; 20 S. E., 905; Norton v. Livingston, 14 S. C., 178; Cureton v. Dargan, 16 S. C., 619; State ex rel. Detheridge v. Gilreath, 16 S. C., 105; Paris v. Dupre, 17 S. C., 288; Walker v. Walker, 17 S. C., 388; Lanier v. Tolleson, 20 S. C., 62; Bauskett v. Keitt, 22 S. C., 200; State v. Turner, 18 S. C., 104; McDaniel v. Stokes, 19 S. C., 61; Cureton v. Stokes, 20 S. C., 583; Johnson v. Frazee, 20 S. C., 427; McLure v. Lancaster, 24 S. C., 280; Cureton v. Westfield, 24 S. C., 460; Coln v. Coln, 24 S. C., 597; Weatherby v. Covington, 51 S. C., 55; 28 S. E., 1; Tucker v. Ry. Co., 51 S. C., 306; 28 S. E., 943; Pearson v. Spartanburg, 51 S. C., 480; 29 S. E.,

193; Hayes v. Sease, 51 S. C., 534; 29 S. E., 259; Peeples v. Warren, 51 S. C., 560; 29 S. E., 2; Gable v. Rauch, 50 S. C., 95; 27 S. E., 555; State v. Aughtry, 49 S. C., 285; 26 S. E., 619; 27 S. E., 199; Miller v. Bank, 49 S. C., 427; 27 S. E., 514; Burwell v. Chapman, 59 S. C., 581; 38 S. E., 222; Norhden v. R. R. Co., 59 S. C., 87; 37 S. E., 228; Norris v. Clinkscales, 59 S. C., 232; 37 S. E., 821; State v. Whittle, 59 S. C., 297; 37 S. E., 923; Elliott v. Jeter, 59 S. C., 483; 38 S. E., 124; Cromer v. Watson, 59 S. C., 488; 38 S. E., 126; Watts v. R. R. Co., 60 S. C., 67; 38 S. E., 240; Westbury v. Simmons, 57 S. C., 467; 35 S. E., 764; Alexander v. McDaniel, 56 S. C., 252; 34 S. E., 405; State v. Washington, 55 S. C., 372; 33 S. E., 453; Camden v. Roberts, 55 S. C., 374; 33 S. E., 456; Anderson v. Dicks, 55 S. C., 398; 33 S. E., 505; Sloan v. Courtney, 54 S. C., 314; 32 S. E., 431; Rawls v. Johns, 54 S. C., 394; 32 S. E., 451; Drakeford v. Supreme Conclave Knights of Damon, 61 S. C., 338; 39 S. E., 523; Hawkins v. Collins, 61 S. C., 537; 39 S. E., 768; Walters v. Cotton Mills, 53 S. C., 155; 31 S. E., 1; Butler v. W. U. Tel. Co., 62 S. C., 222; 40 S. E., 162; Levi v. Gardner, 53 S. C., 24; 30 S. E., 617; Lesley v. Lesley, 53 S. C., 44; 30 S. E., 635; Connor v. Johnson, 53 S. C., 90; 30 S. E., 833; Bomar v. Means, 53 S. C., 232; 31 S. E., 234; Garrick v. R. R. Co., 53 S. C., 448; 31 S. E., 334; Armour v. London, 53 S. E., 539; 31 S. E., 580;Calvert v. Nickles, 26 S. C., 304; 2 S. E., 116; Dial v. Agnew, 28 S. C., 454; 2 S. E., 295; Scott v. Alexander, 27 S. C., 15; 2 S. E., 706; Peeples v. Cummings, 45 S. C., 107; 22 S. E., 730; Mole v. Folk, 45 S. C., 265; 22 S. E., 882; Whilden v. Pearce, 27 S. C., 44; 2 S. E., 709; Meinhard v. Strickland, 29 S. C., 491; 7 S. E., 838; Hodge v. Fabian, 31 S. C., 212; 9 S. E., 820; Young v. Garlington, 31 S. C., 290; 9 S. E., 960; Simmons v. Reid, 31 S. E., 389; 9 S. E., 1058; Association v. Jones, 32 S. C., 308; Fishburne v. Smith, 34 S. C., 330; 13 S. E., 525; Dobson v. Cothran, 34 S. C., 518; 13 S. E., 679; State v. Turner, 36 S. C., 535; 15 S. E., 602; Connor v. Edwards, 36 S. C., 563; 15 S. E., 706; Dendy v. White, 36 S. C., 570; 15 S. E., 712; Cunningham v. Cauthen, 37 S. C., 124; 15 S. E., 917; State v. Davenport, 38 S. C., 348; 17 S. E., 37; Stone v. Fitts, 38 S. C., 393; 17 S. E., 136; Summer v. Kelly, 38 S. C., 507; 17 S. E., 364; State v. Floyd, 39 S. C., 24; 17 S. E., 505; Jumper v. Bank, 39 S. C., 296; 17 S. E., 980; Greene v. Tally, 39 S. C., 338; 17 S. E., 779; Moorer v. Andrews, 39 S. C., 427; 17 S. E., 948; Thackston v. R. R. Co., 40 S. C., 80; 18 S. E., 177; State v. Atkinson, 40 S. C., 363; 18 S. E., 1021; Geddes v. Hutchinson, 40 S. C., 402; 19 S. E., 9; Williams v. Washington, 40 S. C., 457; 19 S. E., 1; Davis v. Elmore, 40 S. C., 533; 19 S. E., 204; Aultman v. Utsey, 41 S. C., 304; 19 S. E., 617; Knox v. Moore, 41 S. C., 355; 19 S. E., 683; Buerhaus v. DeSaussure, 41 S. C., 457; 19 S. E., 926; Younts v. Starnes, 42 S. C., 22; 19 S. E., 1011; Whaley v. Bartlett, 42 S. C., 454; 20 S. E., 745; State v. Nance, 42 S. C., 421; 20 S. E., 279; Levi v. Blackwell, 35 S. C., 511; 15 S. E., 243; Elkins v. R. R. Co., 59 S. C., 1; 37 S. E., 20; Humphrey v. Campbell, 59 S. C., 39; 37 S. E., 26; Hampton v. Ray, 52 S. C., 74; 29 S. E., 537; Willoughby v. Ry. Co., 52 S. C., 156; 29 S. E., 629; Swearengen v. Ins. Co., 52 S. E., 309; 29 S. E., 722; Lauraglenn Mills v. Ruff, 52 S. C., 448; 30 S. E., 587; McGee v. Wells, 52 S. C., 472; 30 S. E., 602.

Exceptions should not merely refer back to exceptions to referee's report.—Bouknight v. Brown, 16 S. C., 164; Chapman v. Lipscomb, 18 S. C., 230; Harbin v. Parker, 19 S. C., 598; Covar v. Sallat, 22 S. C., 271; State v. Seabrooke, 42 S. C., 74; 20 S. E., 58; Huggins v. Watford, 38 S. C., 504; 17 S. E., 363; Ross v. Charleston County, 42 S. C., 447; 20 S. E., 285.

Exceptions referring to paragraphs of the complaint by number.—Ross v. Charleston Co., 42 S. C., 447; 20 S. E., 285.

An exception should not be in the form of an argument.—Alsobrook v. Watts, 19 S. C., 543; Cunningham v. Cauthen, 37 S. C., 124; 15 S. E., 917; Hall v. Hall, 45 S. C., 33; 22 S. E., 881.

Points not made by exception considered in *favorem vitae*.—State v. Davis, 27 S. C., 609; 4 S. E., 567; State v. Workman, 39 S. C., 151; 17 S. E., 604; State v. McNinch, 12 S. C., 89; State v. Washington, 13 S. C., 455; State v. Dodson, 14 S. C., 619.

But generally in the absence of a specific exception, error cannot be considered.—Pinckney v. Inglesby, 28 S. C., 345; 5 S. E., 823; Stedham v. Creighton, 28 S. C., 609; 9 S. E., 465; Talbott v. Padgett, 30 S. C., 167; 8 S. E., 845; Bryce v. Massey, 35 S. C., 127; 14 S. E., 768; Rumph v. Hiott, 35 S. C., 44; 15 S. E., 235; Davis

v. Cardue, 38 S. C., 471; 17 S. E., 247; Gadsden v. Desportes, 39 S. C., 132; 17 S. E., 706; Ryttenberg v. Keels, 39 S. C., 204; 17 S. E., 441; Beasley v. Newell, 40 S. C., 17; 18 S. E., 224; Cooke v. Poole, 26 S. C., 321; 2 S. E., 609; Miller v. Carrier, 30 S. C., 617; 9 S. E., 350, 741; Beattie v. Latimer, 42 S. C., 313; 20 S. E., 53; Frazee v. Beattie, 26 S. C., 348; 2 S. E., 125; Cureton v. Dargan, 16 S. E., 619; Ellis v. Cribb, 55 S. C., 328; 33 S. E., 484; Keller v. Pagan, 54 S. C., 255; 32 S. E., 353.

Exceptions based on misconceptions overruled.—Spellman v. R. R. Co., 35 S. C., 475; 14 S. E., 947; State v. Toland, 36 S. C., 516; 15 S. E., 599; Suber v. Chandler, 36 S. C., 344; 15 S. E., 426; Geddes v. Hutchinson, 40 S. C., 402; 19 S. E., 9; Buerhaus v. DeSaussure, 41 S. C., 457; 19 S. E., 926; 20 S. E., 64; Moss v. Johnson, 36 S. C., 551; 15 S. E., 709; Martin v. Bowie, 37 S. C., 103; 15 S. E., 736; Cheatham v. Morrison, 37 S. C., 188; 15 S. E., 924; Greene v. Duncan, 37 S. C., 240; 15 S. E., 956; Richardson v. Wallace, 39 S. C., 216; 17 S. E., 725; Bickley v. Bank, 43 S. C., 529; 21 S. E., 886; 39 S. C., 281; 17 S. E., 977; State v. Morrow, 40 S. C., 221; 18 S. E., 853; Heyward v. Farmers' Mining Co., 42 S. C., 139; 19 S. E., 963; Long v. McKissick, 50 S. C., 218; 27 S. E., 636; Sadler v. Nicholson, 49 S. C., 7; 26 S. E., 893; State v. Moore, 49 S. C., 438; 27 S. E., 454; State v. Sullivan, 43 S. C., 206; 21 S. E., 4.

Exception must contain a statement of the finding of fact or matter excepted to.—Holtzclaw v. Green, 23 S. E., 515; 45 S. C., 494; Metz v. Bank, 45 S. C., 216; 23 S. E., 13.

Only a party who has answered and is affected by the decision can except.—Early v. Law, 42 S. C., 330; 20 S. E., 136; White v. Coleman, 38 S. C., 556; 17 S. E., 21; State v. Rhodes, 44 S. C., 42; 21 S. E., 807; 22 S. E., 306.

Nor can a party in default.—Washington v. Hesse, 56 S. C., 28; 33 S. E., 787; Odom v. Burch, 52 S. C., 305; 29 S. E., 726.

Failing to charge what was not requested no ground of exception.—State v. Atkinson, 33 S. C., 100; 11 S. E., 693; Ellis v. Mason, 32 S. C., 277; 10 S. E., 1069; Davis v. Elmore, 40 S. C., 533; 19 S. E., 204; Sullivan v. Jones, 14 S. C., 365; Stackhouse v. Wheeler, 17 S. C., 105; State v. Coleman, 17 S. C., 473; Sawyer v. Macauley, 18 S. C., 545; McPherson v. McPherson, 21 S. C., 267; State v. Jenkins, 21 S .C., 596; Long v. Ry. Co., 50 S. C., 49; 27 S. E., 531.

After settlement of case by Circuit Judge leave may be given by the Supreme Court to appellant to file additional exceptions to the charge as settled.—McNamee v. Huckabee, 20 S. C., 192.

But after the appeal has been perfected, an amendment to an exception cannot, ordinarily, be allowed for the purpose of making a new point; it may be allowed to amplify a point already made.—Watts v. R. R. Co., 60 S. C., 67; 38 S. E., 240.

Additional grounds to sustain Circuit Court.—Sumner v. Harrison, 54 S. C., 625; 32 S. E., 572; Norris v. Ins. Co., 55 S. C., 450; 33 S. E., 566; Graham v. Seignous, 53 S. C., 132; 31 S. E., 51.

A constitutional objection to a statute not raised below cannot be considered on appeal as an additional ground to sustain the judgment.—Hunter v. Bamberg Co., 63 S. C., 129; 41 S. E., 26.

An exception based on point not made below will not be considered.—Bryce v. Cayce, 62 S. C., 546; 40 S. E., 948; Hutmacher v. Charleston Consolidated &c., R. R. Co., 63 S. C., 123; 40 S. E., 1039; Lampley v. A. C. L. R. R. Co., 63 S. C., 123; 41 S. E., 517; Hicks v. So. Ry. Co., 63 S. C., 559; 41 S. E., 753.

The case must show that the ground of appeal was passed on by the Circuit Court.—Lampley v. A. C. L. R. R. Co., 63 S. C., 123; 41 S. E., 517; Hicks v. So. Ry. Co., 63 S. C., 569; 41 S. E., .

The case must also show the entry of judgment on the verdict rendered, or appeal will be dismissed.—Hutmacher v. Charleston Consolidated Ry. &c., Co., 63 S. C., 124; 40 S. E., 1029; All v. Hiers, 59 S. C., 557; 38 S. E., 157.

The Supreme Court has power to require conformity to the order of the Circuit Court settling a case on appeal, and may remand a case to the Circuit Court for further settlement. But the Supreme Court has no power itself to say what the case shall contain.—Baker v. Irvine, 62 S. C., 293; 40 S. E., 672.

Exceptions held too general—Thompson v. Security Trust and Life Ins. Co., 63 S. C., 290; 41 S. E., 464; State ex rel de Zabaljauregui v. Commissioners of Pilotage, 62 S. C., 511; 40 S. E., 959; Smith v. Bradstreet Co., 63 S. C., 524; 41 S. E., 763.

RULE VI.

Printed papers. How prepared.

All papers printed for the use of the Court shall be on white writing paper, in book form; and each Case or other paper comprising more than two leaves shall be stitched or bound. Such printed matter may conform, as to external form and dimensions, and as to dimensions of printed page, to the volumes of the current series of the South Carolina Reports.

Small pica solid is the smallest and most compact mode of composition allowed. The folio (of one hundred words), numbering from the commencement to the end of the case, shall be printed on the outer margin of the page.

Title.

Each separate paper printed for the use of the Court shall instead of being endorsed, set forth on the first page, or, if covered, on the first page of the cover, the following particulars: The style of the Court, the title of the cause, which, in case of appeal, shall stand as it stood in the Circuit Court, without further change than adding the words "Appellant" and "Respondent," so as to indicate the parties appealing to this Court, the nature of the paper, and the names of the attorneys.

Effect of non-compliance with this Rule.

No charge for printing the papers mentioned in this rule shall be allowed as a disbursement in a cause, unless the foregoing requirements shall be shown, by affidavit, to have been complied with in all papers hereafter printed, nor where the Brief shall be held by the Court to be insufficient.

Amended 22 April, 1898.

"If a party to an action or proceeding in the Court shall file with the Clerk of the Court an affidavit that he or she is unable to pay for the printing of any briefs, report or other paper connected with his or her appeal, he or she shall not be required to print the same.

"Typewriting will be permitted only when a good quality of ink is used, with ordinary spacing upon linen paper of ordinary weight, eight by thirteen inches in size.

"Papers in typewriting must have a blank margin of an inch and a half on the left. If more than two pages of typewriting be used they shall be fastened at the top so as to read continuously.

"Papers in typewriting shall be folded from the bottom in four equal folds indorsed in the manner hereinbefore provided as to printed papers.

"It shall be the duty of the Clerk of the Court to see that this Rule is complied with before filing any of said papers.

RULE VII.

Case or Brief. Service of. Effect of non-compliance.

Within twenty days after the "Case" has been settled or agreed upon, the appellant shall serve three printed copies of the Case, or Brief, as prepared for argument, on the attorney of the adverse party. If he fail to do so the respondent may, by notice in writing, require the service of such copies within ten days after the service of the notice; and if the copies be not served in pursuance of such notice the appellant shall be deemed to have waived the appeal; and on affidavit proving the default and the service of such notice, the respondent may enter an order with the Clerk, dismissing the appeal for want of prosecution, with costs; and the Court below may proceed as though there had been no appeal.

Notice of motion to dismiss.—Dial v. Levy, 38 S. C., 552; 16 S. E., 838; DeLoach v. Sarratt, 58 S. C., 117; 36 S. E., 532; McClenaghan v. McEachern, 56 S. C., 350; 34 S. E., 627.

Rule enforced.—Wallace v. Thomson, 36 S. C., 604; 15 S. E., 510; Lysaght v. Berkeley, 41 S. C., 554; 19 S. E., 747; Stokes v. Greenville, 14 S. C., 629.

Before the rule specified that the copies served should be printed, the service of three manuscript copies on respondent's attorney was sufficient.—Detheridge v. Gilreath, 14 S. C., 617.

Motion to restore to the docket an appeal dismissed under this rule must be on affidavit.—Stokes v. Greenville, 14 S. C., 629.

Where failure to serve case is caused by unavoidable failure of stenographer to furnish transcript of evidence and charge, the appeal will not be dismissed. Wilson v. So. Ry. Co., 64 S. C., 162; 36 S. E., 701.

RULE VIII.

Case or Brief. Points. How disposed of.

Three days previous to the commencement of the argument of any case, the counsel for the appellant shall deliver to the Clerk of the Court ten copies of the Case or Brief, which shall be disposed of as follows: one copy to each of the Justices, one for the Court, one for the Reporter, and one for the Library of the Supreme Court; and at the same time each party shall deliver to the Clerk eight copies of the points, as required by Rule IX, six copies to be disposed of as above stated, and the remaining two copies to be delivered to the counsel of the other party on demand.

Amended Dec. 17, 1896.

Parties failing to furnish points will be confined to the discussion of questions that arise upon such points as shall be furnished by other parties to the cause, in accordance with this Rule.

Construed.—Wade v. Couch, 32 S. C., 583; 10 S. E., 1103; Hargrove v. Washington, 32 S. C., 584; 10 S. S., 616; Archer v. Long, 42 S. C., 545; 20 S. E., 539.

Enforced.—Dial v. Dial, 33 S. C., 606; 12 S. E., 474; Hill v. Salinas, 33 S. E., 606; 12 S. E., 475; Randolph v. Hahn, 33 S. E., 609; 12 S. E., 600; Garrison v.

Nesbit, 33 S. C., 610; 12 S. E., 628; Booker v. Smith, 33 S. C., 611; 12 S. E., 628; Barnett v. Faust, 33 S. C., 612; 12 S. E., 664; Veronee v. Bell, 33 S. C., 612; 12 S. E., 664; Ussery v. Vogel, 36 S. C., 604; 15 S. E., 512; Mortgage Co. v. Telford, 38 S. C., 547; 16 S. E., 719; Russell v. Russell, 38 S. C., 547; 16 S. E., 839; Mortgage Co. v. McMillan, 41 S. C., 547; 19 S. E., 692, 695; Archer v. Long, 41 S. C., 551; 19 S. E., 696; Mortgage Co. v. Brown, 39 S. C., 552; 17 S. E., 724; Trimmier v. Thompson, 39 S. C., 554; 17 S. E., 782, 851.

RULE IX.

Statement.

Points and authorities.

The points referred to in Rule VII shall be preceded by a brief statement of the nature of the action and defences, and the nature of the question brought up by appeal, and shall set forth the proposition of law and fact relied on, and a note of the authorities and reference by folio to the evidence when an examination of the evidence is necessary.

At the opening of the case such statement shall be first read, after which counsel may read such portions of the record as they may deem necessary for a proper understanding of the points made. But this Court will not consider any fact which does not appear in the "Case" as prepared for argument in this Court; and, therefore, it is altogether useless for counsel to embody in their arguments, or in the statement of facts preceding the points and authorities required by this Rule, any fact which does not appear in the "Case" as agreed upon or settled. Nor will any fact stated in the exception or grounds of appeal which does not appear in the "Case" be considered by the Court. If counsel desire to add any facts to those stated in the "Case," they must either obtain the written consent of opposing counsel to the insertion of such additional facts, or they must, upon due notice, move this Court before the argument commences, to recommit the "Case" to the Circuit Court for amendment.

No rule can be laid down as to how much should be printed in the points and authorities.—McElwee v. Kennedy, 59 S. C., 335; 37 S. E., 920.

After the printed case has been served, the Court may, on motion, recommit the case to the Circuit Court in order to obtain a further statement from the Circuit Judge as to the proceedings below.—Smith v. Lowery, 55 S. C., 50; 32 S. E., 1038.

RULE X.

Docketing causes.

Order of docket.

Upon the filing of the return of the Court below, in conformity with the rules of this Court, the cause will be docketed by the Clerk. Causes will be placed upon the docket according to the respective Circuits in which they originally depended, and in the order in which the returns were filed. Every cause

shall be docketed before the first day of each term, and not afterwards, except by consent of the opposite party.

See Code Civil Procedure, Sec. 13, as to what causes shall have preference. Second appeal to be heard in order of first.—Mayo v. Ry. Co., 43 S. C., 225; 21 S. E., 10.

See also the following unreported manuscript decisions:

The Court refused to docket case by consent, after the Circuit had been passed for that term.—Hellam v. Abercrombie, January 27th, 1880.

Causes docketed by consent after the first day of the term cannot be forced to a hearing.—Whaley, Adm'r v. Keith et al, January 23d, 1882; Trimmier v. Winsmith, January 27th, 1885.

After the docket is made up, if a party desires to take up a case out of its order therein, under Section 13 of the Code, he should move to do so, after notice, on the first day of the term.—LeConte v. Irwin, January 16th, 1885; Hall v. Woodward, January 11th, 1889.

RULE XI.

Default of appearance.

If, on the call of a cause, either party fail to appear, or shall neglect to furnish and deliver the papers required by Rule VIII, the opposite party may proceed as follows: the appellant may argue or submit the Cause in his behalf; the respondent may have an order dismissing the appeal; *Provided, however,* that the Court, in its discretion, may reinstate an appeal dismissed for such default if good cause be shown therefor, under a motion to that effect, of which at least one day's notice shall be given to the attorney of the opposite party; such motion to be made during the time assigned for the call of cases from the Circuit from which such appeal comes, or as soon thereafter as it is practicable to give the required notice.

Order upon.

When neither party appears to argue, on the call of a cause, it will stand continued at the first term.

Amended July 1, 1894.

Dismissal for want of prosecution where appellant fails to appear.—State v. Salters, 39 S. C., 553; 17 S. E., 724; Scott v. Carpenter, 13 S. C., 44.

Dismissal for failure to file points and authorities.—See cases cited in note to Rule 8, *ante;* also Vaughn v. Morgan, 31 S. C., 602; 9 S. E., 743.

Reinstated after dismissal.—Baker v. Irvine, 61 S. C., 115; 39 S. E., 252.

RULE XII.

Criminal causes. Order of hearing.

Criminal causes shall have a preference, and may be moved, on behalf of the State, out of their order.

RULE XIII.

Counsel. Limited in time.

In the hearing of causes in this Court, counsel will be limited to one hour on each side, in which will be counted the time occupied in reading the brief or case, and the time thus allowed may be apportioned amongst the counsel on the

same side at their discretion; *Provided, however,* that the counsel for appellant be allowed twenty minutes in which to reply to the argument of respondent, whether the time allowed appellant for his opening argument (one hour) be consumed or not; *Provided, however,* that such time may be extended upon special application, in writing, to be filed before the case is called for hearing, stating reasons satisfactory to the Court for such extension.

Not to read from books.

Hereafter counsel, in the course of their argument, will not be permitted to read from books, except by special leave of the Court, which will only be granted in such exceptional cases as, in the opinion of the Court, may call for a departure from this Rule. When counsel wish to quote from books, they will be required to use written or printed extracts therefrom.

RULE XIV.

Members of the Bar and officers of the Court not to sign as sureties.

No member of the Bar or officer of the Court shall sign, as surety, any bond or other obligation which may be required by an order of this Court, under pain of being in contempt.

RULE XV.

Members of the Bar. Dress.

No member of the Bar will be heard unless wearing a black coat.

RULE XVI.

Attorneys.

Affidavits before.

Amended July 1, 1894.

No affidavit will be considered by the Court, or the Clerk thereof which has been sworn to before any party interested in the cause or proceeding in which such affidavit may be offered.

Affidavits before attorneys of record, prior to amendment.—Beattie v. Latimer, 41 S. C., 552; 19 S. E., 748.

RULE XVII.

No argument after decision.

Counsel shall not attempt to argue or explain a case, or any matter arising therein, after he has been heard, and the opinion of the Court has been pronounced.

RULE XVIII.

Consent must be in writing.

No private agreement or consent between the parties or their attorneys, in respect to the proceedings in a cause, shall be bind-

ing, unless the same shall have been reduced to the form of an order by consent and entered; or unless the evidence thereof shall be in writing, subscribed by the party against whom the same shall be alleged, or by his attorney or counsel.

RULE XIX.

Special motions. When heard.

Motions, other than those that arise on the call of a cause, will be heard at the opening of the Court on the morning of the day fixed for the call of causes from the Circuit to which they appertain, and not afterwards, without the special leave of the Court.

Notice.

When a party intends to move the Court that an appeal be dismissed, or the cause stricken from the docket, for any irregularity in the taking of the appeal, or in the record filed in this Court, such motion must be made at the time assigned by this Rule for the hearing of special motions.

All motions, whether made before the Court, or a Justice at Chambers, as to all matters of fact involved, not appearing on the record filed in this Court, and not appertaining to the class of which this Court takes judicial notice, must be made on affidavits, copies of which must be served on the opposite party, with notice of the motion, in conformity with Chap. XI, Title 12, Second Part of the Code of Procedure, at least four days before the day on which such motion may be heard; *Provided,* that upon a proper showing for that purpose, the Court, or Justice before whom the motion is made, may prescribe a shorter time.

(Code, §§ 408-418.)

Motion to dismiss appeal will not generally be entertained, where notice has not been given. Fripp v. Williams, 14 S. C., 505. See also DeLoach v. Sarratt, 58 S. C., 117; 36 S. E., 532; McClenaghan v. McEachern, 36 S. C., 350; 34 S. E., 624; Dial v. Levy, 38 S. C., 552; 16 S. E., 838.

Should appeal be dismissed on ground that the order appealed from is not appealable, where parties have agreed on a case, in which notice of intention to make such motion is not incorporated. Devereaux v. McCready, 53 S. C., 387; 31 S. E., 294.

Where it is impracticable to make the motion at the regular time, the same may be heard at some other time by special leave of the Court. This special leave is not necessary in order to give the required notice, but may be obtained on the day when the motion is made.—The State v. Prather, 26 S. C., 614; 2 S. E., 108.

Motions made during the session of the Court, though cognizable by a single justice, must be made to the Court. See minutes of January 20th, 1882.

Motion to suspend appeal in order to allow motion on the Circuit for a new trial on after-discovered evidence dismissed, the appellant not having given the notice required by this Rule.—The State v. Jacobs, 28 S. C., 609; 6 S. E., 577.

Where the notice was given, but the affidavit relied on to support it was not served, the Court dismissed the motion.—Stokes v. Greenville, 14 S. C., 629.

Motion to dismiss appeal form an order, not appealable, may be made at any time.

State v. Merriman, 34 S. C., 577; 12 S. E., 328; 898; State v. James, 34 S. C., 580; 13 S. E., 325; 899; State v. LeVelle, 36 S. C., 600; 15 S. E., 380.

Motion to reinstate appeal dismissed by Clerk; notice required. Cummings v. Wingo, 28 S. C., 610; 7 S. E., 48.

RULE XX.

Remittitur. Form of. When to be sent to the Court below.

The remittitur shall contain a copy of the judgment of the Court, and shall be sealed with the seal and signed by the Clerk of the Court, and shall not be sent to the Court below until ten days after the final determination, unless this Court shall otherwise direct. When a decree or order shall be affirmed or an appeal dismissed by default of apearance by the appellant, the remittur shall not be sent to the Court below, unless this Court shall otherwise direct, until ten days after notice of the affirmance or dismissal shall have been served on the attorney of the party in default. Service of notice shall be proved to the Clerk, by affidavit, or by written admission of the attorney on whom it was served.

Stay of remittitur. Amended 22d Dec., 1892. How obtained.

On application to either of the Justices at Chambers, an order may be granted for a further stay of the remittitur for such time as he may deem proper, not beyond the third day of the ensuing term, subject to the order of the Court; *Provided,* a petition for that purpose be presented, stating specifically the grounds of such application, with a certificate from some counsel not concerned in the cause, that there is merit in such grounds, accompanied with a consent in writing, signed by the parties and not by the counsel, that the stay of the remittitur shall be granted upon condition that the status of the property involved in the case shall not be disturbed until after the final determination of the case.

Time within which to act under an order is stayed during appeal therefrom, until the filing of the remittitur. Barnwell v. Marion, 56 S. C., 54; 33 S. E., 719.

When the Supreme Court remands a case for further proceedings, all questions are open for trial on circuit, except those specifically decided on appeal. Jennings v. Parr, 54 S. C., 109; 32 S. E., 73.

Rehearing of decided case. Hartsfield v. Chamblin, 44 S. C., 112; 21 S. E., 798.

When the remittitur is sent by the Clerk of the Supreme Court to the Circuit Court the jurisdiction of the Supreme Court ends. Pringle v. Sizer, 3 S. C., 337; Whaley v. Bank, 5 S. C., 262; Ex parte Dial, 14 S. C., 584; Ex parte Dunnovant, 16 S. C., 300; Brooks v. Brooks, 16 S. C., 261; Ex parte Knox, in re Cothran v. Knox, 17 S. C., 217; Hand v. R. R. Co., 17 S. C., 264; State v. Way, 38 S. C., 333; 17 S. E., 39.

Directed to issue forthwith. Coleman v. Curtis, 36 S. C., 607; 15 S. E., 709; 16 S. E., 770; State v. Wilson, 39 S. C., 554; 17 S. E., 752; State v. Levelle, 38 S. C., 216; 16 S. E., 717; 17 S. E., 30.

Stay of Remittitur revoked. State v. Turner, 36 S. C., 608; 16 S. E., 687.

fused. State v. Jacobs, 28 S. C., 609; 6 S. E., 577; Hammett v. Hammett, 38 S. C., 51; 16 S. E., 293; 839.

Stay of Remittitur revoked. State v. Turner, 36 S. C., 608; 16 S. E., 687.

Motions to recall remittitur refused. State v. Merriman, 35 S. C., 607; 14 S. E., 394; State v. Keels, 39 S. C., 553; 17 S.E., 802.

Contents of remittitur. Ex parte Dunnovant, 16 S. C., 300; State v. Levelle, 38 S. C., 216; 16 S. E., 717; 17 S. E., 30.

But extension may be allowed by the Court where notice was served after expiration of time. Bryson v. Whitney, 55 S. C., 51; 32 S. E., 1038.

RULE XXI.

Order for extension of time or stay of proceedings.

The time prescribed by these Rules for doing any act may be enlarged by the Court, or by either of the Justices thereof; and either of the Justices may make orders in any cause pending in this Court to stay proceedings, which, when served with the papers on which it was made, shall stay the proceedings, according to the terms of the order. Any order may be revoked or modified by the Justice who made it, or, in case of his absence or inability to act, by either of the other Justices.

Motion to enlarge time should be made before expiration of time. Stribling v. Johns, 16 S. C., 115; Scurry v. Coleman, 14 S. C., 166.

Enlarging time. Code Civil Procedure, Sec. 348; Pelzer v. Cely, 40 S. C., 432; 18 S. E., 780.

Stay of sale pending appeal. Ry. Co. v. Sheppard, 42 S. C., 543; 20 S. E., 481.

RULE XXII.

Ex parte order. Rule to show cause. Service of. Contempt.

To make the service of an *ex parte* order, or rule to show cause, effectual, a copy of the affidavits, or other proofs on which it was granted, must be served with a copy of such order or rule; and in order to bring any person into contempt for the disobedience of an order the original order must be exhibited to such person, and a copy thereof left with him. When any person avoids the service of an order, on application to this Court, or to one of the Justices thereof, making proof of such fact, special directions will be given as to the service thereof.

RULE XXIII.

Applicants for admission to practice.

Applicants for admission to practice as attorneys and counsellors in this Court, who are entitled to examination, shall be examined in open Court, at a regular term thereof, and no private examination shall be permitted.

Applications therefor shall be in writing accompanied by the proofs required by law, and shall be filed on or before the second Tuesday of each regular term. After the petitions are filed, a day for examinations will be appointed, of which due notice will be given.

Course of study.

In pursuance of an Act entitled "An Act to enable citizens of this State to apply for admission to the Bar," approved December 23, 1879, the following course of study is hereby prescribed for persons wishing to apply for admission to practice in the Courts of this State, viz: Blackstone's Commentaries; Kent's Commentaries; Parson on Contracts or Chitty on Contracts; Daniel on Negotiable Instruments, or Chitty on Bills; Williams on Executors; Pomeroy on Remedies; Greenleaf on Evidence; Story's Equity Jurisprudence, or Adam's Equity; Daniel's Chancery Pleading and Practice; Bishop on Criminal Law; Bishop on Criminal Procedure; Constitution of the United States; Constitution of South Carolina; General Statutes of South Carolina; and all Acts of public nature which have been passed since the adoption of the General Statutes; Rules of the Supreme Court, Circuit and Probate Courts.

Rules as to the admission of attorneys.

In accordance with the provisions of the foregoing Act of the Legislature (19 Stats., 521,) requiring the examination of applicants for admission to the Bar to be in writing, the following Rules are established for the conduct of such examination:

1. The examination will be conducted in the Supreme Court Room, during which no person will be admitted to the room, except the Justices of the Supreme Court, the applicants, and the officers of the Court.

2. Each applicant will be furnished with a copy of the questions to be answered numbered in regular order, together with the stationery necessary for the preparation of the answers, which must be numbered in the same order as the questions.

3. Each applicant, as he completes his answers, will sign the certificate appended to the questions, deliver the same, both questions and answers attached together to the Clerk of the Court, and retire from the room.

4. No conversation upon any subject will be permitted in the Court Room during the progress of the examination.

5. The examination papers will be delivered by the Clerk to the Justices of the Court as soon as they are completed, and the result will be announced by the Court as soon thereafter as practicable.

The attention of applicants is called to the provision of the Act of the Legislature, requiring the payment of a fee of five dollars in *advance*.

RULE XXIV.

Motions at Chambers. Will not be heard on written application.

No motion will be heard by the Court or by either of the Justices at Chambers on written applications. If the counsel on record cannot attend, the motion must be submitted by counsel representing them.

RULE XXV.

Rules. When to take effect. Former Rules.

These Rules as hereby amended and republished shall take effect on the 1st day of July, 1879, from which time all rules inconsistent herewith are abrogated, except so far as it may be necessary to follow them in cases where causes are already prepared for argument; and except, also, that all cases not herein provided for are governed by the existing rules and practice of this Court and of the late Court of Appeals, so far as such rules and practice are conformable to existing laws.

Rules of Practice for the Circuit Courts of South Carolina.

RULE I.

Statutes and Rules.

Every Clerk of the Circuit Court who cannot produce the Statutes at large, the Rules of Court and the Bar Calendar, when required, shall be fined ten dollars for each default.

RULE II.

Clerk to keep books.

The several Clerks of the Circuit Courts shall keep in their respective offices a book, properly indexed, in which shall be entered the titles of all civil papers filed, the orders made, and the steps taken therein, with the dates of the several proceedings; also, an index of all undertakings filed in the office, stating in appropriate columns, the title of the cause or proceeding in which it is given, (with a general statement of its condition) or a reference to a Statute under which it is given, the date, when and before whom approved, and when filed, with a statement of any disposition or order made of or concerning it; and such other books, properly indexed, as may be necessary to enter the minutes of the Court, record judgments, enter orders and all necessary matters and proceedings.

RULE III.

Entry of judgment.

The Clerk shall not enter, without special leave of the Court, any judgment until the expiration of five days after the Court has adjourned for the term.

RULE IV.

Sheriff.

Sheriff to file affidavits on arrests.

The Sheriff shall file with the Clerk the affidavits on which an arrest is made, within five days after the arrest.

RULE V.

Sheriff compelled to return process.

At any time after the day when it is the duty of the Sheriff, or other officer, to return or deliver or file any process, undertaking, orders, or other papers, by the provisions of the

Code of Procedure, any party entitled to have such act done may serve on the officer a notice to return, deliver or file such process, undertaking, order, or other paper, as the case may be, within ten days, or show cause, at a time to be designated in said notice, why attachment should not issue against him.

Elmore v. Davis, 4 S. C., 33.

RULE VI.

Appointment of guardian *ad litem.*

No person other than the general guardian of an infant shall be appointed guardian *ad litem,* either on the application of the infant or otherwise, who is not fully competent to understand and protect the rights of the infant; who has any interest adverse to that of the infant, or who is connected in business with the attorney or counsel of the adverse party; nor shall the attorney of the adverse party represent the guardian *ad litem.* And the same rule as to the appointment of guardian *ad litem* shall apply to other persons incapable of representing themselves.

Morgan v. Morgan, 45 S. C., 323; 23 S. E., 64.

RULE VII.

Attorneys and Officers.

Change of attorney.

An attorney may be changed by consent, or upon cause shown, and upon such terms as shall be just, upon the application of the client, by order of the Circuit Judge, and not otherwise.

RULE VIII.

Dress of attorneys.

The habit of the gentlemen of the Bar and all officers of the Court except constables shall be black coats; and no gentleman of the Bar shall be heard if otherwise habited; and it shall be the duty of the Sheriff to attend to the execution of this Rule.

RULE IX.

Attorneys and other officers not to be sureties.

No attorney or other officer of the Court shall become surety upon any recognizance in the Court of General Sessions, or upon any undertaking in the Court of Common Pleas. Attorneys and other officers violating this Rule shall be punished as for a contempt of Court.

RULE X.

If the plaintiff resides beyond the State, security for costs may be required. Whenever security for costs shall be required the following form and no other shall be regarded as a compliance with the order:

Security for costs.

Form of undertaking.

STATE OF SOUTH CAROLINA,

..........................COUNTY

A. B.
vs.
C. D.

Complaint For

I (or we as the case may be) acknowledge my self (or ourselves) liable for the costs of this case in the sum .... dollars, and consent that if the plaintiff fail to recover, the defendant may have execution for his costs against me (or us, as the case may be) for not exceeding said sum.

Given under .... hand this .... day of .... A. D., 190

E. F.

Witness:

Approved:

G. H.
C. C. P. & G. S.

The amount to be inserted therein shall be fixed by the Clerk after careful examination of the whole case; *Provided, however,* that if the same be in the opinion of any party to the cause, insufficient, application may be made on notice, as in the case of any other interlocutory application, for an order fixing the amount for which such security, or any additional security shall be given.

This rule shall not be construed as to prevent the plaintiff or others for him when security for costs is required from the deposit of a sum of money, as authorized by the Act entitled "An Act to authorize the deposit of money in proceedings in the Courts of this State as security in lieu of bonds and undertakings," approved 17th February, 1897; the sum to be deposited to be fixed by the Clerk as hereinbefore provided.

Deposit in lieu of undertaking.

Construed: Dulany v. Elford, 22 S. C., 304; Bomar v. R. R. Co., 30 S. C., 456; 9 S. E., 512; Cummings v. Wingo, 31 S. C., 431; 10 S. E., 107.

Security can only be required in Circuit Court. R. R. Co. v. Earle, 13 S. C., 44. When succeeding judge may or may not grant further time to give security. Williams v. Connor, 14 S. C., 621; Burk v. Dillingham, 8 Rich., 256.

What is not a compliance with order. Willis v. Potter, 9 Rich., 411.
Order not appealable. McMillan v. McCall, 2 S. C., 390.
How security may be enforced. Earle v. Cureton, 13 S. C., 19; Stuckey v. Croswell, 12 Rich., 273.
May be required from relator. Tharin v. Seabrooke, 6 S. C., 114.

RULE XI.

Argument and request to charge.

Counsel shall not attempt to argue or explain a case, or any matter arising therein, after he has been heard and the opinion of the Court has been pronounced; nor shall one attorney interrupt another in the course of his argument without first obtaining the permission of the Court.

Before the argument of the case commences the counsel on either side shall read and submit to the Court in writing such propositions of law as they propose to rely on, which shall constitute the request to charge; *Provided, however,* that nothing herein contained shall prevent either counsel at the close of the argument from submitting such additional requests as may be suggested by the course of the argument, or from withdrawing any or all of the requests submitted at the beginning of the argument. When required by the Court, counsel shall note in the margin opposite each request the authorities relied on in support of the propositions of law therein contained, and also produce the same.

Amended 18th Dec., 1896.

Required requests to charge to be submitted. McPherson v. McPherson, 21 S. C., 267; Youngblood v. R. R. Co., 60 S. C., 9; 38 S. E., 232; Lourimore v. Mfg. Co.; 60 S. C., 167; 38 S. E., 430; State v. Wine, 58 S. C., 94; 36 S. E., 439; Wagener v. Kirven, 56 S. C., 126; 36 S. E., 439.
Time to present requests. State v. Hutchings, 24 S. C., 145.
Circuit Judge may dispense with the reading of the requests to charge. Herskovitz v. Baird, 59 S. C., 307; 37 S. E., 922.
If any part of a request to charge is unsound, the judge may refuse to charge it.—Earle v. Poat, 63 S. C., 439; 41 S. E., 525. As to the necessity for a request for more specific statement of law, see Smith v. S. C. & G. R. R. Co., 62 S. C., 322; 40 S. E., 665; Brassington v. S. B. R. R. Co., 62 S. C., 322; 40 S. E., 665; Kirby v. So. Ry. Co., 63 S. C., 494; 41 S. E., 765.

RULE XII.

Manner of preparing papers.

All original pleadings and other proceedings shall be written on legal cap paper, or printed in acordance with the requirements of Rule VI of the Supreme Court.

Typewriting will be permitted only when black indelible ink is used, with ordinary spacing upon linen paper weighing not less than four pounds to five hundred single cap sheets, eight by thirteen inches in size; and each page of typewriting shall be numbered and initialed by the attorney, officer or person signing such paper.

Amended 17th Dec., 1895.

It shall be the duty of the Clerk of the Court to see that papers are numbered and initialed as herein prescribed before filing.

Papers in handwriting or in typewriting must have a blank margin of an inch and a half on the left. If more than two pages of handwriting or typewriting be used, they shall be fastened at the top so as to read continuously.

Papers in handwriting or in typewriting shall be folded from the bottom in four equal folds and endorsed with the style of Court, the venue, the name of the parties, the nature of the paper, and the name of the attorney or officer.

RULE XIII.

Pleadings to be legibly written and endorsed.

All pleadings and other proceedings, and copies thereof, shall be fairly and legibly written or printed, and endorsed with the title of the cause; and if not so written or printed and endorsed, the Clerk shall not file the same, nor will the Court hear any motion or application founded thereon.

RULE XIV.

Consent must be in writing.

No agreement or consent between the parties, or their attorneys, in respect to the proceedings in a cause shall be binding, unless the same shall have been reduced to the form of an order by consent and entered; or unless the evidence shall be in writing, subscribed by the party against whom the same shall be alleged, or by his attorney or counsel; or unless made in open Court and noted by the presiding Judge or the Stenographer on his minutes by the direction of the presiding Judge.

RULE XV.

DEFAULT ORDERS.

Orders by default taken by counsel.

When any order is obtained by default the counsel obtaining the same shall endorse his name as counsel on the paper containing the proof of notice, and the Clerk in entering the order shall specify the name of such counsel.

RULE XVI.

MASTER'S OR REFEREE'S REPORT.

Master or Referee to file report in Clerk's office.

The Master or Referee in all cases of reference, having prepared his report, shall file the same in the Clerk's office,

and at the same time give notice to the attorneys engaged in the cause of such filing, and the party who shall be dissatisfied therewith shall, within ten days after such notice, serve his exceptions thereto. Such notice of the filing of the Master's or Referee's report shall be deemed and taken as service of such report.

RULE XVII.

Notice of Appearance or Retainer.

Notice of appearance or retainer.

Service of notice of appearance or retainer generally by attorney for the defendant shall in all cases be deemed an appearance, and the plaintiff on filing such notice, at any time thereafter, with proof of service thereof, may have the appearance of the defendant entered as of the time when such notice was served.

RULE XVIII.

Numbering causes of action or ground of defense.

In all cases of more than one distinct cause of action, defense, counter-claim or reply, each shall be separately stated and numbered; and where the defendant intends to set up a counter-claim, it shall be distinctly entitled and designated as such.

Demurrer.

A demurrer must, in every case, be accompanied by a certificate of the counsel filing it that it is meritorious, and not intended merely for delay.

Motion to dismiss complaint.

A motion to dismiss a complaint or answer on the ground that the complaint does not state facts sufficient to constitute a cause of action, or the answer does not state facts sufficient to constitute a defense, may be made orally, but the grounds upon which said motion is made must be reduced to writing by the counsel submitting the same, or taken down by the Stenographer under the direction of the Court, stating wherein the pleading objected to is insufficient.

Amended 17th Dec., 1895.

A motion for a nonsuit must be reduced to writing by the moving counsel, or by the Stenographer, under the direction of the Court, stating the grounds of the motion.

Counter claim sufficiently stated; no particular form prescribed. Co-operative Publishing Co. v. Walker, 61 S. C., 315; 39 S. E., 525.

Grounds for non-suit not presented to Circuit Judge cannot be considered on appeal.—Hicks v. So. Ry. Co., 63 S. C., 566; 41 S. E., 753.

It is a sufficient compliance with the rule, that a written demurrer be interposed stating merely that the complaint does not state facts sufficient to constitute a cause of action; and the specific grounds of objection, showing wherein it is insufficient, is submitted in writing at the hearing. Riggs v. Home, &c., Ass'n., 61 S. C., 448; 39 S. E., 615.

The Supreme Court cannot consider whether respondent complied with this rule, by submitting grounds of demurrer in writing, where the "case" fails to show such question was made on circuit. Elkins v. R. R. Co., 59 S. C., 1; 37 S. E., 20; nor can the Court consider additional defects not brought to the attention of the Court below, to sustain demurrer. Norris v. Ins. Co., 55 S. C., 454; 33 S. E., 566.

Certificate to demurrer, requirement construed. Elliott v. Pollitzer, 24 S. C., 85.

RULE XIX.

Time to answer not extended without certificate of merits.

No order extending the time to answer or demur to a complaint shall be granted unless the party applying for such order shall present to the Judge to whom the application shall be made a certifiicate of the attorney or counsel retained to defend the action, that, from the statement made to him by the defendant, he verily believes that the defendant has a good and substantial defense upon the merits to the cause of action set forth in the complaint or to some part thereof. And if any extension of time to answer or demur has been previously granted by stipulation or order, the fact shall be stated in the certificate.

Subsequent extension.

RULE XX.

Motions to amend pleadings.

Motions to strike out of any pleading matter alleged to be irrelevant or redundant, and motions to correct a pleading on the ground of its being "so indefinite or uncertain that the precise nature of the charge or defence is not apparent," must be noticed before demurring or answering the pleading, and within twenty days from the service thereof.

Construed. Ruff v. R. R. Co., 42 S. C., 118; 20 S. E., 27; Whaley v. Lawton, 53 S. C., 582; 31 S. E., 660; State v. Norris, 15 S. C., 242; Cohrs v. Fraser, 5 S. C., 351.

Practice on such motions. Long v. Hunter, 48 S. C., 179; 26 S. E., 228; Savage v. Sanders, 51 S. C., 179; 29 S. E., 248.

RULE XXI.

Defense of *plene administravit.*

The defense of *plene administravit* shall not be effectual unless the party making such defense shall file with the pleading, on oath, a full and particular account of the administration of the estate, with a certified copy of the inventory and appraisement; or, if the party be charged as executor of his own wrong, a full statement, on oath, of all the assets which have come into his possession, and the value thereof, and an account showing the manner in which the same may have been disposed of.

Willis v. Tozer, 44 S. C., 10; 21 S. E., 617.

RULE XXII.

Real owner admitted to defend action against tenant.

Where a tenant is sued for land of which he is in possession, the real owner may, on motion, be admitted as a defendant to the action, and shall be entitled to the service of a copy of the complaint, and to answer or demur thereto, as if he had been the original defendant.

Whenever an action to recover the possession of real estate shall be brought against any person claiming to be the owner thereof, and such person intends to vouch any grantor under and through whom he claims title, he shall vouch such person in writing and before the time for answering has expired; and the person so vouched may, if he desires, be permitted to apply to the Judge of the Circuit Court in which the action is brought, within twenty days from being so vouched, to come in and make such additional defenses as he may desire.

RULE XXIII.

Juries.

Venire and summons for jurors.

To all writs of *venire* for jurors, the Sheriff and his deputies shall make a return, on oath, before the Clerk of the Court from which the *venire* issues, including in *one* class the names of those who have been summoned personally; in the *second* class, of those for whom summonses have been left at their houses; and in the *third* class, of those who could not be found. The summons for each juror shall state the day, the hour, and the Court, at which he is to appear, the penalty for default, and, also, whether he is to serve as a grand or petit juror.

RULE XXIV.

Defaulting jurors.

If any juror, in attendance upon the Court, shall refuse or neglect to attend punctually, and to answer to his name whenever the same shall be called, the Clerk shall note such default, and the defaulter shall forthwith be served with a rule to show cause why he should not be fined therefor. Upon the adjournment of each term of the Court, the Clerk shall cause to be served by the Sheriff on each and every juror noted for non-attendance at that Court a notice, requiring him to show cause, by affidavit, at ten o'clock on the first day of the next regular term, why he should not be fined, according to law, for failing to attend and serve as a grand or petit juror, as the case may be.

Judgment against.

And on or before the first day of the next regular term the Sheriff shall make return of all such notices to the Clerk, who shall, after entering the same on the Contingent Docket, deliver them to the Attorney-General or solicitor, and the Attorney-General or solicitor shall, upon the call of the Docket, move for the judgment of the Court thereon.

RULE XXV.

Jury in criminal cases.

In the empanelling of a jury in criminal cases, where the right of peremptory challenge is claimed and allowed a child under ten years of age shall, in the presence of the Court, draw one from the names of all the jurors in attendance, which one, having answered, shall be presented to the accused; and so on until, in regular course, the panel be exhausted or a jury formed.

Construed. State v. Campbell, 35 S. C., 31; 14 S. C., 292; State v. Cardoza, 11 S. C., 196; State v. White, 15 S. C., 381.

RULE XXVI.

Common Pleas Calendar.

No Clerk shall enter a cause on the Calendar until the pleadings are made up. And no cause shall be entered on the Calendar except by the Clerk or his Deputy.

No cause shall be on more than one Calendar at the same time; except in cases in which some of the defendants have pleaded and others have made default.

Causes may be entered on Docket 3 at any time after the time for answering has expired and before the beginning of the term; after the beginning of the term no cause shall be entered on said Docket by the Clerk or his Deputy except by leave of the Court.

Where an issue has been settled by an order of the Court, the Clerk shall give it place on the Calendar according to the date of the order.

The Clerk shall preserve the Calendars as records of the Court. He shall not only number the causes thereon but shall indicate the number of terms they may have been at issue; and he shall, also, in a separate column, copy the memoranda of the disposition of the case at the previous term.

During the daily sessions of the Court the Calendars shall not be subject to the inspection of the Bar; but it shall be the duty of the Clerk to make a copy of the several Calendars, in a Book designated "Bar Calendar," for the use of the Bar.

RULE XXVII.

Motions for continuance.

No motion for the postponement of trial beyond the term, either in the Common Pleas or General Sessions, shall be granted on account of the absence of a witness, without the oath of the party, his counsel or agent, to the following effect, to wit: That the testimony of the witness is material to support the action or defense of the party moving; that the motion is not intended for delay, but is made solely because he cannot go safely to trial without such testimony; that he has made use of due diligence to procure the testimony of the witness; or of such other circumstances as will satisfy the Court that his motion is not intended for delay. In all such cases where a writ of subpœna has been issued, the original shall be produced, with proof of service, or the reason why not served, endorsed thereon or attached thereto; or, if lost, the same proof shall be offered, with additional proof of the loss of the original subpœna.

A party applying for such postponement on account of the absence of a witness shall set forth under oath in addition to the foregoing matters what fact or facts he believes the witness is present would testify to, and the grounds of such belief.

RULE XXVIII.

Issues in equity causes, how tried by jury.

In equity cases where a trial by jury of issues of fact may be desired, the party desiring a jury trial shall within ten days after issue joined give notice in writing of his intention to move the Court, upon the first day of the next term, immediately after the call of Docket No. 3, for an order requiring that the whole issue or certain specified questions of fact involved be tried by a jury. With the notice of motion shall be served a copy of the questions of fact proposed to be submitted to the jury for trial and in proper form to be incorporated in the order. (If the adverse party desires to submit any other issue of fact to the jury, he shall within four days from the service of such motion upon him notify the party giving the notice, in writing, of his intention to move the Court, at the same time, to submit certain issues to the jury for trial, specifying the issues.)

The Court on hearing the motion may settle the issues, if any are deemed necessary.

Construed. McCarter v. Armstrong, 32 S. C., 203; 10 S. E., 953; Ex parte Apeler, 35 S. C., 417; 14 S. E., 931; Neal v. Suber, 56 S. C., 298; 33 S. E., 463; Lucken v. Wichman, 5 S. C., 412.

RULE XXIX.

Calling plaintiff submitting to nonsuit.

It shall not be necessary to call the plaintiff when the jury return to the bar to deliver their verdict, and the plaintiff shall have no right to submit to a non-suit after the jury have gone from the bar to consider of their verdict.

RULE XXX.

Submitting to non-suit or dismissal before a Master or Referee; form of Master's or Referee's report.

On a hearing before a Master or Referee, the plaintiff may submit to a non-suit or dismissal of his complaint, or may be non-suited, or his complaint be dismissed, in like manner as upon a trial, at any time before the cause has been finally submittted to the Master or Referee for his decision; in which case the Master or Referee shall report according to the fact, and judgment may thereupon be perfected by the defendant.

Proceedings on references other than of the issues.

Upon a trial by a Master or Referee, he shall, in his decision or report, state the facts found by him and his conclusions of law separately, a copy of which shall be served with notice of the judgment; and the time within which exceptions may be taken to the report shall be computed from the time of such service.

In references other than for the trial of the issues in an action, upon the coming in of the report of the Master or Referee the same shall be filed, and a note of the day of the filing shall be entered by the Clerk in the proper book, under the title of the cause or proceeding; and the said report shall become absolute and stand as in all things confirmed unless exceptions thereto are filed and served within ten days after service of notice of the filing of the same. If exceptions are filed and served within such time, the same may be brought to a hearing on the notice of any party interested therein.

A point in report not excepted to within ten days cannot be reviewed. Verner v. Perry, 45 S. C., 262; 22 S. E., 888. Cureton v. Mills, 13 S. C., 410.

Failure to report findings of fact and conclusions of law separately. Bollman v. Bollman, 6 S. C., 30; Moore v. Johnson, 7 S. C., 303.

RULE XXXI.

Examination of witnesses; how conducted; time for summing up or hearing.

On the trial of issues of fact, one counsel only, on each side, shall examine or cross-examine a witness and not more than one counsel on each side shall sum up or be heard in any cause; and during such examination the examining counsel shall stand; and the testimony, if taken down in writing, shall be written by some other person than the examining counsel, but the

Judge who holds the Court may otherwise order, or may dispense with this requirement; *Provided,* that the time of two hours, allowed by Statute, may be distributed among as many counsel on each side as they may desire.

RULE XXXII.

Papers to be furnished and by whom.

The papers to be furnished on motions shall be a copy of the pleadings, when the question arises on the pleadings or any part thereof, or of such parts only as relate to the question raised by the demurrer; a copy of the special verdict, return or other papers on which the question arises.

Penalty for failure.

The party whose duty it is to furnish the papers shall serve a copy on the opposite party (except upon trial of issues of law) at least four days before the time the matter may be noticed for argument. If the party whose duty it is to furnish the papers shall neglect to do so, the opposite party shall be entitled to move, on affidavit and notice of motion, that the cause be stricken from the Calendar (whichever party may have noticed it for argument), and that judgment may be rendered in his favor; *Provided, however,* that in mortgage and partition cases where the plaintiff's rights are not contested no copies of pleadings need be furnished the Court.

Who to furnish papers.

The papers shall be furnished by the plaintiff when the question arises on special verdict, and by the party demurring in cases of demurrer, and in all other cases by the party making the motion.

RULE XXXIII.

Change of Venue.

Order to stay with view to change *venue.*

No order to stay proceedings for the purpose of moving to change the place of trial shall be granted unless it shall appear from the papers that the party moving has used due diligence in preparing the motion for the earliest practicable day after issue joined. Such order shall not stay the plaintiff from taking any steps except subpœnaing witnesses for the trial without a special clause to that effect.

Revoking stay; notice of revocation.

RULE XXXIV.

Commissions, how executed and how opened.

Commisisons when executed shall be sealed up by the Commissioners shall have executed the same, and directed to

the Clerk of the Court from which they were issued. Upon the envelope shall appear the names of the Commissioners, written by themselves across the place where the same is sealed, the title of the cause, and when sent by mail, the proper post-mark. Commissions shall not be opened but upon motion in open Court or before a Master or Referee or Referees, hearing the cause, or by consent of the parties, in writing, or by the Clerk or Master, or Referee, upon request of any of the parties, and four days' notice to all parties of the time and place of such opening.

Whenever an original document or paper is enclosed in a commission, and such commission is opened in the manner hereinbefore provided, it shall be lawful, and the Clerk is hereby authorized to take such original document or paper out of such commission and deliver the same to the party entitled thereto, to be used in taking other and further testimony in reference to such document or paper, the same having first been marked for identification.

Commission opened before Commissioner in Equity. Leaphart v. Leaphart, 1 S. C., 199.

RULE XXXV.

Trial in General Sessions.

Presence of the accused on the trial.

No person shall be tried on an indictment unless personally present, except for misdemeanors; and upon the trial of any person charged with an offense for which the law requires that he should be arraigned the prisoner shall be placed in the dock.

And after arraignment the prisoner shall remain in custody of Sheriff until discharged therefrom by due process of law and that the condition of all recognizances in cases of felony be so drawn as to require the accused to appear and plead to such indictment as may be preferred against him.

RULE XXXVI.

Surveys.

Surveys, how made when ordered by the Court; notice of.

Surveys of land in any quantity of two hundred acres or less shall be laid down by a sale of ten chains to the inch; all over that quantity, by a scale of twenty chains to the inch.

No survey made under an order of the Court shall be received in evidence unless it appear that at least ten days' notice

of the time and place of commencing such survey has been given to the parties.

Particulars required.

Every surveyor shall represent in his plat, as nearly as he can, the different enclosures of the parties, and the extent or boundaries within which each party may have exercised acts of ownership. He shall also represent a fence, buildings, or the like, by a mark in due proportion in size, according to the scale of the plat. He shall, by some small but distinct letter or figure, distinguish every corner, station, blazed tree, or other point which is likely to be the subject of dispute. He shall take care not to render the plat confused or indistinct by crowding too much upon it; but he shall rather refer the letters or figures to a table (which may contain the course and distances of lines, the marks at corners, stations and noted points, explanations and remarks,) than attempt to write much on the lines, or near to points on the plat. He shall also make two drafts or duplicates of the plat, so that on the trial there may be one for the use of the Judge, and the other for the parties in Court.

Objections.

After a cause has gone to a jury, and any evidence has been heard on it, neither party shall be allowed to make any objection to the order of survey, or the manner in which it may have been obtained or the survey executed.

Copy of Rule.

A copy of this Rule shall be appended to every order of survey served on a surveyor.

Provides for survey in actions to recover land, but does not require it. Patterson v. Crenshaw, 32 S. C., 534; 11 S. E., 390.

RULE XXXVII.

Judgment and Execution.

Judgment on failure to answer; when to be applied for.

When the plaintiff in the action is entitled to judgment upon failure of the defendant to answer the complaint, and the relief demanded requires application to be made to the Court, such application must be made in the Circuit Court in the County in which the action is triable.

RULE XXXVIII.

Judgment after service by publication; affidavit; undertaking.

In actions for the recovery of money only, when the summons has been served by publication, under Section 156 of the Code of Procedure, and the defendant is a non-resident of the State, no judgment shall be rendered unless the plaintiff or his agent at or before the time of making the application for judgment

shall have been examined on oath respecting any payments that have been made to the plaintiff or to any one for his use on account of the demand mentioned in the complaint, and shall show by affidavit that an attachment has been issued in the action and levied upon property belonging to the defendant, which affidavit shall contain a specific description of such property, and a statement of its value and shall be filed with the proof of publication.

Before judgment is rendered the plaintiff shall (unless the Court in its discretion dispense with the same) cause to be filed an undertaking in such amount as shall be ordered by the Court with security to be approved by the Court or the Clerk thereof, that the plaintiff will abide the order of the Court touching the restitution of any estate or effects which may be directed by such judgment to be transferred or delivered, or the restitution of any money that may be collected under, or by virtue of, such judgment, in case the defendant or his representative shall apply and be admitted to defend the action and shall succeed in such defense.

RULE XXXIX.

Judgment roll; how made up.

The Clerk shall record in the Judgment Book, at length, all judgments entered in his office, with the names of all parties, plaintiff or defendant, who have appeared, or been served with a summons therein, and the names of the attorneys, with the time and place of the rendition of such judgment and the number of the roll; and when, by any judgment, any matter shall be adjudged, or act or thing commanded, other than the payment of money, space sufficient shall be left after the entry thereof for the entering of such proceedings as may be thereafter had for the enforcement or satisfaction of such judgment.

RULE XL.

Recording judgments of Supreme Court.

Adjusting costs thereon.

When a judgment rendered by the Supreme Court shall be certified to the Circuit Court it shall be the duty of the Clerk of the Circuit Court to adjust the costs and disbursements in the Supreme Court to which any party may be entitled upon due notice, as provided in the case of the adjustment of costs in the Circuit Court; and he shall record such judgments and enter an abstract thereof in like manner as is provided in the case of

judgments rendered by the Circuit Court. At the foot of such record a reference shall be made to the page at which the judgment appealed from is recorded and a like reference shall be entered at the foot of the entry of the original judgment to the page at which the judgment on appeal is recorded.

RULE XLI.

Sale of Lands.

Sales of land at auction.

When lands are directed to be sold at auction, notice of sale shall be given for the same time and in the same manner as is required by law on sales of real estate by Sheriffs on execution.

RULE XLII.

Infant's Money.

General guardian; security.

After the appointment of the general guardian of an infant he shall not be entitled to receive any money or other property to which the ward shall thereafter become entitled until the Court is satisfied, upon due inquiry, that he has given a good and sufficient bond to account therefor.

RULE XLIII.

Discovery of Books and Papers.

Application for discovery, how made.

Applications may be made in the manner provided by law to compel the production and discovery of books, papers and documents relating to the merits of any civil action pending in this Court, or of any defense in such action, in the following cases:

1. By the plaintiff, to compel the discovery of books, papers or documents in the possession or under the control of the defendant which may be necessary to enable the plaintiff to frame his complaint or to answer any pleading of the defendant.

2. The plaintiff may be compelled to make the like discovery of books, papers or documents when the same shall be necessary to enable the defendant to answer any pleadings of the plaintiff.

3. Either party may be compelled to make discovery, as provided by Section 389 of the Code.

RULE XLIV.

Moving papers, what to state.

The moving papers, upon the application for such discovery, shall state the facts and circumstances on which the same is claimed, and shall be verified by affidavit stating that the books, papers and documents whereof discovery is sought are not in the possession nor under the control of the party applying therefor. The party applying shall show to the satisfaction of the Court or Judge the materiality and necessity of the discovery sought and the particular information which he requires.

RULE XLV.

Order for discovery.

Discovery may be compelled by requiring the party to produce and deposit the matters to be discovered with the Clerk for the County in which the trial is to be had, or by requiring him to deliver sworn copies thereof to the moving party, or in such other manner as may be directed by the Court. The order therefor shall specify the mode of making the discovery and the time within which it is to be made; and when papers are required to be deposited the order shall specify the time that the deposit shall continue.

RULE XLVI.

Order for discovery to operate as a stay of proceedings.

The order directing the discovery of books, papers or documents shall operate as a stay of all other proceedings in the cause until such order shall have been complied with or vacated, and the party obtaining such order after the same is complied with or vacated shall have the time to prepare his complaint, answer, reply or demurrer to which he was entitled at the making of the order; but the Judge in granting the order may limit its effect by declaring how far it shall operate as a stay of proceedings.

RULE XLVII.

New Trial and Appeals.

Settling cases, exceptions and special verdicts.

Whenever it shall be intended to move the Circuit Court for a new trial (except for irregularity, surprise, or on the minutes of the Judge,) in an action tried by a jury, a case or exceptions, or case containing exceptions, as may be proper and the party may elect, shall be prepared by the party in-

tending to make the motion or to review the trial, and a copy thereof shall be served on the opposite party within ten days after trial, if by a jury, or within ten days after written notice of the filing of the decision, if the trial be by referee; and the party served within ten days thereafter, propose amendments thereto and serve a copy on the party proposing the case or exceptions, who may then, within four days thereafter, serve the opposite party with a notice that the case or exceptions, with the proposed amendments, will be submitted at a time and place to be specified in the notice to the Judge or Referee before whom the cause was tried for settlement. The Judge or Referee shall thereupon correct and settle the case as he shall deem to consist with the truth of the facts. The time for settling the case must be specified in the notice, and it shall not be less than four, nor more than twenty days after service of such notice.

The lines of the case shall be so numbered that each copy shall correspond. Cases reserved for argument, and special verdicts, shall be settled in the same manner.

Manner of settling case. McNamee v. Huckabee, 20 S. C., 195.

Right to move for new trial waived by appeal from judgment. Murdock v. Courtney Mfg. Co., 52 S. C., 428; 29 S. E., 856; 30 S. E., 142.

Code Civil Procedure, Sec. 287, referred to; Murdock v. Mfg. Co., 52 S. C., 428; 29 S. E., 856; 30 S. E., 142.

RULE XLVIII.

Exceptions, what to contain; amendments, how to be marked.

Exceptions shall only contain so much of the evidence as may be necessary to present the questions of law upon which the same were taken on the trial; and it shall be the duty of the Judge upon settlement to strike out all the evidence and other matters not necessarily inserted.

Whenever amendments to a case or exceptions are proposed, the party proposing such case or exceptions shall, before submitting the same to the Judge for settlement, mark upon the several amendments his proposed allowance or disallowance thereof.

Rule 48 seems inapplicable to present procedure, under the Code, on appeals, and no longer of force. Crosswell v. Ass'n., 49 S. C., 376; 27 S. E., 388.

RULE XLIX.

Where a party makes a case and exceptions, he shall procure the same to be filed in the office of the Clerk of the Circuit

Court within ten days after such "case" has been settled or agreed upon; and upon failure so to do, the respondent may, by notice in writing, require the filing of such case and exception within ten days after the service of such notice; and if the same are not so filed within said ten days the appellant shall be deemed to have abandoned the appeal; and satisfactory proof that the case and exceptions have not been filed within the time required by such notice in the office of the said Clerk, the respondent shall be entitled to an order of the Supreme Court, (if the appeal has been perfected) or (if not) to an order of the Circuit Court declaring the appeal abandoned, and the respondent may proceed as if no notice of appeal had been given.

Case and exceptions to be filed in office of Clerk of the Circuit Court; when, where and how order declaring appeal abandoned may be obtained.

Construed. Donahue v. R. R. Co., 33 S. C., 608; 12 S. E., 560; 665; Aultman v. Utsey, 33 S. C., 611; 12 S. E., 628; Lombard v. Brown, 33 S. C., 598; 11 S. E., 634; Archer v. Long, 35 S. C., 588; 14 S. E., 26; Nott v. Thomson, 35 S. C., 589; 14 S. E., 23; Bomar v. Means, 35 S. E., 591; 14 S. E., 24; 309; Chisholm v. Ins. Co., 35 S. C., 599; 14 S. E., 349; 480; Ridgeway v. Cutter, 36 S. C., 603; 15 S. E., 429; McElhose v. Ludeke, 38 S. C., 552; 16 S. E., 771; Simonds v. Marco, 38 S. C., 554; 16 S. E., 830; Geddes v. Hutchinson, 39 S. C., 552; 17 S. E., 560; Margenhoff v. Margenhoff, 40 S. C., 547; 18 S. E., 942; O'Leary v. Bradley, 40 S. C., 552; 18 S. E., 933; Barwick v. Barwick, 59 S. C., 200; 37 S. E., 774; Crosswell v. Ass'n., 49 S. C., 375; 27 S. E., 388.

RULE L.

In every appeal to the Supreme Court from matter appealable, the appellant, or his attorney, shall, within ten days after written notice of the filing of such matter appealable, or, if filed within term time, within ten days after the rising of the Circuit Court, give written notice to the opposite party, or his attorney, of his intention to appeal therefrom, and within thirty (30) days after such notice the appellant, or his attorney, shall prepare a case or exceptions, or a case containing exceptions (which exceptions shall have been taken and served within the time prescribed by law), and serve them on the opposite party, or his attorney, or within such further time as, upon ten (10) days' notice to the opposite party, or his attorney, the Judge who tried the cause may for good cause grant. But should the parties, within the time above named, be unable to agree upon a case, then the proposed case, with the proposed amendments and allowances and disallowances, shall be, within ten days after failing to agree, referred for settlement to the Circuit Judge who heard the cause, who shall settle the same within the time and in the manner provided for settling a case in Rule XLVII.

Mode of preparing a case on appeal.

The parties, if they agree on a case, or the Circuit Judge who may settle the same, must see that the case shall, as to the matter it contains, conform to the requirements of the Rules of the Supreme Court in regard to the form and substance of a case for hearing before that Court.

As to contents of case see Rule 5, Supreme Court. The motion to settle the case must be made before the Circuit Judge, the Circuit Court having jurisdiction until the return has been filed in Supreme Court and the papers in the cause are records of that Court. Sullivan v. Thomas, 3 S. C., 548; Gibson v. Gibson, 7 S. C., 356.

The time within which the case should be served may be extended either by the Circuit Judge under this rule or by a justice of the Supreme Court. Under Rule 21 of that Court, ante, the motion for extension should ordinarily be made before the time has expired. See note to that rule, also Stribling v. Jones, 16 S. C., 115. If made in the Circuit Court it must be before the Judge who tried the cause, and his decision is final. *Ib.* Relief may be granted even where notice is served after expiration of time under peculiar circumstances. Bryson v. Whitney, 55 S. C., 50; 32 S. E., 1038.

The procedure before the Circuit Judge on motion to settle the case is stated in Chalk v. Patterson, 4 S. C., 99. Crosswell v. Ass'n., 49 S. C., 374; 27 S. E., 388.

As to time for giving notice of appeal. Molair v. Railway Co., 31 S. C., 522; 10 S. E., 243. Willoughby v. Ry. Co., 49 S. C., 372; 27 S. E., 273.

Where notice is served of intention to appeal from judgment to be entered up, the time within which the case must be served does not commence to run until judgment is entered up. Publishing Co. v. Gibbes, 59 S. C., 215; 37 S. E., 753.

Computation of time within which to appeal, &c. Bigham v. Holliday, 52 S. C., 528; 30 S. E., 485.

The Supreme Court has power to require conformity to the order of the Circuit Court settling a case for appeal to the Supreme Court, and may remand a case to the Circuit Court for further settlement. But the Supreme Court has not the power itself to say what the case shall contain.—Baker v. Irvine, 62 S. C., 293; 40 S. E., 672.

RULE LI.

Case, how waived and what deemed settled.

If the party shall omit to make a case, or exceptions, or statement of facts, within the time above limited, he shall be deemed to have waived his right thereto; and when the same is made, and the parties shall omit, within the several times above limited, the one party to propose amendments, and the other to notify an appearance before the Judge, Master or Referee, they shall respectively be deemed, the former to have agreed to the case as proposed, and the latter to have agreed to the amendments as proposed.

RULE LII.

If in an action to foreclose mortgage defendant fail to answer.

If in an action to foreclose a mortgage the defendant fails to answer within the time allowed for that purpose, or the right of the plaintiff as stated in the complaint is admitted by the answer, the plaintiff may have an order referring it to the Master, Clerk, or some suitable person as Referee, to compute the amount due to the plaintiff, and to such of the defendants as

are prior encumbrancers of the mortgaged premises, and to examine and report whether the mortgaged premises can be sold in parcels, if the whole amount secured by the mortgage has not become due. If the defendant is an infant, and has put in a general answer by his guardian, or if any of the defendants are absentees, the order of reference shall also direct the person to whom it is referred to take proof of the facts and circumstances stated in the complaint, and to examine the plaintiff or his agent, on oath, as to any payments which have been made, and to compute the amount due on the mortgage, preparatory to the application for judgment of foreclosure and sale.

The plaintiff in such case, when he moves for judgment, must show, by affidavit or otherwise, whether any of the defendants who have not appeared are absentees; and, if so, he must produce the report as to the proof of the facts and circumstances stated in the complaint, and of the examination of the plaintiff, or his agent, on oath, as to any payments which have been made. And in all foreclosure cases the plaintiff, when he moves for judgment, must show by affidavit, or by the certificate of the Clerk for the County in which the mortgaged premises are situated, that a notice of the pendency of the action containing the names of the parties thereto, the object of the action, and a description of the property in that County affected thereby, the date of the mortgage, and the time and place of recording the same, has been filed at least twenty days before such application for judgment, and at or after the time of filing the complaint, as required by Section 153 of the Code of Procedure.

As to proof of payments in case of absentees. Clemson v. Pickens, 42 S. C., 521; 20 S. E., 401.

RULE LIII.

Judgment for sale of mortgaged premises; what to contain.

Unless otherwise specially ordered by the Court, the judgment shall direct that the mortgaged premises, or so much thereof as may be sufficient to raise the amount due to the plaintiff for principal, interest and costs, and which may be sold separately without material injury to the parties interested, be sold by or under the direction of the Sheriff of the County or the Clerk or Master, and that the plaintiff or any other party may become a purchaser on such sale; that the officer making the sale execute a deed to the purchaser; that

out of the proceeds of the sale he pay to the plaintiff or his attorney the amount of his debt, interest and costs, or so much as the purchase money will pay of the same, and that he take the receipt of the plaintiff or his attorney for the amount so paid and file the same with his report of sale; and that the purchaser at such sale be let into possession of the premises on production of the deed.

All surplus moneys arising from the sale of mortgaged premises under any judgment shall be paid or deposited by the Sheriff or other officer making the sale, within five days after the same shall be received, in the manner provided by law for the securing of moneys in the custody of this Court.

As to requiring payment of cash at time of sale. Tyer v. Charleston, 32 S. C., 598; 10 S. E., 1067.

Rule in nature of writ of assistance. Crolwell v. Boozer, 1 S. C., 271; Armstrong v. Humphrey, 5 S. C., 128. Trenholm v. Wilson, 13 S. C., 174; Cave v. Hogg, 48 S. C., 325; 26 S. E., 686.

RULE LIV.

Claims for surplus money.

On filing the report of the sale, any party to the action, or any person who had a lien on the mortgaged premises at the time of the sale, upon filing with the Clerk where the report of sale is filed; a notice stating that he is entitled to such surplus money or some part thereof, and the nature and extent of his claim, may have an order of reference to ascertain and report the amount due to him or to any other person which is a lien upon such surplus moneys, and to ascertain the priorities of the several liens thereon; to the end that on the coming in and confirmation of the report on such reference such further order may be made for the distribution of such surplus moneys as may be just. Every party who appeared in the cause, or who shall have filed such notice with the Clerk previous to the entry of the order of reference, shall be entitled to service of a notice of the application for the order of reference and to attend on such reference and to the usual notices of subsequent proceedings relative to such surplus. But if such claimant has not appeared or made his claim by an attorney of this Court, the notice may be served by putting the same into the postoffice directed to the claimant at his place of residence, as stated in the notice of his claim.

What is not a report of sale.—Barnwell v. Marion, 62 S. C., 466; 40 S. E., 873.

RULE LV.

Requisites for obtaining an order for partition.

No partition of real estate of a deceased person shall be had unless the legal representative or representatives of such deceased person be made parties to the action and it be made to appear to the Court that the debts of such deceased person are fully paid, or that the personal estate in the hands of the personal representative or representatives is sufficient for the payment of the debts of such deceased person, or unless in the decree due provision is made for the payment of the debts.

Where several tracts or parcels of land lying in this State are owned by the same persons in common, no separate action for partition of a part thereof only shall be brought without the consent of all the parties interested therein; or if brought without such consent the share of the plaintiff may be charged with the whole costs of the proceeding. And when infants are interested, it shall be stated whether the parties own any other lands in common.

Prohibition of sale without providing for payment of ancestors' debts. Burnett v. Burnett, 17 S. C., 545.

Separate writs should issue for each County in which lands are situate. Daniels v. Moses, 12 S. C., 130.

RULE LVI.

Reference as to title where no defense is interposed.

Where the rights and interests of the several parties, as stated in the complaint, are not denied or controverted, if any of the defendants are infants, or absentees, or unknown, the plaintiff, on an affidavit of the fact, and notice to such of the parties as have appeared, may apply for an order of reference, to take proof of the plaintiff's title and interest in the premises, and of the several matters set forth, and to ascertain and report the rights and interests of the several parties in the premises and an abstract of the conveyances by which the same are held.

RULE LVII.

How questions brought before the Court.

All questions for argument, and all motions, shall be brought before the Court on a notice, or by an order to show cause: and if the opposite party shall not appear to oppose, the party making the motion or obtaining the order shall be entitled to the rule or judgment moved for on proof of due service of

the notice, or order, and papers required to be served by him, unless the Court shall otherwise direct.

Order to show cause, when granted.

Such order to show cause shall only be granted when a special reason for a notice, less than four days, appears on the papers presented; and the party shall, in his affidavit, state the present condition of the action, and whether at issue.

And when the motion is for irregularity, the notice or order shall specify the irregularity complained of.

Restraining order, when granted.

No restraining order pending return to a rule to show cause shall be granted unless it shall be made to appear, by affidavit to the satisfaction of the Judge, that irreparable injury is likely to result to the moving party in the meantime.

Notice necessary to validity of order. State v. Parker, 7 S. C., 240.

If made without notice, party aggrieved should move to vacate. Earle v. Stokes, 5 S. C., 339; Ex parte Williams, in re Campbell v. County of Charleston, 7 S. C., 77.

Motion for irregularity, specific notice required. Guckenheimer v. Libby, 42 S. C., 166; 19 S. E., 999. Addison v. Sujette, 50 S. C., 192; 28 S. E., 948; Lipscomb v. Rice, 47 S. C., 14; 24 S. E., 925; Smith v. Walker, 6 S. C., 169; Green v. R. R. Co., *Ib.*, 344.

The Judge cannot decide on motion any question not covered by the motion papers. Ford v. Calhoun, 53 S. C., 106; 30 S. E., 830.

Prior proceedings referred to in notice of motion may be referred to in consideration of motion. Ex parte Wells, 43 S. C., 478; 21 S. E., 334.

Notice referring to other papers. Standard Co. v. Henry, 43 S. C., 17; 20 S. E., 790.

RULE LVIII.

Points on motions; discussions on facts.

In all calendar motions, each party shall briefly state upon his points the leading facts which he deems established, with a reference to their folios where the evidence of such facts may be found; and the Court will not hear an extended discussion on a mere question of fact.

RULE LIX.

Opening and Reply.

Argument and reply.

On all rules to show cause, where a party failing to answer would be in contempt, the party called on shall begin and end his cause; and on all motions or special matters, either springing out of a cause or otherwise, the actor or party submitting the same to the Court shall in like manner begin and close; and so shall the defendant, where he admits the plaintiff's cause by the pleadings, and takes upon himself the burden of proof, have the like privilege.

The party having the opening in an argument shall disclose his entire case; and on his closing shall be confined strictly

to a reply to the points made and authorities cited by the opposite party.

Boyce v. Lake, 17 S. C., 484; Mitchell v. Fowler, 21 S. C., 299; State v. Huckie, 22 S. E., 299; Addison v. Duncan, 35 S. C., 165; 14 S. E., 305; Beckham v. Ry. Co., 50 S. C., 36; 27 S. E., 611; Columbia v. Tindal, 43 S. C., 547; 22 S. E., 341; Brown v. Kirkpatrick, 5 S. C., 269; Davis v. Winsmith, *Ib.*, 335; Bennett v. Sandifer, 15 S. C., 418.

A defendant is not entitled to open and reply unless he admits in his answer the plaintiff's cause of action, and sets up an affirmative defence.—Thompson v. Security Trust and Life Ins. Co., 63 S. C., 290; 41 S. E., 464; Addison v. Duncan, 35 S. C., 165; 14 S. E., 305; Beckham v. Ry. Co., 50 S. C., 25; 27 S. E., 611.

RULE LX.

Miscellaneous.

Costs of former suits.

Where a party has suffered a non-suit, or discontinuance, or has otherwise let fall his action, all proceedings in any new action for the same cause shall be suspended until all costs of such former action have been paid.

Blakeley v. Frazier, 11 S. C., 123; Daniel v. Moses, 12 S. C., 130; Tibbetts v. Langley Mfg. Co., *Ib.*, 466.

RULE LXI.

Subsequent application for order after refusal.

If any application for an order be made to any Judge and such order be refused in whole or in part, or be granted conditionally or on terms, no subsequent application upon the same state of facts shall be made to any other Judge; and if upon such subsequent application any order be made it shall be revoked; and in the affidavit for such order the party or his attorney shall state whether any previous application for such order has been made.

RULE LXII.

Affidavit in mitigation, how submitted.

In the Court of General Sessions, the defendant, after verdict against him, shall not be permitted to submit any affidavit to the Court which goes to deny matters of fact, but he may submit affidavits as to matters in extenuation or mitigation; *Provided,* they are filed so as to allow the Attorney General or Solicitor a reasonable time to answer them.

RULE LXIII.

Time for complying with orders.

In all cases where a motion shall be granted on payment of costs or on the performance of any condition, or where the order shall require such payment or performance, the party

whose duty it shall be to comply therewith shall have twenty days for that purpose unless otherwise directed in the order, but where costs to be adjusted are to be paid the party shall have fifteen days to comply with the order after the costs shall have been adjusted by the Clerk on notice unless otherwise ordered.

Construed. Brown v. Brown, 27 S. C., 153; 3 S. E., 69; Meinhard v. Youngblood, 37 S. E., 223; 15 S. E., 947; Brown v. Easterling, 59 S. C., 481; 38 S. E., 118.

RULE LXIV.

Orders on petitions.

Orders granted on petitions or relating thereto shall refer to such petitions by the name and description of the petitioners, and the date of the petitions if the same be dated, without reciting or setting forth the tenor or substance thereof unnecessarily. Any order or judgment directing the payment of money, or affecting the title to property, if founded on petition, where no complaint is filed, may, at the request of any party interested, be enrolled and docketed as other judgments.

RULE LXV.

Order to stay judgment, how obtained.

No order to stay a sale under a judgment in partition, or for the foreclosure of a mortgage, shall be granted or made by a Judge out of Court except upon notice of at least four days to the plaintiff or his attorney.

Rice v. Mahaffey, 9 S. C., 283.

Undertaking to be required.

No order to stay a sale under execution shall be granted without requiring a written undertaking, with sureties, from the moving party to the effect that he will pay to the adverse party such damages, not exceeding an amount to be fixed by the order and specified in the undertaking, as he may sustain by reason of the injunction, if the Court shall finally decide that he was not entitled thereto. Such damages may be ascertained by a reference or otherwise as the Court shall direct.

RULE LXVI.

Sureties.

Sureties to justify.

Whenever a Justice or other officer approves the security to be given in any case or reports upon its sufficiency it shall be his duty to require personal sureties to justify. And all bonds and undertakings shall be duly proved by a subscribing

witness, or acknowledged in like manner as deeds of real estate before the same shall be received or filed.

Does not apply to special statutory proceedings. Sharp v. Palmer, 31 S. C., 444; 10 S. E., 98.

Probating undertakings. Grollman v. Lipsitz, 43 S. C., 329; 21 S. E., 272; Sullivan v. Williams, 43 S. C., 501; 21 S. E., 642.

RULE LXVII.

Where sureties shall justify.

Wherever sureties are required to justify they shall justify within the County where the defendant shall have been arrested, or where the sureties reside.

RULE LXVIII.

Filing Papers.

Where papers to be filed.

Papers shall be filed in the County specified in the complaint as the place of trial, or in the County to which the place of trial has been changed. And in case the place of trial is changed for the reason that the proper County is not specified, papers on file at the time of the order making such change shall be transferred to the County specified in such order; and all other papers in the cause shall be filed in the County so specified.

RULE LXIX.

What papers to be filed and when.

It shall be the duty of the plaintiff's attorney forthwith to file with the Clerk for the proper County all undertakings given upon procuring an order of arrest, an injunction order or an attachment, with the approval of the Judge or officer taking the same endorsed thereon; and in case such undertaking shall not be filed within ten days after the order for arrest, or injunction or attachment has been granted, the defendant shall be at liberty to move the Court to vacate the proceedings for irregularity, with costs, as if no undertaking had been given. It shall also be the duty of the attorney to file, within the same time and under the like penalty, the affidavits upon which an injunction or attachment has been granted, and also the affidavit upon which an order for the service of a summons by publication or an order for a substituted service of a summons has been granted, together with the order for such service.

Affidavits in attachment. Ketchin v. Landecker, 32 S. C., 157; 10 S. E., 936; Doty v. Boyd, 46 S. C., 39; 24 S. E., 59.

Undertakings. Meinhard v. Youngblood, 37 S. C., 229; 15 S. E., 947.

RULE LXX.

Receivers.

Powers of receiver of debtors estate.

Every receiver of the property and effects of the debtor shall, unless restricted by the special order of the Court, have general power and authority to use for and collect the debts, demands and rents belonging to such debtor, and to compromise and settle such as are unsafe and of a doubtful character. He may also sue in the name of a debtor where it is necessary or proper for him to do so.

Construed. Dilling v. Foster, 21 S. C., 335.

RULE LXXI.

Action for malicious prosecution, how commenced.

No action for malicious prosecution based upon an indictment tried by the Court of Sessions shall be commenced unless a copy of the indictment has been first obtained by order of the Judge before whom the case was tried.

RULE LXXII.

Damages on breach of bond, how recovered.

After a judgment has been recovered on an official bond it shall stand as a security for any former or subsequent breach of it, and any one who may conceive himself aggrieved by the misconduct of the officer shall have a right to come in and suggest the breach of the bond of which he complains and pray execution for his damages; and upon serving a twenty-day rule upon such officer and his sureties, or such of them as judgment has been rendered against in the first action, requiring them to plead to the suggestion, shall in default of such plea, or upon issue joined, have his damages assessed by the verdict of a jury and have execution for the penalty to enforce the payment of the damages assessed.

Effect on costs. Bratton v. Massey, 18 S. C., 560.

RULE LXXIII.

Motion for arrest of judgment; when made.

If a motion in arrest of judgment or for a new trial in a criminal case be intended to be made, the party shall give notice thereof and of his grounds within two days after verdict.

No motion in arrest of judgment shall be heard after a motion for a new trial, but the motion in arrest of judgment and for a new trial may, in the first instance, be made simultaneously.

RULE LXXIV.

All Rules heretofore adopted for the government of the practice of the Circuit Courts of this State shall be, and they are hereby, repealed. In cases where no provision is made by Statute or by these Rules, the proceedings shall be according to the practice as it has heretofore existed in the Courts of Law and Equity of this State in cases not provided for by Statute or the written Rules of the Court.

All former Rules repealed.

The Rules of Westminster (Miller's Compilation, p. 46) are such rules. Brown v. Dunlap, 3 S. C., 101.

RULE LXXV.

In any case where a petition and bond for the removal of any cause pending in any Court of this State to any Court of the United States shall have been filed, no order accepting the said petition and bond or directing the cause to be removed shall be made except after due notice of the application therefor to the other parties to the action as in the case of interlocutory applications requiring notice.

Practice on removal to U. S. Courts. Sparkman v. Council, 57 S. C., 16; 35 S. E., 391; State v. R. R. Co., 45 S. C., 470; 23 S. E., 383.

RULE LXXVI.

Whenever any pleading or other paper in an action is not filed within the time required by Section 416, of the Code of Procedure, any party to the action may apply after due notice to the Court or a Judge thereof at Chambers, for an order requiring the party or attorney having served such pleadings or in possession of such paper to file the same (or a copy if the original pleading or paper be lost or destroyed) within a time limited, and on failure so to do such party or attorney may be proceeded against as for contempt.

Rules of Practice for the Courts of Probate of South Carolina.

RULE I.

Books.

The Judge of Probate shall, in addition to the books required by law, keep a book, properly indexed, in which shall be entered the titles of all cases instituted in his Court, with proper entries under each, denoting the papers filed, the orders made, and the steps taken therein, with the dates of the several proceedings. Also, a calendar of all cases which are pending in his Court, until the same shall be disposed of by a final decree or order.

RULE II.

Sheriff compelled to return process.

At any time after the day when it is the duty of the Sheriff or other officer to return, deliver, or file any process, undertaking, order or other paper, by the provisions of the Code of Procedure, any party entitled to have such act done, may serve on the officer a notice to return, deliver or file such process, undertaking, order or other paper, as the case may be, within ten days; or show cause, at a time to be designated in said notice, why an attachment should not issue against him.

RULE III.

Guardian *ad litem*. Decree against infants.

No person other than the general guardian of an infant shall be appointed guardian *ad litem,* either on the application of the infant or otherwise, who is not fully competent to understand and protect the rights of the infant, who has an interest adverse to that of the infant, or who is connected in business with the attorney or counsel of the adverse party; and no decree against an infant or other person not *sui juris* shall be made, except upon proof of the facts necessary to support such decree.

RULE IV.

Duty of Guardian *ad litem.*

It shall be the duty of every attorney or other officer of this Court to act as the guardian *ad litem* of any infant defendant, in any suit or proceeding, whenever appointed for that purpose by an order of the Court. And it shall be the duty of the guar-

dian *ad litem* to examine into the circumstances of the case, so far as to enable him to make the proper defence for the protection of the rights of the infant.

RULE V.

Summons.

After a petition or complaint has been filed, it shall be the duty of the Judge of Probate to issue his summons, directed to each of the defendants named in said petition or complaint, notifying them of the filing of such petition or complaint, and that unless they plead thereto within twenty days from the time of service of such summons, judgment will be rendered against them for the relief demanded. Such summons shall be served in the same manner and according to the same rules as are prescribed by law in the case of a summons in the Court of Common Pleas.

Publication.

And, in case any of the parties defendant are absent from or reside beyond the limits of the State, or whose residence is unknown, upon such fact being made to apear to the satisfaction of the Judge of Probate, by affidavit, such summons shall be published, in the same manner as required by law, in the case of the publication of a summons for an absent defendant in the Court of Common Pleas.

Personal service

Personal service on any absent party, under an order of the Court, shall be deemed sufficient without publication.

RULE VI.

Pleadings. Time of Trial.

All pleadings in the Court of Probate must be in writing; and the only pleading necessary on the part of the defendant shall be an answer, in which issues both of law and fact may be raised.

When the petition or complaint is verified, the answer must also be verified.

Each case shall stand for trial at the session commencing on the first Monday in the month, after the day on which the time for answering shall expire; but may, on just cause shown, be continued to such other day as may be appointed by the Probate Judge; *Provided, however,* that the case may be tried on any day after the time to answer has expired, with the consent of all parties interested, or their atttorneys.

RULE VII.

Counsel shall not attempt to argue or explain a case, or any matter arising therein, after he has been heard, and the opinion of the Court has been pronounced.

No argument after decision.

RULE VIII.

All pleadings and other proceedings shall be written on each page of legal cap paper. If more than two pages are used, they shall be fastened at the top, so as to be read continuously. Papers shall be folded from the bottom, in four equal folds, and endorsed with the style of the Court, the names of the parties, the nature of the paper, and the name of the attorney.

Manner of preparing papers.

RULE IX.

No private agreement or consent between the parties or their attorneys, in respect to the proceedings in a cause, shall be binding, unless the same shall have been reduced to the form of an order by consent, and entered; or unless the evidence thereof shall be in writing, subscribed by the party against whom the same shall be alleged, or by his attorney or counsel.

Consent must be in writing.

RULE X.

Where the service of the summons, or notice accompanying the same, if any, shall be made by any person other than the Sheriff, it shall be necessary for such person to state in his affidavit of service, when and at what particular place he served the same, and that he knew the person served to be the person mentioned and described in the summons as defendant therein; and also to state that he left with the defendant a copy of the paper so served.

Proof of service.

RULE XI.

No order extending the time to answer shall be granted, unless the party applying for such order shall satisfy the Judge of Probate, by affidavit, that there are grounds therefor; unless such extension of time has been agreed upon, in writing, or orally in open Court, by all the parties interested, or their attorneys.

Extension of time to answer.

RULE XII.

Motion to correct pleadings.

Motions to strike out of any pleading matter alleged to be irrelevant or redundant, and motions to correct a pleading on the ground of its being "so indefinite or uncertain, that the precise nature of the charge or defence is not apparent," must be noticed before answering the pleadings.

RULE XIII.

Judgment of Appellate Court.

When a judgment rendered in the Circuit Court or in the Supreme Court, upon an appeal from the Judge of Probate, is certified to the Judge of Probate, the same shall be recorded with other judgments of the Probate Court, with proper references made to the judgment appealed from.

RULE XIV.

Orders after issue joined.

After issue has been joined in any case in the Court of Probate, no order shall be granted therein except at the time appointed for the hearing thereof, unless two days' notice, in writing, has been given to the parties to be affected thereby, or their attorneys, where they reside in the same county; but where they reside in different counties, four days' notice shall be given.

RULE XV.

Rules of Circuit Court to govern.

In all cases not provided for by any of the foregoing Rules, the Rules of the Circuit Court, so far as they can be made applicable, shall govern.

RULE XVI.

When to take effect.

These Rules shall go into operation on the first day of July, A. D., 1879.

Rules of Practice in the Circuit Courts of the United States for the District of South Carolina.

AT LAW.

RULE I.

PROCESS.

As authorized by Revised Statutes, Section 915, the Court adopts in common law causes all State laws now in force in the State constituting this District, in relation to attachments and other process, subject to the limitations contained in said Section; and such laws so adopted include all remedies by attachment, or other process, against the property of defendants now provided by the laws of said State, whether directly or by foreign attachment, with all the exemptions relating thereto.

As authorized by R. S. U. S., Court adopts certain State laws.

As authorized by Revised Statutes, Section 916, the Court adopts all State laws now in force in the State constituting this District, in relation to remedies upon judgments in common law causes, by execution or otherwise, to reach the property of judgment debtors.

RULE II.

Forms of executions, &c.

The forms of executions and other final process in all suits whatsoever, whether at law or in equity, shall be the same as are now used in the Court, except in cases where the Court or a Judge thereof shall otherwise direct; but under the authority of Revised Statutes, Section 918, the time for returning such executions and other final process shall be distinctly set forth in the same, and the same shall be returned in the same time, and *alias* and *pluries* executions shall issue in the same manner, as now required by the laws of the State constituting this District, except as otherwise provided in these Rules.

RULE III.

Summons, executions and other process; how tested and served.

All summons, executions and other process shall be tested as required by the Act of Congress, approved May 8th, 1792, and shall be served by the marshal.

R. S. U. S., 2d Ed. (1878), Sec. 911.

RULE IV.

Summons; how subscribed and directed and what to require.

The summons shall be subscribed by an attorney, and directed to the defendant, and shall require him to answer the complaint and serve a copy of his answer on the attorney, whose name is subscribed to the summons, at a place within the District to be therein specified, in which there is a post-office, on or before the Rule Day, occurring twenty days next after the service thereof, exclusive of the day of service. The summons must be sealed and tested as required by Section 911, Revised Statutes of the United States.

RULE V.

Summons; what notice plaintiff shall also insert.

The plaintiff shall also insert in the summons a notice in substance that if the defendant shall fail to answer the complaint on or before the Rule Day occurring twenty days next after the service of the summons, the plaintiff will apply to the Court for the relief demanded in the complaint.

Chamberlain vs. Mensing, 47 F. R., 202.

RULE VI.

Complaint; copy need not be served with summons; in which case what summons to state; Defendant can appear when and do what, and time in which copy to be served and Defendant to answer.

A copy of the complaint need not be served with the summons. In such case the summons must state where the complaint is or will be filed, and if the defendant, within twenty days thereafter, causes notice of appearance to be given, and, in person or by attorney, demands, in writing, a copy of the complaint, specifying a place within the State where it may be served, a copy thereof must, within twenty days thereafter, be served accordingly; and after such service the defendant shall have until the Rule Day occurring at least twenty days next after the service to answer; but only one copy need be served on the same attorney.

RULE VII.

The summons must be served by the marshal, and the service shall be made and the summons returned to the clerk with proof of service in the same manner that a summons is served and returned in the Circuit Courts of this State.

Summons; to be served by Marshal and served and returned to the Clerk (as in State Courts).

RULE VIII.

Due time shall be allowed for the service of all process, not exceeding thirty days (except in case of executions) for any point within the State.

Process; time allowed for service of.

The summons and complaint, as soon as possible after the service thereof, shall be filed in the clerk's office, not to be removed therefrom without an order of Court, and in case the complaint is not so filed, the defendant will be excused from entering his appearance under the Rule next following until the complaint is filed.

RULE IX.

The appearance of defendant shall be by entry of appearance with the clerk, and service of notice of appearance on the plaintiff or his attorney.

Appearance of Defendant; how made and entered.

RULE X.

"PLEADINGS."

The forms of pleadings in all civil actions, except in Equity and Admiralty, and the rules by which the sufficiency of the pleadings are to be determined, are those now (and such as from time to time may be) prescribed by the Code of Procedure of this State.

In civil actions (except equity and admiralty) to be formed by, and sufficiency of determined by rules prescribed by Code of the State.

RULE XI.

It shall not be necessary for a party to set forth in a pleading the items of an account therein alleged; but he shall deliver to the adverse party, within ten days after a demand therefor in writing, a copy of the account, and every bond, deed or other writing sued on which, if the pleading be verified, must be verified by his own oath, or that of his agent or attorney, to the effect that he belives it to be true, or be precluded from giving evidence thereof.

Account; items of need not be set forth in pleadings; bills of particulars; how and when delivered and verified.

If a bill of particulars furnished is defective or insufficient, application may be made for a further account.

RULE XII.

"JUDGMENT BY DEFAULT."

In civil actions on contract for recovery of money only; how obtained.

In all civil cases founded on contract for the recovery of money only and in which the complaint is verified, the plaintiff may file with the clerk on the Rule Day on which the defendant is required to answer, or any Rule Day thereafter, proof of service of the summons and complaint on one or more of the defendants, or of the summons, according to Rule 6, and that no answer, demurrer or notice of appearance has been received. The clerk shall thereupon enter an order for judgment by default and enter the cause on the docket for the next succeeding term of the Court, at which term the damages shall be assessed or a verdict be taken before a jury.

RULE XIII.

In all other actions.

In all other cases the plaintiff may, upon filing like proof on the Rule Day, at which the defendant is required to answer and fails so to do, or on any Rule Day thereafter, have the clerk enter an order for judgment by default and shall cause the case to be docketed, and apply to the Court at the ensuing term thereof for the relief demanded.

RULE XIV.

Where Defendant has appeared under Rule 9.

Judgment shall in no case be entered for default of answer, where defendant has entered appearance in accordance with Rule 9, unless five days' notice of intention to enter judgment for want of answer is given to the attorneys of the defendant, and such notice may be given by personal service or by mail.

RULE XV.

"DEFENCES."

Defence of *plene administravit*; how made effectual.

The defence of *plene administravit* shall not be effectual, unless the party making such defence shall file with the pleading, on oath, a full and particular account of the administration of the estate, with a certified copy of the inventory and appraisement; or, if the party be charged as executor of his

own wrong, a full statement, on oath, of all the assets which have come into his possession, and the value thereof, and an account showing the manner in which the same may have been disposed of.

RULE XVI.

Letter of Attorney; cannot be demanded after pleading.

Neither party shall, after pleading, demand the letter of attorney of the opposite party.

RULE XVII.

Counter claim; time to reply thereto; must be accompanied by bill of particulars.

Where an answer sets up a counter-claim, plaintiff shall be entitled to the same time for the reply thereto as is allowed defendant to answer to the complaint. It shall be accompanied with a copy of the bill of particulars and of any bond, deed or other writing constituting the defence.

RULE XVIII.

"Custody of Papers."

Papers not to be removed from Clerk's Office; certified copies to be furnished Special Master; when.

Papers filed of record in the clerk's office shall not be removed therefrom under any pretense whatever.

When any cases are referred to a special master (other than the clerk), and such master requires, for the purposes of his references or report, the records of the case in which he is acting, or any part thereof, the clerk will, on his request, furnish him certified copies of so much of the records as he may require. Same to be taxed as costs in the case.

RULE XIX.

"Rules Days."

Rules Days; when, by whom and how held; Judge may allow; special orders on.

Rules shall be held monthly in the clerk's office on the first Monday in every month, for the purpose of entering all proceedings and orders necessary for the speeding of the cause, which may be entered at the Rules, and not necessary to be taken or be made in open Court. The rules shall be held under the direction of the clerk, but either of the Judges of the Court may make or allow any special order in any cause not inconsistent with the regulations herein prescribed, which shall be entered in the Rule Book, and take effect accordingly.

RULE XX.

Number of; what each to contain; motion for transfer.

The clerk shall make three dockets. One docket shall contain all cases at issue. The other docket shall contain all motions to be tried by the Court. Docket number three shall contain all cases wherein orders for judgment by default have been entered at the Rule Day, but final judgment cannot be had except by an application to the Court in term.

If causes are improperly docketed, either party may on the first call of the docket, move for their transfer to the proper docket.

RULE XXI

Terminated causes; how re-docketed.

Causes marked on the docket settled, discontinued or otherwise terminated, shall not again be docketed, without leave of Court or consent of both parties in writing.

RULE XXII.

Dockets to be records; what to contain; bar docket; call of docket; Court may restore case.

The clerk shall preserve the dockets as records of the Court. He shall not only number the causes thereon, but shall indicate the number of terms that they may have been at issue; and he shall also, in a separate column, copy the memoranda made by the Judge of the disposition made of the case at the previous term. During the daily sessions of the Court the docket shall not be subject to inspection of the Bar, but it shall be the duty of the clerk to make a copy thereof for the use of the Bar.

On the calling of the docket on the first day of each term, or whenever the same may be called, the parties shall immediately announce ready, or move to continue; and if no announcement or motion is made, the plaintiff's case may be dismissed or the defendant's plea or answer stricken out.

But the Court may, on good cause shown, and on such terms as it may deem proper, direct the revocation of the order of dismissal or striking out of the answer, and the cause shall thereupon be restored to the docket.

RULE XXIII.

Rule Day docket; what to contain; order thereon; when called; not answered, stricken off; fee of Clerk; copy for Bar; contingent docket; what to contain; when and how called

The clerk shall prepare and keep a docket on which he shall enter all suits and matters which are to be brought before a Judge of the Court on Rules Days, or such other days as the Judge may appoint, on notice to an adverse party, by motion,

petition, order to show cause or otherwise, of which a memoranda containing the title to the suit or matter, and the subject of the notice and the names of the attorneys or solicitors on both sides, shall be filed with the clerk for the purpose.

The order of cases on the docket shall be the order of time in which the memoranda are filed with the clerk. Every suit and matter placed on the list shall remain thereon until the hearing of such notice is had, or until it is otherwise disposed of, and shall not lose its place by an adjournment of it. It may be adjourned at any time, by a written consent of parties to the next Rule Day, such consent to be handed to the Clerk of the Court.

The docket will be called in its order on each Rule Day.

A case called and not answered to by either party will be stricken off.

The fee to the clerk for every memorandum filed shall be 25 cents, which shall be taxable as costs in the case.

A copy of this docket shall be prepared for the use of the Bar.

The clerk shall keep a docket to be called the contingent docket, on which shall be entered all rules against defaulting jurors or witnesses. All writs of *scire facias* issued upon recognizances of persons accused of crimes, all indictments against persons for whom bench warrants have issued, and who have not been arrested thereon, and cases in which offers of compromise may have been accepted, but with the terms of which defendants have not complied.

This docket shall be called from time to time on motion of the District Attorney.

RULE XXIV.

"Trial."

In action on instrument for payment of money only; what Plaintiff shall produce and prove; proviso.

On the trial of an action founded on a bill of exchange, promissory note or other instrument for the payment of money only, the plaintiff shall produce the instrument sued on, but need not prove the signature to or the execution of such instrument nor the consideration thereof, unless the defendant in his answer, on oath, denies the consideration, or the execution of the instrument, or the genuineness of the signature to the same.

RULE XXV.

Prayer for instructions; to be submitted before argument.

At the trial of every case, the counsel on either side shall, before argument, submit to the Court such prayer for instructions as they may desire.

RULE XXVI.

"ATTACHMENTS."

Return of persons upon whom warrants are served, if Plaintiff dissatisfied, may file suggestions and issue to be tried by Court or Jury—In default of return, attachment may issue, when.

That all persons upon whom warrants of attachments are served shall, within twenty days thereafter, make due return thereto, under oath, setting forth whether they have in their possession or under their control any moneys, claims, credits or property, real or personal, of the defendant, and if any, the nature and value of them.

If the plaintiff is not satisfied of the correctness of the return he may contest it by filing suggestions, setting forth the particulars wherein the return is defective or false and the issue shall be tried by the Court or a jury, as the parties may elect.

If the party upon whom warrant of attachment is served fails to make return thereto, in accordance with this rule, a rule may be entered that an attachment issue against him unless he show cause within four days, or on the first day of the ensuing term.

RULE XXVII.

"BAIL."

Defendants may be arrested and held to bail as in State Courts.

The defendant may be arrested and held to bail in the same cases and in the same manner as defendants are now arrested and held to bail in the Courts of this State.

RULE XXVIII.

Undertaking to be made before Clerk or Commissioner, who shall approve same.

The undertaking required of the plaintiff, before the order of arrest is granted, may be made before a Clerk or U. S. Commissioner, who shall approve and certify his approval of the sureties.

RULE XXIX.

"NEW TRIALS."

Where judgment rendered on verdict; what notice required.

If judgment has been rendered upon a verdict, the party intending to move for a new trial shall give four days' notice in

writing to the opposite party of any motion to stay execution thereon, and also of the petition intended to be filed pursuant to Section 18 of the Act of September 24th, 1789, unless a shorter time be allowed by the Court or a Judge thereof.

RULE XXX.

Motion to set aside verdict or in arrest of judgment.

No party shall be entitled to move to set aside a verdict, or in arrest of judgment, unless notice, with the grounds thereof, shall be filed with the clerk and served on the opposite party within two days after the rendition of the verdict or judgment complained of, unless the time be enlarged by the Court.

RULE XXXI.

Briefs must be furnished one day before argument on motions in arrest of judgment and for new trial; cost to be taxed against loser.

No argument will be heard by the Court on motion in arrest of judgment, or for a new trial, until there has been delivered to the Judges and opposing counsel, at least one day before the argument, a brief statement of the points intended to be insisted on by the counsel on each side. And the costs, unless otherwise directed by the Court, shall be taxed against the party against whom judgment shall be rendered.

RULE XXXII.

Bills of exceptions; demurrer to evidence; special verdict found; must be noted in writing at the time; afterwards to be drawn up, amended and settled in the time required by the Court.

When exceptions to the opinions and rulings of the Court are taken by either party on the trial of the cause, or there is a demurrer to evidence interposed, or a special verdict found, the party shall not be required to prepare his bill of exceptions at the trial, or his demurrer or statement of the evidence, or to put in form the special verdict, but shall merely reduce such exceptions to writing, or make a minute of the demurrer to the evidence, and of the facts found specially by the jury, as the case may happen to be, and deliver it to the Court; or the Court will themselves, at the request of either party, note the point; and the bill of exceptions, demurrer to the evidence and special verdict shall afterwards be drawn up, and within four days after the trial, unless further time be allowed by the Court, served on the opposing counsel, who shall have four days after such service within which to propose amendments, and at the expiration of said four days, if not agreed upon, the same shall be settled by the Court upon at least two days' notice.

RULE XXXIII.

Rule 31 as Arguments, followed in special proceedings, etc.

Arguments on questions of law arising on special proceedings, special verdicts, cases stated and agreed, cases reserved, shall be governed by the principles laid down in Rule 31.

RULE XXXIV.

"JUDGMENTS."

Judgment Book; to be kept by Clerk; what to contain.

The clerk shall keep a judgment book, wherein shall be entered all judgments obtained, the amount and date thereof, and the nature of the execution sued out, the satisfaction of such judgments, and the date thereof.

RULE XXXV.

Rank of judgments obtained and entered on rules day; those at same term.

Judgments duly obtained and entered or enrolled shall have rank in lien as of that date. All judgments obtained at the same term and enrolled up agreeably to the next Rule, shall have equal rank and precedence.

RULE XXXVI.

When judgment to be entered to obtain certain ranks, and when cannot be entered except on motion at rules or or in open Court.

Judgments obtained during term time, to retain their rank or precedence, shall, unless otherwise ordered by the Court, be entered up within five days after the last day of the term, but may be entered at any time before the next term after, to take precedence from date of entry. If not entered at any time before the next term they shall not be entered without a motion at Rules Day or in open Court, and then not until the Rules Day next after such motion; *Provided,* that judgment may be entered at any time after its rendition upon leave of the Court first had and obtained.

RULE XXXVII.

Judgments for a penalty; satisfaction of. Other than for payment of money only, Court or jury to determine amount due.

In all cases where judgment shall be signed for a penalty, satisfaction shall be entered on payment of principle, interest and costs; and where the condition is for the performance of something other than the payment of money the Court or the Jury, as the case may be, will determine the real amount due.

RULE XXXVIII.

Whenever the existence of unsatisfied judgments or mortgages impedes the payment over of moneys levied and in Court, or in the hands of the marshal, a notice must be served on the parties interested in such judgments, or their attorneys, to come forward and satisfy the Court that such judgments are actually subsisting unsatisfied judgments. If the parties interested fail to do this within tyenty days after such service the Court may order the money to be paid over to the executions in the hands of the marshal.

Where unsatisfied judgment or mortgage impedes levy, advertisement to be made for parties interested; failing to come forward, Court will order payment to marshal.

RULE XXXIX.

"EXECUTIONS."

No execution shall issue within ten days after entry of judgment, except by leave of the Court first had and obtained.

At what time may issue; when may be stayed.

RULE XL.

The marshal shall return each execution to the clerk on the first Rule Day occurring ninety days next after the receipt thereof, with a special note endorsed, exhibiting what has been done thereunder, which execution and return shall be filed and preserved with the judgment-roll; and no new execution shall be signed until that previously issued has been duly returned, except by a special order of the Court or of a Judge.

Return of Marshal; filing new execution.

RULE XLI.

"CONTINUANCE."

Motions for continuances on the ground of absence of witness, or the non-return of a commission, shall be accompanied with an affidavit, stating what the party expects to prove by the witness or commission, and that he is not able to prove the same by any other means.

On ground of absent witness; non-return of commission; what affidavit shall show.

The affidavit shall also show that due diligence has been used to procure the same, by stating the steps that had been taken, or the causes why the ordinary measures have not been pursued, to the end that the Court may be satisfied that the party making such motion does not affect delay.

RULE XLII.

Where two counsel on same side; absence of one not sufficient ground unless otherwise shown; when expediency appears by affidavit; case will be continued to aonther place where Court is to sit.

Where, in any case, there are two or more counsel employed on the same side, the absence of one of them shall not, unless sufficient reason be shown therefor, be deemed a ground of continuance.

Whenever it shall be made to appear to the Court, by affidavit, or otherwise, that it will be for the convenience of counsel or of witnesses, and in furtherance of justice, that a cause upon the docket of the Circuit Court should be continued so that it may be tried either at Charleston or at Greenville, or at Columbia, it will be continued to the next succeeding term at the place designated.

RULE XLIII.

"JURIES."

Court to appoint a Commissioner; duties of Clerk and Commissioner under Act of Congress.

All jurors, grand and petit, including those summoned during the session of the Court, shall be publicly drawn from a box containing at the same time of each drawing the names of not less than three hundred (300) persons, possessing the qualifications prescribed in Section eight hundred (800) of the Revised Statutes, viz: They shall have the same qualifications, and be entitled to the same exemptions as jurors of the highest Court of Law in this State may have and be entitled to at the time when such jurors for service in this Court are summoned, which names shall have been placed therein by the clerk of this Court, and a Commissioner appointed by this Court, which Commissioner shall be a citizen of good standing, residing in the District in which this Court is held, and a well-known member of the principal political party in this District opposing that to which the clerk may belong, the clerk and said Commissioner each to place one name in said box alternately, without reference to party affiliations until the whole number required shall be placed therein.

A list of the names of the persons so selected, signed by the clerk and the Commissioner, with their places of residence, shall be delivered to the Clerk of the Court, who shall file the same and who shall prepare slips containing the name and residence of each person on said list, and shall place the same in, and the clerk and the marshal shall, at least thirty days before each succeeding term of the Court draw from the box in the presence of one of the Judges of this Court, sixty names,

unless otherwise ordered, to serve as jurors in the Circuit Court; and the first twenty-three (23) names so drawn shall be the grand jurors, and the residue shall be the petit jurors of said Court.

And at the same time, and in the same manner, the said Commissioner and the said Clerk of this Court shall place in separate and special apartments in the jury box, one apartment for each city in which the Court shall sit, to be known as the tales box, the names of one hundred and fifty (150) persons qualified to serve as jurors as aforesaid, who reside within seven miles of the said cities respectively, from which shall be drawn jurors to supply deficiencies in the grand jury attending the Court from any cause arising during the session thereof.—

See Supplement R. S. U. S., Vol. 1, p. 270.

RULE XLIV.

Jury to be drawn 30 days before Court.

At least thirty (30) days before each succeeding term of Court it shall be the duty of the clerk and marshal to draw the juries for such succeeding term at which such juries are to serve.

RULE XLV.

If panel not full.

There shall be an apartment in the jury box in which the Jury Commissioner and the Clerk shall place the names of the persons to serve as jurors who reside within or just without the corporate limits of the city in which the session of the Court is held. No names shall be drawn from this box except for the purpose of filling up the jury after the Court has been organized, if the panel be not complete from any cause.

RULE XLVI.

Duty of Clerk after jury is drawn.

After drawing every jury, the clerk shall fold up the names of the jurors so drawn, seal the envelope, and endorse the same with his name, with the date of such drawing, and the Court and jury for which they were drawn, which paper shall remain sealed until the whole list be drawn throughout.

RULE XLVII.

Jury box.

The jury box shall be kept locked, except when opened for the purpose of drawing jurors, and shall be furnished with two locks, a key of one to be kept by one of the Judges of the

Court, and the key of the other to be kept by the clerk, and the box shall be kept by the marshal.

RULE XLVIII.

When Court may summons by-standers.

When a jury cannot be had from the persons so summoned or from a failure of the method of drawing perscribed, or if the juries fall below the required number from any cause, a number of names to meet the deficiency shall be drawn from the apartment in the jury box provided in Rule 45, and in case, after such drawing, there still be a deficiency, or a deficiency should thereafter arise from any cause, or in case of emergency, the Court will fill the jury *de talibus circumstantibus.* Persons thus selected from the by-standers will serve until the jury on which they are placed has been discharged of the cause for which they were empanelled.

RULE XLIX.

When Court does not sit jury drawn stands over.

If the Court should not sit at any term, the jurors drawn for that term shall stand over for the next term that shall be held.

RULE L.

In absence of Marshal Deputy acts.

In the absence of the marshal a deputy marshal may, in drawing the jurors, do whatever the marshal himself may do.

RULE LI.

Venire; to be made out by Clerk 30 days before Court; what to contain.

At least thirty days before the then next term of the Court the clerk shall make out and deliver to the marshal a *venire,* directing the marshal to summon all the persons drawn as mentioned in the preceding Rules (unless the Judge shall otherwise direct) to attend as jurors at such term.

RULE LII.

Return to *venire;* what to contain.

To all writs of *venire* the marshal or his deputy shall make a return, on oath, to the clerk, exhibiting in three several columns, those jurors on whom a summons has been served personally, those who have been summoned by copies or notices left at their houses, and those who could not be found; and when the return is *non est inventus* as to any juror, the marshal or his deputy shall, on oath, state the steps taken by him in order to serve said juror.

RULE LIII.

The marshal shall summon jurors by delivering to each personally, or by leaving at his usual residence, a written or printed summons, expressing the day, hour and Court at which he is to appear, and also whether he is to serve as a grand or a petit juror.

Jurors, how summoned; What summons to contain.

RULE LIV.

"COMMISSIONS TO EXAMINE WITNESSES."

Either party to a cause at issue, or ordered for judgment, wishing to sue out a commission to examine witnesses, shall first file a copy of the interrogatories to be propounded to the witness with the clerk, and shall give notice thereof, accompanied with a copy of such interrogatories to the opposite party, or his attorney; and each party may name any number of commissioners, not exceeding two, any two of whom shall be competent to execute the commission; but at least one of these shall be a commissioner named by the opposite party, unless a good reason be shown for the omission, and the cross-interrogatories and name of commissioners in behalf of the opposite party shall be rendered within ten days after such notice.

Party desiring Commission must file interrogatories; must give notice; number of Commissioners and by whom named; who to act; cross-interrogatories and commissioners of opposite party.

RULE LV.

No exception to a question shall prevail, unless it be filed with the interrogatories before the issuing of the commission.

Exception to questions; when only can prevail.

RULE LVI.

Commissions for examining witnesses may be forwarded by mail, and when executed may be returned in the same mode; *Provided,* that in the latter case the commissioner who deposits it in the postoffice, certify the same on the envelope over the seal, and if deposited by a messenger, that the commissioner certify the delivery to the messenger, and the messenger certify the delivery to the office. And if it should pass through any number of hands, successively, the same to be done by each, noting every stage of its progress, until delivered into the office.

Commissions forwarded and returned by mail; proviso; what Commissioner shall do.

RULE LVII.

Time allowed for returning commissions.

The time to be allowed for the return of a commission from any part of the United States, if not exceeding 100 miles distance, shall be one month; if at a greater distance not exceeding 500 miles, two months; if at a greater distance, three months. If from the West India Islands, three months. If from any part of Europe, six months. If from any other quarter of the globe, it must be judged of specially by the Court.

RULE LVIII.

Opening of Commissions; whose property; to remain with Clerk.

When a commission is returned, it may be opened by leave of the clerk, upon consent of both parties in writing, endorsed on the commission; and after the return of a commission, it shall be the property of both parties, and remain with the clerk to be used by either.

RULE LIX.

"Witnesses."

Government will pay per diem, only when; for Defendant.

In no case will a witness summoned by the Government for the defence be paid *per diem* by the United States, unless it shall appear that such witness has testified at the trial and that the testimony was material to the issue. If the cause be abandoned by the prosecution, either by an entry of *nol. pros.* or by consenting to a verdict of not guilty, or if the Court shall instruct the jury to find for the defendant upon the close of the testimony for the prosecution, this rule shall not apply, if the witness be present at the trial, and if it shall appear by affidavit that the testimony of such witness would have been material if the witness had been sworn upon the trial.

RULE LX.

When attachment will issue to compel attendance of witness.

If after service of subpœna and payment or tender of fees (for necessary expenses) the witness summoned does not appear to give evidence, the Court will, on motion, award an attachment.

RULE LXI.

"Scire Facias."

Service of the writ in suits commenced by.

In suits commenced by *scire facias* the service of the writ shall be personal on the party to be summoned.

RULE LXII.

A *scire facias* upon recognizance shall be served by personal summons of the defendant, or if he cannot be found, by leaving a copy at his residence or usual place of business; and the marshal shall return the manner of service. If the defendant has no known residence or place of business within the district, the plaintiff may proceed as heretofore, by two writs of *scire facias.* But the return of "*nihil*" by the marshal shall also state the reason for not making the service as above directed.

Service upon recognizance, to revive judgment and in other cases.

RULE LXIII.

Upon the return of "*scire feci*" to a *scire facias,* or "*nihil*" to an "*alias scire facias,*" the rule shall be that the defendant appear and plead in twenty days, or suffer judgment; but notice of the rule to appear need not be served, nor notice of the rule to plead, unless the defendant appear.

Rule upon return; service of notice of rule.

RULE LXIV.

"COSTS."

The costs in this Court are those prescribed by Acts of Congress of the United States.

According to rates prescribed by Congress

RULE LXV.

In all cases marked settled the clerk may enter up judgment against the plaintiff, if he be a non-resident, and defendant for their respective costs, and in cases discontinued or dismissed he may enter up judgment against the plaintiff for all costs in the case, unless otherwise ordered by the Court.

In cases marked settled. In those discontinued or dismissed; proviso.

RULE LXVI.

In no case shall the defendant be required to plead or answer until the plaintiff shall have given security for costs, if notice be given to the plaintiff's attorney that such security will be required. The amount of such security, not exceeding $50.00, shall be fixed by the clerk. On application made to a Judge such further security may be ordered as may be deemed necessary.

Security for costs; amount; further security when required.

RULE LXVII.

Printing records; by whom costs to be borne.

Whenever any part of the record and report and testimony, or either, in any cause shall be printed, the expense of printing, in the absence of any agreement in writing to the contrary, shall be borne equally by the parties for whose convenience the printing shall be done, and shall be taxed up in the costs of the case.

RULE LXVIII.

"Surveys."

Of land of 200 or less acres in quantity; larger quantities; for admission in evidence what must appear; what plats shall represent; must be furnished in duplicate; after case has gone to jury, no objection will lie to order of surveys; obtaining of or execution thereof; copy of this rule to be annexed to every order served on surveyor.

Surveys of lands in any quantity of two hundred acres or less, shall be laid down by a scale of ten chains to the inch; in all over that quantity by a scale of twenty chains to the inch. No survey under an order of the Court shall be received in evidence, unless it appear that at least ten days' notice of the time and place of commencing such survey has been given to the parties. Every surveyor shall represent in his plat, as nearly as he can, the different enclosures of the parties, and the extent or boundaries within which each party may have exercised acts of ownership. He shall also represent a fence, buildings, and the like, by a mark, in due proportion in size, according to the scale of the plat. He shall, by some small but distinct letter or figure, distinguish every corner, station, blazed tree, or other point which is likely to be the subject of dispute. He shall take care not to render the plat confused or indistinct by crowding too much upon it; but he shall rather refer by letters or figures to a table which may contain the courses and distances of lines, the marks at corners, stations and noted points, explanations and marks, than attempt to write much upon the lines, or near to points on the plat. He shall also make two drafts or duplicates of the plat, so that on the trial there may be one for the use of the Court and the other for the parties in Court.

After a cause has gone to a jury, and any evidence has been heard on it, neither party shall be allowed to make any objection to the order of survey, or the manner in which it may have been obtained or the survey executed.

A copy of this rule shall be appended to every order of survey served on the surveyor.

RULE LXIX.

"MARSHAL'S SALES."

Sales of all property made under the order of this Court are regulated by the Act of Congress, approved March 3d, 1893, United States Statutes at Large, Vol. 27, Chap. 225, page 751.

Place and manner of regulated by Act of Congress.

RULE LXX.

"ATTORNEYS."

Attorneys of unexceptionable character, who have been admitted into the Supreme Court or any of the Circuit Courts of the United States, shall be admitted of course to practice in this Court; and those who have been admitted in the State Supreme Court, and practiced therein for three years, and are of unexceptionable character, shall be admitted to practice in this Court on motion.

Admission to practice; requirements; commission to examine.

On application, the Court will appoint a Commission to examine attorneys of the State Supreme Coprt who have not yet served the above required time, and upon report of their fitness, their admission to this Court will be ordered.

RULE LXXI.

In the trial of every action the plaintiff, and on all rules to show cause, the parties cited, shall begin and end the argument; but in all special matters, either springing out of the cause at issue or otherwise, the actor or parties submitting a point to the Court will be heard last; and generally the actor shall open and conclude the cause. A fair opening of the case shall be made by the party having the opening and closing argument, and no party shall be allowed to speak more than one hour without the leave of the Court.

Argument and reply; generally actor opens and concludes; time allowed; in criminal actions district attorney to close.

In all criminal prosecutions the District Attorney shall be entitled to have the closing argument.

RULE LXXII.

Whenever any proceeding, intervention or notice in a cause is filed in this Court by any attorney not resident within the District, in behalf of a non-resident party, such attorney, at the time of filing such proceeding, shall designate some member of this Bar, resident within the District, upon whom can be served all papers in such cause, which properly could be served

When any proceeding in a cause is filed by non-residents, resident attorney to be named.

on such non-resident attorney were he resident within the District.

RULE LXXIII.

Attorneys or Counsellors not to be bail or surety.

No attorney or counsellor of this Court shall, on pain of being struck from the roll, be bail or surety in any cause pending before the Court, or to be returned thereto; and this rule shall apply to both criminal and civil causes.

RULE LXXIV.

Repeal.

Repeal.

All Rules heretofore adopted for the government of the practice of this Court shall be and they are hereby repealed. But this repeal shall have no application to causes pending at the date of this enactment.

The United States of America, District of South Carolina, } *In the Circuit Court, Fourth Circuit.*

It appearing to the Court that a new and revised edition of the Rules of this Court should be prepared, it is

Ordered by the Court, That R. Withers Memminger, Jr., C. B. Northrop and Huger Sinkler, Attorneys and Solicitors of this Court, be appointed a Committee, entrusted with the preparation of proper rules for the government thereof. And that they be authorized and requested in such preparation to consult with the other members of the Bar, thus obtaining the aid of their learning and experience.

CHARLES H. SIMONTON,
Circuit Judge.
WILLIAM H. BRAWLEY,
District Judge.

10th April, 1896.

True copy.

J. E. HAGOOD,
C. C. C. U. S. Dist., S. C.

In pursuance of this order the Committee submitted to the Court a revision of the rules thereof, and the foregoing rules were adopted as the Rules of the Court, to take effect July 6th, 1896.

Rules of Practice in the District Courts of the United States for the District of South Carolina.

Note: The Rules of the local United States Courts are here given for the convenience of the Bar: The Rules of the United States Courts in Equity and Admiralty cases prescribed by the Supreme Court are not here given, being easily accessible in any work on Federal Practice.

RULE I.

Process.

The libel. Must state facts.

A libel, information or petition, must state plainly the facts upon which relief is sought, without any repetitions or amplification of charges.

RULE II.

Libel; when to be verified.

Libels (except on behalf of the United States) praying an attachment *in personam* or *in rem,* or demanding the answer of any party on oath, shall be verified by oath or affirmation.

RULE III.

Libel; when verification is not necessary.

Libels, informations or petitions, praying a monition or citation only, without attachments, need not be sworn to.

RULE IV.

Libel; amendments, etc.; how connected with.

Amendments or supplementary matters must be connected with the libel or other pleading by appropriate references, without a recapitulation or restatement of the pleading amended or added to.

RULE V.

Libel; mariners in same voyage may join in suit by petition.

In suits for seaman's wages, any mariner in the same voyage, not made a party, may by short petition to the Court in any stage of the cause previous to the final distribution of the fund in Court, or discharge of the defendant and his sureties, be joined as libellant in the cause, but no costs shall be allowed for the proceedings taken to make him a party.

RULE VI.

Libel; co-salvors may join by petition on Terms.

In case of salvage and other causes, civil and maritime, persons entitled to participate in the recovery, but not made parties in the original libel, may upon petition be admitted to prosecute as co-libellants on such terms as the Court may deem reasonable.

RULE VII.

Process on libels; when returnable, and Writs of sale.

Process on libels or informations may be made returnable on any day at a stated special term, but writs for the sale of property, under any order or decree of the Court and all final process, shall be returnable at a stated term, unless upon cause shown, an earlier day is specially appointed by the Judge.

RULE VIII.

Process may be issued without mandate of Judge; when.

Process *in rem* may be issued without a mandate of the Judge except in foreign attachment or in suits for seamen's wages. In the absence of the Judge from the District, the process may issue as provided by Statute.

The "Berkeley" 58 F. R., 920.

RULE IX.

Process; to conform to State Courts in absence of rule.

Where no specific process is provided by the Rules parties may have such process as is in use in like cases in the Circuit Courts of the State.

RULE X.

Process; *in personam* in cases of torts or unliquidated damages.

No process *in personam* for the arrest of any person, in cases of torts or unliquidated damages, shall issue, except upon the mandate of the Judge.

RULE XI.

Process; attachment of person in liquidated damages; when may be issued by Clerk; what to express and indorsement to be made by Clerk.

In cases of liquidated damages, when the certainty and amount of the demand appear upon the face of the libel, an attachment *in personam* may be issued by the Clerk without an order. The attachment shall plainly express the cause of action and the amount of the demand, and the Clerk shall endorse thereon the sum for which bail is required, not exceeding one hundred dollars above the sum sworn to be due and un-

paid; but no attachment or citation shall be issued until the libellant shall have filed a stipulation for costs in the sum of one hundred dollars.

RULE XII.

Return.

"Served Personally;" Party deemed in Court.

On the return of a citation or warrant by the marshal, "served personally," the party shall be deemed in Court, and may be proceeded against accordingly.

RULE XIII.

When not "served personally" in suits *in personam.*

When the citation or monition in suits *in personam* is not served personally, the defendant being within the jurisdiction and evading service, the libellant may at his election pursue the defendant to a decree of contumacy, in which decree may be embraced an order for the attachment of the defendant as for contempt process; or, on verifying by oath the matters demanded by the libel, the libellant may have an attachment *in personam* instanter, on the return of the citation "not served."

In the latter case all subsequent proceedings may be as if the attachment had been sued out in the first instance.

RULE XIV.

When Marshal shall return all process; return may be compelled; what return shall contain.

All process to the marshal shall be returned on the return day thereof, and if he shall not return the same in four days, after being required in writing so to do, by any party or his proctor, upon affidavit of such requirement, and of the delivery of the process to him, an order may be entered, of course, that he show cause why an attachment shall not issue against him, and in the case of process *in rem,* the return of the marshal shall express the day of the seizure of the property or the day of sale, if a process for that object.

RULE XV.

Of process requiring action in open Court; if Court not in session deemed continued.

In case the Court is not in session at the return of process, requiring to be acted on in open Court, proceedings shall be continued to the next sitting of the Court (either stated or special,) at which time the like proceedings may be had thereupon as if then returnable.

RULE XVI.

Foreign Attachment.

When Defendant appears; when in default.

In cases of foreign attachment, if the defendant appear, the same proceedings may be had as is usual in suits *in personam,* and if he make default, the Court will proceed *ex parte,* and pronounce the proper decree, unless the attachment is discharged; at the instance of the garnishee.

RULE XVII.

Default Cases.

Decree on proclamation.

On proclamation after due return of process, the libellant shall be entitled to a decree of default or contumacy, according to the nature of the case, and the three proclamations heretofore used are abolished.

RULE XVIII.

Attachment.

Intervention to have attachment vacated.

In case of the attachment of property or the arrest of the person in causes of civil and admiralty jurisdiction (except the attachment is issued upon certificate pursuant to Sections 4,546 and 4,547 of the Revised Statutes) the party arrested, or any person having a right to intervene in respect to the thing attached may, upon evidence showing any improper practices, or a manifest want of equity on the part of the libellant, have a mandate from the Judge for the libellant to show cause *instanter* why the arrest or attachment should not be vacated.

RULE XIX.

Bonds and Stipulations.

Amount of *in rem* and *in personam.*

The amount of stipulations required of defendants in causes *in personam,* where stipulations can lawfully be required, shall be the sum endorsed on the warrant.

On libels *in rem* the bond to release the property from arrest shall conform to the provisions of Section 941, U. S. Revised Statutes; but the amount of the bond may be reduced by consent. Or the bond may be given under the provisions of Admiralty Rules 10 and 11 of the Supreme Court wherever they apply. And in any case cash may be deposited in the registry

of the Court in lieu of a bond equal in amount to the penalty of the bond if one were required.

RULE XX.

Notice of application for; what to specify.

Two days' notice shall be given the proctor of the libellant, of application for delivering up on stipulation property under attachment, specifying the sureties intended to be given, and their occupations and places of residence, and the officer before whom, and in the place where, the stipulation will be offered, except in suits by seamen for wages, when such notice may be *instanter*.

RULE XXI.

Conditions of

The stipulation or bond to be given upon releasing and delivering up property arrested by process of the Court, shall be conditioned that the claimant and his sureties shall, at any time upon the interlocutory order or decree of the Court, or of any Appellate Court to which the cause may proceed, and on notice of such order to the proctor of the party to whom the property shall have been delivered, bring into Court the appraised or agreed value of such property, or any part thereof, so ordered or decreed, if no proctor is employed by such party, the order or decree shall be deemed peremptory two days after the same is entered.

RULE XXII.

Clerk to Register.

The clerk shall provide a book in which shall be registered all stipulations filed in causes civil and admiralty, which shall be open to the examination of all parties interested.

RULE XXIII.

Process *in rem*, no answer, appearance or intervention allowed until stipulation filed; amount $250.

No process *in rem* shall be issued, nor shall any appearance or answer be received, or third party be permitted to intervene and claim; unless a stipulation in the sum of two hundred and fifty dollars shall be first entered into by the party, and at least one surety, resident in the district, conditioned that the principal shall pay all costs awarded against him by the Court, or in case of appeal, by the Appellate Court.

Cash may be deposited with the clerk in lieu of stipulation.

RULE XXIV.

Suits in *rem* for seamen's wages; salvors in possession of property; stipulation not required; court may order.

But seamen suing *in rem* for wages in their own right, and for their own benefit, for services on board American vessels, and salvors coming into port in possession of the property libelled, shall not be required to give such security in the first instance. The Court, on motion, with notice to the libellants, may, after the arrest of the property, for adequate cause, order the usual stipulations to be given in these cases, or that the property arrested be discharged.

RULE XXV.

Juratory caution; poor Plaintiffs.

When not otherwise provided by law, suits can be prosecuted or defended, *in forma pauperis,* by express allowance of the Court only, and in such cases no stipulation for costs will be required, but process *in rem* in such cases, unless specially allowed by the Court, shall not issue except upon proof of twenty-four hours' notice of filing of the libel for opportunity to appear.

See Benedict's Admiralty, (3d Ed.) Sec. 502. United States Statutes at Large, Vol. 27, page 252.

RULE XXVI.

Monition *in personam* without arrest or attachment; stipulation $100

Before monition shall issue *in personam* in cases in which neither a warrant in attachment nor of arrest is sought, a stipulation must be entered into in behalf of libellant, with or without surety in the discretion of the clerk or the Judge, in the sum of one hundred dollars, for the payment of such costs as shall be awarded against libellant by this Court.

RULE XXVII.

Party in interest may move for better security on notice.

In all cases of stipulations in civil and admiralty causes, any party having an interest in the subject matter may move the Court, on special cause shown, for greater or better security, giving the opposite party two days' notice thereof, unless a shorter time is allowed by order of the Judge.

RULE XXVIII.

Appraisement for bonding in seizures by the U. S.; as to notice.

In case of seizure of property in behalf of the U. S., an appraisement for the purpose of bonding the same may be had

by any party in interest, on giving one day's previous notice of motion before the Court, or the Judge in vacation, for the appointment of appraisers. If the parties or their proctors and the district attorney are present in Court, such motion may be made *instanter* after seizure and without previous notice.

RULE XXIX.

Notice of Arrest and Sale.

Notice of arrest of property by attachment *in rem*, in behalf of individual suitors, shall be published and affixed in the manner directed by Act of Congress in case of seizures on the part of the United States, except when the Judge, by special order, directs a shorter notice than fourteen days; and except, instead of the substance of the libel, a short statement of its purport may be given.

Notice of arrest of property by attachment must be published and affixed.

See Admiralty, Rule 9.

RULE XXX.

Notice of sale of property after condemnation in suits *in rem* (except under the revenue laws and on seizure by the United States) shall be six days, unless otherwise specially directed in the decree of condemnation and sale.

Six days' notice; except when.

RULE XXXI.

Appraisement.

Orders for the appraisement of property under arrest at the suit of an individual may be entered, of course, by the clerk, at the instance of any party interested therein, or upon filing the consent of the proctors for the respective parties.

Orders for may be entered of course.

RULE XXXII.

Appraisers acting under an order of this Court shall be severally entitled to three dollars for each day necessarily employed in making the appraisement; to be paid by the party at whose instance the same shall be ordered.

Pay of appraisers.

RULE XXXIII.

Tender.

A tender *inter partes* shall be of no avail on defence or in discharge of costs, unless on suit brought, and before answer,

Must be deposited in Court; after suit brought, must include accrued costs.

plea or claim filed, the same tender is deposited in Court, to abide the order or decree to be made in the matter. Where tender is first made, after suit brought, it must include taxable costs then accrued.

RULE XXXIV.

DEFENCE.

Claimant must prove interest; mode of proof.

No third party can intervene by claim without proof of a subsisting interest in the subject matter of the claim. This proof may in the first instance be the oath of the claimant, but subject to denial and disproof on the part of the libellant, on issue thereto or on summary petition.

RULE XXXV.

To be by answer or claim; exceptions to be only for matter of abatement; how and when.

Defence may be made by answer or claim, of matters of law or fact, without the employment of exceptions or special plea usual in causes of civil and maritime jurisdiction, other than exceptions to the competency of the party, or the process or other matters of abatement.

The defence herein referred to must be filed in the clerk's office within fourteen days (unless the Court shall direct otherwise) after the service of process, that is to say, in proceedings *in rem,* after the service of the warrant of arrest, and in proceedings *in personam* of the monition.

RULE XXXVI.

Answer as evidence; need not be verified, except to sworn libel or one by United States.

A sworn answer is not to be deemed higher evidence than the libel or information to which it responds, unless made so by the act of the promovent. An answer need not be put in under oath unless so required by a sworn libel, or one filed by the United States.

RULE XXXVII.

Answer in bailable process *in personam;* bail stipulation required

In the case of bailable process *in personam,* unless the defendant appear and put in bail stipulation according to the Rules of the Court, his claim or answer may be treated as a nullity, and his default be entered.

An answer in such case shall be deemed filed from the time the bail becomes perfected.

RULE XXXVIII.

When claim or answer may be verified by proctor; same applies to libel.

On due proof that a claimant or respondent is absent from the United States, or resides out of the district and more than one hundred miles from the City of Charleston, a claim or answer to a libel may be sworn to by a proctor, or attorney in fact, in behalf of such party. And if thereupon the libellant, by written notice to the respondent, demands a personal answer, verified by the oath of the party, proceedings shall stay a reasonable time to enable such answer to be taken by commission or *dedimus protestatem.*

The provisions of this rule may also be applied to the verification of a libel, by the oath of a proctor or attorney.

RULE XXXIX.

Exceptions.

Practice for insufficiency, irrelevancy of scandal.

The libellant may, within four days from the filing of the answer or claim, file exceptions thereto for insufficiency, irrelevancy, or scandal, which exception shall briefly and clearly specify the parts excepted to by the line and page of the papers in the clerk's office, whereupon the party answering or claiming shall in four days either give notice to the libellant of his submitting to the exceptions, or set down the exceptions for hearing, and give four days' notice thereof for the earliest day of jurisdiction afterwards. In default whereof the like order may be entered as if the exceptions had been allowed by the Court.

RULE XL.

Practice where libel is multifarious or ambiguous; amendment.

The defendant may, on the return day of the process and before answering, demurring or pleading, file an exception to the libel that it is multifarious or ambiguous, or without plain allegations, upon which issue can be taken, and if it be adjudged by the Court insufficient for any of these causes, and be not amended by the libellant within two days thereafter, it shall be dismissed with costs.

RULE XLI.

Further answer required after exceptions; time within which to answer.

If a party submit to exceptions for insufficiency, he shall answer further within four days after notice of his submitting. If the exceptions are allowed on hearing, he shall answer

further within such time as the Court shall direct, and if the hearing of the exceptions shall not be duly brought on, or the further answer duly put in, the claim or answer excepted to shall be treated as a nullity, and the default of the party be entered.

RULE XLII.

Testimony by Commission.

Time within which Commission to be moved for.

Commissions for taking testimony, if not sued out pursuant to the Rules of the Circuit Court, shall be moved for in four days after the claim or answer is filed or perfected (if the same shall have been excepted to), but if interrogatories shall be propounded for the other party, by the party who moves for a commission, he shall have four days for moving after the answers to the interrogatories shall be perfected, otherwise such commissions shall not operate to stay proceedings; but on a proper case shown, application for a commission may be made at any time after the action is commenced and before issue joined, after a default or interlocutory decree.

RULE XLIII.

Affidavit for; to specify what

Affidavits on which a motion for a commission is made shall specify the facts expected to be proved, and the shortest time within which the party believes the testimony may be taken and the commission returned.

RULE XLIV.

Effect of admission by opposite party of facts stated in affidavit.

A commission will not be allowed to stay proceedings if the opposite party admits in writing that the witness will depose to the facts stated in such affidavits; such affidavit, with the admission, may be read on the trial or hearing, and will have the same effect as a deposition to those facts by the witness or witnesses named.

RULE XLV.

Motion for commission; when to be made; number of commissioners; costs.

The motion may be noticed and made at term before the Court, or in vacation before the Judge out of Court; and only one commissioner will be named, unless special cause is shown for the appointing a greater number, nor will costs be taxed for the services of more than one except where both parties require a greater number.

RULE XLVI.

Interrogatories, in case of disagreement; notice of presentation of.

Interrogatories for the direct and cross examination, in case the parties disagree respecting them, shall be presented to the Judge for his allowance at one time and one day's notice of such reference shall be given by the party objecting to the opposite interrogatories.

RULE XLVII.

Cross-interrogatories; time in which to be served; when parties deemed to assent.

Cross-interrogatories shall be served four days after the direct have been received or they shall be regarded as assented to, and if no notice of reference to the Judge is given within five days after both direct and cross-interrogatories have been served, each party shall be deemed to have assented to the interrogatories served.

RULE XLVIII.

Depositions to be returned to Clerk's office immediately and attorney notified.

Depositions taken under commission or otherwise shall be forwarded to the clerk immediately after they are taken. On their return to the clerk's office, each deposition shall be filed by the clerk, who shall forthwith give notice to the attorneys or proctors of the parties.

RULE XLIX.

Motions to open depositions; how made; objections; how made.

Either party at any time after the deposition or commission is filed with the clerk may move the Court or the Judge at Chambers to open and publish the same, giving two days' notice to the other attorneys or proctors. All objections to the form or manner in which the deposition or commission was taken or returned shall be deemed waived, unless such objection be specified in writing and served on the party at whose instance the deposition was taken or commission issued, within four days after the same are opened, unless further time be granted by the Court.

RULE L.

Opening does not preclude objections at trial.

Opening such commissions or depositions shall not preclude either party from objecting to the competency or relevancy of the evidence when offered on trial.

RULE LI.

Trial.

When case deemed ready for.

When all the pleadings in a cause of admiralty and maritime jurisdiction shall have been filed and the cause shall be at issue, the clerk shall enter it on the docket for trial. Thereupon, without move the cause will be deemed for trial at the expiration of four days thereafter. If for any reason the trial be not begun at that time, any party to the suit may call it up for trial by giving one day's notice to the other parties or their attorneys, whereupon the trial shall proceed forthwith, unless the Court shall order otherwise, on cause shown. By consent of parties the delay of four days after pleadings filed can be dispensed with.

RULE LII.

Court may order prompt hearing.

Nothing in the above rule contained shall be construed so as to prevent the Court, when in its discretion the emergency shall require it, from ordering the return of process *instanter,* immediate pleading and prompt hearing of the cause.

RULE LIII.

Admiralty Court always open; call of docket; examinations *de bene esse* or references to take testimony.

The Court of Admiralty shall always be deemed open for the transaction of business. For the purpose of an orderly dispatch of business the Admiralty Docket will be called peremptorily on the Tuesday of each week, except when the Circuit Court is in session. The cases on the docket at such call will be disposed of, grounds of continuance under the rule being admissible. No examination of witnesses will be had but at the trial of a cause, except in such cases as require depositions and examinations *de bene esse* or by commission.

References to take testimony out of Court will not be made except in cases of absolute necessity by the reason of the absence or inability of the Judge.

RULE LIV.

True bill found; docketing and trial of case.

When the Grand Jury find a true bill in any case, it shall be placed on the docket, subject to peremptory call for trial, unless cause be shown, on affidavit if urged, for a postponement of trial for a day during the term for a continuance to the next term.

RULE LV.

New Parties.

Whenever from the death of any of the parties or changes of interest in the suit, defect in the pleadings or proceedings, or otherwise, new parties to the suit are necessary, the persons required to be made parties may be made such either by a petition on their part or by the adverse party.

When necessary; to be made by petition.

RULE LVI.

In either mode it shall be sufficient to allege briefly the prayer of the original libel, the several proceedings in the cause and the date thereof, and pray that such persons required to be made parties to the suit may be made such parties.

Petition, what to contain.

RULE LVII.

On service of a copy of such petition and of notice of the presenting thereof, such order shall be made for the further proceeding in the cause as shall be proper for its speedy and convenient prosecution as to such new parties, and the same stipulations and security shall in all such cases be required and given, as in cases of persons becoming originally parties to a suit.

Petition; order upon; security required.

RULE LVIII.

Appeals.

Appeals shall be taken and matured as prescribed by the Rules of the Circuit Court of Appeals for this Circuit.

Governed by Rules C. C. A.

RULE LIX.

Summary Practice in Admiralty.

In admiralty and maritime causes, wherein the matter in demand does not exceed fifty dollars, the proceedings for recovery thereof may be summary.

Where amount does not exceed fifty dollars, proper.

RULE LX.

Instead of filing a libel, the provement in suits by individuals may by short petition, state the matter of his demand and the amount or value thereof, or present an account stated, or a

Libel not necessary; process will issue when.

bill of charges by items, on filing either of which with proof that demand has been made for payment, process may issue as on the filing of a libel in ordinary cases.

RULE LXI.

Process when returnable; hearing of case.

The monition or citation or attachment may be made returnable the first day of a stated or special session of Court next succeeding the service thereof—at least three days intervening between the service and return of process *in rem* in suits by individuals, and fourteen in suits by the United States:—and on the return of process in open Court, duly served, the cause may be put *instanter* upon the calendar, and either party without other notice may proceed therein to proofs and hearing. And the party obtaining a continuance of the cause, if *in rem*, shall bear all expenses taxed for keeping the thing attached, intermediate such continuance and the final hearing.

RULE LXII.

Practice in Informations.

What rules govern.

Informations on seizures upon land or water are to be drawn in a precise form, only referring to, without reciting Statutes or Sections of Statutes at large. The information should set forth the *gravamen* of the suit by plain and issuable allegations; and when *in rem* the property demanded as forfeited is to be specified, together with the alleged cause of forfeiture. Informations are subject to the same general rules as to their structure and amendment as ordinary libels.

RULE LXIII.

Joinder in what cases and when.

Proceedings *in rem* for a forfeiture, and *in personam* for an offence, fine, penalty or debt, may be joined in one information when having relation to the same transactions.

RULE LXIV.

What process Clerk shall issue.

On filing an information *in personam* or *in rem*, the clerk shall issue process thereon corresponding as nearly as may be with that employed in the Instance Court of Admiralty in similar cases. But process *in personam* may be in the first instance a *capias* or attachment against goods to compel an appearance, or a monition at the election of the complainant.

RULE LXV.

No party shall be held to bail on an information *in personam* without the mandate of the Judge, except where bail is required or authorized by Statute.

Party held to bail; when.

RULE LXVI.

All rules applicable to the service of, or proceedings in relation to, process in plenary causes in admiralty, shall equally apply to process on informations.

Rules applicable to process on.

RULE LXVII.

If the information filed is multifarious or ambiguous, or does not supply plain allegations upon which issue can be taken or a distinct reference to the Statute upon which it is founded, the defendant or claimant may move the Court to have it reformed, giving two days' previous notice, together with a specification of the exceptive parts to the district attorney or proctor in whose name it is filed. It may be amended, of course, in conformity to such notice; if not reformed within two days after pronounced defective by the Court, the defendant may take an order of discharge from the action.

Where multifarious or ambiguous may be reformed and amended; how.

RULE LXVIII.

Amendments may be had to informations in any stage of the cause; but if after an issue is formed between the parties, it shall be on payment of all costs which may have accrued by means of the amendment or the defective pleading.

Amendments allowed; when and how.

RULE LXIX.

In informations *in rem,* a delivery on stipulation of property seized, or a sale of perishable articles may be had as in case of proceedings in the Instance Court of Admiralty.

Delivery on stipulation and sale of perishable property.

RULE LXX.

The claimant shall appear and interpose his claim or plea on informations *in rem,* within the same time and in the same manner as in causes on the instance side of the Court of Admiralty; and shall appear and plead to informations *in personam* within the same time and in the same manner as in

Claimant; rules applicable to.

causes at common law; but no plea other than in abatement, the general issue, former recovery, pardon or remission of the offence, fine or forfeiture, shall be received.

RULE LXXI.

Traverse to; general issue.

Instead of a traverse of each separate cause of forfeiture alleged in the information, the defendant may plead as a general issue to an information *in rem* "that the several goods in the information mentioned did not, nor did any part thereof, become forfeited in manner and form as in the information in the behalf alleged."

RULE LXXII.

Proceedings to conform to common law; when.

Putting in and justifying bail on behalf of the defendants on arrest, and the proceedings to and on trial and execution when a trial by jury must be had, shall be the same as in cases of common law jurisdiction.

RULE LXXIII.

Common Law Practice.

Rules days; what may be entered on.

Rules shall be held monthly in the clerk's office on the first Monday of every month for the purpose of entering all proceedings and orders which may be entered at the Rules and not necessary to be taken or made in open Court.

RULE LXXIV.

Calendars; what to contain.

The clerk shall, before the first day of every stated term, prepare two calendars, one for the use of the Court and the other for the use of the Bar, which calendars shall be each divided under two titles, the first containing the jury cases noticed for trial and the second containing the titles of all admiralty suits and issues at law.

RULE LXXV.

Where no rules of this Court what rules govern.

In cases not provided for by the Rules of this Court, the Rules of the Circuit Court of the United States for this District, for the time being (whether adopted before or after these Rules), so far as the same may be applicable, shall regulate the practice of this Court; and when there is no rule of the

Circuit Court to apply, then the Rules of the Circuit Court of the State, then in force, so far as the same may be applicable, shall govern.

RULE LXXVI.

Proctor.

Papers to be presented by.

To secure the orderly and responsible transaction of the business of the Court, all papers in any case requiring the signature of the Judge must be presented by a proctor of the Court.

RULE LXXVII.

Admission to practice; what necessary.

All persons who have been admitted as attorneys of the Courts of this State, and have practiced therein for one year, and whose private and personal character appears fair, may, on petition in writing, duly presented, be admitted to practice in this Court. On application the Court will appoint a commission to examine attorneys of the State Courts who have not yet served the above required time; and, upon report of their fitness, their admission to this Court will be ordered.

Admission to the Circuit Court will not entitle the attorney to practice in this Court, except upon motion in this Court and payment of the clerk's costs.

RULE LXXVIII.

Repeal.

Repeal.

All Rules heretofore adopted for the government of the practice of this Court shall be and they are hereby repealed. But this repeal shall have no application to cause pending at the date of this enactment.

The United States of America,
District of South Carolina. } *In the District Court.*

It appearing to the Court that a new and revised edition of the Rules of this Court should be prepared, it is

Ordered by the Court, That R. Withers Memminger, Jr., C. B. Northrop and Huger Sinkler, Attorneys and Solicitors of this Court, be appointed a Committee, entrusted with the preparation of proper rules for the government thereof. And that they be authorized and requested in such preparation to consult

with the other members of the Bar, thus obtaining the aid of their learning and experience.

WM. H. BRAWLEY,
U. S. Judge.

10th April, 1896.

True copy.

C. J. C. HUTSON,
C. D. C. U. S. Dist. S. C.

In pursuance of this order the Committee submitted to the Court a revision of the Rules thereof, and the foregoing Rules were adopted as the Rules of the Court, to take effect July 6, 1896.

ALPHABETICAL INDEX

TO

RULES OF COURTS.

References to Court Rules are indicated as follows: Supreme Court, S. C.; Circuit Court, C. C.; Probate Court, P. C.; United States Circuit Court, U. S. C.; United States District Court, U. S. D.

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