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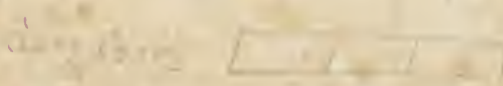


L. G. Johnson
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THE CODE

OF THE

STATE OF GEORGIA.

PREPARED BY

R. H. CLARK, T. R. R. COBB AND D. IRWIN.



ATLANTA, GEORGIA:
PUBLISHED BY JOHN H. SEALS.

CRUSADER BOOK AND JOB OFFICE.

1861.

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P R E F A C E .

By an Act of the General Assembly, assented to 9th December, 1858, provision was made for the election of three Commissioners, "to prepare for the people of Georgia a Code, which should as near as practicable, embrace in a condensed form, the Laws of Georgia, whether derived from the common Law, the Constitutions, the Statues of the State, the decisions of the Supreme Court, or the Statutes of England, of force in this State."

David Irwin, Hon. Hershell V. Johnson, and Iverson L. Harris, were elected Commissioners, under the provisions of this Act. The last two named, declining the position, His Excellency, Governor Brown, supplied the vacancies by the appointment of Thomas R. R. Cobb, and Richard H. Clark, who were also elected by the Legislature at its session next after they were appointed.

Thus organized, the Commissioners commenced the work assigned them.

Looking alone to the words of the Act, the object contemplated by the Legislature swelled into a project, the magnitude of which would have deterred the boldest adventurer, if its accomplishment did not strike his mind as being utterly impossible. The commissioners, however, did not believe, that such a construction of the Act was a proper interpretation of the Legislative will, but construed it as requiring a Code, which should embody the great fundamental principles of our jurisprudence from whatsoever source derived, together with such Legislative enactments of the State, as the wants and circumstances of our people had from time to time, shown to be necessary and proper.

Such a Code will furnish all the information, on the subject of Law, required either by the citizen, or the subordinate Magistrate.

Thus interpreting the Act of the Legislature prescribing their duties, the Commissioners entered upon the discharge of those duties, seeking not only to condense, and arrange, the verbose, and somewhat chaotic mass of the Statutes of Georgia, but also to interweave therewith, those great leading principles of jurisprudence, necessary to fill out and make perfect the body of our laws, of which the Statutes constituted but disjointed parts.

In such an undertaking, the Commissioners could not hope for complete success, but to attain it as near as possible, they have spared neither painstaking or labor. How far they have succeeded in their efforts is submitted to the judgment of a generous profession, and a generous public,

The Code is divided into four parts as follows :

PART I.—THE POLITICAL AND PUBLIC ORGANIZATION OF THE STATE; Which treats of the Boundary, Divisions, Subdivisions of the State, and the municipal organization, and regulations thereof.

PART II.—THE CIVIL CODE; Which treats of rights, wrongs, and remedies.

PART III.—THE CODE OF PRACTICE; Which treats of the various methods of enforcing rights, and redressing wrongs, together with the law of Pleading and Evidence, and the practice of the Courts.

PART IV.—PENAL LAWS; Which treats of Crimes and Misdemeanors, Trial and Punishment, and it is subdivided into: First.—Penal Code for the Trial and Punishment of white persons, to which is added a XVI Division, containing the Proceedings in Preliminary Courts. Second.—Laws for the government of the Penitentiary. Third.—Penal Code for Slaves, and Free persons of color.

In the preparation of this work, the Commissioners have endeavored to arrange the various subjects, under appropriate Titles, Chapters, Articles, and Sections, except the Penal Code, in which for the purpose of convenient reference, the original Divisions have been retained.

The paragraphs are numbered from the beginning to the end of the book.

Thus prepared, the Code, after a thorough and laborious examination by a Legislative committee, was submitted to the Legislature, and on the 19th of December, 1860, was “adopted as the Code of Georgia, to be of force, and take effect on the 1st day of January, 1862.”

The adopting statute further provided: That all laws and resolutions of a public and general character, passed at the session of the Legislature, in the year 1860, and also the Laws of Georgia, having reference to the City of Savannah, should be incorporated in, and made part of the Code, and that the duties and powers of the Commissioners should be continued to that end, with authority to place the same in the Code, in proper form and connection, and to correct any conflicts that might be created thereby, with existing provisions.

On the 18th of March, 1861, a convention of the people, then in session:

Resolved, That in the publication of the Code, it should be made to conform to the Government of the Confederate States, instead of the Government of the United States, from which Georgia had then but recently seceded, and also that the Constitution of the Confederate States, should be published as part of the Code.

A compliance with these provisions, required an almost entire revision of the Code, and added greatly to the labor, as well as to the difficulties in the way of perfect success.

It is but an act of justice to the Publisher to state, that the typographical errors which appear in the book, are mainly attributable to the frequent change of Printers during the progress of its publication, resulting from the excited

and unsettled state of our national affairs. No less than eleven Printers, who were at one time or another, engaged in printing this Code, are now in the service of the Confederate States.

The errors alluded to, have been corrected in an *Errata*, which will be found at the end of the Index, and to which the special attention of the reader is invited.

Many of the Rules of the Supreme and Superior Courts, having been superceded by Legislative enactments, and decisions of the Courts, and others being embodied in this code under appropriate heads, it is believed that the rules of both courts should undergo a revision by the proper authorities, and therefore they are omitted in this book.

As constant reference will be made to the Code, not only by the Bench and Bar of the State, but also by the various public officers, and citizens who are not Lawyers, the commissioners have endeavored to make the Index copious and full, and to distribute the matter under as many heads as it could be appropriately placed, in order that what is sought for, may be readily found.

The commissioners submit to the people of Georgia the result of their labors, and ask for it a patient examination, sufficient at least to understand the plan, arrangement and execution of the work, and if after that, it be not approved by the public, they can but regret it.

REPORT OF THE COMMITTEE.

To the General Assembly of the State of Georgia.

The committee appointed under the resolution of the last session of this General Assembly, (assented to 16th Dec. 1859,) to meet the Commissioners appointed under an Act to provide for the Codification of the Laws of Georgia, (approved 19th of Dec. 1858,) at the capital in Milledgeville, at least twenty days before the meeting of this present session of the General Assembly, for the purpose of revising and fully examining said Code, respectfully report ;

That they have discharged the duty devolved upon them by said resolution and the following is the result of their investigations.

Referring to said Act, of 9th of December 1858, your Committee find that it was made the duty of the Commissioners, thereby appointed to prepare for the people of Georgia a Code which shall, as near as possible embrace in a condensed form, the Laws of Georgia, whether derived from the Common Law, the Constitution of the State, the Statutes of the State, the decisions of the Supreme Court, or the Statutes of England, of force in this State.

With this enlarged and extensive chart of the powers and duties of said Commissioners before your Committee, and as directory, as well to compilation

as in the revision and examination of said Code, they caused each and every section thereof to be fully and carefully read before them, and they present as their unanimous conclusion that said Commissioners have kept themselves fully and carefully within the pale of the powers and duties conferred.

The mingling together in condensed and intelligible form the common and statute Laws, Constitutional provisions and Court Decisions, and thus to place the whole body of all the Law within the reach of the people was in the opinion of your Committee the great end aimed at by the Legislature, and this end has been kept in view, and to every practicable and attainable extent ably and efficiently accomplished by the Commissioners.

A Code so entirely extensive in its aims and purposes as to define in intelligible form and language out of the body of the great system of the Common Law, existing time whereof the memory of man runneth not to the contrary, mischiefs and rights, duties and obligations and to present in intimate and close connection therewith Constitutional and statutory provisions, and the Judicial exposition and construction thereof, for their redress and enforcement, is of rare, if not in the Code now presented, of original occurrence. Your Committee intend to say, that it has not been before so extensively attempted, that the citizen should be referred to the whole embodiment of the Law in a single volume to be exactly informed what are his rights in any and every exigency, and what his remedies for their enforcement and protection. And it need hardly be added that to the large degree in which the offered Code accomplishes this great desideratum, it must and will commend itself to public approval and acceptance. As your Committee have said in the discharge of the duties devolved upon them, they caused each and every section of the Code to be read before them, and at the option, or upon the suggestion of any one of its members, its sections were discussed, canvassed and amended, enlarged and restricted by a vote of the majority; and your Committee will add, that the Codifiers themselves being present, with scarce a single exception, approved, acquiesced in, and adopted all such suggestions, alterations, modifications, enlargements, or restrictions, as your Committee thought proper to make.

Beyond what has been said, the limits of this report will not authorize your Committee to enlarge.

As "the result of their investigations," and in full view of the delicate responsibilities thereby incurred, specially if their further suggestions shall receive Legislative approval, they do not hesitate with entire unanimity to report that the Commissioners have ably, faithfully, and efficiently discharged the arduous duties imposed upon them, and with like unanimity recommend the Legislative sanction and adoption of that which they present as "The Code of Georgia."

In the further anxious discharge of their duties, the thoughts of your Committee have been necessarily turned to consider the mode, in and by which, this can be done.

The importance of a knowledge of the contents of the Code to a satisfactory and well considered vote for its adoption by each member of the Legislature,

has on the one hand pressed strongly upon us, while on the other, the utter impossibility of canvassing and considering within any reasonable period of time, the four thousand paragraphs embraced therein, has presented an obstacle almost, if not absolutely insurmountable.

The mere reading of the manuscript to inform and enlighten the Legislative mind as to its provisions, would occupy more than half the time limited by the Constitution to a Legislative Session. Such reading, accompanied by the unquestioned power to amend and discuss according to the varied opinions and policy of our three hundred members, it need hardly be said would occupy, to say the very least, more than all the time thus limited.

In the opinion then, of your Committee, to read without amendment, and discussion, would be idle and useless waste of time and money; and to read, amend and discuss, impracticable.

Entertaining these opinions, and seeking the best solution of the difficulties, your Committee were naturally, to refer to the precedents set and acted upon by your sister States under similar circumstances. So far as such precedents will sanction and justify the recommendation to which they are led, they have been pleased to find that in almost every State, Revised Codes have been adopted by a simple Legislative Act, such as your Committee offer with this Report, and upon the action and report of a committee, leaving other considerations, amendments and discussions, of course, to the power and wisdom of the Legislature after publication.

With the exception of Virginia, your Committee believe that the action of the States has been uniformly such as they now recommend. In that State the other policy was pursued. Each section of its Code was subjected to a thorough revision, and separate adoption by its whole Legislative Department. The result was that its session was extended to a period over six months, and of course at a very great cost to the State. Your Committee from a partial and cursory examination of the Code of that State will be permitted to add, in no censorious spirit, that the benefit of this course is not manifest in the results. Other Codes adopted upon the plan which your Committee feel constrained to suggest, compare most favorably with this Code of Virginia.

Your Committee believe that they could give satisfactory reasons for the opinion entertained, that the labor, time and money which might be expended in a Legislative reading, revision and examination of the Code, might be really detrimental, rather than beneficial to its efficiency, harmony, and entire plan and structure. But the limits of a report forbid all such attempts.

If the Code now presented were a new system of jurisprudence, or had the Commissioners attempted to graft upon our system any new features extracted from others, and unharmonious with our own, or even if alterations in a well defined public policy had been attempted, your Committee would have paused, hesitated to recommend the mode of adoption suggested, without at least calling the special attention of the Legislature to such new and essential changes.

But at an early stage of our revision and examination, the Codifiers announced the leading principle by which they had attempted to guide their labors, and your Committee report the same prominent in all the amendments and changes made at their suggestion. This principle was, to attempt no change or alteration in any well defined rule of law which had received Legislative sanction or judicial exposition, and to add no principle or policy which had received the condemnation of the former, or was antagonistic to the settled decisions of the latter.

The prominent and leading power of change exercised in construction and revision, has been to cut and unravel *Gordian knots*, resulting from conflicting decisions of the Courts, to reconcile actual and apparently discordant legislation, harmonizing all conflicts to what seemed to be settled and favored public policy; to remedy existing defects by wise and harmonious provisions, and to supply omissions which the practice and experience of the Courts had discovered and made manifest in existing legislation. In short, the great end and aim has been to reconcile, harmonize, render consistent the body of the Law, so as to give shape and order, system and efficiency, to the sometimes crude, and often ill expressed, sovereign will of the State.

A settled conviction on the mind of your Committee that the Codifiers have, to a degree as complete and perfect as might reasonably be expected, accomplished these and like ends, has won for the Code as an *entirety* their cordial and unanimous approval. Your committee will not conceal that some particular sections and provisions have not met this unanimous concurrence.—When differences arose, careful and anxious consideration and discussion followed, and minorities did not hesitate to yield; all being satisfied that as a whole, the Code was entitled to and should receive, as it does receive, their unanimous and unqualified approbation and recommendation.

Your Committee fully believe that such would be the result of any examination and revision by the Legislative Department.

Your Committee do not deem it inappropriate to their duties to add, that the proper printing and publication of the Code, if adopted, becomes a subject of much interest and importance. Its plan and structure accompanies this Report. A reference thereto will render most manifest the necessity in the publication of rigidly adhering to the plan. The numerical order of its paragraphs, and its references in one title, section, or paragraph, to another, must be preserved. In the use and value of the Code, its Index becomes of the highest importance.

These and like considerations and reflections lead your Committee to suggest that none other than those who constructed the Code, who devised its plan, and are familiar with its details and manuscript, can so well superintend its publication and prepare its index. Your Committee have further to add that it is provided in the Code itself that it shall not take effect until the 1st of October, 1861, thus giving time for its publication.

It is further provided, and your committee think wisely, to meet any insufficiency of the Code, that all questions not embraced or provided for therein, shall be decided and settled by existing laws, and that the Code does not interfere with or in any manner abrogate or repeal local legislation.

If in the views thus presented by your Committee, they shall have the concurrence of the Legislature, they present as part of this Report, a Bill to adopt the Code, and a Bill to provide for its publication.

All of which is respectfully submitted.

HINES HOLT,

DANL. S. PRINTUP,

W. W. PAINE,

Committee on part of Senate.

GEO. N. LESTER,

ISHAM S. FANNIN,

W. G. DELONY,

M. W. LEWIS,

C. N. BROYLES,

C. J. WILLIAMS,

Committee on part of House.

THE ACT ADOPTING THE CODE.

An Act to approve, adopt and make of force, in the State of Georgia, a Revised Code of Laws, prepared under the direction, and by authority of the General Assembly thereof; and for other purposes therewith connected.

Section 1. *The General Assembly of the State of Georgia do enact*, That the Revised Code of Laws prepared under its authority, by Richard H. Clark, Thos. R. R. Cobb, and David Irwin, Esqr's., and revised and fully examined by its committee, and recommended and reported for adoption, (the manuscript whereof now being on file in the Executive Department,) be, and the same is hereby adopted, as the Code of Georgia; to be of force and take effect, on the first of January, 1862..

Provided, That the adoption of the Code, shall not operate so as to repeal an act, entitled an act to define the liability of the husband for the debts of the wife, and to define the liability of the property received through the wife, for the debts of the husband, existing at the time of the marriage, approved 28th February, 1856; or to punish any Judge, Justice, or Minister, for joining in marriage any female under the age of twenty-one, without the consent of her father or guardian.*

Section 2. *And be it further enacted*, That all laws and resolutions of a pub-

lic and general character, passed at this present Session of the General Assembly, be incorporated in and made part of said Code; and that the duties and powers of the Codifiers, be continued to that end, with authority to place the same in proper and appropriate form and connection, and to correct any conflicts which may be created thereby, with its existing provisions. And that the performance of the further duties by said Codifiers, as required in this section, be submitted to the revisal, examination and approval of His Excellency, the Governor, before the publication of said Code.

Section 3. *Be it further enacted,* That the laws of the State of Georgia, having reference to the city of Savannah, &c., as codified by order of the City Council of Savannah, by the city Attorney of Savannah, be, and the same is hereby declared and made a part of the Code of Georgia, and the laws thereof, the manuscript copy whereof, is now on file in the Executive Office.

Assented to Dec. 19th, 1860.

*The Code, as published, contains the provisions of the Act of Feb. 28th, 1856,—Sec. 1701—and the clause for the punishment of Judges, and others, for joining in marriage, females under 21 years, without the consent of their parents, is omitted. By the act of 1861, the operation of the Code is suspended until the 1st January, 1863.

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§1. The laws of this State shall be thus graduated in reference ^{Obligation of} laws to their obligation :

First. The Constitution of the Confederate States.

Second. Treaties entered into by the Federal Government within the scope of their power.

Third. Laws of the Confederate States made in pursuance of the Constitution.

Fourth. The Constitution of this State.

Fifth. The Statutes of this State.

Sixth. Such portions of the Common, Civil, Canon and Statute Laws of England, as were usually in force in the Province of Georgia prior to 14th May, A. D. 1776, which were applicable

to the condition and habits of the people so far as the same are consonant with our form of Government, and are not repealed, modified or superseded by the provisions of this Code.

Seventh. The customs of any business or trade shall be binding only when it is of such universal practice, as to justify the conclusion, that it became, by implication, a part of the contract.

Code — when
and how to
take effect.

§ 2. This Code shall take effect on the first day of January, 1862.

All offences committed prior to that date, shall be tried and punished under existing laws; and all rights, or obligations, or duties acquired or imposed by existing laws, shall remain valid and binding, notwithstanding the repeal or modification of such laws.

Acts — when
to take effect.

§ 3. All acts hereafter passed by the General Assembly, unless specifically provided otherwise in the Acts, shall take effect and be obligatory only from the first day of July next succeeding the date of their passage.

When "from
and after pas-
sage."

§ 4. Public Laws which in themselves prescribe specifically that they are to take effect "from and after their passage," shall not be obligatory on the citizen until published in some public gazette, and three days shall be allowed, from the date of publication, for every hundred miles distance from the Capital, before a knowledge of the law shall be presumed against the citizen.

Rules for
Construction
of Statutes.

§ 5. The following rules shall govern the construction of all Statutory enactments in this State:

First. The ordinary signification shall be applied to all words, except words of Art, or connected with a particular trade or subject matter, when they shall have the signification attached to them by experts in such trade, or with reference to such subject matter.

Second. The present or past tense shall include the future.

Third. The masculine gender shall include the feminine and neuter.

Fourth. The singular or plural number shall each include the other, unless expressly excluded.

Fifth. A joint authority given to any number of persons, or officers, may be executed by a majority of them, unless it is otherwise declared.

Sixth. A substantial compliance with any requisition of the Code, or laws amendatory thereof, especially on the part of public officers, shall be deemed and held sufficient, and no proceeding shall be declared void for want of such compliance, unless expressly so provided by the enactment.

Seventh. When a bond is required by law, an undertaking in writing, without seal, is sufficient, and in all bonds where the names of the obligors do not appear in the bond, but are subscribed thereto, they are bound thereby.

Eighth. When a number of days is prescribed for the exercise of any privilege, or the discharge of any duty, only the first or last day shall be counted; and if the last day shall fall on the Sabbath, another day shall be allowed in the computation.

Ninth. In all interpretations, the Courts shall look diligently for the intention of the General Assembly, keeping in view, at all times, the old law, the evil and the remedy. Grammatical errors shall not vitiate, and a transposition of words and clauses may be resorted to when the sentence or clause is without meaning as it stands.

§6. The following meaning shall be given to each of the following words in all Statutes, unless a different meaning is apparent from the context: Meaning of Specific Terms.

“*Property*” includes real and personal property.

“*Personal Property*” includes everything except interests exceeding a lease-hold in lands, tenements and hereditaments. Stocks in incorporated Companies, though the object of the Company is necessarily connected with the land, shall be held as personal property.

“*Person*” includes a corporation; it does not include slaves or free persons of color, unless named.

“*Writing*” includes printing, and all numerals.

“*Oath*” includes affirmation.

“*Signature*,” or “*Subscription*,” includes the mark of an illiterate or infirm person.

“*Lunatic*,” “*Insane*,” or “*Non-Compos-Mentis*,” each includes all persons of unsound minds.

“*Negro*” includes mulattoes and all slaves.

“*Free Person of Color*” means all such as, by admixture of negro blood, are excluded from being citizens.

“*Justice*,” when applied to magistrates, means Justice of the Peace.

“*Preceding*” and “*Aforesaid*” mean generally next before, and “*following*” next after, unless the context requires a different signification.

“*Month*” means a calendar month.

“*Year*” means a calendar year.

“*Seal*” shall include impressions on the paper itself, as well as

impressions on wax or wafers, with the exception of Official Seals. A *Scrawl*, or any other mark intended as a seal, shall be held as such.

“*Highway*,” or “*Road*,” includes bridges upon the same.

Future operation of laws.

§7. Laws prescribe only for the future; they cannot impair the obligation of contracts, nor generally have a retrospective operation. Laws looking only to the remedy or mode of trial, may apply to contracts, rights and offences entered into, accrued or committed prior to their passage; but in every case a reasonable time subsequent to the passage of the Statute should be allowed for the citizen to enforce his contract, or protect his right.

Ignorance of law.

§8. Laws, after promulgation, are obligatory upon all inhabitants of this State, and ignorance of the law excuses no one.

Loco loci.

§9. The validity, form and effects of all writings or contracts, are determined by the laws of the place where executed. When such writing or contract is intended to have effect in this State, it must be executed in conformity to the laws of this State, excepting wills of personalty of persons domiciled in another State or country.

Comity of States.

§10. The laws of other States, and foreign nations, shall have no force and effect of themselves within this State, farther than is provided by the Constitution of the Confederate States, and is recognized by the comity of States. The Courts shall enforce this comity, until restrained by the General Assembly, so long as its enforcement is not contrary to the policy, or prejudicial to the interests of this State.

Waiver of law.

§11. Laws made for the preservation of public order, or good morals, cannot be done away with or abrogated by any agreement; but the citizen may waive or renounce what the law has established in his favor, when he does not thereby injure others, or affect the public interest.

Repeal of Repealing Act.

§12. The repeal of a Repealing Act shall not be construed to revive the former Act, unless such appears manifestly to have been the intention of the General Assembly.

Local laws.

§13. If there is a law in force at the time of the adoption of this Code, having entirely a local application, such local law is not repealed by this Code, unless so expressly declared.

Bonds of Public Officers.

§14. All bonds taken from Public Officers, shall be kept in the places specified by law, and copies thereof shall be furnished to any person desiring them. Suits thereon may be brought

by any person aggrieved by the official misconduct of the officer, in his own name, in any Court having jurisdiction thereof.

§15. All bonds taken by Public Officers, under the laws of this State, shall be returned to the offices specified by law; and any person interested therein, may bring suit thereon, in his own name, in any Court having jurisdiction thereof.

Bonds taken by Public Officers.

§16. All books kept by any Public Officer, under the laws of this State, shall be subject to the inspection of all the citizens of this State, within office hours every day, except Sundays and holidays.

Inspection of Office Books.

PART I.

THE POLITICAL AND PUBLIC ORGANIZATION OF THE STATE.

TITLE I.

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ARTICLE 3. Coast Survey.

ARTICLE I.

THE BOUNDARY OF THE STATE.

SECTION.

- 17. Boundary of the State.
- 18. Line between Ga. and S. Carolina.
- 19. Between Ga., N. C. and Tennessee.

SECTION.

- 20. Between Georgia and Alabama.
- 21. Between Georgia and Florida.

§17. The boundaries of Georgia, as deduced from the Constitution of Georgia, the Convention of Beaufort, the Articles of Cession and agreement entered into on the 24th April, 1802, the resolution of the General Assembly of December 5th, 1826, and

Boundaries of the State of Georgia.

Article 1.—The Boundary of the State.

the adjudications and compromises affecting Alabama and Florida, are as follows:

From the sea, or the mouth of the river Savannah, along the stream thereof, to the fork or confluence made by the rivers Keowee and Tugalo, and thence along said river Tugalo, until the fork or confluence made by said Tugalo and the river Chattooga, and up and along the same to the point where it touches the Northern boundary line of South Carolina, and the Southern boundary line of North Carolina, which is at a point on the thirty-fifth parallel of North latitude, reserving all the Islands in said rivers Savannah, Tugalo and Chattooga to Georgia; thence on said line of said thirty-fifth parallel, from said point of intersection, and on and along said line West, to a point where it merges into, and becomes the Northern boundary line of Alabama, it being the point fixed by the survey of the State of Georgia, and known as Nickajack; thence in a direct line to the great bend of Chattahoochee river, called Miller's Bend, it being the line run, and marked by said survey, and thence along and down the Western bank of said Chattahoochee, along the line or limit of high-water mark to its junction with Flint river; thence along a certain line of survey, made by Gustavus J. Orr, a Surveyor on the part of Georgia, and W. Whitner, a Surveyor on the part of Florida, beginning at a fore-and-aft tree, about four chains below the present junction; thence along this line East, to a point designated Thirty-Seven Links North of Ellicott's Mound on the St. Mary's river; thence along the middle of said river to the Atlantic Ocean, and from thence to the mouth or inlet of said Savannah river, to the place of beginning, including all the lands, waters, Islands and jurisdictional rights within said limits, and also all the Islands within twenty marine leagues of the Sea Coast.

Line between Georgia and South Carolina.

§18. The boundary between Georgia and South Carolina, shall be the line described as running from the mouth of the river Savannah, up said river, and the rivers Tugalo and Chattooga, to the point where the last named river intersects with the thirty-fifth parallel of North latitude, conforming, as much as possible, to the line agreed on by the Commissioners of said States at Beaufort on the 28th April, 1787.

Line between Georgia and North Carolina, and between Georgia and Tennessee.

§19. The boundary between Georgia and North Carolina, and Georgia and Tennessee, shall be the line described as the thirty-fifth parallel of North latitude, from the point of its intersection by the river Chattooga, West to the place called Nickajack.

Article 1.—The Boundary of the State.

§20. The boundary line between Georgia and Alabama, shall be the line described from Nickajack to “Miller’s Bend” on Line between Georgia and Alabama. Chattahoochee, and down said river to its junction with the Flint.

§21. The boundary line between Georgia and Florida shall be the line described from the junction of the Flint and Chattahoochee rivers, to the point Thirty-Seven Links North of Elliott’s Mound, on the St. Mary’s river; thence down said river to the Atlantic Ocean. Line between Georgia and Florida.

ARTICLE II.

THE SOVEREIGNTY AND JURISDICTION OF THE STATE.

SECTION.

22. Jurisdiction as to places.

23. Jurisdiction as to persons.

SECTION.

24. Governor must defend Suits—when.

§22. The sovereignty and jurisdiction of this State extends to all places within the limits of her boundaries, except so far as she has voluntarily ceded the same to the Confederate States, or adjacent States, over particular localities. Sovereignty and jurisdiction as to places.

§23. The jurisdiction of this State, and its laws extend to all persons while within its limits, whether as citizens, denizens or temporary sojourners. Sovereignty and jurisdiction as to persons.

§24. When any suit is instituted against the State, or against any person, in the result of which the State has an interest, under pretence of any claim inconsistent with its sovereignty, jurisdiction or rights, the Governor shall, in his discretion, provide for the defence of such suit, unless otherwise specially provided for. The Governor must defend suits in which the State is interested.

ARTICLE III.

COAST SURVEY.

SECTION.

25. Persons employed in Coast Survey.

26. Damages to land owners—awarded.

27. Award—objections thereto, issue, etc.

SECTION.

28. How costs may be avoided.

29. Amount of the costs.

§25. Any person employed under the Act of the Congress of the Confederate States, providing for a survey of the coasts, may enter upon lands and clear or cut timber within this State Privileges to persons employed in Coast Survey.

Article 3.—Coast Survey.

upon the same, for any purpose legitimately connected with, and requisite to effect the said object: *Provided*, no unnecessary injury be done thereby, and all damages to the owner of the land be promptly paid.

Damages to
land-owners
—how to be
awarded.

§26. If the parties representing the Government of the Confederate States, and the owner or possessor of the land so entered upon, cannot agree upon the amount to be paid for said damages, either party may complain in a summary manner to the nearest Justice of the Peace of the county within which the land lies, who shall associate with him two disinterested freeholders of the county, one to be named by each party interested, who shall, upon hearing the parties, and with or without view of the premises, as they may determine, proceed to assess and award the damages, if any, provided the party complaining shall give the opposite party ten days' notice in writing of the time and place, when and where said complaint is to be heard, and the name of the freeholder by him selected.

Award—ob-
jections
thereto, and
trial of the
issue.

§27. The said assessors, without unreasonable delay, shall file their award in the office of the Clerk of the Inferior Court of the county, which shall be conclusive upon both parties, unless objections are filed to the same within ten days after the filing of the award. If objections are filed, the other party shall have written notice; whereupon an issue shall be made and tried at the first term thereafter of said Court, under the same rules as other civil cases.

Costs may
be avoided
by tender of
damages.

§28. The person so entering upon lands, may tender such amount as he chooses for the damage done, and if the damages finally assessed shall not exceed the sum tendered, the party complaining shall pay all costs.

Amount of
costs.

§29. The costs before the Justice, and in the Inferior Court, shall be the same as are allowed by law in civil cases in said Courts.

CHAPTER II.

THE POLITICAL AND JUDICIAL DIVISIONS OF THE STATE.

ARTICLE 1. Counties.

ARTICLE 2. Congressional Districts.

ARTICLE 3. Judicial Districts and Circuits.

Article 1.—Counties.

ARTICLE I.

COUNTIES.

SECTION.	SECTION.
30. Names and limits of Counties.	37. Who may qualify officers.
31. Cases belonging to new Counties.	38. Executors, &c., cut off into new county.
32. Unexecuted processes transferred.	39. When counties are divided by a stream.
33. Officers cut off into new counties.	40. Offences committed on water courses.
34. Officers of adjacent County may act.	41. Offences committed on boundary line.
35. Juries for new counties.	42. Counties entitled to 2 Representatives.
36. Extra tax in new counties.	43. Representation from new county, when

§30. The State is divided into the following counties, whose Name and limits of counties. boundaries and limits shall be ascertained by the several Acts laying off the same, and those amendatory thereof, viz :

Appling.	Dawson.	Jasper.	Rabun.
Baker.	Decatur.	Jefferson.	Randolph.
Baldwin.	DeKalb.	Johnson.	Richmond.
Banks.	Dooly.	Jones.	Schley.
Berrien.	Dougherty.	Laurens.	Scriven.
Bibb.	Early.	Lee.	Spaulding.
Brooks.	Echols.	Liberty.	Stewart.
Bryan.	Effingham.	Lincoln.	Sumter.
Bullock.	Elbert.	Lowndes.	Talbot.
Burke.	Emanuel.	Lumpkin.	Taliaferro.
Butts.	Fannin.	Macon.	Tattnal.
Calhoun.	Fayette.	Madison.	Taylor.
Camden.	Floyd.	Marion.	Terrell.
Campbell.	Forsyth.	McIntosh.	Telfair.
Carroll.	Franklin.	Meriwether.	Thomas.
Cass.	Fulton.	Miller.	Towns.
Catoosa.	Gilmer.	Milton.	Troup.
Charlton.	Glascock.	Mitchell.	Twiggs.
Chatham.	Glynn.	Monroe.	Union.
Chattahoochee.	Greene.	Montgomery.	Upson.
Chattooga.	Gordon.	Morgan.	Walker.
Cherokee.	Gwinnett.	Murray.	Walton.
Clarke.	Habersham.	Muscogee.	Ware.
Clay.	Hall.	Newton.	Warren.
Clayton.	Hancock.	Oglethorpe.	Washington.
Clinch.	Haralson.	Paulding.	Wayne.
Cobb.	Harris.	Pickens.	Webster.
Coffee.	Hart.	Pierce.	White.
Columbia.	Heard.	Pike.	Wilcox.
Colquitt.	Henry.	Polk.	Wilkes.
Coweta.	Houston.	Pulaski.	Wilkinson.
Crawford.	Irwin.	Putnam.	Whitfield.
Dade.	Jackson.	Quitman.	Worth.

Article 1.—Counties.

Transcript of pending cases to be transferred to new county.

§31. When a new county is organized, the jurisdiction of all suits pending in the county, or counties, from which the new county has been laid off, of which, under the Constitution and Laws of this State, the new county should have cognizance, is transferred immediately to the corresponding Courts in such new county, together with all the Court papers pertaining thereto, to which shall be attached the certificate of the Clerk of the Court from whence they came, that they are the proper papers of the suit, and the amount of costs accrued therein, the amount then due, and by what persons paid, for which certificate the Clerk must receive from the person asking the transfer, the costs then due, unless he makes oath that, owing to his poverty, he is not able to pay the costs.

Unexecuted processes to be transferred to new county.

§32. All process, (mesne or final) or paper requiring some official act to be done by any officer of the counties from which the new county is taken, and which cannot be done by reason of the creation of said new county, must, without delay, be transmitted by the same, to the corresponding officer in the new county, and if proceedings have been had thereon, and not finally disposed of, the officer of the new county must proceed as though the paper had been originally in his hands; but publication of the times and places of sale, and proceedings of like character, shall be in the manner prescribed by law.

Officers cut off in new county to retain their commission.

§33. All ministerial officers in commission, included within the limits of the new county, hold their commissions, and exercise the duties of their office, until their commissions expire and their successors are elected and qualified, unless there is more than one for the same office, and in new counties organized entirely from one county, all the officers of the old county are authorized to exercise their respective duties in the new county, until the proper officers are elected and qualified; and Justices of the Peace comprised in the new county, whose districts are not materially disturbed by the lines of the new county, retain their offices, and their district, until their commissions expire.

Officers of old county to act until officers of new county are qualified.

When there are no officers in new county, process may be issued and served by officers of adjacent county.

§34. When any new county, as organized, is without a person authorized to act as Clerk, or Sheriff, or both, a corresponding officer in any adjoining county may exercise the duties of such officer, in issuing, serving, and returning process, until said new county is supplied.

§35. The Justices of the Inferior Court of the new county, aided by the Clerks of the Superior and Inferior Courts, and Sher-

Article 1.—Counties.

iff, shall, without delay, after their qualification, make a Grand and Petit jury box, and draw therefrom, pursuant to law, panels in time for the succeeding terms of the Superior and Inferior Courts, and, if by the organization of the new county, the panels already drawn for the old counties are disturbed, the Justices of the Inferior Courts of said counties, or two of them, or one, if only one remaining, may, at any time before the next term of said Courts, draw, to supply said deficiency, the requisite number of Grand and Petit jurors.

Juries for a new county, how organized.

§36. The Justices of the Inferior Court of the new county may levy, for the first year after their qualification, an extra tax for county purposes, of such per cent. upon the State tax, as may be necessary, according to their discretion, and the terms of the Act of organization.

Extra tax in new county, for the first year, how levied.

§37. The Governor may direct the *dedimus potestatem* for the qualification of said Inferior Court, to the Judge of the Superior Court of the Circuit, any Justice of the Inferior Court or any Justice of the Peace embraced within its limits, and in default of either, to any Justice of the Inferior Court of an adjoining county, and the qualification under it is legal.

Who may qualify officers of new county.

§38. Any Executors, Administrators or Guardians making returns to the Ordinary of the old county, and residing within the limits of the new county when organized, may make their returns to, and perform all their official acts with the Ordinary thereof, and when any such act is done, the jurisdiction is changed to the new county, and such trustee shall file with the Ordinary of the new county, to be recorded by him, a certified copy of all his acts from the Ordinary of the old county.

Executors, &c., cut off in new county, may move their proceedings.

§39. Whenever a stream of water is the boundary of a county, the jurisdiction of the county shall extend to the centre of the main channel of such stream, and if an offence is committed on such stream, and the evidence on the trial does not definitely disclose in which county it was committed, the Courts of either county may maintain jurisdiction for the trial and punishment of the offender.

Jurisdiction, when counties are divided by a water course.

§40. Whenever an offence is committed on the waters of any river which forms a boundary between this, and any other State, the whole of which river belongs to Georgia, the county which is situate on the side of the river opposite the point where the offence is committed, has jurisdiction of the same, and if the evidence on the trial does not definitely disclose on which side of

Jurisdiction of offences in certain cases, when water course divides Georgia from another State.

Article 1.—Counties.

the line, between two counties, at the place where it touches the river, the offence was committed, the Courts of either county may maintain jurisdiction.

Jurisdiction in cases where the offence is committed on the boundary line between Georgia and another State.

§ 41. This State claims jurisdiction of an offence committed on any of her boundary lines with other States for the county bordering on that part of the line where the offence was committed, and if doubtful as to which of two counties (as set forth in the preceding Section) for either county, and will proceed to arrest, indict, try, and execute, until such other State shall make a demand for the accused as a fugitive from justice, in which event, the progress of the case shall be suspended by order of the Governor until the question of jurisdiction is settled.

The counties entitled to two Representatives in the Legislature.

§ 42. The counties of Bibb, Burke, Cass, Carroll, Chatham, Cherokee, Clarke, Coweta, Cobb, Columbia, Decatur, Floyd, Fulton, Gordon, Greene, Gwinnett, Hancock, Harris, Hall, Henry, Houston, Jackson, Meriwether, Monroe, Muscogee, Newton, Oglethorpe, Richmond, Stewart, Sumter, Talbot, Thomas, Troup, Walton, Walker, Washington and Whitfield, being thirty-seven, are entitled to two Representatives, and all other counties as the Constitution prescribes.

No representation of new county until next regular election, after it is organized.

§ 43. There shall be no representation in either branch of the General Assembly from any new county, until after the next regular election for members of the same, but the Senators and Representatives, already elected from the counties forming the new county, shall serve out the term for which they were elected, without regard to their residence in or out of the old counties, and all vacancies by death, resignation, or removal, shall be filled by the county where the member resided at the time of his election.

ARTICLE II.

CONGRESSIONAL DISTRICTS.

SECTION.

44. Congressional Districts.

SECTION.

45. New counties, where attached.

Congressional Districts—of what counties each is composed.

§ 44. The State, under the present apportionment, being entitled to ten Representatives in the House of Representatives of the Congress of the Confederate States, they shall be elected from the following Districts respectively :

The First District shall be composed of the counties of Appling, Bryan, Bulloch, Chatham, Camden, Charlton, Clinch, Cof-

Article 2.—Congressional Districts.

fee, Effingham, Emanuel, Glynn, Liberty, McIntosh, Montgomery, Pierce, Scriven, Telfair, Tattnal, Ware and Wayne.

The Second District shall be composed of the counties of Baker, Berrien, Brooks, Calhoun, Clay, Colquitt, Dooley, Decatur, Dougherty, Early, Echols, Irwin, Lee, Lowndes, Mitchell, Miller, Randolph, Terrell, Thomas, Wilcox and Worth.

The Third District shall be composed of the counties of Chattahoochee, Harris, Muscogee, Marion, Macon, Quitman, Stewart, Sumter, Sehley, Taylor, Talbot and Webster.

The Fourth District shall be composed of the counties of Jasper, Putnam, Jones, Baldwin, Bibb, Crawford, Wilkinson, Twiggs, Houston, Laurens and Pulaski.

The Fifth District shall be composed of the counties of Burke, Columbia, Glascock, Hancock, Jefferson, Johnson, Lincoln, Richmond, Warren, Wilkes and Washington.

The Sixth District shall be composed of the counties of Clarke, Elbert, Franklin, Greene, Hart, Madison, Morgan, Newton, Oglethorpe, Taliaferro and Walton.

The Seventh District shall be composed of the counties of Butts, Clayton, Fayette, Henry, Meriwether, Monroe, Pike, Spalding, Troup and Upson.

The Eighth District shall be composed of the counties of Campbell, Carroll, Cobb, Coweta, DeKalb, Fulton, Haralson, Heard, Paulding and Polk.

The Ninth District shall be composed of the counties of Banks, Cherokee, Dawson, Forsyth, Gwinnett, Habersham, Hall, Jackson, Lumpkin, Milton, Pickens, Rabun, Towns, Union and White.

The Tenth District shall be composed of the counties of Cass, Catoosa, Chattooga, Dade, Fannin, Floyd, Gordon, Gilmer, Murray, Walker and Whitfield.

§ 45. If in the organization of a new county, there is an omission to specify to which Congressional District it belongs, it shall be attached to that from which most of its representative population has been taken, according to the Federal basis, which shall be determined by the Governor, if necessary, at any time before legislation, to remedy the omission.

To what District new county belongs, when the act creating it is silent.

ARTICLE III.

JUDICIAL DISTRICTS AND CIRCUITS.

SECTION.

46. Judicial Districts and Circuits.

47. Change of District or Circuit.

SECTION.

48. To what Circuit a new county belongs.

Judicial Districts, and Circuits.

§ 46. The State is divided into five Supreme Judicial Districts, with reference to the jurisdiction and sessions of the Supreme Court, and into sixteen Judicial Circuits in reference to the jurisdiction and sessions of the Superior Court; tables of which will be found in Part III, Title I.

Cases taken to the Supreme Court, from a county changed from one District to another, must go to latter.

§ 47. When any county is changed from one Judicial Circuit to another, within a different Supreme Judicial District, the county is attached to the latter, and all bills of exception, afterwards certified, must be to the time and place for holding the Courts of said District, but all bills certified previously, must be heard at the time and place to which they are certified and returned.

To what Circuit a new county belongs.

§ 48. If any new county is organized with an omission to attach it to any Judicial Circuit, it belongs to the Circuit from which most of its territory is taken.

TITLE II.

CITIZENSHIP.

CHAPTER 1. Who are Citizens.

CHAPTER 2. As to Expatriation.

CHAPTER I.

WHO ARE CITIZENS.

SECTION.

49. Who are deemed citizens of Georgia.

50. Who are not white persons.

SECTION.

51. The *status* of children.

52. Persons prohibited from citizenship.

Who are deemed citizens of this State.

§ 49. All free white persons born in this State, or in any other State of this Union, who are, or may become residents of this State, with the intention of remaining therein; all free white persons naturalized under the laws of the Confederate States, and who are, or may become residents of this State, with the in-

Chapter 1.—Who are Citizens.

tention of remaining therein; all persons who have obtained a right to citizenship under former laws, and all children wherever born, whose father was a citizen of this State at the time of the birth of such children, or in case of posthumous children at the time of his death, are held and deemed citizens of this State.

§ 50. Persons having one-eighth, or more, of negro or African blood in their veins, are not white persons in the meaning of this Code. Who are persons of color.

§ 51. The status of every person in this State, upon the question of freedom, is determined by the status of his or her mother. The status of the mother fixes that of her children.

§ 52. No person transported or banished from other countries or States, within or out of this Confederacy, for crime involving moral turpitude, are permitted to reside in, or become citizens of this State. Who cannot become citizens of this State.

CHAPTER II.

AS TO EXPATRIATION.

SECTION.

53. How citizenship may be renounced.
54. When citizenship ceases.

SECTION.

55. How citizenship is acquired.

§ 53. Except in time of war, every citizen shall have the right of expatriation, with a view to become a citizen of another State or country, not a part of the Confederate States, with which this State is at peace. The declaration or avowal of such intention, accompanied by actual removal, is held a renunciation of all his rights and duties as a citizen. How citizenship may be renounced.

§ 54. Until citizenship is acquired elsewhere, after compliance with the terms of Section No. 53, the person continues a citizen of Georgia, and of the Confederate States. When citizenship ceases.

§ 55. If a person, having been thus expatriated, acquires citizenship under some foreign power, he and his descendants, who go with him for the purpose of residence, can be a citizen of this State again only after a residence of three years herein, and taking the oath of allegiance, as in case of other foreigners. How citizenship may be again acquired, by one who has renounced it.

TITLE III.

OF THE EXECUTIVE DEPARTMENT.

CHAPTER 1. The Governor—his powers and duties.

CHAPTER 2. The Executive Office and Secretaries.

CHAPTER 3. State House Officers—Secretary of State, &c.

CHAPTER 4. Offices connected with the Executive Department.

CHAPTER 5. Regulations as to all Executive offices and officers.

CHAPTER I.

THE GOVERNOR—HIS POWERS AND DUTIES NOT SPECIFIED IN THE CONSTITUTION.

SECTION.

- 56. Governor's Inauguration.
- 57. His oath to be taken.
- 58. He may call out the Militia.
- 59. May call out Militia and Volunteers.
- 60. Shall cause fugitives to be arrested.
- 61. Deliver fugitives from other States.
- 62. Delivery suspended in certain cases.
- 63. Fugitives not demanded.
- 64. Warrants for the arrest of fugitives.
- 65. He may offer rewards.
- 66. Negroes illegally imported.
- 67. He may pardon persons of color.

SECTION.

- 68. May appoint Commissioners of deeds.
- 69. He must commission officers.
- 70. Shall issue grants to lands.
- 71. Shall protect the pubhe property.
- 72. Shall appoint officers and fill vacancies.
- 73. His Secretaries and other officers.
- 74. Officers of Public Institutions.
- 75. He may employ special agents.
- 76. May suspend collection of taxes.
- 77. Payments from the Treasury.
- 78. Certain records to be kept.
- 79. Seal of the Executive Department.

Governor's Inauguration.

§56. The Governor elect shall begin the discharge of his duties from the time of his inauguration. The ceremony of inauguration shall take place during the first week of the session of the General Assembly, next after the election, and on such day of that week as the General Assembly, by joint resolution, appoints. On failure of appointment, it takes place at 12 o'clock, meridian, on Saturday of that week, unless prevented by Providential causes.

His oath to be taken in the presence of Legislature.

§57. The oath prescribed by the 5th Section of the 3d Article of the Constitution of this State, and the oath to support the Constitution of the Confederate States, shall be taken by the Governor elect in the presence of the General Assembly.

May call out the Military when necessary, to execute the laws.

§58. It is the duty of the Governor to see that the laws are executed. For this purpose he has power, as Commander-in-Chief, to call out the Military whenever, in his discretion, the

Chapter 1.—The Governor, his Powers and Duties not specified in the Constitution.

due enforcement of the process of the Courts is so resisted, and set at defiance, as to require such interposition.

§59. In case of invasion or insurrection, the Governor has power to call out all Volunteer Military Companies, or the Militia, or both, for the defence of the State, until such time as the General Assembly meet; and when so called into action, he has power to make all necessary provision for their transportation, accommodation, equipment and support.

§60. Whenever there is found, within this State, a fugitive from justice from a foreign State, and by the treaty stipulations of the Confederate States such person is to be surrendered up to the authorities of such foreign State upon requisition from the proper officers, the Governor, by his warrant, shall cause him to be arrested and delivered over to such officer.

§61. It is the duty of the Governor, under his warrant, to cause to be arrested, and delivered up to the proper officers of any other State of this Confederacy, any fugitive from justice from said State, upon demand made of him by the Executive of such other State in the manner prescribed by the laws and Constitution of the Confederate States. And if such fugitive shall have assumed another name in this State, and the Governor is satisfied, by evidence under oath filed in his office, of the identity of such person with the fugitive demanded, he shall state the fact in his warrant for the arrest.

§62. If any person demanded as a fugitive from justice, is, at the time of such demand, under prosecution for an offence against the laws of this State, the Governor shall suspend his delivery until the issue is determined as to his guilt, and if condemned, until he shall have suffered the penalty of the law imposed.

§63. When a person, charged with the commission of an offence in some other State, shall flee into this, and is pursued and caught, or some person in this State finding, shall arrest him, it is the duty of the Governor, on oath filed in his office of the commission of the offence, and the identity and locality of the party, to issue his warrant for his arrest, as in other cases, and command his lodgment in any jail in the State, for as long as twenty days, and if, at their expiration, there is no formal demand made by the Governor of the State where the offence is alleged to be committed, he shall be discharged from custody; but upon affidavit made before any proper officer of the commis-

May call out the Volunteer Military force, and the Militia, in case of insurrection or invasion.

Upon requisition, he shall cause the arrest of fugitives from foreign countries.

Upon requisition, he shall cause fugitives from other States to be arrested and delivered.

He shall suspend the delivery of a fugitive under prosecution in this State, until the prosecution ends.

How fugitives not demanded shall be disposed of.

Chapter 1.—The Governor, his Powers and Duties not specified in the Constitution.

sion of the offence, and of such intended application, the accused shall be held under it five days.

Officers must execute warrants for the arrest of fugitives.

§64. When the Governor, or other officer issues such, or any other warrant of arrest, it is the duty of the Sheriffs, their Deputies, Coroners and Constables, to execute them when placed in their hands.

May offer rewards for the arrest of felons.

§65. The Governor shall, in his discretion, offer, and cause to be paid, rewards for the detection or apprehension of the perpetrator of any felony committed within this State; but no such reward shall be paid to any officer, who shall arrest such person in the regular discharge of his duty, by virtue of process in his hands to be executed, nor to any person who has arrested the offender previous to the publication of the reward.

May cause negroes, illegally imported into this State, to be arrested and disposed of.

§66. He shall have power to issue his warrant, and cause to be arrested, to be dealt with according to law, all negroes illegally imported into this State, from any foreign port, or which landed first in another State, may be brought into this, either for the purpose of sale, residence or transportation through.

May pardon or commute the punishment of slaves.

§67. He shall have power to pardon or commute the punishment of any slave, or free person of color, convicted of any capital offence under the laws of this State.

May appoint Commissioners of deeds in other States.

§68. He shall have power to appoint, in other States and Territories of the Confederate States, Commissioners to take and certify the acknowledgement or proof of deeds, or other conveyance of property in this State, of depositions under commissions or otherwise, of powers of attorney, (of wills executed by persons devising or bequeathing property within the State,) and of other instruments in writing, required to be attested under the laws of this State.

Must grant commissions to officers elect in this State.

§69. He shall grant commissions to all such officers of this State, including Senators and Representatives in Congress, as are required to hold them, and in all cases, he may, in his discretion, issue a *dedimus potestatem* to such officers as are authorized to administer oaths requiring the qualification of the officer elect, as provided by law, and to issue to him his commission. The forms of all commissions shall be in the discretion of the Governor. Commissions thus issued are final, except where the Constitution and laws otherwise provide.

Shall issue grants to land.

§70. He shall issue all grants to lands under the laws of this State, but such shall not be conclusive, but subject to the investigation of the Courts; and whenever such are declared by

the proper Court to have been wrongly issued, it is his duty to issue another grant in accordance with such decision, if it so requires.

§71. He shall have general supervision over all property of the State, with power to make all necessary regulations for the protection thereof, when not otherwise provided for. He must assign rooms in the Capitol to all officers, who must hold their offices there, and, in the absence of any legislative provision, designate the purpose for which other rooms are to be applied.

Shall supervise and protect the public property, and assign to officers their rooms in the Capitol.

§72. He shall appoint all officers, and fill all vacancies, unless otherwise prescribed by the Constitution and laws. All appointments to discharge a public duty by the General Assembly, or by the Governor, under its authority, are declared to be offices within the meaning of the Constitution.

Shall appoint all officers, and fill all vacancies not otherwise provided for.

§73. He has the power of appointing the following officers, who shall hold their offices during the time for which he is Governor, subject to be removed at his pleasure, viz :

May appoint and remove his Secretaries, and certain other officers.

Three Secretaries of the Executive Department ;

A Messenger for his office ;

A State Librarian ;

A Guard for the Capitol buildings ;

A person to keep the Capitol Grounds, and other State property at the seat of Government, in proper order.

§74. All the officers of the following State Institutions, named in this Code and laws hereafter enacted amendatory thereof, unless menials, servants, day-laborers, or otherwise required, viz :

May appoint trustees of the Asylums for Lunatics, Deaf and Dumb, and Blind, and officers of the W. & A. R. R., and keeper of the arsenals and arms.

Officers of the Penitentiary ;

Trustees of the Lunatic Asylum ;

Trustees of the Asylum for the Deaf and Dumb ;

Trustees of the Asylum for the Blind ;

Officers of the Western & Atlantic Railroad ;

Keepers of the Arsenal and Public Arms.

§75. And he has power to engage the services of any competent person for the discharge of any duty required by the laws, and essential to the interests of the State, or necessary in an emergency to preserve the property or funds of the State.

May employ special agents whenever necessary.

§76. The Governor may suspend the collection of the taxes, or any part thereof due the State, until the meeting of the next General Assembly, but not longer, nor shall he otherwise interfere with the collection thereof.

May suspend the collection of taxes for a time.

Chapter 1.—The Governor, his Powers and Duties not specified in the Constitution.

Payments from the Treasury to be made on Governor's warrant.

§77. All payments from the Treasury, unless otherwise provided, shall be made upon the warrant of the Governor, and he may withhold his approval on any account audited and certified by the Comptroller General. The warrant shall always specify on what appropriation or fund it is drawn.

Shall cause to be kept the following books and records. A journal of his official acts.

§78. The Governor shall cause to be kept, and preserved in the Executive Office, the following books of record :

1. A journal or minute book, showing all of his official acts.

A book of appropriations.

2. A Book of Appropriations, in which shall be entered a full account of all annual appropriations, setting forth the amounts under their appropriate heads, together with the date of his warrant for such appropriation, and in whose favor drawn.

A book of the public debts.

3. A book giving a statement of the public debt of the State, the dates and numbers of the bonds issued, in whose favor, and for what amounts, the date of payment and the disposition thereof; also a full and accurate account of all sums of money that are set apart as a sinking fund for the redemption of the public debt, particularly setting forth the amount for the several specific purposes, when drawn, and in whose favor.

A book of bonds and evidences of debts due the State.

4. A book in which shall be kept copies of all bonds of agents, disbursing public funds; also a schedule of all bonds and other evidences of debt due to the State, and the disposition made thereof.

A book of commissions of officers.

5. A Book of Commissions, showing the dates when issued, for all officers, Civil and Military, in this State.

A book of the Education Fund.

6. A book showing the exact condition of the Educational Fund of this State, and the annual income thereof.

A land book.

7. A book or books containing a list of the respective numbers, Districts, Sections and Counties of the several lots of land disposed of by the several land lotteries, and the names of the drawers of each, to whom and when granted, and a similar schedule of all lands sold by the State, by whom purchased, and to whom and when granted.

An index or key to papers of file in his office.

8. He shall also keep, and cause to be carefully filed away, properly marked or numbered, all documents appertaining to his office, whether there as the place of deposit, or received by mail or express, and to keep a book as an index or key to the same.

Other necessary books.

9. And any other books or files that, in his judgment, his Department needs.

Executive seal.

§79. There shall be a seal of the Executive Department. The device shall be the same as that now used therein, and shall not be altered, except by authority of the General Assembly.

CHAPTER II.

THE EXECUTIVE OFFICE AND RESIDENCE OF THE GOVERNOR.

SECTION.

80. Where Executive office must be kept.

SECTION.

81. Where the Governor must reside.

§80. The Executive Office shall be in the State House, at the Seat of Government. If, from any cause, there is no State House, or it has to be abandoned, then at such place at the Seat of Government, as the Governor may direct, and not elsewhere, unless made necessary from invasion, insurrection, pestilence or rebellion.

Where the Executive Office must be kept.

§81. The Governor shall reside at the Seat of Government during his term of office.

Where the Governor shall reside.

CHAPTER III.

THE SECRETARY OF STATE, TREASURER, SURVEYOR-GENERAL, AND COMPTROLLER GENERAL.

ARTICLE 1. The Secretary of State.

ARTICLE 2. The State Treasurer.

ARTICLE 3. The Comptroller General.

ARTICLE 4. The Surveyor General.

ARTICLE I.

OF THE SECRETARY OF STATE.

SECTION.

82. Bond of Secretary of State.

83. Must reside at the Capital.

84. Must furnish applicants with records.

SECTION.

85. He shall keep the State seal.

86. The Great Seal of the State.

§82. Before entering on the duties of his office, he shall execute a bond with sufficient securities, to be approved by the Governor, in the sum of ten thousand dollars, conditioned for the faithful performance of all the duties of his said office, and all such duties as shall be required of him by the General Assembly, or the laws of this State, and for a faithful account of all the public money or effects that may come into his hands during his continuance in office. It shall be filed in the Executive office,

Bond of the Secretary of State.

Article 1.—The Secretary of State.

Certified copy evidence.

and a copy thereof, certified by one of the Governor's Secretaries, under the seal of the Executive Department, shall be received in evidence in lieu of the original, in any of the Courts of this State.

He shall keep his office in the Capitol.

§83. He shall be provided with suitable apartments in the State Capitol, furnished at the State's expense. He shall reside at the Capitol, and keep his office open daily, Sundays and holidays excepted.

He shall furnish copy of records.

§84. He shall furnish to all applicants, upon the payment of the prescribed fees, copies of all records and public documents within his office, and shall attach the Great Seal of the State to such transcripts as the Governor, or General Assembly may direct.

He shall have no perquisites.

§85. He shall receive no perquisites for any official act; but the fees prescribed shall be collected by him, and paid into the State Treasury.

He shall keep the seal, and certain records and papers.

1. It is his duty to keep the Great Seal of the State; the original Acts passed by the General Assembly, and all the public records of the State, not appertaining specially to other offices. He shall look to, and preserve the records and papers belonging to the Senate and House of Representatives. He shall see that the recorded journals of both Houses are deposited in, and kept in his office.

He shall attest grants, and other papers.

2. He shall attest all grants, and other public documents requiring the Great Seal of the State, issuing from the Executive of the State.

Shall keep record of grants.

3. He shall keep a record, in proper books, of all grants issued by the State.

He shall keep bonds.

4. He shall keep safely, all bonds of agents appointed to disburse public money.

He shall furnish fuel, lights, stationery, &c., for the General Assembly.

5. He shall provide all fuel, lights, servants, or other contingents, necessary for the General Assembly; also all stationery for their use, and shall report the amount of the same to the Finance Committee of the House of Representatives, before the adjournment of the session. He shall perform all other duties required of him by law, or which necessarily attach to his office.

Great Seal to be kept in his office.

§86. The Great Seal of the State, adopted February 8th, 1799, and now on deposit in the office of Secretary of State, is as follows:

Description of Seal.

1. It is of silver, and the size of two-and-a-quarter inches in diameter.

Article 1.—The Secretary of State.

2. The device on one side is a view of the sea shore, with a ship bearing the flag of the United States riding at anchor near a wharf, receiving on board hogs-heads of tobacco, and bales of cotton, emblematic of the exports of this State; at a small distance, a boat landing from the interior of the State, with hogs-heads, &c., on board, representing her internal traffic. In the back part of the same side, a man in the act of ploughing, and at a small distance a flock of sheep in different pastures, shaded by a flourishing tree, the motto thereon—Agriculture and Commerce, 1799.

3. The device on the other side is three pillars, supporting an arch, with the word Constitution engraven within the same, emblematic of the Constitution, supported by the three departments of Government, viz: the Legislative, Judicial and Executive: the first pillar to have engraven on its base, "Wisdom;" the second, "Justice;" the third, "Moderation;" on the right of the last pillar, a man standing with a drawn sword, representing the aid of the Military in the defence of the Constitution; the motto, State of Georgia, 1799.

ARTICLE II.

THE STATE TREASURER.

SECTION.

87. Treasurer's bond.
88. His rights and duties.
89. His duties specified.
90. His office subject to inspection.

SECTION.

91. Must settle with his successor—when.
92. How dealt with on failure to settle.
93. He shall keep a book of State bonds.

§87 The State Treasurer must give a bond, conditioned the same as that of the Secretary of State, for the sum of two hundred thousand dollars, and subject to the same rules and regulations. Treasurer must give bond.

§88. His rights and duties are the same as those of the Secretary of State, set forth in section eighty-five, except the use of the Great Seal. He shall receive no perquisites for any official act, but the fees prescribed shall be collected by him, and paid into the State Treasury. His rights and duties same as the Secretary of State.

§89. It is moreover the duty of the State Treasurer—

1. To receive and keep safely all the money which shall be paid to him in behalf of the State, upon the certificate of the How he shall keep and disburse the funds of the State.

Article 2.—The State Treasurer.

Comptroller General, and to pay out the same, only upon the warrants of the Governor, when countersigned by the Comptroller General, excepting the drafts of the President of the Senate and Speaker of the House of Representatives, for the sums due to the members and officers of their respective bodies.

Shall keep a book of warrants drawn on him.

2. To keep in his office a book, in which shall be entered all warrants drawn on him by the Executive, stating in whose favor drawn, the date, the amount thereof, and to what fund charged, and to retain and file away carefully all such warrants.

His duty as to an account of taxes.

3. To keep annually an account of all taxes that may be due and unpaid, by the several chartered Banks, and to enforce the collection thereof, agreeable to the laws in force; also to keep an account of all taxes paid into the Treasury annually by the Tax Collectors of the several counties. An abstract of these accounts must be laid before the Governor.

He must submit estimates of probable receipts and expenditures.

4. And preceding each Annual Session, he must submit to the Governor detailed estimates of the probable receipts and expenditures, for the next fiscal year, stating the sources of income, and the probable amounts to be received therefrom; also the objects of appropriation, and the probable necessities of the Treasury.

Must pay pledged or appropriated funds to their proper objects.

5. To pay all funds pledged to the payment of the public debt, or interest thereon, or to any object of education; and to these objects only, and in nowise to any other purpose; all payments from the Treasury shall be paid from the fund appropriated for such purpose, and not from any other.

Must make quarterly reports to the Governor.

6. At the end of every quarter of the year, to make a written report, on oath to the Governor, of the several amounts received by him during the three months preceding such report.

Shall keep scrip for Bank Stock, &c.

7. To keep safely the scrip for Bank Stock, the State Bonds, and other evidences of the Educational Fund, and manage and control the same for the purposes to which they are pledged. He may, under the direction of the Governor, deposit all funds set apart for the purpose of Education, or any other purpose not required for immediate use, in any chartered Bank of this State, subject to his draft as Treasurer, and with the Governor make such contract with said Bank, for the use of such funds as may be beneficial to the State.

Under the Governor's direction, he may deposit funds in Bank.

Shall not use the funds of the State.

8. He shall not, under any circumstances, use himself, or allow others to use, the funds of the State in his hands, and for every violation of this section, he is liable to the State for the sum of

Penalty.

Article 2.—The State Treasurer.

five hundred dollars as a penalty, or a forfeiture of salary, if said forfeiture will pay the penalty incurred.

9. He is authorised to pay all officers of the State, whose salaries are fixed by law, seventy-five per cent. of the amount for which service has actually been rendered at the date of said payment, taking receipts for the same, which shall be his vouchers and offsets, to Executive warrants for said salary, and may also pay members of the General Assembly in the same way, when their accounts are duly audited, unless prevented by the resolution of either, or both branches of the General Assembly.

He may pay 75 per cent. of salaries and sums due Legislators without warrants.

10. He shall annually report to the Governor, the amount of the State debt, bearing interest for each year, distinguishing between the sterling bonds, if any, and federal; the rate per cent. paid upon each kind of bonds; the amount upon each rate paid; also the exchange, if any, and the aggregate amount of interest paid in each year, and the amount due and unpaid at each semi-annual payment, and the reasons for such non-payment.

Shall annually report to the Governor, the amount and state of the public debts.

11. When he pays the interest or principal of the State debt, upon a warrant issued in his favor, he shall deposit in the Executive office, coupons or bonds, on which the payments are made, there to be marked paid and filed away, subject to the order of the General Assembly.

Must deposit in the Executive office, coupons or bonds.

12. He shall not pay any appropriation due and not called for, within six months after the expiration of the political year for which it is appropriated, but it reverts to the general fund in the Treasury.

Shall not pay appropriations not called for within a given time.

13. All reports required to be made to the Governor by the Treasurer, shall be made annually, on or before the 15th of October, and shall be filed in his office, and by him laid before the General Assembly, in connection with his first Annual Message thereafter.

All reports made to the Governor to be filed.

§90. The Governor may exercise a general superintendence over the office of State Treasurer, not inconsistent with the provisions prescribed for it by law, and may, at any time, appoint some competent person to examine into the state of such office for any period of time he may designate, and report its condition to him, and shall have power to require of such Treasurer, to withdraw the public funds from any place of deposit deemed unsafe by him.

Treasurer's office subject to Governor's inspection.

Governor may order deposits to be withdrawn.

§91. If the Treasurer resign, or is removed, he must, within ten days thereafter, state his accounts, and deliver the books, pa-

Treasurer resigning must settle with his successor in ten days.

Article 2.—The State Treasurer.

Comptroller must record settlement and receipt in his office.

pers and money of the Treasury to his successor, taking his receipt therefor, and the Comptroller must record a statement of such settlement and receipt, in his office, and report the same forthwith to the Governor.

How Treasurer is dealt with who fails to settle with successor, or absents himself.

§ 92. If the Treasurer fail to comply with the provisions of the preceding section, or if he dies, absconds, or absents himself without sufficient cause, for as long as thirty days, the Comptroller, after giving ten days notice by publication in some public gazette at the seat of Government, must proceed, and in the presence of any person who may appear in behalf of the late State Treasurer, to state his account and deliver the books, papers, money and all other appurtenances of the office, to his successor, taking his receipt therefor, and record and file such statement and receipt in his office, and report forthwith to the Governor.

Shall keep a book of State bonds, and their payment.

§ 93. The Treasurer shall keep a book, in which he shall record a description of all the bonds heretofore or hereafter issued by this State, and in said book shall note all bonds paid, and the date of payment, and all coupons paid on each, and the date of their payment.

ARTICLE III.

OF THE COMPTROLLER GENERAL.

SECTION.

- 94. Comptroller's bond.
- 95. His rights and duties.
- 96. His duties specified.
- 97. Annual Report to the Governor.
- 98. His authority.
- 99. Improvements in revenue laws.
- 100. Book of appropriations and warrants.

SECTION.

- 101. Bonds of Tax Collector and Receiver.
- 102. Must give copies of office papers.
- 103. Delivery of office to successor.
- 104. Additional fees.
- 105. Additional duties.
- 106. Shall not speculate in wild lands.

Bond of Comptroller General.

§ 94. The Comptroller General must give a bond conditioned the same as that of the Secretary of State, for the sum of twenty thousand dollars, subject to the same rules and regulations.

His rights and duties.

§ 95. His rights and duties are the same as those of the Secretary of State, set forth in sections 84 and 85, except the use of the Great Seal. He shall receive no perquisites for any official act, but the fees prescribed shall be collected by him and paid into the State Treasury.

Shall keep an account of appropriations.

§ 96. It is moreover the duty of the Comptroller General—

- 1. To keep an account showing the several appropriations au-

Article 3.—The Comptroller General.

thorized by law, the time when the same are drawn from the Treasury, in whose favor, and to what fund charged.

2. To countersign all warrants upon the Treasury, drawn by the Governor. Countersign warrants on the Treasury

3. To audit all accounts against the State, and allow or reject the same before they are submitted to the Governor. Must audit acctg. against the State.

4. To examine all the digests of Tax Returns forwarded to his office by the several Receivers, and note and correct all mistakes therein, and notify the Collector of such corrections. Must examine and rectify tax digests.

5. To settle with and ascertain the amounts due from all Tax Collectors, and all other persons indebted to this State, and give certificates of the amounts due, before the same are paid into the Treasury, and keep an account showing the amounts thus paid therein. Must settle with tax collectors, and keep account of the same.

6. To collect all amounts due from defaulting Collectors of Taxes, and issue execution therefor, against them and their securities. Collect what is due from defaulting Tax Collectors.

7. To see that no draft or warrant be countersigned by him, to be paid out of any appropriated fund, after the same has been exhausted, and in such case, or in any case of illegal payments from the Treasury upon warrants countersigned by the Comptroller, he, as well as the Treasurer, with all their securities, are jointly and severally liable upon their several bonds for the repayment of such amounts, with all expenses of prosecution, to the State. Comptroller and Treasurer liable for all monies paid on warrants improperly countersigned.

8. To issue his draft, payable to the Treasurer, for the amounts of all dividends or taxes due by chartered Banks in this State, or by the agencies of foreign Banks, and on failure to pay the same, to issue Execution therefor. Shall issue draft for taxes due from Banks, if not paid, issue execution.

9. To receive and keep safely, and collect all evidences of debt due to the State, from any other source than taxes, and pay over the same to the Treasurer as soon as received. He shall receive all monies due and pay to Treasurer.

10. To notify the Attorney and Solicitors General, or any other Attorney in his discretion, of all executions against defaulting Tax Collectors, and require of them annually a report of the state or condition of such executions, prior to the session of each General Assembly. He may require report from Attorneys and Solicitors General.

11. To keep a book in which to enter all bonds taken since the third day of March, 1856, and to file the originals in his office. To keep a book of bonds since 1856, and file originals.

12. To have made suitable indexes to the record books in his office. Shall cause books to be indexed.

Article 3.—The Comptroller General.

13. To audit the accounts of all agents disbursing public money.
- § 97. To make a report annually to the Governor, showing—
1. An account current from his books, between the Treasurer and the State, of all receipts and payments, including amounts paid on the drafts of the President and Speaker, as reported to him by the Treasurer.
 2. A statement of the taxes paid to the State by each of the counties, as appears by the Digest thereof, and the counties whose collectors are in default, and the amount of such default.
 3. A statement of all evidences of debt due the State, and uncollected, which may remain in his office, the condition of the same, the name of the Solicitor or Attorney having it in charge, and his report of it.
 4. A statement of the Educational Fund of the State, its annual income, the amounts paid out, when and to whom.
 5. A statement of the condition of the Public Debt of the State, the amount of interest paid, and the fund from which paid.
 6. A statement of the accounts of all officers and agents disbursing public money, and the names of such as have failed to comply with the laws relating to their offices and appointments, and the several sums for which they are in default.
 7. The salaries and pay of all officers of the State.
 8. The incidental expenses of the General Assembly, Executive and Judicial departments.
 9. All sums paid, or due to individuals by special contract.
- § 98. He has authority—
1. To settle up the business of the office for previous years.
 2. To allow Receivers and Collectors of Taxes their Commissions, and to balance the Tax Books and other books of the office upon satisfactory proof of payment or settlement.
 3. To collect all unpaid taxes of previous years.
- § 99. In his Annual Report the Comptroller General shall suggest such improvements in the Revenue Laws as his experience and observation may approve. His Report must be made at the time the Treasurer's is, and likewise communicated to the General Assembly.
- § 100. He must keep in his office a well bound book, in which shall be entered in alphabetical order, the full amount of all annual appropriations, setting forth the amounts under their several heads, all warrants that he may check and pass, together with the fund on which it is drawn, the time, amount, and in

Must audit accounts.

Shall annually report to the Governor.

Taxes paid by each county.

Debts due to the State.

Educational Fund.

Public Debt.

Accounts of money Agts.

Salaries and pay of officers.

Incidental expenses of Legislature.

Sums paid on contracts.

To settle old business.

Also, to allow commission to Tax Collectors & settle with them.

Collect unpaid Taxes.

He may suggest improvements in Revenue Laws.

Must keep books of annual appropriations & warrants, so as to show financial condition of the State.

Article 3.—The Comptroller General.

whose favor drawn, and make all entries necessary to a true exhibit of the finances of the State.

§ 101. He must keep a book in which to enter all bonds taken of Tax Collectors and Receivers, and keep the same on file in his office. He shall collect all unpaid taxes of previous years at a compensation of five per centum on the amount collected.

Must keep book of Tax Collector & Receiver's Bonds, and file originals.

§ 102. He must certify under his official seal at all times when necessary for the public use, and on application and payment of his legal fees therefor, for private use, copies of any papers kept in his office.

Must give copies of papers.

§ 103. If the Comptroller resigns, or is removed, he must immediately state his account, and deliver everything pertaining to his office to his successor; or if he dies, absconds, or absent himself for as long as thirty days without the Governor's permission, the Governor may without delay declare the office vacant, supply his place by appointment, examine the condition of his office and deliver over to the appointee.

Must settle with successor, and deliver up every thing pertaining to his office.

When office may be declared vacant.

§ 104. He shall, in addition to his salary, have ten per cent. on all sums he may collect, except for taxes, which necessarily was the duty of a predecessor to collect, and which was not done.

Additional fees.

§ 105. The Comptroller General must make out for the use of the General Assembly—

What his report must contain.

1. A table containing the taxable property and other items on the Tax Digest of each county for the year in which he makes his Annual Report.

2. A table annually of the polls in each county for the year immediately preceding his Report—the number of voters in each county at the general election next preceding his Report—the number of children in each county returned for participation in the Educational Fund and the amount drawn by each county from said fund—the amount drawn by each county for pay of members of the General Assembly—the total amount drawn by each county from the Treasury and the total amount of net tax paid into the Treasury for the year preceding by each county. Also, to furnish such other statistical information connected with his office as may be useful to the General Assembly. The Annual Reports of said officer and of the Treasurer must contain only the available funds or cash in the Treasury as the balance therein. They are also required to report separately and under the head of "Assets belonging to the State," all Bank or Railroad Stocks or Bonds, or other assets. The State Road to be

Article 3.—The Comptroller General.

reported without any stipulated value. Such officers are authorized to make such transfers or alterations on their books as are necessary to comply with the preceding section. The items "Darien Bank Bills," Western and Atlantic Railroad script and uncurrent funds hitherto reported, must be sealed up, remain in the Treasury and be left out of all future Annual Reports of said officers.

Shall not speculate in wild lands.

§ 106. He shall not directly or indirectly be interested or engaged in the purchase and sale of wild lands on speculation, on pain of removal by the Governor, or the General Assembly.

ARTICLE IV.

OF THE SURVEYOR GENERAL.

SECTION.

107. Surveyor General's bond.
108. His rights and duties.

SECTION.

109. Other duties.
110. Shall not speculate in wild lands.

His bond.

§ 107. The Surveyor General must give a bond conditioned the same as that of the Secretary of State, and for the same sum, subject to the same rules and regulations.

Surveyor General's duties similar to Secretary of State, &c.

§ 108. His rights and duties are the same as those of the Secretary of State set forth in sections 84 and 85, except the use of the Great Seal. He shall receive no perquisites for any official act, but the fees prescribed shall be collected by him and paid into the State Treasury.

Must keep records of plats and grants and report to Governor.

§ 109. It is moreover the duty of the Surveyor General—

1. To keep safely all the records of plats of land granted, and to report the condition of such records to the Governor at least once a year.

Must record plats and furnish originals to Secretary of State.

2. To record all plats of land legally authenticated and returned to him by the several County Surveyors, or other Surveyors, acting by authority for which grants are sought, and to furnish the originals thereof to the Secretary of State, to be attached to the grants.

Must keep maps of all surveys, by districts.

3. To keep in his office correct maps of all the different surveys (made by State authority) and of those comprising the land lotteries, their divisions into numbers, districts, sections and the like, having for every district a separate map.

Must keep register of grantees, &c.

4. To keep a register of the various grantees thereto, and the dates of the grants.

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Article 4.—The Surveyor General.

5. To keep correct maps of all surveys of rivers, harbors, swamps or land, made by the special direction of the General Assembly.

Must keep maps of surveys of all rivers, harbors and swamps.

6. He shall, when necessary contract for the execution of new maps, or the re-execution of, or repairs of old maps subject to the ratification of the General Assembly.

May have new maps made, and old ones repaired.

7. He must certify under his official seal, as the Comptroller General is directed in Section 102.

Must give copies of papers.

§ 110. He shall not directly or indirectly be interested or engaged in the purchase and sale of wild lands on speculation, on pain of removal by the Governor, or the General Assembly.

Shall not speculate in wild lands.

CHAPTER IV.

OTHER OFFICERS CONNECTED WITH THE EXECUTIVE DEPARTMENT.

ARTICLE 1. State Librarian.

ARTICLE 2. Governor's Messenger and State House Guard.

ARTICLE I.

STATE LIBRARIAN.

SECTION.

111. Librarian's bond.
 112. He must keep the State Library.
 113. He must preserve the books, &c.
 114. He shall distribute the laws, &c.
 115. He must keep a catalogue of books.

SECTION.

116. He must take and file receipts, &c.
 117. He must exchange for reports, &c.
 118. His office is subject, &c.
 119. He must deliver contents of office.

§ 111. The Librarian must give a bond in the sum of two thousand dollars, with good security, payable to the Governor and his successors in office, conditioned for the faithful performance of his duty as State Librarian.

Must give bond.

§ 112. The Library belonging to this State with such additions as may be hereafter made from any quarter, together with all copies of the laws, journals, or other books published, or purchased by the State, shall be kept in appropriate apartments at the Capitol building designated by the Governor, under such rules and regulations as he may from time to time prescribe.

Must keep the Public Library.

§ 113. It is his business to preserve, keep in order, and protect said Library; to keep the same open for the inspection of all citizens of the State, and to discharge such other duties in connection with the Library as may be required of him by law, or the Governor of the State.

Must preserve the books of the State, subject to the inspection of citizens.

Article 1.—State Librarian.

Shall distribute Laws and Journals and other books.

§ 114. The distribution of the Laws and Journals, Reports of the Supreme Court Decisions, Laws of the Confederate States, and all other books required to be distributed to the several counties (of the State) or to be sent to other States, shall be made by the Librarian under the direction of the Governor in pursuance of the provisions of the law in respect thereto.

Must keep a catalogue of books.

§ 115. He shall make out and keep on hand a catalogue of all the books in the Library, to be amended without unnecessary delay from time to time, as he may obtain new books, or dispose of old ones, which shall be printed and kept in his office in two or more conspicuous places.

Must take and file receipts for Books distributed.

§ 116. It is his duty to receive from the State Printer the Laws and Journals, and when distribution is made to the various counties, to take from Clerks of Courts, or other distributees, their receipts therefor, likewise all other books required to be distributed. He must receive and take receipt on the distribution, and keep in his office a file of such receipts.

Must effect exchange of Reports with other States.

§ 117. He must correspond with the proper authorities of other States who publish the reports of their highest appellate tribunal, with a view to exchange theirs for our Supreme Court reports.

His office subject to the Governor's supervision.

§ 118. His office is under the general supervision of the Governor, who may at any time appoint a competent person to examine into, and report its condition, to him.

Must deliver books and contents of office to successor.

§ 119. If the Librarian resign or be removed, he must, within ten days thereafter, deliver the books, papers, and other contents of his office to his successor, taking his receipt therefor, which must be filed and recorded in the Executive office, and if there is any deficiency in the books received by him, or other damage done, the Governor shall have suit brought on his bond.

ARTICLE II.

GOVERNOR'S MESSENGER AND STATE HOUSE GUARD.

SECTION.

- 120. Governor's Messenger.
- 121. His duties.
- 122. Appointment of Special Messenger.

SECTION.

- 123. Capitol Guards, their duties.
- 124. Number may be changed.

Governor may appoint Messenger for Executive Department.

§ 120. The Governor may in his discretion, as the exigency may require, appoint a Messenger to the Executive Department, or have that duty performed by some other employee about the State House, engaged by him under the general authority granted

Article 2.—Governor's Messenger and State House Guard.

to him, and when so performed, it must be done without additional compensation.

§ 121. When there is a Messenger, he shall perform such duties for the Executive office, the other offices in the State House, and such other service connected with the State business at the Capitol as the Governor shall prescribe, and be governed by such rules and regulations as he may adopt. Duties of Messenger.

§ 122. When there is no Messenger, the Governor may, if occasion should require, employ some person to perform any special service, for a reasonable compensation, such as is the duty of the Messenger to perform, but which cannot be performed by the person acting as such. Governor may employ persons for special service.

§ 123. The Governor shall appoint a Guard for the Capitol buildings, including the Captain of the Guard, whom he shall designate as such, whose business it shall be to remain in said buildings from sundown until sunrise of the next day, every night in the year, and on Sundays and holidays, to keep watch over the same and protect them from fire or intruders. Guard of Capitol, and their duties.

§ 124. The Governor has power to keep the number of said Guard full, when lessened by Providential or other cause, and adopt such rules and regulations in regard to them, as in his judgment the public service may demand. Number of Guard may be changed.

CHAPTER V.

GENERAL REGULATIONS, AS TO ALL OFFICERS AND OFFICES.

ARTICLE 1. Of eligibility, qualifications, and commissions.

ARTICLE 2. Official oaths.

ARTICLE 3. Official bonds, and herein of discharging sureties.

ARTICLE 4. Of delivery of Books, &c., to successor.

ARTICLE I.

OF ELIGIBILITY, QUALIFICATION, AND COMMISSION OF OFFICERS,
AND VACATION OF OFFICES.

SECTION.

- 125. Persons ineligible to civil office.
- 126. When ineligible, the next highest.
- 127. Persons elected, failing to qualify.
- 128. Residence, seal, and term of office.
- 129. Commissions under Great Seal.

SECTION.

- 130. Commissions under Executive Seal.
- 131. When civil offices are vacated.
- 132. Vacancy in Executive office.
- 133. Resignations sent to the Governor.

Article 1.—Eligibility, Qualification and Commission of Officers, and Vacation of Offices.

Persons ineligible to office.

§ 125. The following persons are held and deemed ineligible to hold any civil office in this State, and the existence of either of the following state of facts, is a sufficient reason for vacating any office held by such person; but the acts of such person, while holding a commission, are valid as the acts of an officer *de facto*, viz :

Minors.

1. Persons who are not citizens of this State, nor of the age of twenty-one years or upwards.

Those holding and refusing to pay over public money.

2. All holders or receivers of public money of this State, or any county thereof, who have refused, when called upon, or failed after reasonable opportunity, to account for, and pay over the same to the proper officer.

Felons of moral turpitude.

3. Any person convicted and sentenced finally for any felony, under the laws of this, or any other State, involving moral turpitude, the offence being also a felony in this, unless restored by a pardon from the proper Executive, under the Great Seal of the State, to all the rights of citizenship.

Confederate States officers, or officers under other States.

4. Persons holding any office of profit or trust under the Government of the Confederate States, (other than that of Post Master) or of either of the several States, or of any foreign State.

Persons insane or infirm.

5. Persons of unsound mind, and those who from advanced age, or bodily infirmity, are unfit to discharge the duties of the office to which they are chosen or appointed.

Those whose term of residence is incomplete.

6. Those who have not been inhabitants of the State, County, District, or Circuit for the period required by the Constitution and Laws of this State.

Those otherwise disqualified.

7. All persons, from any cause Constitutionally disqualified. All officers are eligible to re-election and re-appointment, and to hold other offices, unless expressly declared to the contrary by the Constitution or Laws.

All officers re-eligible.

The person having next highest vote, to an ineligible candidate, is elected, if plurality elects.

§ 126. If at any popular election to fill any office, the person elected is ineligible under the foregoing rules, the person having the next highest number of votes, who is eligible, whenever a plurality elects, shall be declared elected, and be qualified and commissioned to such office.

A person elected, and failing to obtain commission, is ineligible on account of the failure.

§ 127. Persons who after an election, fail to comply with all the pre-requisites of the law, in order to obtain commissions or certificates to discharge the duties of the office, are ineligible to re-election at the election held by reason of such failure, for the same office.

§ 128. All officers of this State must reside therein at such

Article 1.—Eligibility, Qualification and Commission of Officers, and Vacation of Offices.

places as are designated by law, and discharge the duties of their office until their successors are commissioned and qualified; and all officers whose certificate of records, or other papers, are admissible in evidence in any Court in this State, must have and keep an official Seal.

Officers must reside in the State, and hold office until successor is qualified; and must keep a Seal—when.

§129. The following officers must be commissioned with the Great Seal of the State annexed thereto, signed by the Governor, and countersigned by the Secretary of State, viz: Senators and Representatives in Congress, Judges of the Supreme and Superior Courts, Attorney and Solicitors General, Reporter of the Supreme Court, Secretary of State, Treasurer, Comptroller, and Surveyor General, and all Military officers of the grade of General, either of Division or Brigade. Those of all Federal and Judicial officers above enumerated must be on parchment.

What officers must be commissioned with the Great Seal of the State.

§130. All other civil officers of the State, or county, shall be commissioned under the Seal of the Executive Department, signed by the Governor, and countersigned by one of his Secretaries, except Constables, whose election shall be certified by the Clerk of the Inferior Court of the county, and such certificate shall operate as their commission. All officers of the Militia, and of Volunteer Companies, Battalions or Regiments, regularly incorporated, (of the grade of Lieutenant, or higher) shall have commissions under the Seal of the Executive Department.

What officers to be commissioned under Seal of Executive Department.

§131. All offices in the State are vacated—

Offices are vacated by death; by accepted resignation;

1. By the death of the incumbent.

2. By resignation, when accepted.

3. By decision of a competent tribunal, declaring the office vacant.

by judgment;

4. By voluntary act or misfortune of the incumbent, whereby he is placed in either of the conditions specified of ineligibility to office, which shall operate from the time the fact is ascertained and declared by the proper tribunal.

by voluntary act, or misfortune, rendering incumbent ineligible, according to law;

5. By the incumbent ceasing to be a resident of the State, or of the county, circuit or district, for which he was elected. In the first case, the office shall be vacated immediately: In the latter cases, from the time the fact is judicially ascertained.

and by a failure of incumbent to reside where the law requires:

6. By failing to apply for and obtain commissions or certificates, or by failing to qualify or give bond, or both, within the time prescribed by the laws and Constitution.

by failure to obtain commission, or qualify;

7. By abandoning the office, and ceasing to perform its duties, or either.

and by abandonment of the office.

Article 1.—Eligibility, Qualification and Commission of Officers, and Vacation of Offices.

How vacancy in the office of Governor must be communicated.

§132. The resignation of the Governor must be transmitted by him to the General Assembly, if in session; if not in session, to the Secretary of State, who must, on the same day notify the President of the Senate. If the office becomes vacant by death, or any other cause, when the General Assembly is not in session, the Secretary of State must inform the President of the Senate. In either case the President of the Senate when informed, shall, within ten days, repair to the Capitol and take the oath of office before any Judge of the Supreme or Judge of the Superior Court, and the General Assembly if in session, which fact shall be entered on the minutes of the Executive Department. If he does not so appear in said time, he shall be considered as having resigned, and the Secretary of State shall then, or in case there is no President of the Senate, inform the Speaker of the House of Representatives, and the proceedings shall be the same.

President of the Senate failing to qualify, the Speaker of the House must be notified.

What officers must communicate resignation to the Governor.

§133. The resignation of Senators and Representatives in Congress, and members of the General Assembly, and of all officers whose commissions issue from the office of Secretary of State or the Executive Department, and whose places may be supplied by Executive appointment, shall be made to the Governor.

ARTICLE II.

OFFICIAL OATHS.

SECTION.

- 134. Additional oath of public officers.
- 135. Oath must accompany *Dedimus*.
- 136. Who may qualify officers.
- 137. Official oaths to be filed.
- 138. Where to be filed.

SECTION.

- 139. Endorsement of filing.
- 140. Oaths of deputies to be filed.
- 141. Failing to take and file oath.
- 142. When acts are valid without oath.

Additional oath of public officers.

§134. All public officers, besides the oath of office, and the oath prescribed by the Constitution, (if any,) shall swear that he is not the holder of any public money due this State, unaccounted for; that he is not the holder of any office or trust, under the Government of the Confederate States, (except Post Master,) nor either of the several States, nor of any foreign State; and, if elected by any circuit or district, that he was a resident thereof for the time required by the Constitution and laws, (stating the time,) and is otherwise qualified to hold said office, according to the Constitution and laws of Georgia, and will support the Constitution of the Confederate States, and of this State.

Article 2.—Official Oaths.

§135. The form of said oath, as well as the oath of office, to be taken and subscribed, must be forwarded with the *dedimus potestatem*, and be taken and subscribed at the time of receiving the commissions, before the officer to whom the same is directed, and in conformity to the directions.

Form of oath to be sent with *Dedimus*.

§136. When not otherwise provided by law, and not directed in the *dedimus potestatem*, the oaths of office may be taken before any officer authorized by law to administer an oath. Such oaths must be written out and subscribed by the person taking them, and accompanied by the certificate of such officer specifying the day and year when taken.

Who may qualify officers.

§137. Such oaths, when taken by any officer whose general duties are not confined to any one county, (unless otherwise specially provided,) must be filed with the certificate required by the preceding Section, in the Executive office; and when taken by an officer whose duties are confined to one county, as provided in the next Section.

Where official oaths must be filed.

§138. When taken by the Justices of the Inferior Court, the Ordinaries and the Clerks of the Superior Courts, they must be filed in the office of the Clerk of the Inferior Court, and also entered on the Minutes of their respective Courts. When taken by Sheriffs, they must be likewise filed in the office of the Inferior Courts, and must be entered on the Minutes of the Superior Courts; and when taken by Coroners, Tax Collectors or Receivers, County Treasurer, Justices of the Peace or Constables, or any other county officer, they must be filed in the office of the Clerk of the Inferior Courts; and the Clerks of the Inferior Courts, and also of the Superior Courts, when one and the same officer, must file their oaths in the office of the Ordinary, and enter them on the Minutes of their own Courts respectively.

Where official oaths must be filed.

§139. The officer, in whose office such oaths are filed must endorse thereon the day and year of filing.

Endorsement of—when filed.

§140. All deputies, before proceeding to act, must take the same oaths as their principals take, which must be filed in, and entered on the Minutes of the same office, and with the same endorsement thereon, but these provisions do not apply to any deputy who may be employed in particular cases only.

Oaths of Deputies, and where to be filed.

§141. If any officer or deputy, required by law to take and file such oaths, enters upon the duties of his office without first taking and filing the same in the proper office, he is guilty of a

Penalty for a failure to take and file official oath.

Article 2.—Official Oaths.

misdeemeanor, and, on conviction, must be fined not less than two hundred dollars.

Acts of officers valid without the oath, unless otherwise declared.

§ 142. The official acts of an officer are not the less valid for his omission to take and file the oath, unless in cases where so specially declared.

ARTICLE III.

OFFICIAL BONDS, AND HEREIN OF DISCHARGING SURETIES AND REQUIRING ADDITIONAL SURETIES.

SECTION.

- 143. The payee and condition, of bonds.
- 144. Bonds must accompany *dedimus*.
- 145. Approval of official bonds.
- 146. Number and qualification of sureties.
- 147. May be signed by Attorney in fact.
- 148. When bonds must be filed.
- 149. Certificate of failure to file bond.
- 150. Acting before filing bond.
- 151. Endorsement of filing.
- 152. Notice of failure to file bond.
- 153. Penalty for failure.
- 154. Obligations of official bonds.

SECTION.

- 155. Approval, filing and record of bonds.
- 156. Giving bonds to be certified.
- 157. Deputies' bonds.
- 158. Principal or deputy may be sued.
- 159. Bond when discharged.
- 160. Officers liable, above penalty of bond.
- 161. Validity of bonds.
- 162. Damages, in suits on bonds.
- 163. Future official oaths and bonds.
- 164. How sureties may be discharged.
- 165. Officer failing to give new bond.

Official bonds to whom payable and upon what conditions.

§ 143. The bonds of all public officers required by law to give bond, unless otherwise provided, must be made payable to the Governor of the State of Georgia, and his successor in office, with such sureties as the approving Court or officer is satisfied is sufficient, and conditioned in all cases, in which a different condition is not prescribed, faithfully to discharge the duties of such office during the time he continues therein, or discharges any of the duties thereof.

Official bonds must be sent with *dedimus potestatem*.

§ 144. Official bonds of all officers who are entitled to commissions from the Governor, and who are required to give bonds, must be prepared and furnished by the Executive Department, at the time of forwarding the *dedimus potestatem*.

Approval of bonds.

§ 145. The approval of all official bonds shall be in writing, endorsed on the bond, and should show the day and year on which the same were approved, and shall not be filed until thus approved.

Number and qualification of sureties on official bonds.

§ 146. Such bonds shall not be approved by the approving officers, unless they have at least two good and solvent sureties, and not more than five, all of whom must be permanent residents of the State, and two also of the county, and freeholders thereof. When

Article 3.—Official Bonds, and Herein of Discharging Sureties, &c.

said approving officers do not, of their own knowlege, know that a surety is worth enough to enable them to accept him, they shall not take him unless he swears to his means, and it is satisfactory, of which swearing they shall make a minute on the bond.

§ 147. When an official bond is signed by an Attorney in fact, the power of attorney must be attested by a Justice of the Inferior Court, and filed and recorded as the bond is. Power of Attorney attested and filed.

§ 148. The official bonds of public officers required by law to be filed in the office of Comptroller, Secretary of State, or Executive Department, must be filed therein within forty days after the election or appointment of such officer; when in the office of the Clerk of the Superior or Inferior Courts, or Ordinary, within thirty days therefrom. In all other cases within twenty days therefrom. Within what time official bonds must be filed.

§ 149. When any officer of whom bond is required fails to make and file the same as prescribed in the preceding section, it is the duty of the Court, or officer in whose office it is required to be filed, at once to certify such failure to the appointing power, and to the power whose duty it may be to order an election. Certificate of failure to file official bond.

§ 150. If any public officer, required by law to give bond, performs any official act, before his bond is approved and filed as required, he is guilty of a misdemeanor, and on conviction, must be fined not less than five hundred dollars. Acting before filing bond a misdemeanor.

§ 151. Every officer in whose office the official bond of any public officer is filed, must endorse on such bond the day and year when the same was filed, and sign his name to such endorsement. Endorsement on official bonds.

§ 152. If any public officer required by law to give bond, fails to file the same, within the time hereinbefore prescribed, in the proper office, notice of such failure must be given by the officer in whose office such bond is required to be filed, by or during the two first days of the session of the Superior Court held in the county in which the officer so failing resides, next after such failure, to the Attorney or Solicitor General of the Circuit. Notice to be given of a failure to file official bond.

§ 153. Any officer whose duty it is to mark-file the bond and to give the several notices required in this article, and failing to do so, without good and sufficient excuse therefor, shall, on information rendered and citation to appear before the Superior Court of the county of his residence, be fined as for a contempt (in the discretion of the Court.) Penalty for a failure to mark-file, or notify of the failure to file the bond.

§ 154. Every official bond executed under this Code is obligatory on the principal and sureties thereon— Official bonds are obligatory.

Article 3.—Official Bonds and Herein of Discharging Sureties, &c.

For breach by the officer. 1. For any breach of the condition during the time the officer continues in office, or discharges any of the duties thereof.

Breach by a deputy. 2. For any breach of the condition by a deputy, although not expressed, unless otherwise declared by law.

Discharge of duties imposed by law subsequent to its execution. 3. For the faithful discharge of any duties which may be required of such officer by any law passed subsequently to the execution of such bond, although no such condition is expressed therein.

For the use of any one injured. 4. For the use and benefit of every person who is injured, as well by any wrongful act committed under color of his office as by his failure to perform, or by the improper or neglectful performance of, those duties imposed by law.

How official bonds are to be approved, filed and recorded. § 155. The official bonds of the Ordinaries, the Clerks of the Superior Courts, of Sheriffs, Coroners, County Surveyors, County Treasurers, Tax Collectors and Receivers, given for county taxes, must be approved by at least three Justices of the Inferior Courts, filed in the office of the Clerks of the Inferior Courts, and by them recorded; that of the Clerks of the Inferior Court must be filed in the Ordinary's office, and by them recorded, and when the Clerks of the Inferior Courts are also Clerks of the Superior Courts, those of the Clerks of the Superior Courts must likewise be filed and recorded in the Ordinary's office. The bonds of Tax Collectors and Receivers for State Taxes, after being likewise approved, must be recorded by the Clerks of the Inferior Courts, and the original bond must be by them transmitted to the Governor, (for deposit in the Comptroller General's office.)

Justices of the Inferior Court must certify to the Governor that certain officers have given bonds. § 156. Such Justices of the Inferior Court must sign a certificate to the Governor, stating that the Clerks of the Superior and Inferior Courts respectively, the Sheriffs, Coroners, and County Surveyors, have taken the oaths and given the bonds sent from the Executive Departments, together with a statement of the dates, amounts, and names of the sureties of each, and that they have delivered to them their commissions, which shall be attested by the Clerks of said Courts, and by them immediately transmitted to the Governor.

Deputies bonds to whom payable, for what amount, and where filed & recorded. § 157. When Deputies give a bond, they must be payable to their principals, with surety conditioned as theirs are, for their conduct as Deputies, for the same amounts, and must be recorded in the same office, and in the same manner as the bonds of the principals.

§ 158. It shall be at the option of any person who claims dam-

Article 3.—Official Bonds, and Herein of Discharging Sureties, &c.

ages of any principal officer for the act of his Deputy, to sue said Deputy's bond instead of his, in the same manner as the principal's bond may be sued.

Principal's or Deputy's bonds may be sued for act of Deputy.

§ 159. Such bonds are not discharged by a single recovery, but proceedings may be had from time to time, until the whole penalty is exhausted against the officer and his sureties, or either, and said bonds are joint or several, whether so set forth or not.

One recovery does not discharge the bond, unless to the full penalty.

§ 160. When the penalty is exhausted, the officer himself shall still be liable, and upon the same measure of damages as upon his bond, and he is likewise liable for any damage he may do in undertaking to discharge the duties of an office without having given the necessary bond, or having given one, it is invalid, in whole, or in part.

Officer liable though penalty is exhausted.

§ 161. Whenever any officer required by law to give an official bond, acts under a bond which is not in the penalty, payable and conditioned nor approved, and filed as prescribed by law, such bond is not void, but stands in the place of the official bond, subject on its conditions being broken, to all the remedies including the several recoveries which the persons aggrieved might have maintained on the official bond.

Bonds valid, though not in conformity to law.

§ 162. The measure of damages upon all official bonds for the misconduct of the officer, unless otherwise specially enacted, shall be the amount of injury actually sustained, including the reasonable expenses of the suit to the plaintiff, besides the costs of Court, but in all cases when little or no damage is actually sustained, and the officer has not acted in good faith, the jury may find for the plaintiff an amount as smart money, which taking all the circumstances together, shall not be excessive nor oppressive.

Measure of damages in suits on bonds.

§ 163. All the provisions of this, and the preceding article, apply to the oaths of office and official bonds of all public officers of this State, whose office may be established hereafter, unless the contrary is expressly provided.

Provisions of this and preceding article apply to official oaths.

§ 164. When the surety to any bond, given by any officer for the performance of any public duty, shall give notice in writing to the Governor, of his desire to be relieved from future liability, for good cause therein stated and sworn to, of which the Governor shall be the judge; or any such surety shall in the opinion of the Governor, formed upon satisfactory evidence, become insufficient, it shall be his duty to require of such officer a new bond and surety.

How sureties on official bonds may be discharged.

Article 3.—Official Bonds, and Herein of Discharging Sureties, &c.

Officer failing to give new bond when required, to be removed from office.

§ 165. If any officer shall fail to comply with such requisition within ten days from the date he is served personally with a copy of the Executive order containing such requisition, he is by such failure removed from office and a vacancy declared.

ARTICLE IV.

OF DELIVERY OF BOOKS TO SUCCESSORS.

SECTION.

166. Outgoing officer must deliver books.
167. Persons having office property.
168. Persons refusing to deliver, &c.

SECTION.

169. May be imprisoned.
170. Books, &c., delivered to successor.
171. Penalty for failure.

Officer must deliver books, &c., to successor.

§ 166. When any office is vacated, it is the duty of the incumbent, on demand made, to deliver all books, papers, and other property appertaining to the office, to his qualified successor.

Other persons having office property must deliver it up.

§ 167. If a vacancy occurs by death, or the incumbent is not to be found at the time of demand made, it is the duty of any person having possession, or control of such office property, or any part thereof, to deliver it up, and the rights and remedies are the same against such person, as against the deceased officer, if living, or to be found.

How person in possession, refusing to deliver office and contents, to be proceeded against.

§ 168. If any person neglects or refuses so to do after demand made, the successor shall make complaint to the Justices of the Inferior Court of the County, or to the Judge of the Superior Court of the Circuit in which the person refusing resides, or if neither can be had, the Judge of the Superior Court of an adjoining Circuit, and if such officer is satisfied, from the oath of complainant or otherwise, that such are withheld, he must grant an order requiring the person so refusing to show cause before him on a day and at a place named in such order, why he should not be compelled to deliver over the same.

If such person shows no good cause, and fail to comply with an order to deliver, they shall be imprisoned.

§ 169. At the time so appointed, or at any other time to which the matter may be adjourned, a copy of such order having been personally served on the person so refusing, such officer must proceed to inquire into the circumstances, and if it appears that such books and papers are withheld, he must order the same delivered up instantler to said successor, and on failing to comply with such order, he shall issue a warrant directed to any officer of said county, or of the adjoining county authorized to make the arrest, to arrest said officer, and commit him to jail, there to remain until he complies with said order, or is otherwise dis-

Article 4.—Delivery of Books to Successors.

charged by course of law. At the same time, in the same way, he shall command said officer to search such places for them as may be designated in such warrant, and to seize and bring them before him or some other officer authorized to preside, and being so brought and appearing to belong to said office, he shall cause them to be delivered to the successor. The payment of costs are in the discretion of the Court. Said proceedings do not interfere with the provisions in the Penal Code on this subject.

Search may be made for papers under a warrant.

§ 170. All judicial or ministerial officers, or State's Attorneys who, by law, are entitled to receive from the State any books, pamphlets, or other documents, upon retiring from office must deliver them over to their successors, and from one successor to another.

Officers must deliver books to successors.

§ 171. On failure to deliver such books, after demand made by incoming officer, he is liable for three times the first cost thereof, to be retained out of his salary, if a salaried officer, and if not a salaried officer, or being one it is omitted to be retained, the officer so detaining is subject to suit and recovery (in a Court having jurisdiction) by the successor, in the name of the State, for his use.

Penalty for failure to deliver books to successor.

TITLE IV.

LEGISLATIVE DEPARTMENT.

CHAPTER I.

OF THE GENERAL ASSEMBLY.

SECTION.

- 172. Meeting of Legislature.
- 173. Length of sessions.
- 174. How organized.
- 175. Oath of Members.
- 176. President and Speaker.
- 177. Elections by General Assembly.
- 178. Doorkeepers and Messengers.
- 179. Special Messengers.

SECTION.

- 180. Joint Finance Committee.
- 181. Duty of Secretary and Clerk.
- 182. Engrossed copies of laws.
- 183. Unfinished business lies over.
- 184. Pay of President, Speaker, &c.
- 185. Pay of sick members.
- 186. Amount due deceased members.
- 187. Accounts of officers and members.

§ 172. The regular sessions of the General Assembly begin on the first Wednesday in November, annually, at noon, in the Capitol.

When Legislature meets.

§ 173. Each session shall not continue longer than forty days,

Length of sessions.

unless otherwise ordered by a vote of two-thirds of each branch of the General Assembly.

General Assembly—how organized.

§ 174. Each branch shall be organized by the Clerk and Secretary thereof respectively, who are ex-officio presiding officers until such are elected. No question shall be entertained by them but one relating to the organization, and in deciding such questions they are to be governed, as far as practicable, by the standing rules of the House over which they preside. In the absence of such officer their assistants may officiate. In the absence of both, the body may appoint a Chairman, whose powers and duties are the same.

Who may administer oath to members.

§ 175. The oaths of office may be administered to the members of the General Assembly by any Judge of the Supreme or Superior Courts, to be procured by the person organizing each branch.

Election of President of Senate and Speaker of House.

§ 176. The President of the Senate and Speaker of the House are elected by their respective bodies by ballot, and a majority of votes is necessary to a choice. In like manner the Senate must elect a President, *pro tem.*, and the House a Speaker, *pro tem.*, whose powers and duties, while presiding, or in the absence of said officers, are the same.

President and Speaker *pro tem.*

How elections by Legislature conducted.

§ 177. All elections by the General Assembly are to be conducted as follows:

Assemble in the Representative Hall.

1. On the day and hour appointed for the election, the members of both Houses must assemble in the Representative Hall.

Members called and vote by ballot.

2. The names of the members of each House are to be called by their respective Clerks, each member voting by ballot as soon after his name is called as practicable.

Result—how ascertained and announced.

3. The result must be ascertained by the President of the Senate and the Speaker of the House, and announced by the first named officer.

One election at time, majority necessary, counting blanks.

4. The votes are to be given for but one election at the same time, and a majority of the whole number of votes cast is necessary to a choice, and all blanks are to be counted as votes.

Resolution to bring on election may be rescinded.

5. When both branches of the General Assembly, agree by Resolution to bring on an election at a specified time in the Representative Chamber, on joint ballot, said resolution can only be rescinded by a vote of two-thirds of either House, and without such vote the election held according to said resolution is valid.

6. When both branches meet for such purposes, and there is a necessity for an adjournment without having concluded the

Chapter 1.—The General Assembly.

elections for which they convened, they shall adjourn to some named hour on the same or next day, (not counting Sunday or a public holiday) or to a day certain, and the elections made at such time are valid, unless the resolution for the election is in the mean time repealed by said two-thirds vote.

Adjournment pending an election.

§ 178. Each House is entitled to a Door Keeper and Messenger, to perform such duties as may be required of them, who shall be appointed by the presiding officers thereof respectively, with power of removal at pleasure, and who shall receive the same pay as the members of the General Assembly.

Appointment of Door Keepers and their pay.

§ 179. When it shall be necessary to carry into effect the 4th section of the 2d Article of the Constitution, or for any like purpose, either of said officers may appoint any person to execute the orders of each House and the warrant of the presiding officer, who may receive for the service such compensation as the General Assembly may appropriate.

Persons may be appointed for special service.

Their compensation.

§ 180. It is part of the duty of the joint standing Committee of Finance, to examine the accounts and vouchers of the Comptroller and Treasurer as to all monies received into and paid out of the Treasury, during the last fiscal year, to compare the warrants drawn during that period, with the several laws by authority of which they purport to be drawn, to examine into the other accounts and books of such officers, and to count the money on hand at the time of the examination, and to examine the annual reports made by said officers to see if they are sustained by the true condition of their offices, and report the result to each branch of the General Assembly.

Duty of joint Finance Committee.

§ 181. At the close of each session, the Secretary of the Senate, Clerk of the House of Representatives, and Secretary of State, must select all the papers belonging to the General Assembly, except such as relate to the unfinished and rejected business, and deposit them in the office of the Secretary of State.

Duty of Secretary of Senate and Clerk of House at close of each session.

§ 182. The engrossed copies of all laws and joint resolutions passed by the General Assembly, must be preserved by the Chairman of the Enrolling Committee, and deposited in the office of the Secretary of State.

Engrossed copies of laws and Resolutions passed—where and by whom deposited.

§ 183. The unfinished business of the first session of the same General Assembly must be the first business at the succeeding session, subject to the standing rules thereof.

Unfinished business lies over.

§ 184. The President of the Senate and Speaker of the House receive ten dollars, and the other members six dollars for each

Pay of President of the Senate and Speaker of the House, and members.

day's attendance, and all are allowed five dollars for every twenty miles of travel going to and returning from the Seat of Government, the distance to be computed by the direct mail route, if any, and if none, by the direct land route usually traveled.

Pay of sick members.

§ 185. If any member is detained by sickness, after leaving home, in coming to, or is unable to attend the House after he arrives at the seat of Government, he is entitled to the same daily pay as an attending member, but no member shall receive pay for absent time unless on account of sickness of himself or family, or by express leave of the House of which he is a member.

Widows of deceased members to receive their *per diem* pay, &c.

§ 186. If any member of the General Assembly shall die during the session, or afterwards, without having received the whole or any portion of his pay, the amount due for the whole session shall be paid to the widow of the deceased, and if no widow, in like manner to the children.

Pay of members and officers, how audited and certified.

§ 187. The compensation due to the officers and members of the General Assembly must be certified by the President and Speaker, respectively, upon the report of the Auditing Committee, to the Treasurer, who afterwards shall pay each member who presents his account duly audited.

CHAPTER II.

SUBORDINATE OFFICERS OF THE GENERAL ASSEMBLY.

SECTION.

- 188. Election of Secretary and Clerk.
- 189. Oath of Secretary and Clerk.
- 190. Administering the oath.
- 191. Compensation of Secretary & Clerk.
- 192. Assistants of Secretary and Clerk.

SECTION.

- 193. Qualification of subordinate Clerks.
- 194. Secretary and Clerk must file papers.
- 195. Receive no pay till files are made.
- 196. When both Houses meet Sec'y to aid.

Election and official term of Secretary of Senate and Clerk of the House.

§ 188. There shall be a Secretary of the Senate and a Clerk of the House of Representatives elected by the members of each House respectively, by ballot, and a majority of votes cast is necessary to elect. Their term of office shall be the time for which the members of the General Assembly are elected.

Oath of Secretary and Clerk, and their assistants.

§ 189. Said officers, their assistants, and engrossing and enrolling Clerks, before entering on the discharge of their duties, shall take an oath before their respective presiding officers to discharge their duties faithfully, and to the best of their skill and knowledge, of which a minute shall be made and entered on the Journals.

Chapter 2.—Subordinate Officers of the General Assembly.

§ 190. The President of the Senate and Speaker of the House are to administer the oaths required to the subordinate officers of their respective (bodies) Houses.

President and Speaker may administer oaths to subordinates

§ 191. The *per diem* pay of the Secretary of the Senate and the Clerk of the House, their assistants and all subordinates, shall be determined by each General Assembly, in perfecting the appropriation bill.

Pay of Secretary and Clerk—how fixed.

§ 192. Said Secretary and Clerk shall have power to appoint their assistants and subordinate Clerks as follows, viz:

Secretary & Clerk may appoint—

1. The Secretary of the Senate may appoint, at the commencement of the session for which he is elected, one Reader, or assistant Clerk at the desk, one Journalizing Clerk, and one for Enrolling and one Engrossing Clerk, and one Recording Clerk.

Readers, Journalizing, Enrolling, Engrossing, and Recording Clerks.

2. The Clerk of the House may appoint, at the same time, one Reader, or assistant Clerk at the desk, one Journalizing Clerk, two Enrolling, and two Engrossing Clerks, and one Recording Clerk.

3. If, at any time during the session, the business requires the appointment of additional Clerks, either of said officers may apply to their respective Houses for leave to appoint them, and if they are deemed necessary by the Enrolling Committee, such body may, by resolution, authorize the appointment, specifying therein the number.

Additional Clerks—how appointed.

4. No Clerk shall be allowed compensation in either of said departments, appointed in any other way.

What Clerks only shall receive pay.

§ 193. No Journalizing, Recording, Enrolling or Engrossing Clerk shall be appointed by the Secretary of the Senate, or Clerk of the House, until such Clerk has been examined by the Enrolling Committee, and certified to their respective Houses, to be competent and well qualified to the discharge of the duties required of him; and such Clerk shall be removed, at any time, upon the recommendation of the Enrolling Committee of the House in which he is employed.

Qualification and removal of Journalizing, Recording, Enrolling and Engrossing Clerks.

§ 194. The Secretary of the Senate, and Clerk of the House of Representatives, must, within ten days after the adjournment of each session, file, in proper order, all the papers and documents of their respective Houses.

Secretary and Clerk must file papers and documents.

§ 195. The records, papers and documents thus filed, must be delivered to the Secretary of State, who, upon receipt of the same, must certify that such Secretary and Clerk have respectively

Secretary and Clerk shall not be paid until they have filed the papers.

complied with said requisitions, and the Treasurer shall not pay their several salaries, until such certificate is produced.

§ 196. When there is a meeting of both branches of the General Assembly, in any one chamber, said Secretary and Clerk shall be present, and join in the discharge of the duties required, and shall enter on the Journals of each the proceedings.

Secretary
must aid
when both
Houses
meet.

TITLE V.

THE JUDICIAL DEPARTMENT.

CHAPTER I.

GENERAL PROVISIONS IN REGARD TO JUDICIAL POWER.

SECTION.

197. Judicial power—where vested.
198. Rules of Court shall be observed.
199. Judge interested shall not preside.
200. Power of the Court.

SECTION.

201. Records shall not be removed.
202. Minutes read and signed by Judge.
203. The Court may act when no Clerk.

Judicial
power—how
vested.

§ 197. The Judicial power of the State is vested in such tribunals as are created by the Constitution, and such other Inferior Courts as are, or may be established by law, and such persons as are, or may be specially invested with powers of a Judicial nature.

Rules of
Court.

§ 198. The rules of the respective Courts, legally adopted, and not in conflict with the Constitution of the Confederate States, of this State, or the laws thereof, are binding, and must be observed.

When Judi-
cial officer
incompetent
to try a case.

§ 199. No Judge or Justices of any Court, no Ordinary, Justice of the Peace, nor presiding officer of any Inferior Judicature or commission, can sit in any cause or proceeding in which he is pecuniarily interested, or related to either party within the fourth degree of consanguinity or affinity, nor in which he has been of counsel, without the consent of all the parties in interest.

Courts have
power—

to enforce
order in its
presence ;

and before
bodies acting
under their
authority ;

§ 200. Every Court has power—

1. To preserve and enforce order in its immediate presence, and as near thereto as is necessary, to prevent interruption, disturbance or hindrance to its proceedings.

2. To enforce order before a person, or body empowered to conduct a Judicial investigation under its authority.

Chapter 1.—General Provisions in regard to Judicial Powers.

3. To compel obedience to its judgments, orders and process, and to the orders of a Judge out of Court, in an action or proceeding therein. and compel obedience to its process and judgment ;

4. To control, in furtherance of justice, the conduct of its officers, and all other persons connected with a Judicial proceeding before it, in every matter appertaining thereto. and to control its officers ;

5. To administer oaths in an action or proceeding pending therein, and in all other cases, when it may be necessary, in the exercise of its powers and duties. and to administer oaths,

6. To amend and control its process and orders, so as to make them conformable to law and justice, and to amend its own record so as to make them conform to the truth. And to amend its processes, records, &c.

§201. No records or papers of any Court must be removed out of the county, except in cases of invasion, whereby the same may be endangered, or unless by order of the Court. When records may be removed.

§202. The minutes of every Court of record must be read each morning by the Clerk, in open Court, and on the adjournment of the Court must be signed by the Judge, Judges or Justices thereof: but if not signed, are valid, unless repudiated by the Court. Minutes must be read and signed.

§203. The acts of a Court shall not lack validity for the want of a Clerk, and whenever there is no Clerk, or none to be had, or he is incapable of discharging his duty, and any Court performs that duty itself, its action as such is valid. Court may perform duties of Clerk when there is none.

CHAPTER II.

THE SUPREME COURT AND ITS OFFICERS.

ARTICLE 1. The Supreme Court and its Judges.

ARTICLE 2. The Clerk.

ARTICLE 3. The Reporter.

ARTICLE 4. The Sheriff, or Marshal.

ARTICLE I.

THE SUPREME COURT AND ITS JUDGES.

SECTION.

204. Judges of the Supreme Court.
205. Their oath of office.
206. Two may hold the Court.
207. Who are eligible for Supreme Bench.
208. Vacancies—how filled.

SECTION.

209. When there is but one Judge, &c.
210. Unanimous decisions how reversed.
211. The powers of Supreme Court, &c.
212. Two of the Judges must concur, &c.
213. Officers of the Supreme Court.

Article 1.—The Supreme Court and its Judges.

Judges of
the Supreme
Court.

§ 204. The powers of the Supreme Court are vested in, and its duties performed by three Judges, who are elected for the term of six years by the General Assembly.*

Their oath.

§ 205. Before entering on the discharge of their duties they shall take the oath prescribed for Judges of the Superior Courts, and all other oaths required for civil officers.

Two may
hold Court.
Chief Jus-
tice.

§ 206. They, or two of them, may hold said Court, and the oldest Judge in commission is the Chief Justice, or President thereof, but without any greater powers than his associates.

Who are eli-
gible to the
Supreme
Bench.

§ 207. No person is eligible as such, unless he has been duly admitted and licensed to plead and practice in the Courts of Law and Equity in this State for ten years prior to his election: within twenty days after the election the Governor shall issue his commission.

Vacancies—
how sup-
plied.

§ 208. In case of a vacancy (from any cause) the Governor shall appoint and commission some qualified person to supply it until the next meeting of the General Assembly, who shall elect some one for the unexpired term. If a vacancy occurs during the session of the General Assembly there must be no appointment, but if it closes without an election the Governor shall appoint some person to hold the office until the action of the General Assembly.

When but
one Judge
competent
how the case
must be dis-
posed of.

§ 209. When two or all of the Judges are disqualified from deciding any cause or proceeding pending in their said Court, they must certify the same to the Governor, who must direct a commission to issue to any two or three Judges of the Superior Court, whom he may select, and that has not performed any judicial duty, in the cause, empowering them in the particular cause stated, to exercise the powers of a Judge of the Supreme Court therein, as in cases of vacancy, at the time and place for hearing and determining the same.

How unani-
mous deci-
sions may be
reversed.

§ 210. A decision concurred in by three Judges cannot be reversed or materially changed, except by a full bench, and then after argument had, in which the decision by permission of the Court is expressly questioned and reviewed, and after such argument the Court in its decision shall state distinctly whether it affirms, reverses or changes such decision.

*The amended Constitution provides that the Judges of the Supreme Court shall be appointed by the Governor and with the advice and consent of the Senate.

Article 1.—The Supreme Court and its Judges.

§ 211. The Supreme Court has authority—	Supreme Court has authority—
1. To exercise appellate jurisdiction, and that only, and in no case to hear facts or examine witnesses.	To exercise appellate jurisdiction alone.
2. To hear and determine all causes, civil and criminal, that may come before it, and to grant judgments of affirmance or reversal, or any other order, direction or decree required therein, and if necessary to make a final disposition of the cause, but in the manner prescribed elsewhere in this Code.	To hear and determine cases that come before it and to give final judgment.
3. To grant any writ necessary to carry out any purpose of its organization, or to compel any inferior tribunal, or officer thereof, to obey its order.	To grant writs to enforce its orders.
4. To appoint its own officers, and to commission any person, to execute any specific order it may make.	To appoint its own officers.
5. To establish, amend and alter its own rules of practice, and to regulate the admission of Attorneys.	To make rules of practice.
6. To punish for contempt by the infliction of a fine as high as five hundred dollars, and imprisonment not exceeding ten days, or both.	To punish for contempt.
7. To exercise such other powers, not contrary to the Constitution, as are or may be given to it by law.	And exercise all legal powers.
§ 212. The concurrence of two of said Judges is necessary to make a reversal, or to grant any order, disturbing the judgment of the Court below, and when only two preside in a cause, and they disagree as to the reversal, or as to said order, the judgment stands affirmed.	Two Judges must concur to reverse. When two only preside their disagreement affirms.
§ 213. The officers of the Supreme Court are a Clerk, a Reporter and assistants, a Sheriff and deputies.	The officers of the Supreme Court.

ARTICLE II.

THE CLERK.

SECTION.	SECTION.
214. His appointment and oath of office.	217. Must tax costs, &c.
215. May appoint a deputy.	218. Who liable for costs, &c.
216. The duties of the Clerk enumerated.	
§ 214. The Clerk of the Supreme Court holds his office for six years, unless removed for incapacity, improper conduct, or neglect of duty; and before entering upon his duties he must take an oath faithfully to discharge them, and also all other oaths required of civil officers.	

Appointment and oath of Clerk.

Article 2.—The Clerk.

May appoint a deputy.

§ 215. He may appoint one or more deputies in his discretion, under such rules as the Court may adopt, he being responsible for the faithful performance of their duties; and when so appointed their powers and duties are the same as his.

§ 216. It is his duty—

Must keep an office at Capitol.

1. To keep an office at the Seat of Government, in one of the apartments of the Capitol, where all books, records and archives, and the seal of the Court shall remain.

Must attend the Courts.

2. To attend all sessions of the Court and obey all of its lawful orders.

Must keep minutes, records, &c.

3. To keep in well bound books fair and regular minutes of the Court's proceedings, a record of its judicial acts, a docket of its causes, and such other books as said Court may require him to keep.

Must certify records and papers.

4. To certify, when required, upon payment of his lawful fees, all minutes, records, or files of said Court.

Must publish order of circuits.

5. To arrange the cases on the docket by circuits, and to give notice in one of the newspapers, printed at the place where the Court is to be held, twenty days previous to its session, of the order of arrangement.

Must report all pauper cases to the Governor.

6. To submit to the Governor a fair statement of each criminal pauper case, showing the items of costs, the nature of the crime charged, and the county from whence it came, under the seal of the Court, as a condition to a warrant in his favor for their payment.

Must make out remitter.

7. To make out a remitter of every case within ten days from the adjournment of the Court, and to transmit it to the attorney of the party prevailing, together with a certificate of the amount of the costs, and by whom paid, which remitter shall consist of a copy of the judgment of the Court, as entered on the minutes, and nothing more.

Must issue all writs and processes.

8. To issue and sign all writs and processes of every description issued under the authority of the Court.

Must administer oaths.

9. To administer such oaths, and take such affidavits, as the business of the Court, or the law may require.

Must perform all other official duties.

10. To discharge whatever other duty may be required by law, or necessarily appertains to his office.

Must tax costs, and charge only for services rendered.

§ 217. When judgment shall be pronounced in any cause, he shall tax the costs thereof, item by item, which shall be entered on the minutes at the foot of the judgment without charge. He shall make no charge for attaching the seal to the remitter, nor

Article 3—The Reporter.

to any precept issued by him, nor for anything but services actually rendered, nor shall he record the bill of exceptions, or transcript of the records from the Court below.

§218. Every attorney for the plaintiff in error, who argues or presents a cause to the Supreme Court, is liable to the Clerk for costs, except in a pauper case. Who are liable for costs.

ARTICLE III.

THE REPORTER.

SECTION.

219. Appointment and oath of Reporter.
220. May appoint an assistant.
221. Must attend Courts, &c.

SECTION.

222. Reports must not contain arguments.
223. Penalty for failing to publish reports.
224. Copyright reserved to the Reporter.

§219. The Reporter of the Supreme Court holds his office for the same term, and on the same conditions as the Clerk, and before entering on his duties, must take the same oaths. Appointment and oath of the Reporter.

§220. He may, with the consent of the Court, under such rule as they may adopt, appoint an assistant Reporter, whose duties are the same as the Reporter's. May appoint assistant.

§221. It is his duty—

1. To attend all sessions of the Supreme Court by himself, or his assistant. Must attend the Courts.

2. To publish, in good and substantial form, the decisions of said Court, as written out, within six months of the time of their delivery to him. Must publish decisions.

3. To furnish one copy of each volume of his reports to each Judge of the Supreme Court; one copy to the Clerk thereof, to be kept in his office; twenty-five copies to the State, to be delivered to the State Librarian; and a copy to each Clerk of the Superior Courts, to be kept in their offices; for such copies he shall be paid by the Governor at the price of three dollars per copy. Must furnish copies to the State and certain officers.

§222. The volumes of reports must not contain any argument, or brief of counsel, beyond a statement of the points and authorities. Reports not to contain argument of counsel.

§223. If he fails to publish his volumes of reports within the time designated, he forfeits one-fourth of his salary for every additional month's delay, unless a majority of the Court will certify that the delay was not from his fault, or of those under his control, and if he fails to publish and furnish them as required in Penalty for failing to publish reports as the law requires.

Article 4.—The Sheriff.

preceding section, he also forfeits one-fourth more of his salary, and must be removed by the Supreme Court.

Copyright shall be Reporter's.

§224. He shall have the copyright to his reports, in addition to his salary.

ARTICLE IV.

THE SHERIFF.

SECTION.

225. Sheriff shall attend Supreme Court.
226. If he fails the Court may appoint.

SECTION.

227. Sheriff's fees in the Supreme Court.

Duty of the Sheriff of the county where the Court is held.

§225. The Sheriff of the county wherein a session of the Supreme Court is holden, or his Deputy, must attend daily the sessions thereof, obey all lawful orders, execute all lawful commands and process, and preserve order.

Court may appoint an officer.

§226. On failure of said Sheriff, or a lawful Deputy, to attend and discharge the duties required, or any part thereof, the Court may appoint some fit and proper person for such purpose.

Sheriff's fees in Supreme Court.

§227. He shall receive for his services the fees allowed in the Superior Court, for like services, and when he performs a journey in the discharge of his duties, he is entitled to the same pay for mileage, as a Marshal of the Confederate States.

CHAPTER III.

THE SUPERIOR COURTS AND THEIR OFFICERS.

ARTICLE 1. The Superior Court and Judges.

ARTICLE 2. The Clerks.

ARTICLE 3. The Receiver.

ARTICLE I.

THE SUPERIOR COURT AND ITS JUDGES.

SECTION.

228. Election and official term of Judges.
229. Their oath of office.
230. Vacancies—how filled.
231. Time of election.
232. Judges elected to fill vacancies.
233. No special election—when.
234. Who are eligible to Judgeship.
235. Shall not practice law.
236. Shall not be deprived of his office.
237. Must hold Court twice a year.
238. His jurisdiction.

SECTION.

239. Duties of the Judge.
240. Shall deliver his charge in writing.
241. Such charge shall be filed.
242. Jurisdiction of the Superior Courts.
243. Powers enumerated.
244. When the Judge is absent.
245. Can only exercise powers granted.
246. When the Judge is disqualified.
247. May be impeached.
248. Perform no Judicial act out of State.

Article 1.—The Superior Court and its Judges.

§228. Judges of the Superior Courts are elected by the people, of and for each Judicial Circuit, in the manner, and at the time hereinafter prescribed, and hold their offices for four years, unless sooner removed in the manner prescribed by the Constitution.

Election and official term of the Judges.

§229. Before entering on the duties of their office, they must take the oath required of all civil officers, and in addition the following, viz :

Their oath.

“ I swear that I will administer justice without respect to persons, and do equal rights to the poor and the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent on me as Judge of the Superior Court of this State, according to the best of my ability and understanding, and agreeable to the laws and Constitution of this State, and the Constitution of the Confederate States. So help me God.”

§230. When a vacancy occurs, (or from some cause there is a failure to elect,) the Governor shall appoint some qualified person to fill such vacancy, and shall order a special election.

Vacancies—how filled.

§231. Such election shall be held on the first Wednesday in January next thereafter: *Provided*, there is time for the Governor's proclamation of such election to be advertised for as much as thirty days preceding said day.

Time of election.

§232. Judges thus elected hold their offices for a full term of four years, and must be by the Governor so commissioned.

Judges elected to fill a vacancy.

§233. If, at the time a vacancy occurs, the unexpired time of the (former) incumbent does not exceed twelve months, the person appointed holds his office for the unexpired term, and there shall be no special election.

The appointee holds without an election.

§234. No person is eligible to such Judgeship who shall not have been a resident citizen of this State for ten years, just preceding his election or appointment, and who shall not have been an inhabitant in the Circuit over which he is to preside, for at least one year next preceding the said time, and who shall not have been duly admitted and licensed to plead and practice in the Superior Courts of this State at least five years prior to the same.

Who are eligible to the Circuit Judgeship.

§235. Such Judges are prohibited from practicing law in any of the Courts of this State between the times of their election and qualification, but they may practice until their qualification in any case in which they may have been actually employed before their election, and they are also prohibited from practicing

Judges shall not practice law.

Article 1.—The Superior Court and its Judges.

as attorneys, proctors, or solicitors, in the district or Circuit Courts of the Confederate States, after their election, or while in commission.

Attaching the county of his residence to another Circuit does not oust him from office.

§ 236. A person having been appointed or elected a Judge of any Circuit cannot be deprived of his office by attaching the county in which he resides to a different Judicial Circuit, but he continues to discharge its duties as though he resided in the Circuit.

Must hold Court in each county of his Circuit twice a year.

§ 237. Said Judges must hold the Superior Courts of each Circuit at the county site and Court House (if any) of each county, or other place therein designated by law, twice each year, at such times as is now or may be prescribed by the General Assembly.

Jurisdiction co-extensive with the State.

§ 238. The jurisdiction of the Judges of the Superior Courts is co-extensive with the limits of this State, but they are not compelled to alternate unless required by law.

Duties of Judge.

§ 239. Each of said Judges shall discharge all the duties required of him by the Constitution and laws, for the Circuit for which he was elected or appointed, although he may hold Courts in other Circuits, and may also exercise other judicial functions for them when permitted by law.

Written charges in certain cases

§ 240. The Judges of the Superior Courts of this State, shall, in all cases of felony, and on the final, or appeal trial of all civil cases tried before them, give their charges to the jury in writing; that is to say, shall write out their charges and read the same to the jury, when the counsel for either party shall require them to do so; and that it shall be error for such Judge to give any other or additional charge than that so written out and read.

Shall be filed.

§ 241. The charge so written out and read, as aforesaid, shall be filed with the Clerk of the Court in which the same was given, and shall be accessible to all persons interested in the same; and the Clerk shall give certified copies thereof to any person applying for the same, upon the payment of the usual fee.

§ 242. The Superior Courts have authority—

Jurisdiction of Superior Courts in civil and criminal cases.

1. To exercise original, exclusive or concurrent jurisdiction (as the case may be) of all causes, both civil and criminal, granted to them by the Constitution and laws.

Equitable powers. May try appeals from Inferior Courts, &c. May correct errors of inferior tribunals.

2. To exercise the powers of a Court of Equity.

3. To exercise appellate jurisdiction in all cases tried by a jury in the Inferior Court, and from judgments of the Ordinary.

4. To exercise a general supervision over all inferior tribunals, and to review and correct in the manner prescribed by law, the

Article 1.—The Superior Courts and its Judges.

judgments of the Justices of the Inferior Court, the Justices of the Peace, Corporation Courts or Councils, or any inferior judicature, or any person exercising judicial powers, and of the Ordinary, except in cases touching the probate wills and the granting of letters of Administration, when there must be a special jury empanelled.

5. To punish contempt by fines not exceeding two hundred dollars, and by imprisonment not exceeding twenty days. May punish for contempts.

6. To exercise such other powers, not contrary to the Constitution, as are or may be given to such Courts by law. May exercise all other legal powers

§ 243. The Judges of the Superior Courts have authority— Judges may grant writs of certiorari, su-

1. To grant for their respective Circuits writs of *certiorari*, *superse-deas*, *quo warranto mandamus*, *habeas corpus*, and bails in actions *ex-delicto*. per se-deas, &c.

2. To grant bills *quia-timet*, writs of injunction, prohibition, and *ne-exeat*. May grant bills quia timet, &c.

3. To grant all other writs, original or remedial, either in law or equity, that may be necessary to the exercise of their jurisdiction, which is not expressly prohibited. May grant other writs.

4. To hear and determine questions arising upon writs of *habeas corpus* or bail, when properly brought before them; all motions to grant, revive, or dissolve injunction, to give new security or lessen the amount of bail, and to perform any and all other acts required of them at Chambers. May hear & determine returns to habeas corpus, motions to dissolve injunctions, &c.

5. To administer oaths and to exercise all other powers necessarily appertaining to their jurisdictions, or which may be granted them by law. May administer oaths.

§ 244. The authority granted in the preceding section to each Judge in his own Circuit, may be exercised by any Judge of another Circuit, whenever the resident Judge is absent from the Circuit so that the business cannot be done as speedily as necessary, or is indisposed, or interested, or is laboring under any disqualification, or inability to serve, or in case the Circuit should be, from any cause, without a Judge. The authority when thus exercised should show the grounds. When Judge is absent from his Circuit or disqualified another Judge may exercise power therein.

§ 245. Said Judges cannot exercise any power out of term time, except the authority is expressly granted, but they may, by order granted in term, render a judgment in vacation. Can only exercise granted powers out of term time.

§ 246. When from any cause the Judge of the Superior Court is disqualified from presiding, he shall procure the services of a Judge of another Circuit to try said cause, if he has to appoint

Article 1.—The Superior Court and its Judges.

When Judge is disqualified he must obtain the services of another Judge, or an attorney may preside by consent.
May be impeached.

an adjourned term for that purpose. If the parties litigant consent thereto and select any attorney practicing in the Court to preside in such a case, the Judge shall have such consent entered on the minutes, and the attorney so selected shall exercise all the functions of Judge in that case.

§ 247. If any Judge does not comply with the provisions of the preceding section, within a reasonable time, when it is in his power to do so, it is a ground of impeachment.

Can perform no Judicial act out of the State.

§ 248. No Judge of the Superior Courts shall have authority to perform any judicial act required of him by law, when beyond the jurisdiction of this State.

ARTICLE II.

THE CLERKS OF THE SUPERIOR COURTS.

SECTION.

- 249. Election of Clerk Superior Court.
- 250. Cannot practice law.
- 251. Vacancy—how filled.
- 252. Elected to fill a vacancy.
- 253. In case of a tie, &c.
- 254. An appointment must be made.
- 255. Who may act.
- 256. Appointee may hold to end of term.
- 257. Judge may appoint in certain cases.
- 258. How long such appointee may hold.
- 259. Oath of Clerk of Superior Court.

SECTION.

- 260. Must give bond and security.
- 261. May appoint deputies.
- 262. The plan for the office—duties.
- 263. Powers of the Clerk, &c.
- 264. Penalty for a failure of duty.
- 265. Clerk subject to rule.
- 266. Subject after retiring from office.
- 267. How removed from office.
- 268. His office subject to be examined.
- 269. Pay when not otherwise provided.
- 270. Proceedings if pay is refused.

Election of Clerk Superior Court.

§ 249. The Clerks of the Superior Courts are elected for the term of two years, and are eligible during the same time to be also Clerks of the Inferior Courts.

Clerk cannot practice law.

§ 250. No person is eligible to the office of Clerk, or to perform any official duty as such, who, while in such capacity, practices law in his own name or another's, as a partner or otherwise, in any Court of law or equity in this State, except in his own case.

Vacancy—how supplied.

§ 251. If a vacancy occurs, (or will shortly,) any two or more Justices of the Inferior Court of the county where it happens shall give notice in one or more of the public gazettes of said county (if any,) and at the Court House, and at three or more of the most public places of said county, twenty days previous to the day of election, which shall be appointed by them.

Article 2.—The Clerks of the Superior Courts.

§ 252. The person elected on said day shall hold his office for the unexpired term of his predecessor. The returns of the election must be made to the Governor, who must commission him.

One elected to fill a vacancy holds only the unexpired term

§ 253. Should any two or more candidates at an election to fill said vacancy, or at a regular election, have the highest, and an equal number of votes, said Justices shall appoint and advertise another election in the manner prescribed in the preceding sections, and so do until a choice is made.

In case of a tie a Clerk is appointed and new election ordered.

§ 254. As soon as a vacancy occurs, or in anticipation of it, said Justices, or a majority of them in commission, must meet and appoint some qualified person to discharge the duties of Clerk until the vacancy is filled.

Until an election is had a Clerk must be appointed.

§ 255. If from any sudden emergency there is a vacancy, and it is not immediately supplied, the Clerk of the Inferior Court must discharge the duties of such Clerk until one is appointed, and in case the vacancy occurs at the same time in both offices, the Ordinary, or his Clerk shall thus act.

Clerk of Inferior Court may act as Clerk of Superior Court in an emergency, and if both be vacant, &c.

§ 256. When a vacancy occurs, and it is not more than six months from the time the election can be appointed by said Justices and held, until the existing term will expire, the person or persons appointed shall discharge the duties of the office for the balance of the term, and there shall be no special election.

If only six months of an unexpired term, appointee to fill vacancy holds out the term.

§ 257. If there is a vacancy, or the Clerk and his deputy for any reason do not act as Clerk at the time provided by law for holding any of said Superior Courts, the presiding Judge thereof shall appoint a Clerk, who holds his office during the term, and for ten days thereafter, and any act he does, during said time, that the Clerk could have done, is valid.

Judge may appoint Clerk in certain cases.

§ 258. If by the expiration of said time there is no one else to act as Clerk, said last mentioned appointee may continue as such until there is an appointment or election, and any appointee or other person lawfully discharging said duties, shall continue to do so until there is an election and qualification.

Such appointee may hold until election.

§ 259. The Clerks, before entering upon the discharge of their duties, whether appointed, elected, or such by operation of law, must, besides the oath required of all civil officers (unless already taken) take and subscribe to the following oath:

Oath of Clerk of Superior Court.

“I do swear that I will truly and faithfully enter and record all the orders, decrees, judgments, and other proceedings of the Superior Court of the county of ——, and all other matters and things which by law ought by me to be recorded; and that

Article 2.—The Clerks of the Superior Courts.

I will faithfully and impartially discharge and perform all the duties required of me to the best of my understanding. So help me God.”

Appointees to the Clerkship must take oath & give bond.

When said oath is taken by the Clerks of the Inferior Court, the Ordinaries, or their deputies acting in a certain contingency as Clerks of the Superior Court, they may take it before any person authorized to administer an oath, and enter it on the minutes of the Superior Court.

Must give bond.

§260. They shall also at the same time (except those appointed by the Judges of the Superior Courts, and those so by operation of law,) execute a bond in the sum of three thousand dollars with good security.

Clerks of Superior Court may appoint deputy, who must take oath and give bond.

§261. They shall have the power to appoint a deputy, or deputies, and may require from them bonds with good security; who shall take the same oath as the Clerks do before entering upon the discharge of their duties, and whose powers and duties are the same as long as the principal continues in office, and not longer, for the faithful performance of which they and their securities are bound.

§262. It is the duty of the Clerks of the Superior Court—

Where office must be kept.

1. To keep their offices, and all things belonging thereto, at the county site, and at the Court House, unless impracticable from any cause, when by special permission of the Justices of the Inferior Court it may be kept at some other designated place, not more than one mile therefrom, of which public notice must be given.

Clerk must attend Court and keep minutes, including entries on Bench docket.

2. To attend all sessions of the Courts, and keep fair and regular minutes of their proceedings from day to day, including a transcript of the Judge's entry on his dockets, when not more fully shown in a book kept for that purpose.

Must issue processes of all kinds.

3. To issue and sign (and attach seals thereto when necessary) every summons, subpoena, writ, execution, process, or order, or other paper under the authority of the Court.

Must keep certain dockets as follows: Common Law docket.

4. To keep in Court, convenient of access, the following dockets, to wit: A Common Law docket of civil cases, in which must be entered by the appearance term the names of the parties and attorneys, the nature of the action, and the Sheriff's return. An Appeal docket, and an Equity docket, in which must be entered all the cases to the respective terms, to which they are returned or stand for trial, together with other entries, as in the case of the Common Law docket.

Equity docket.

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A claim docket, a certiorari and an illegality docket in the same manner. A motion docket for entering all motions to be submitted to the Court, showing the nature of the motion, and the parties, and attorneys thereto.

Claim
docket.
Motion
docket.

A subpoena docket, for civil cases, and one for criminal cases, in which must be entered the case in which the subpoena issues, the date, the name of the witness, for whom issued, and to whom delivered, and any return of the Sheriff thereon.

Subpoena
dockets.

In the former must be likewise entered, and in the same manner, the issuing of commissions. A trial docket of criminal cases, in which must be entered all the criminal cases in the order the indictments are found, the nature of the offence, and the attorneys for the defence.

Criminal
docket.

A docket in which must be entered all criminal cases which have been on the criminal docket for as much as five years without any existing arrest, and which must be inspected by the Court, at least once every year, that if necessary, any case may be re-transferred to the criminal docket.

A docket of
criminal
cases in
which there
is no arrest
for five
years.

Execution docket, and enter therein the names of plaintiffs, their attorney, and the defendants, the amount of principal and interest, and costs; the date, the term to which returnable, to whom and when delivered, and by whom, and when returned, and an entry of satisfaction or nulla bona, as the case may be, with the dates thereof.

Execution
docket.

Duplicates of the common law appeal and criminal dockets, one for the use of the bench, the other for the use of the bar, in which last must be copied from term to term all the entries made in the former. All appeal cases must be entered on the same appeal docket in the order they are entered on the minutes, and from the Inferior Court in the same order and at the time received. Divorce cases are first to be entered on the equity docket, and after one trial are to be entered on the appeal docket in their proper order from the minutes.

Copy dock-
ets for the
Bar.

5. To record in well bound books, within six months after the final determination of any civil suit, all the proceedings relating thereto.

Must keep
record of
civil suits.

6. To keep well bound books for recording all deeds, mortgages, and other liens and bills of sale separately.

Must keep
record of
deeds.

7. To have properly stamped and labelled, and numbered or lettered if required, all the books herein enumerated, and to keep for each, (except the dockets called by the Court,) a proper

Must label
and index
the books of
his office.

Article 2.—The Clerks of the Superior Courts.

index, and to supply any of said books or indexes needed, and to transcribe the contents of any books of record which may be in a dilapidated condition.

Must preserve the books so as to be of ready reference.

8. To keep all the books, papers, dockets and records, belonging to their office, with care and security, and the papers filed, arranged, numbered and labelled, so as to be of easy reference.

Must preserve and have bound, newspapers, in which he advertises.

9. To procure and preserve for public inspection a complete file of all newspapers, in which their advertisements appear, and have them bound in volumes of suitable size to be deposited and kept with their other records.

Must keep in their offices all books and documents distributed, for public convenience.

10. To keep at their offices all publications of the laws of the Confederate States furnished by the Governor, and the Laws and Journals of this State, all Statute Laws, Digests, this Code, the Supreme Court Reports, and all other Law Books, or other public documents distributed to them for the public convenience.

Must keep an official seal.

11. To procure within thirty days after their qualification (if not already done) a substantial seal of office with the name of the Court and County inscribed thereon.

Must certify copies of papers.

12. To make out and deliver to any applicant, upon payment of legal fees, a correct transcript properly certified, of any minute, record, or file of their office.

Must make out records for Supreme Court.

13. To make out transcripts of the record of all cases for the Supreme Court as the laws require.

Must make minute of record of deeds, and attest deeds for registration.

14. To make a minute on all conveyances or liens, of the day left for record, and the day recorded, to be signed officially, which shall be evidence thereof, and to attest deeds and other written instruments for registration.

Must administer oaths.

15. To administer all oaths, during term time, required by the Court, and to record all oaths required by law.

Must do other duties of office.

16. To perform such other duties as are, or may be required by law, or as necessarily appertain to their offices.

§263. The Clerks of said Courts have authority—

May administer oaths by law.

1. To administer oaths, and take affidavits in all cases permitted by law, or where the authority is not confined to some other officer.

May receive costs due.

2. To receive the amounts of all costs due in the Court of which they are Clerks, and other sums whenever required to do so by law, or order of the Judge, and not otherwise.

May advertise.

3. To advertise under the same rules and restrictions as Sheriffs.

Article 2.—The Clerks of the Superior Courts.

4. To exercise such other powers as are, or may be conferred upon them by law. May exercise other legal powers.

§264. Any such Clerk failing to perform any duty, or to exercise any authority, when required, set forth in the two preceding sections, is subject to be fined for each offence, by the presiding Judge, during term time, as for a contempt, on information of any party aggrieved, of which he shall have notice in writing. Penalty for failure of duty.

§265. If any of such Clerks receive any money on any suit or judgment from their Courts, or otherwise, and do not faithfully account for it, they are liable to rule as Sheriffs are, and they and their sureties are likewise liable on their official bonds. Clerk subject to rule.

§266. They are subject to the rule and order of their respective Courts, after their retirement from office, as Sheriffs are. Subject to rule after out of office.

§267. They are subject to be removed from office by the Judge of the said Court, for any sufficient cause, including incapacity or misbehavior in office, charges for which must be exhibited to the Court in writing, and the facts tried by a special jury, such Clerk being entitled to a copy of the charges three days before trial. May be removed from office.

§268. Their offices are subject to an examination by the Grand Juries, their Committees, or any person whom they may especially empower, to report to the same, or a succeeding Grand Jury, or to the Judge of the Superior Court, who shall submit, in writing, the condition of said offices, and specify any neglect of duty, or anything done wrongly or corruptly by such Clerks. Clerk's office subject to examination by Grand Jury or Committee.

§269. For any services rendered, or expenses incurred, legally by said Clerks for their offices, where no pay is specially provided, they must be paid out of the County Treasury by order of the Justices of the Inferior Court, after examining and passing upon their accounts and vouchers, and finding them correct and reasonable. Compensation when none prescribed.

§270. If said Justices refuse to allow, and order such accounts paid, said Clerks may apply for and obtain a *mandamus* from the Judge of the Superior Court, who shall hear and determine the questions, and submit any disputed fact to a special jury. When Inferior Court refuse to allow pay, mandamus lies.

ARTICLE III.

THE RECEIVER.

SECTION.

271. Receiver may be appointed—when.
272. Funds invested pending litigation.
273. Duties and liabilities of Receiver.

SECTION.

274. Receiver required to give bond.
275. Receivers of Banks, &c.

Article 3.—The Receiver.

Receiver may be appointed, and is an officer of the Superior Court.

§271. When any fund or property may be in litigation, and the rights of either or both parties cannot be otherwise fully protected, or when there may be a fund or property having no one to manage it, a Receiver of the same may be appointed (on a proper case made) by the Judge of the Superior Court, having jurisdiction thereof, either in term time or vacation, and such Receiver is an officer of said Court.

Pending a litigation, the fund may be invested in State bonds.

§272. The presiding Judge, in his discretion, under the law, may order any fund in the hands of a Receiver, or any other officer of Court, awaiting the determination of a protracted litigation, to be invested in State bonds, as Executors and Administrators are authorized to do.

Duty and liability of Receiver.

§273. The Receivers so appointed must discharge their trust according to the order or decree of the Courts appointing them, and are at all times subject to their orders, and may be brought to account and removed at their pleasure.

Judge may require Receiver to give bond.

§274. The Judges of the Superior Courts may, in their discretion, require such Receivers to give bonds conditioned for the faithful discharge of the trust reposed, and if they require them, they must fix the amount and the sufficiency of the security, and also regulate their compensation.

Receivers of corporations must make return to Superior Court.

§275. Receivers of Banks, or other corporations hereafter appointed by any power, are amenable to, and must make their returns to the Superior Court of the county where they reside at the time of the appointment.

CHAPTER IV.

THE INFERIOR COURT—ITS JUSTICES AND CLERKS.

ARTICLE 1. The Inferior Court and its Justices.

ARTICLE 2. The Clerk.

ARTICLE I.

THE INFERIOR COURT AND ITS JUSTICES.

SECTION.

- 276. Election, oath and official term.
- 277. Vacancies—how filled.
- 278. Vacancies need not be filled—when.
- 279. Persons elected to fill vacancies.
- 280. Persons eligible.
- 281. Number necessary to hold Court.

SECTION.

- 282. When Justices are equally divided.
- 283. Their disability, privilege, &c.
- 284. When a majority are interested.
- 285. Jurisdiction in civil cases.
- 286. In relation to county property, etc.
- 287. Other powers and duties of Court.

Article 1.—The Inferior Court and its Justices.

§276. The presiding officers of the Inferior Court consist of five persons, styled the “Justices of the Inferior Court,” who are elected by the people of their respective counties, at the times, and in the manner hereinafter prescribed, and who hold their offices for four years, unless sooner removed in the manner prescribed by the Constitution. Before entering on the duties of their office, they must take the oaths required of all civil officers, and in addition the oath taken by the Judges of the Superior Courts.

Number, election, official term and oath of Justices of the Inferior Court.

§277. When a vacancy occurs, any two or more of said Justices, and one, if only one in the county qualifies, and if not one, then the Ordinary of the County shall order an election as prescribed in the case of a vacancy in the Clerkship of the Superior Court.

Vacancies—how filled.

§278. If there are as many as three of said Justices in commission, and in the discharge of their duties, and the vacancy takes place not exceeding eight months prior to the next regular election for such Justices, there must not be any special election.

If as many as three Justices, and regular election only 3 months off.

§279. The persons elected to fill the vacancy, are commissioned for the unexpired terms of the outgoing Justices, and hold their offices accordingly.

Those elected to fill vacancies.

§280. No person is eligible to such Justiceship, unless he has been a resident citizen of the county in which he is to preside for at least one year next preceding his qualification. Persons elected Justices of such Court, cannot practice law therein, directly nor indirectly.

Who are eligible.

Justices cannot practice law.

§281. Not less than three of such Justices can hold a Court, and when three preside it requires the concurrence of two to make a judgment. When more than three preside, there must be a concurrence of three.

What number may hold Court and decide questions.

§282. When four of said Justices preside, and are equally divided in their opinions, the question or case on which it arises must be postponed until the fifth Justice can preside, or until the next term of the Court.

When equally divided in opinion the case stands over.

§283. They are disqualified from holding any other county office, but are eligible as members of the General Assembly, to military offices, and are exempt from jury, militia, and patrol duty.

Their disability, privileges and exemptions.

§284. Suits cannot be entertained by such Justices where a majority of their number are interested, and in such, and in all cases, where such majority are disqualified, suits must be brought

Cases in which a majority are interested go to the Superior Court.

Article 1.—The Inferior Court and its Justices.

in the Superior Court, but if brought before said Justices they do not abate, and there may be an appeal to the Superior Court as in other cases.

Jurisdiction
in civil cases

§ 285. The Inferior Courts have authority—

1. To exercise jurisdiction concurrent with the Superior Court in all civil cases, except those respecting titles to land and those requiring equity jurisdiction or equity proceedings.

2. To exercise concurrent jurisdiction with said Court likewise, in changing names, legitimating persons and granting certain incorporations; in establishing copies of lost documents, in compelling the production of books or other writings, and in other cases when in like manner conferred.

3. To exercise within their jurisdiction all the power and authority granted to the Superior Courts, and to be governed by the same rules whenever applicable.

4. To exercise jurisdiction in all cases or matters granted to them specially, and which do not, by the Constitution, belong to some other tribunal exclusively.

5. To punish for contempt by fines not exceeding fifty dollars, or imprisonment not exceeding five days.

§ 286. To exercise original and exclusive jurisdiction, when sitting for county purposes, over the following subject matters, viz:

1. In directing and controlling all the property of the county as they may deem expedient according to law.

2. In levying a general tax for general, and a special tax for particular, county purposes, according to the provisions of this Code.

3. In establishing, altering, or abolishing all roads, bridges and ferries in conformity to law.

4. In establishing and changing election precincts and militia districts.

5. In supplying by appointment all vacancies in county offices, and in ordering elections to fill them.

6. In examining, settling, and allowing all claims against the county.

7. In examining and auditing the accounts of all officers having the care, management, keeping collection or disbursement of money belonging to the county, or appropriated for its use and benefit, and in bringing them to a settlement.

8. In making such rules and regulations for the support of the poor of the county, for county police and patrol, for the promo-

May change
names, legit-
imate per-
sons and
grant incor-
porations.

Powers—
how regula-
ted.

Extent of ju-
risdiction.

May punish
contempts.

Exclusive
jurisdiction.

As to coun-
ty property.

As to county
taxes.

As to Roads,
Bridges, and
Ferries.

As to chang-
ing election
precincts.

As to vacan-
cies in coun-
ty offices.

As to claims
against the
county.

As to ac-
counts of fi-
nancial
county offi-
cers.

As to the
county poor.

Refer to all but § 286

Article 1.—The Inferior Court and its Justices.

tion of health and quarantine, as are granted by law, or not inconsistent therewith.

9. In regulating peddling and fixing the costs of license therefor. As to peddling.

§ 287. The Justices of the Inferior Court have authority, viz: Justices may issue and decide *habeas corpus*.

1. To issue and determine on writs of *habeas corpus* in the absence of the Judge of the Superior Court.

2. To issue attachments returnable to the Superior, Inferior, or Justices Courts, to grant orders for the foreclosure of Mortgages on personal property, and for bail in actions *ex delicto*, and to hear and determine upon questions of possession of personal property. May issue attachments, Foreclose mortgages on personal property, grant bail in suits *ex delicto*, &c.

3. To exercise separately the same powers in all criminal matters, as are by law vested in Justices of the Peace, with the condition that in all capital cases three must preside on the committing trial. May hear criminal warrants.

4. To sit at any time as a Court for county purposes, and for the exercise of any power they possess as Justices, as a *quasi* corporation, contradistinguished from their power as a Court. May sit at any time for county purposes.

5. To appoint any person to discharge any trust authorized by their powers, where no other person is designated by law, and to regulate his compensation, and to take bond and security. May appoint agents.

6. To attest deeds and other written instruments for register. Attest deeds

7. To approve of all official bonds required of them by law and sent them by the Governor with the *dedimus*, to qualify such officers and to deliver them their commissions. Approve official bonds

8. To act as members of the Board of Education of their respective counties. May act as Board of Education,

9. To exercise such other powers as are granted by law or are indispensable to their jurisdiction. and exercise other powers.

ARTICLE II.

THE CLERKS OF THE INFERIOR COURTS.

SECTION.

288. Election, qualification, &c.

289. Vacancies—how filled.

290. Oath, bond, &c.

SECTION.

291. May appoint a deputy.

292. Duties enumerated.

293. His compensation in certain cases.

§ 288. The Clerks of the Inferior Courts are elected, qualified, commissioned, hold their offices and are removed as the Clerks of the Superior Courts are. Election and term of office.

Article 2.—The Clerks of the Inferior Courts.

- Vacancies—
how filled. § 289. Vacancies are supplied as they are in the offices of the Clerks of the Superior Courts, except that the Justices of the Inferior Courts appoint in the particular cases where the Judges of the Superior Courts appoint, and where the contingency happens mentioned in section number 255, the duties devolve upon the Clerks of the Superior Courts, if any, and if none, then as provided for in said section.
- Oath, bond,
&c. § 290. The Clerks of the Inferior Courts take the same oaths and give the same bond as the Clerks of the Superior Courts, and are removable in the same manner.
- May appoint
deputy. § 291. They may appoint deputies and require bonds of them and are otherwise under the same disabilities—are subject to the same rules and regulations, and must perform the same duties as the Clerks of the Superior Courts do for their Courts, whenever applicable to the Inferior Court and there is no provision to the contrary.
- Duties of
Clerk;
To attend
Court, § 292. In addition, it is their duty—
1. To attend all sessions of said Court, and all sessions of said Justices on county business and keep fair and regular minutes of their proceedings.
 2. Upon the request of any one of them, to notify the Justices of the Inferior Court of the time and cause of every special session.
 3. To keep all the dockets, books, indexes and files required of the Clerks of the Superior Courts (except the equity, appeal, criminal and *certiorari* dockets, and the books for the record of deeds, mortgages, and bills of sale) and in the same manner.
 4. To keep a well bound book, in which must be entered a copy of the bonds of county officers.
 5. To keep other books, in which must be kept the records of all constables bonds, and in the other the oaths and bonds of all persons who obtain permission to sell spirituous liquors.
 6. To keep a book for entering marks, brands and estrays, and a book for the registry of the names, descriptions and oaths of licensed peddlers.
 7. To enter on the minutes the items of all accounts allowed by the Justices of the Inferior Court, as well as the order for their payment.
 8. To keep a book in which shall be entered all sums received by them on account of the county and paid to the Treasurer, and for what special fund, if any.
- Give notice
of special
sessions, To keep
dockets and
other
books, To keep
books of official
bonds, Book of Con-
stables and
retailers
bonds and
oaths, To keep
book of
marks and
brands, To enter all
accounts al-
lowed, To keep ac-
count of
monies re-
ceived and
aid out,

Article 2.—The Clerks of the Inferior Courts.

9. To transmit to the Clerk of the Superior Courts, all appeal, *certiorari*, and other papers of which the Superior Court obtains jurisdiction. To transmit appeals.

10. To perform such other duties as are or may be required of them by law, or as are indispensable to those required. Other duties.

§ 293. For the services they are required to perform for the Justices of the Inferior Court on account of their counties, for which no fees are specially provided, they shall receive an annual salary to be fixed by such Justices at the close of each year, to be regulated by the services performed and the means of the county, which shall be not less than fifty nor more than two hundred dollars. Compensation for certain services.

CHAPTER V.

ORDINARIES.

ARTICLE 1. The Ordinaries and their Courts.

ARTICLE 2. The Ordinaries as Clerks.

ARTICLE 3. The Ordinaries as School Commissioners, &c.

ARTICLE I.

THE ORDINARIES AND THEIR COURTS.

SECTION.

- 294. Name and style of the Ordinary.
- 295. His election and term of office.
- 296. His oath of office.
- 297. His bond.
- 298. Vacancies—how filled.
- 299. Ordinaries elected to fill vacancies.
- 300. Must complete unfinished business.
- 301. When Ordinary is disqualified.
- 302. Eligibility & disabilities of Ordinary.
- 303. His trust as Executor, Adm'r., &c.

SECTION.

- 304. Who takes Administration.
- 305. Where Ordinary's office must be kept.
- 306. Jurisdiction & powers of his Court.
- 307. May punish for contempt, &c.
- 308. May grant Administration—when.
- 309. Administration in certain cases.
- 310. Must report estates unrepresented.
- 311. Failing to account as Executors, &c.
- 312. Cannot practice law in his own Court.

§ 294. The Court established pursuant to the amended Constitution, approved the second time December 5th, 1851, has the name and style of the Court of Ordinary, and the incumbent thereof has the name and style of the Ordinary. Name and style of Ordinary and his Court.

§ 295. The Ordinaries are elected by the people of their respective counties, at the time and in the manner hereinafter prescribed, who hold their offices for four years, unless sooner removed in the manner prescribed by law. Election and term of office.

Article 1.—The Ordinaries and their Courts.

Oath.

§ 296. Before entering on the duties of their offices they must take and file the oaths required of all civil officers, and in addition, the following oath: "I do swear that I will well and faithfully discharge the duties of Ordinary for the county of ——— during my continuance in office according to law, to the best of my knowledge and ability, without favor or affection to any party, and that I will only receive my legal fees. So help me God."

Bond.

§ 297. They must also give bond and surety, in the sum of \$1,000, for the faithful discharge of their duties as Clerks of the Ordinary.

Vacancy—
how filled.

§ 298. When a vacancy occurs in the Ordinary there shall be an election to supply the same, ordered by the Justices of the Inferior Court, in the same manner as for Clerk of the Superior Court, and until the same is filled the Clerk of the Superior Court shall perform all the duties which the Ordinary could perform as Clerk, and no more.

Term of Or-
dinary elect-
ed to fill va-
cancy.

§ 299. The person elected to supply the vacancy must be commissioned for the unexpired term, unless it does not exceed three months from the time the election can be ordered and held, if so there must not be any special election.

Citations &c.
how dispos-
ed of by suc-
cessor.

§ 300. All citations, and other unfinished proceedings of the former Ordinary must be disposed of by the successor as though there had been no vacancy.

Proceedings
when Ordi-
nary is dis-
qualified.

§ 301. When the Ordinary is disqualified, the proceedings shall be carried as though by consent of parties, by appeal, to the Superior Court, and in the mean time temporary letters shall issue, or other legal means used, if necessary, to preserve the estate.

Eligibility
and disabili-
ties of Ordi-
nary.

§ 302. The eligibility and disabilities of the Ordinary, aside from the Constitution, are the same as the Clerks of the Superior Courts for their offices, with the addition that they cannot, during their terms of office, be executors, administrators, or guardians, or other agent of a fiduciary nature required to account to their Courts, but they may be administrators, guardians or executors in cases where the jurisdiction belongs to another county, or where in special cases they may be allowed by law and required to account to the Ordinary of another county.

His trust as
executor,
&c., abates
on his elec-
tion.

§ 303. When any person holding such trusts are elected Ordinaries their letters and powers (immediately) abate on their qualification.

§ 304. When the Ordinary is also the Clerk of the Superior

Article 1.—The Ordinaries and their Courts.

Court, and there is no public administrator, or other person upon whom the law casts the administration of unrepresented estates, such administrations are cast upon the Clerks of Inferior Courts, unless they too are Ordinaries, in which last event the Sheriffs of the several counties must become such administrators.

Who takes administration when the Ordinary is Clerk Superior Court.

§305. The Ordinaries must keep their offices at the place and in the manner prescribed for Clerks of the Superior Courts, and must hold their Courts at the place prescribed for the Superior Courts, or in their offices.

Where his office must be kept.

§306. Courts of Ordinary have authority to exercise original, exclusive and general jurisdiction of the following subject matter:

Jurisdiction and power of Courts of Ordinary.

1. Probate of Wills.
2. The granting of letters testamentary of administration, and the repeal or revocation of the same.
3. Of all controversies in relation to the right of executorship or administration.
4. The sale and disposition of the real and slave property belonging to, and the distribution of deceased persons estates.
5. The appointment and removal of guardians for minors and persons of unsound mind and free persons of color.
6. All controversies as to the right of guardianship.
7. The auditing and passing the returns of all executors, administrators and guardians.
8. The discharge of former, and the requiring of new surety, from administrators and guardians.
9. The binding out of orphans and apprentices, and all controversies between master and apprentice.
10. The issuing commissions of lunacy in conformity to law.
11. Of all such other matters and things as appertain or relate to estates of deceased persons and to idiots, lunatics and insane persons, and free persons of color.
12. Of all such matters as may be conferred on them by the Constitution and Laws.

§307. Such Courts may issue rules and attachments for contempt offered the Court, or its process, by any executor, administrator, guardian or other person, and may punish the same by fines as high as fifty dollars, or imprisonment not exceeding five days (one or both.)

May punish for contempt and enforce obedience to all orders.

§308. The Ordinary can grant administration upon no person's estate who was not a resident of the county where the applica-

Article 1.—The Ordinaries and their Courts.

In what cases Ordinary may grant administration.

tion is made at the time of his death, or being a non-resident of the State has property in said county or a bona fide cause of action against some person therein.

In what county administration may be granted.

§309. When such non-resident deceased persons have such property, or such cause of action in more than one county, such letters may be granted in either county, and the Ordinary first granting them acquires exclusive jurisdiction.

Must report estates unrepresented.

§310. Such Ordinaries shall at each term of the Superior Courts of their respective counties report to the presiding Judge the estates in their hands unrepresented together with their condition.

Failing to account as executor, &c., makes him ineligible to re-election.

§311. If any Ordinary fails to faithfully account as executor, administrator or guardian, after becoming such Ordinary, which trusts he held at the time of his election, he is ineligible to a re-election.

Cannot practice law in his own Court.

§312. No Ordinary shall engage directly or indirectly in the practice of law in his own or in the name of another, as a partner, open or silent, or otherwise, in any cause or proceeding in his own Court, or in another Court, of which his Court has, or has had, or may have jurisdiction.

ARTICLE II.

THE ORDINARIES AS CLERKS.

SECTION.

313. Ordinaries may appoint Clerks.

314. Powers of such Clerks.

SECTION.

315. The Ordinary may require bond, &c.

316. Special duties of the Clerk.

Ordinaries are Clerks of their own Courts.

§313. The Ordinaries are, by virtue of their offices, Clerks of their own Courts, but they may, at their own expense, appoint one or more Clerks for whose conduct they are responsible, who hold their offices at the pleasure of such Ordinary.

Powers of Clerk and Ordinary.

§314. Such appointed Clerks may do all acts the Ordinaries could, not Judicial in their nature.

May give bond.

§315. When Clerks are thus appointed, before entering on the duties of their offices, they may give to the Ordinary a bond and security in the sum of one thousand dollars.

The duties of the Clerk of the Court of Ordinary.

§316. It is the duty of such Clerks, or the Ordinaries acting as such—

1. To issue all citations required by law.
2. To grant temporary letters of Administration.
3. To grant marriage licenses.

Article 2.—The Ordinaries as Clerks.

4. To issue all *fi. fas.* for costs on all judgments of the Ordinary or other process necessary to enforce them.

5. To issue subpoenas for witnesses, and all similar process for ripening a trial.

6. To issue any paper or process by order of the Ordinary, and bearing test in his name as other Clerks.

7. To keep fair and regular minutes of each session of the Court, entered in a well bound book, and such other services during term time, as the Ordinaries may require.

8. To keep in their offices other suitable books for the following purposes, viz: Books to be kept in the office of the Ordinary.

A book for the record of wills.

Another for the record of all letters of Administration and Guardianship.

Another for the record of all bonds given by Administrators and Guardians.

Another for the record of all appraisements, inventories and schedules.

Another for the record of all accounts of sales.

Another for the record of all accounts current, authorized to be made to the Ordinary, together with the vouchers accompanying the same.

Another for the record of all marriage licenses, and the returns thereon.

Another as a docket in which to enter all applications, and other proceedings in the order they are made, and which shall be called in like order at each session.

Another for the record of all official bonds required to be recorded in the Ordinary's office.

Another for the registry of all free persons of color.

9. To procure and preserve, for public inspection, a complete file of all newspapers in which their advertisements appear, as the Clerks of the Superior Court are required.

10. To keep their books and papers arranged, filed and labeled and indexed as said Clerks are required.

11. To give transcripts likewise as they are required, and when the Ordinary and the Clerk are the same person, so to state in the certificates.

12. To perform any other duty required of them by law, or which is indispensable to those required.

ARTICLE III.

THE ORDINARIES AS SCHOOL COMMISSIONERS.

SECTION.

317. Ordinaries are school commissioners.
318. Shall give additional bond.

SECTION.

319. Special duties of the Ordinary.

Ordinaries
are School
Commissioners,
&c.

§317. The Ordinaries are, by virtue of their offices, School Commissioners, members of the Board of Education, and Treasurers thereof for their respective counties.

Shall take
additional
oath.

§318. Before entering on the duties of their offices, in addition to the oath and bond already prescribed, they shall take an oath, "faithfully to discharge all the duties imposed upon them as such, and to faithfully apply and account for all money coming to their hands in said capacity," and shall also give bond and surety, payable to, and approved by the Justices of the Inferior Court, in double the sum of the whole School Fund, arising from all sources, conditioned for the faithful discharge of their duties, and application of, and accounting for said fund for the purposes, and in the manner prescribed by law, as Treasurer of said Board of Education, which oath and bond shall be entered, filed and recorded as his other oaths and bonds are.

Shall give
additional
bond.

His oath and
bond—
when enter-
ed, &c.

§319. It is their duty in said capacities—

Special du-
ties of the
Ordinary,
&c.

1. To enter yearly, as soon as received, in a book to be kept for that purpose, the names of all children entitled to the benefit of the School Fund.

Must attend
meetings of
the Board of
Education.

2. To attend the sessions of the Board of Education, and once in each year to report to them the condition of the funds in their hands; the amounts due teachers; the probable revenues and necessities for the current year.

His reports
to the Grand
Jury.

3. To lay said reports before the first Grand Juries of their respective counties at the first session thereafter, and to each successive Grand Jury, until action is had thereon, together with the action of said Board of Education, and specially to inform said jury of the number of children entitled to the benefit of the School Fund, and the amount of funds on hand after paying teachers for the previous years, aside from what may be raised from county taxation.

Must keep
an account
of receipts
and dis-
bursements.

4. To keep full and fair accounts of all his receipts and disbursements in a well bound book, kept for that purpose, showing the different amounts received, when received, and from what source and to whom, when paid and for what purpose, which

Article 3.—The Ordinaries as School Commissioners.

shall be laid before the Grand Jury for their inspection whenever they require it.

5. To pay teachers of such children, and any other charge on such fund, in the manner prescribed by law, and said Board of Education taking and filing proper vouchers for the same. Must pay teacher, &c.

6. To keep by themselves, or their Clerks, (if any,) the minutes of said Board of Education in a book to be kept for that purpose, which shall be deposited in their offices for public inspection. Must keep the minutes of the Educational Board.

7. To issue, in such capacity, any order or process such Board may require. Orders of the Board.

CHAPTER VI.

SHERIFFS AND THEIR DEPUTIES.

SECTION.

- 320. Sheriffs—how elected.
- 321. A surety for Tax Collector.
- 322. Vacancies in the office of Sheriff.
- 323. His oath of office.
- 324. Must give bond.
- 325. Bond to be examined.
- 326. His bond—where recorded.
- 327. Judge of the Court may examine.
- 328. When a Sheriff is succeeded.
- 329. Sheriff's office—where to be kept.
- 330. May appoint deputies.

SECTION.

- 331. The Sheriff is Jailor.
- 332. Jailors must take an oath.
- 333. Bond and oath must be recorded.
- 334. Jailors bound to receive prisoners.
- 335. Sheriff liable for acts of deputy.
- 336. Sheriff's duty in executing orders.
- 337. His book of entries when filled.
- 338. Cannot purchase at his own sale.
- 339. When allowed fees.
- 340. Defaulting Sheriffs.

§ 320. The Sheriffs are elected, qualified, commissioned, hold their offices for the same term, and are subject to the same disabilities as the Clerks of the Superior Courts. Sheriffs—how elected and qualified, and term of office.

§ 321. A security for any Tax Collector, or other holder of public money is ineligible to the office of Sheriff, until all monies for which he is bound shall have been paid to the proper authority. Disqualifications for the office.

§ 320. Vacancies are filled, and the after proceedings are as in case of vacancies in Clerks of the Superior Courts, except that in case there is a failure to appoint, as set forth in section 257, the Coroner of the county shall act as Sheriff, and if there is no Coroner the Ordinary shall make a temporary appointment, and on failure of both, the Sheriff of any adjoining county is authorized to act as Sheriff until the Justices of the Inferior Court shall make their appointment or there is an election. Vacancies—how filled.

His oath of office.

§ 323. Before entering on the duties of their office they shall take and subscribe, beside the oath of all civil officers, the following oath, before the Judge of the Superior Court or Justices of the Inferior Court, viz: "I do swear that I will faithfully execute all writs, warrants, precepts and process directed to me as Sheriff of this county, or which are directed to all Sheriffs of this State, or to any other Sheriff specially, I can lawfully execute, and true returns make, and in all things well and truly, and without malice or partiality, perform the duties of the office of Sheriff of — county, during my continuance therein and take only my lawful fees. So help me God."

Must give bond.

§ 324. They shall also give a bond with at least two sureties, in the sum of twenty thousand dollars, (unless changed to a less or greater amount by local acts now in force or hereafter to be enacted,) conditioned for the faithful performance of their duties as Sheriffs, by themselves, their deputies, and their Jailors, and upon the terms required by law.

His bond—by whom to be examined and approved.

§ 325. Such bonds shall be approved by three Justices of the Inferior Court of the county, and then deposited in the office of the Clerk of the Superior Court, until the first session of that Court thereafter, when the presiding Judge shall examine said bonds, and if taken in conformity to the law, and the sureties are sufficient, so declare by order and have them spread upon the minutes of the Court, and if it has not been so taken they shall give another bond, which said Judge is authorized to take and have entered on said minutes.

Such bond to be recorded and deposited.

§ 326. When said bonds are thus approved by the Justices of the Inferior Court, and before deposited in said office, they shall be recorded in the office of the Clerk of the Inferior Court, and after being passed upon by the Judge of the Superior Court, shall be returned to the office of said Clerk of the Inferior Court and by him filed, and if the Judge of the Superior Court compels said Sheriff to give a new bond, after having been approved and entered on the minutes, it shall be filed in the office of the Clerk of the Inferior Court and be recorded therein without further approval.

Judge of Superior Court may examine said bond in the first instance, in certain cases.

§ 327. If a term of the Superior Court is held in the county before the Justices of the Inferior Court shall have approved the Sheriff's bond, the Judge of the Superior Court may do so in the first instance, being careful to take the opinion of such Justices, or a part of them, or the Ordinary, as to the solvency and sufficien-

Chapter 6.—The Sheriffs and their Deputies.

cy of the sureties, and having so approved the other proceedings are as hereinafter set forth.

§ 328. When a Sheriff's deputy is the succeeding Sheriff the sureties must be essentially different from those on such Sheriff's bond.

When a Sheriff is succeeded by his deputy.

§ 329. Sheriffs must keep their offices at the same place and on the same terms as Clerks of the Superior Court are required.

Sheriff's office.

§ 330. They are authorized, in their discretion, to appoint one or more deputies, from whom they must take a bond with sureties.

May appoint a deputy.

§ 331. They are, by virtue of their offices, Jailors of the counties, and have the appointment of Jailors, subject to the supervision of the Inferior Court, as prescribed in this Code.

May appoint Jailors.

§ 332. Before entering on the duties of their office, such Jailors must give to the Sheriff bond and surety for the sum of one thousand dollars, conditioned for the faithful performance of their duties as Jailors, and shall take and subscribe before some one of the Justices of the Inferior Court of the county the following oath, viz: "I do swear that I will well and truly do and perform, all and singular, the duties of Jailor for the county of —, and that I will humanely treat prisoners who may be brought to the jail, of which I am keeper, and not suffer them to escape by any negligence or inattention of mine. So help me God."

Jailors must take an oath and give bond.

Form of his oath.

§ 333. Such bond and oath must be filed and recorded as those of a Sheriff's deputy.

Bond and oath must be recorded and filed.

§ 334. It shall be the duty of the keepers of the several jails within this State to receive into their respective jails, and safely keep therein, all prisoners committed under the authority of the Confederate States, under the like penalties and subject to the same action as in the case of prisoners committed under the authority of this State.

Jailors bound to secure persons committed under authority of the Confederate States.

§ 335. Sheriffs are liable for the misconduct of the Jailor as they are liable for their deputies, and persons injured by the Jailor or have the same option in suing the Jailor's bond that they have in suing the deputy's bond.

Sheriffs liable for the misconduct of deputies and Jailors.

§ 336. It is the duty of the Sheriff—

1. To execute and return the process and orders of the Courts of record of this State, and of officers of competent authority, if not void, with due diligence, when delivered to them for that purpose, according to the provisions of this Code.

His duty in executing and entering Process, orders, &c.

2. To attend upon all sessions, by themselves or deputies, of

Chapter 6.—The Sheriffs and their Deputies.

- In attending upon the Courts. the Superior and Inferior Courts of the county, and of the Court of Ordinary, whenever required by the Ordinary, and never to leave said Courts while in session, without the presence of one or both of said officers if required, and to attend in like manner at the place of holding an election, at the county site, on the day of an election, from the opening to the closing of the polls, and to take under their charge all under officers present, as a police to preserve order.
- In attending elections.
- Shall publish sales, citations, &c.
3. To publish sales, citations, and other proceedings, as required by law, and to keep a file of all newspapers in which their official advertisements appear, in the manner required of Clerks of the Superior Courts.
- Keep an execution docket.
4. To keep an execution docket, wherein they must enter a full description of all executions delivered to them, the dates of their delivery, together with all their acts and doings thereon, and have the same ready for use in any Court of their county.
- A record of sales.
5. To keep a book, in which shall be entered a record of all sales made by process of Court, or by agreement of parties, under the sanction of Court, describing accurately the property and process under which sold, the date of the levy and sale, the purchaser and price.
- Shall receive and complete unfinished business of predecessor.
6. To receive from the preceding Sheriff all unexecuted writs and process and to proceed to execute the same; to carry into effect any levy or arrest made by a predecessor; to put purchasers into possession, and to make titles to purchasers at his sales, when not done by him.
- Shall receive jails, prisons, &c., from predecessor.
7. To take from preceding Sheriff's custody of the jail and the bodies of such persons as are confined therein, with the precept, writ or cause of detention.
- Shall furnish prisoners medical aid, fire, blankets &c.
8. To furnish prisoners with medical aid, fire and blankets, to be reimbursed, if necessary, from the County Treasury, and to suffer a penalty for neglect as prescribed in this Code.
- Take prisoners to jail of adjoining county in certain cases
9. To take all prisoners arrested, or in execution under any criminal or civil process to the jail of an adjoining county, or to the jail of some other county, when more accessible, if the jail of the county is in an unsafe condition, under such rules as are prescribed in this Code.
10. To perform such other duties as are or may be imposed by law, or which necessarily appertains to their offices.
- § 337. All books the Sheriffs are required to keep, after becom-

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ing full, must be deposited in the office of the Clerks of the Superior Courts, to be kept as their other books of record.

His books when filled must be deposited.

§ 338. No Sheriff or deputy, or other officer discharging a similar duty, will be permitted to purchase any property whatever at his own sale, upon his own bid nor upon the bid of any other person for him, directly or indirectly, and all such sales and deeds in pursuance thereof, intended to vest in such officer the title to property so purchased, shall be null and void.

Cannot purchase at his own sale.

§ 339. Sheriffs are only entitled to such fees or compensation as the law prescribes, or upon an omission of the law to such reasonable compensation as the Court shall award, and where they use property themselves, or hire it out after being levied upon, they are not allowed a per diem allowance for diet, and are liable to the proper party for the hire received.

When allowed fees and the amount thereof.

340. If any Sheriff or deputy fails to comply with the provisions of section 336, he shall be fined for a contempt, as the Clerk of the Superior Court is in similar cases. Section 267 also applies to Sheriffs.

Defaulting Sheriffs fined for contempt.

CHAPTER VII.

STATE'S ATTORNEYS AND ATTORNEYS AT LAW.

ARTICLE 1. Attorney General.

ARTICLE 2. Solicitors General.

ARTICLE 3. Attorneys at Law.

ARTICLE I.

ATTORNEY GENERAL.

SECTION.

341. The Attorney General.

342. Must give bond and surety.

343. His duties enumerated.

SECTION.

344. May render service out of Circuit.

345. May render service anywhere.

§ 341. The Solicitor General of the Circuit which embraces the Seat of Government is, by virtue of his office, the Attorney General of the State.

Attorney General.

§ 342. Before entering on the duties of his office, he must give bond and surety satisfactory to the Governor, in the sum of ten thousand dollars, and upon his requisition, must give additional bond whenever the public interest demands.

Must give bond and security.

Article 1.—The Attorney General.

§ 343. It is the duty of the Attorney General—

Must give his written opinion.

1. To give his opinion in writing, or otherwise, on any question of law connected with the interests of the State, or with the duties of any of the Departments, when required by the Governor, or either of the State House officers.

Prepare contracts when the State is interested.

2. To prepare all contracts and writings in relation to any matter in which the State is interested, when requested.

Attend, on the part of the State, to civil & criminal cases.

3. To attend, on the part of the State, to all criminal causes in any of the Circuits, when the Solicitor General thereof is prosecuted, and to all other criminal or civil causes to which the State is a party, when ordered by the Governor.

His general duty.

4. To perform such other duties as are or may be required of him, or which necessarily appertain to his office.

His general duty.

§ 344. When the services of such Attorney General shall be needed in either of the Judicial Circuits the presiding Judge thereof shall notify the Governor, twenty days before, of the time, place and cause, and the Governor may (in his discretion) order the Attorney General to comply, unless the law in the case presented makes it his imperative duty to do so.

The services of Attorney General may be required out of his circuit by Comptroller General.

§ 345. It is in the discretion of the Comptroller General to require the Attorney General, when the services of a Solicitor General are necessary, in collecting or securing any claim of the State, in any part of the State, either to command the services of said Attorney General, in any or all of such cases, or of the Solicitors General in their respective circuits.

ARTICLE II.

SOLICITORS GENERAL.

SECTION.

- 346. Solicitor General.
- 347. His oath.
- 348. Vacancy how filled.
- 349. His qualifications.
- 350. On the same footing as the Judge.
- 351. His special duties enumerated.
- 352. May be ruled as Attorneys.
- 353. Failing to attend Court.

SECTION.

- 354. May Nol. Pros. indictments.
- 355. Penalty for exacting illegal costs.
- 356. Who must certify such proceedings.
- 357. Tampering with Grand Jury.
- 358. May be appointed by the Court.
- 359. An Attorney so appointed.
- 360. Charges against Solicitor General.

His election and term of office.

§ 346. Each Superior Court Judicial Circuit must have a Solicitor General, elected by the people thereof respectively, who

Article 2.—Solicitors General.

holds his office four years, unless sooner removed in the manner prescribed by the Constitution.*

§ 347. Before entering on the duties of their offices, beside His oath. the oaths required of all civil officers, they must in addition take the following, viz: "I do swear that I will faithfully and impartially, and without fear, favor or affection, discharge my duties as Solicitor General, and will take only my lawful fees of office. So help me God." And must also give such bond and surety as is required of the Solicitor, who by virtue of his office is Attorney General.

§ 348. Vacancies are filled, as prescribed in cases of the Vacancy how filled. Judges of the Superior Courts, and the manner of proceeding is in every respect the same, except that the person elected to fill the vacancy holds his office only for the unexpired term, and must be so commissioned.

§ 349. No person is eligible to the office of Solicitor General who has not been a resident citizen of this State five years just preceding his election or appointment, who shall not have been an inhabitant of the circuit, in which he is to serve one year, prior thereto; who has not attained the age of twenty-one years, and who has not been duly admitted and licensed to practice law in the Superior Courts of this State for at least three years. His qualifications.

§ 350. A person having been appointed, or elected a Solicitor for any circuit, is on the same footing of a Judge of the Superior Court, as set forth in Section 236, (as to retaining his office.) On the same footing as Judge as to retaining his circuit.

§ 351. Their duties within their respective circuits are—

1. To attend each session of the Superior Courts, regular or adjourned, unless excused by the Judge thereof, and remain until the business of the State is disposed of. Special duties. Must attend the Superior Courts.

2. To attend on the Grand Juries, advise them in relation to matters of law, and swear and examine witnesses before them. Must attend Grand Jury.

3. To administer the oaths the laws require to the Grand and Petit Jurors, to the Bailiffs, or other officers of Court, and otherwise to aid the presiding Judge in organizing the Courts as he may require. Must administer oaths.

4. To draw up all indictments, or presentments when re-

* The amended Constitution provides that the Judges of the Supreme and Superior Courts, the Attorney and Solicitors General, shall be appointed by the Governor, by and with the advice and consent of two-thirds of the Senate; but said amended Constitution not yet being ratified the Codifiers do not feel at liberty at present to change the law. See appendix.

Article 2.—Solicitors General.

Must draw up indictments and presentments. 1. To be questioned by the Grand Jury, and to prosecute all indictable offences.

Must prosecute or defend when the State is interested. 5. To prosecute or defend any civil action in the prosecution or defence of which the State is interested, unless otherwise specially provided for.

Must attend Supreme Court. 6. To attend before the Supreme Court, when any criminal cause is tried, emanating from their respective circuits, argue the same, and perform any other duty therein, the interest of the State may require.

Must collect fines and forfeitures, and settle with the County Treasurer. 7. To collect all moneys arising from fines and forfeited recognizances, all costs on criminal cases, when paid into Court before judgment, and not otherwise; and at the Fall Term of each Court, every year, to settle with the County Treasurer, and pay over to him all moneys due him, according to law, after a fair and full settlement.

Must settle with the preceding Solicitor. 8. To settle at the same time with the preceding Solicitor, and pay over to him any moneys collected, to which he may be entitled, and to render to him, whenever required by him, a just statement of the condition of his interests.

Must collect all money due the State in the hands of escheators. 9. To collect all moneys due the State in the hands of any escheators, and pay over to the Educational fund; and if necessary compel them to pay by rule or order of Court, or other legal means.

Must collect claims due the State when ordered by the Comptroller General. 10. To collect all claims of the State, they may be ordered to do by the Comptroller General, and to remit the same within thirty days after collection; and on the first day in October every year, to report to him the condition of the claims in their hands in favor of the State, particularly specifying the amounts collected and paid; from what sources received, and for what purposes; to whom paid, what claims are unpaid, and why; what judgments have been obtained, when, and in what Court; what suits are instituted, in what Courts, and their present progress and future prospects.

His general duties. 11. To perform such other duties as are, or may be required by law, or which necessarily appertain to their office.

May be ruled as Attorneys at Law. § 352. If Solicitor Generals fail to comply with the provisions of the preceding section, they are liable to rule, as Attorneys at Law are, with all the penalties and remedies; and on failure to comply with the terms of a rule absolute, within twenty days from the time it becomes final, it shall be a ground of impeachment.

Article 2.—Solicitors General.

§353. If they fail to attend on the Courts of their respective Circuits, as required, they are liable to be fined, for each failure, fifty dollars, to be retained out of their salaries.

Failing to attend Court—liable to be fined.

§354. They have authority, on the terms prescribed by law, to enter a *nolle prosequi* on indictments, and if, in any cases, a Solicitor General accepts, directly or indirectly, in money, or other valuable thing, or exacts more than his lawful costs from the defendant, or anybody else, it is a subject matter of investigation by the Grand Jury.

May *nolle prosequi* indictments, &c.

Penalty for exacting illegal costs.

§355. If the Grand Jury presents the Solicitor for having received more than his lawful costs, he shall be disqualified from further discharging his official duties, until a trial shall be had upon an indictment, and if the trial results in a conviction, he shall be fined and imprisoned at the discretion of the Court; and it is also a ground of impeachment. The disqualification continues until the adjournment of the next session of the General Assembly.

How proceeded against for exacting illegal costs.

Penalty on conviction.

§356. It shall be the duty of the Clerk of said Court to certify immediately such proceedings to the Governor.

Clerk shall notify the Governor.

§357. If they take, or agree to take, from any person, money, or any other valuable thing, the consideration whereof is a promise or undertaking, to procure, or to try to procure, a finding by the Grand Jury of "a bill" or "no bill" upon an indictment, or to make, or not to make a presentment, or to prolong or procrastinate a State case, or an arrest, or to advise it done, or how it may be done, the penalty and the proceedings are the same as in the two preceding sections.

Penalty for taking, or agreeing to take, money or other thing of value, to influence the Grand Jury in their deliberations.

§358. When a Solicitor is absent, or indisposed, or disqualified from interest or relationship to engage in a prosecution, the presiding Judge must appoint a competent attorney of the Circuit to act in his place, or he may command the services of the Solicitor of any other Circuit accessible, or he may make a requisition on the Governor for the Attorney General, as the emergency in his discretion may require.

The Solicitor General being disqualified, the Court may supply his place.

§359. An Attorney, acting as such Solicitor, is subject to all the laws governing Solicitor Generals; he is entitled to the same fees for what he does, and incurs the same penalties in the discharge of his duties.

An Attorney, acting as Solicitor, is entitled to the same fees, &c.

§360. When any person makes affidavit before the Court or Grand Jury, that in his judgment the Solicitor General is guilty of an indictable offence, and that he desires to prosecute him, or

Article 2—Solicitors General.

the Grand Jury may present him for such an offence, it is the duty of the Court, *instanter*, to appoint some competent Attorney at Law to draw a bill of indictment, and when there is a true bill found, or presentment made, to put the Solicitor under recognizance, or in prison, according to the offence, until the appearance of the proper prosecuting officer.

ARTICLE III.

ATTORNEYS AT LAW.

SECTION.

- 361. Attorneys at Law.
- 362. Rights of persons admitted.
- 363. Qualifications of applicant.
- 364. Aliens.
- 365. Application for admission.
- 366. Evidence of preparation.
- 367. Must be examined.
- 368. The manner of examination.
- 369. Examination not satisfactory.
- 370. Order of admission.
- 371. Form of the oath to be taken.
- 372. Graduates of Lumpkin Law School.
- 373. Attorneys of other States.
- 374. Order of the Court necessary.
- 375. Prohibited in certain cases.
- 376. Attorneys removing to this State.
- 377. How admitted in Supreme Court.
- 378. Failing to render the service.
- 379. Transferring fee note.
- 380. The rule for settling fees.
- 381. Attorneys may be ruled.
- 382. May bind their clients—when.
- 383. Can receive nothing but money.
- 384. Parties acting by advice of Attorneys.

SECTION.

- 385. Appearing without authority.
- 386. Penalty therefor.
- 387. Required to produce authority.
- 388. When two are employed.
- 389. Leading counsel defined.
- 390. If more than one, preference given.
- 391. Special duties of Attorneys.
- 392. Causes for striking an Attorney, &c.
- 393. May be re-instated, and how.
- 394. Proceeding against Attorneys.
- 395. Accusation must be in writing.
- 396. Proceedings must be under oath.
- 397. Requiring the accuser to appear.
- 398. Appearance.
- 399. Answer.
- 400. If objections be overruled.
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- 402. The judgment and effect thereof.
- 403. Proceedings instituted by the Court.
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- 405. Costs—how taxed and collected.
- 406. Death of the informant.
- 407. Jury may find proceedings malicious.

Persons en-
titled to
practice law.

§361. The following persons, if not specially declared ineligible, are entitled to practice law in the Courts of this State:

1. Those who have been regularly licensed under the laws of the State, before the adoption of this Code.
2. Those who are hereafter licensed in the manner prescribed by law.

Rights of
persons ad-
mitted in
the Superior
Court.

§362. Those who are admitted to practice in the Superior Courts, may practice in any other Court of this State, except the Supreme Court, for which another and special license must be obtained.

Article 3.—Attorneys at Law.

§363. Any white male citizen of good moral character, who has read law, and undergoes a satisfactory examination before a Judge of the Superior Court, as hereinafter prescribed, is entitled to plead and practice law in this State. Qualifications of applicant.

§364. Aliens who have been two years resident in the State, and have declared their intentions to become citizens, pursuant to the act of Congress, are eligible to admission as Attorneys at Law. Aliens.

§365. For the purpose of admission, one must apply, by petition in writing, to a Superior Court, during one of its sessions, in a Circuit of which he is resident, or has read law therein, and must show— Application for admission—how made.

1. His citizenship.
2. That he is of good moral character.
3. That he has read law.
4. That he has been a resident of, or has read law in the Circuit as aforesaid.

§366. The evidence of such facts must be by certificate of two Attorneys of the Court, or of other evidence satisfactory to the Court. Certificate of preparation.

§367. The applicant must also be examined in open Court, touching his knowledge— Authorities on which to be examined.

1. Of the principles of the Common and Statute Law of England of force in this State.
2. Of the law of pleading and evidence.
3. The principles of equity, and equity pleading and practice.
4. The revised Code of this State, the Constitution of the Confederate States, and of this State, and the rules of practice in the Superior Courts.

§368. No portion of such examination must take place out of open Court, and to enable the Judges to have proper examinations, they are required, if there is not ample time, during a term, to appoint a time, at least twice a year, at some county site in their respective Circuits, which has a bar of Attorneys sufficient, in numbers and qualifications, to conduct the examinations, and, if necessary, to request and require the attendance of such Attorneys from other places within the Circuit, of which appointment public notice shall be given thirty days prior to said time in some public gazette. Application for admission may be made to the Judge of each Circuit (as otherwise required) at any time. Manner of examination.

§369. Such Judges are required to be strict, and to reject any

Article 3.—Attorneys at Law.

Such applicant to be rejected.

applicant who does not undergo a full and satisfactory examination.

How admitted to practice.

§370. If, on examination, the applicant is found duly qualified in all the branches required, the Court must direct an order to be entered on the minutes, that, being examined and found to possess the requisite learning and ability, and having otherwise complied with all the conditions of the law; that upon his taking the oath prescribed, that the Clerk issue to him, on the payment of the fees and costs, a license to plead and practice law in the Superior Courts of this State.

Must take an oath.

Form of the oath.

§371. The oath is as follows:

“ I, ———, swear that I will justly and uprightly demean myself, according to the laws, as an Attorney, Counsellor and Solicitor, and that I will support and defend the Constitution of the Confederate States, and the Constitution of the State of Georgia. So help me God.” Which oath must be taken in open Court, and entered on the minutes thereof.

Graduates of Lumpkin Law School—how admitted.

§372. None of the preceding requisitions are applicable to any graduate of the Lumpkin Law School, but upon presentation of a Diploma, and payment of fees, the Court shall cause his name to be enrolled among the Attorneys.

Attorneys from other States—how admitted in this State.

§373. Attorneys at Law residing in other States of the Confederacy, having license to practice law in a Circuit Court therein, where, by law, the Attorneys of this State are permitted to practice law, may practice in the Superior Courts of this State.

1. By presenting a petition, in writing, for such purposes, to the Judge of the Superior Court of any Circuit, either in term time or vacation.

Must produce a certificate.

2. By producing before him a certificate from a Judge of the Circuit, or District Court of the State of which they are citizens, under the seal of said Court, stating that the applicant is of good moral character, and has been legally admitted to practice law in such Circuit, and that, by the laws of such State, the Attorneys of this State are allowed to practice law therein.

Order of admission.

§374. On reading such petition and certificate, such Judge shall grant an order, that the applicant be admitted to practice law in this State, and shall order the Clerk of the Superior Court of the county to enter it on his minutes and file the proceedings, on the payment of his legal fees, which, when done, is a sufficient license.

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§375. Such Attorneys at Law of any State adjoining this, are not thus permitted to practice law herein, unless those of this State are not likewise permitted to practice law in their Courts.

Lawyers from such States as do not allow Ga. lawyers to practice in their Courts.

• §376. Those Attorneys at Law, of other States, who become residents of this State, and do not come under the provisions of the preceding sections, by producing to the Court satisfactory evidence that they were Attorneys at Law, in good standing, in a Court of similar jurisdiction in the State from which they came, may be immediately admitted to plead and practice law in this State, without undergoing the examinations as other resident applicants.

Lawyers from other States may be admitted to this, &c.

§377. Any Attorney authorized to practice law in the Superior Courts of this State, is permitted to practice law in the Supreme Court—

Lawyers—how admitted to practice in Supreme Court.

1. By exhibiting to the Court proof of good private and professional character, and otherwise complying with the terms of its rules.

Proof of good private and professional character.

2. By taking the oath prescribed.

§378. Attorneys are prohibited from collecting any note or other contract in writing given as a fee in any cause, which cause they have failed to attend to in person, or by some competent Attorney, from the time of employment until the rendition of the judgment, and the same shall be null and void, unless they were by contract released from such duty.

Attorneys when employed failing to render the service.

§379. The transfer of such note or obligations subjects them to forfeit and pay to the person from whom the same was taken, double the amount thereof, recoverable in any Court having jurisdiction of the same, unless such person is saved harmless against all fees, costs and other necessary expenses on account thereof.

Transferring fee note or obligation and failing to render the service.

§380. Unless otherwise stipulated, one-half of the fee in any cause is a retainer, and due at any time, unless the Attorney without sufficient cause abandons the case before rendering service to that value; but in cases where he has rendered such service, and cannot render the balance of service, from the act of his client, providential cause, election to office, or removal out of the State, he is entitled to retain the amount, or a due proportion if collected, or sue for it, and collect it, if not; where no special contract is made, the Attorney may recover for the services actually rendered.

The rule of settling for

§381. Where Attorneys retain in their hands the money of

Article 3.—Attorneys at Law.

May be ruled for money collected.

their clients, after it has been demanded, they are liable to rule (and otherwise) as Sheriffs are and incur the same penalties and consequences.

Attorneys may bind their clients—when.

§382. They have authority to bind their clients in any action or proceeding, by any agreement in relation to the cause made in writing, and in signing judgments, entering appeals, and by an entry of such matters when permissible on the dockets of the Court, but they cannot take affidavits, required of their clients, unless specially permitted by law.

Cannot receive anything but money, &c.

§383. Without special authority Attorneys cannot receive anything in discharge of a client's claim but the full amount in cash.

Parties not relieved on the ground that they acted under the advice of counsel.

§384. Clients shall not be relieved from their liability to damages and penalties imposed by law on the ground that they acted under the advice of their counsel, but are entitled to redress from them for unskillful advice.

A party may repudiate an Attorney attempting to appear for him.

§385. If it be alleged by a party for whom an Attorney appears that he does so without authority, the Court may at any stage of the proceedings relieve the party, for whom the Attorney assumed to appear, from the consequences of his acts, if fully satisfied such allegation is true.

Attorney appearing without authority.

§386. Any Attorney appearing for a person without being employed, unless by leave of the Court, is guilty of a contempt of Court, and must be fined in a sum not less than five hundred dollars.

May be required to produce authority.

§387. The presiding Judge, or Justice, may, on motion of either party, and on showing reasonable grounds therefor, require any Attorney, who assumes the right to appear in the cause, to produce, or prove, the authority under which he appears, and to disclose whenever pertinent to any issue, the name of the person who employed him, and to grant any order that justice may require on such investigation, but prima facie, Attorneys shall be held authorized to properly represent any cause they may appear in.

When two or more Attorneys are employed on the same side.

§388. When two or more Attorneys being employed on the same side dispute about the direction to be given to their cause, and the client is not present, the Judge shall hear all the facts and give preference to the leading counsel.

Leading counsel defined.

§389. The leading counsel is he who at the time of the trial, or raising of any issue connected with the cause, is in the judg-

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ment of the Court the counsel upon whom the client relies more than any other.

§390. If there is more than one, upon whom the client thus relies, the Court shall as between them, give him preference who was first employed.

If more than one, preference is given to the one first employed.
Special duties enumerated.

§391. It is the duty of Attorneys at Law—

1. To maintain the respect due to Courts of Justice and judicial officers.

2. To employ for the purpose of maintaining the causes confided to them, such means only as are consistent with truth, and never to seek to mislead the Judges or Juries, by any artifice or false statement of the law.

3. To maintain inviolate the confidence, and at every peril to themselves to preserve the secrets of their clients.

4. To abstain from all offensive personalities, and to advance no fact prejudicial to the honor or reputation of a party or a witness, unless required by the justice of the cause with which they are charged.

5. To encourage neither the commencement nor continuance of an action or proceeding from any motives of passion or interest.

6. Never to reject for any consideration personal to themselves the cause of the defenceless or oppressed.

§392. An Attorney must be removed for the following causes by the Superior Court of the county of his residence:

Special causes for which an Attorney must be removed.
For crimes.

1. Upon his being convicted of any crime, or misdemeanor involving moral turpitude. In either case the record of his conviction is conclusive evidence.

2. When any judgment, or rule absolute has been rendered against him, for money collected by him, as an Attorney, which he fails to pay within ten days after the time appointed in the order. In which case the record of the judgment is conclusive evidence, unless obtained without any service, under some law authorizing such a proceeding.

Failing to pay over money when ruled.

3. Upon it being shown to the satisfaction of the Court that he has been guilty of any deceit or wilful misconduct in his profession.

Unprofessional conduct.

4. For want of a sound mind, or for indecent behavior in or out of the Court House, whereby he becomes a nuisance to the Court, his brother members of the bar, or the public.

Indecency want of mind, &c.

§393. When an Attorney at Law is thus removed, after the lapse

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May be reinstated, and how

of twelve months (unless removed under the first ground of the preceding section) it is in order for him to be restored upon the application of two-thirds of the members of the bar of the county where he was removed and of those who usually practice in the Superior Court of said county, if approved by the Judge of the Circuit.

Summary proceedings against Attorneys.

§ 394. The proceedings to remove an Attorney may be taken by the Court, of its own motion, or upon the motion of an Attorney at Law, or other citizen.

The accusation must be in writing.

§ 395. The accusation must be in writing, signed by the movant, or his Attorney at Law, and when the proceeding is taken by the Court, it may be drawn up by the Solicitor, or the Clerk, under the direction of the Court.

Proceedings must be under oath—when.

§ 396. If the proceedings are upon the information of another the accusation must be verified by the oath of the person making it, or some other person, and presented to the Court.

Order requiring the accused to appear.

§ 397. The Court must then, if of opinion that the accusation would, if true, be grounds of removal, make an order, requiring the accused to appear and answer the same, at a specified day during the same, or at the next term, and must cause a copy of the order and accusation to be served on the accused within a prescribed time before a day appointed in the order.

Appearance of the accused.

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

Failing to appear, &c.

Answer of the accused.

§ 399. The accused may answer, either by objecting to the sufficiency of the accusation or by denying its truth, either of which must be entered on the minutes.

Objections by the accuser.

§ 400. If the objection to the sufficiency of the accusation be not sustained, the accused must answer it forthwith.

Plea of guilty, or refusing to answer.

§ 401. If he pleads guilty, or refuses to answer the accusation, the Court must proceed to judgment of removal; if he denies the accusation, the Court must immediately, or at such time as it may appoint, proceed to try the same; the accused having a right to demand a trial by jury.

Effect of the judgment.

§ 402. A judgment of acquittal is final, but from a judgment of removal there may be a motion for a new trial, and a review by the Supreme Court, as in other cases.

§ 403. The proceedings, when instituted by the Court, of its own

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motion, are conducted in the name of the State, the Solicitor appearing to sustain the accusation, and when on the information of another, in the name of the State, on the information of such person.

Proceedings when instituted, &c.

§ 404. Either party has a right to subpoenas, and other process, to compel the attendance of witnesses, and testimony may be taken by deposition, in such cases, and in the same manner as in actions at law, and the Court may, in its discretion, require the informant to give security for costs, and failing so to do within the time prescribed, the proceedings must be dismissed at the cost of the informant.

Either party may compel the attendance of witnesses.

The Informant failing to give security, &c.

§ 405. When the proceedings are in the name of the State, the costs are paid as in criminal cases; when in the name of the State on the information of another, if the accusation is not sustained, judgment is rendered against the informant, and his security for the costs, if the same has been given, but if the accusation is sustained against the accused, judgment for costs must be rendered against him.

Costs—how taxed and collected.

§ 406. Upon the death of the informant, if there be but one, the proceedings abate, unless some other person is substituted in his place, which may be done on application to the Court; if there is more than one informant the proceedings continue on the information of the survivor.

Upon the death of the informant.

§ 407. It is in the province of the jury who try such proceedings, if they find in favor of the accused, also to find they were malicious, if they so believe, and upon such finding the rights of the accused against the informant are the same as in cases of malicious prosecution, on the criminal side of the Court.

The jury, who try such case, may find the proceedings malicious.

CHAPTER VIII.

JUSTICES OF THE PEACE, JUSTICES' COURTS, AND CONSTABLES.

ARTICLE 1. Justices of the Peace and their Courts.

ARTICLE 2. Constables.

ARTICLE I.

JUSTICES OF THE PEACE AND THEIR COURTS.

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Two Justices of the Peace in each District, &c.

§ 408. There shall be two Justices of the Peace in each Militia District of the several counties of this State, elected by the people of each district, in the manner hereinafter prescribed, who hold their offices for four years, unless sooner removed.

How removed from office.

§ 409. They are removed from office in the manner prescribed by the Constitution, and also on conviction for malpractice in office, or of any felonious or infamous crime.

Vacancies—how filled.

§ 410. Vacancies are filled in the following manner: If there is a Justice of the Peace in the district where the vacancy occurs, he shall appoint some Saturday in a month, which is a time fixed for holding the Justices' Court of the district, and advertise the same at three of the most public places therein at least fifteen days before the day appointed.

Election—how held.

§ 411. On said day said Justice, with two freeholders, must hold said election, in the same manner that a regular election for Justice of the Peace is held, and duly certify the same to the Governor, who must commission the person elected for the unexpired term.

Must be commissioned by the Governor.

If no Justice of the Peace in the District, &c.

§ 412. If there is no Justice of the Peace in the district where the vacancy occurs, the Justices of the Inferior Court of the county must order an election in the same manner, through their Clerk, which may be held by three freeholders of the district, who must hold and certify said election in the same manner.

§ 413. All persons are eligible to the office of Justices of the Peace who are entitled, in the county in which the district is sit-

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uated, to vote for members of the General Assembly; who have been three months in the district next preceding the election, and who do not labor under any disqualification.

Qualifications of a Justice of Peace.

§414. When any district is without a Justice of the Peace, and an election has been legally ordered to supply the vacancy, and none is *bona fide* held at the time and place appointed, it is the duty of the Justices of the Inferior Court to appoint two persons, resident in the district, such Justices to have it certified to the Governor, who must commission the appointees for the required term.

On failure to elect, the Justices of the Inferior Court may appoint.

§415. Justices of the Peace, before entering on the duties of their office, besides the oath required for all civil officers, must take the following oath: "I do swear that I will administer justice without respect to persons, and do equal rights to the poor and to the rich, and that I will faithfully discharge all the duties incumbent on me as a Justice of the Peace for the county of —, agreeably to the Constitution and laws of this State, and according to the best of my ability and understanding. So help me God."

The oath of a Justice of Peace.

§416. Such oaths shall be taken and subscribed before the Justices of the Inferior Court of the county in session, but may be taken before any one of such Justices, and so the *dedimus postestatem*, for such purpose, should state.

Such oath before whom taken.

§417. They have criminal jurisdiction in the following instances:

Their criminal jurisdiction.

1. In acting as conservators of, and preserving the public peace in their respective districts and counties.

2. In issuing warrants for the apprehension of any person charged on oath with a violation of any portion of the Penal Code, or who are so known to them officially.

3. In examining such persons when brought before them, and to commit, bind over or discharge, according to the directions of this Code.

4. In trying all slaves, or free persons of color, charged with any offence committed in the county, not punished with death, in the manner prescribed by this Code.

5. In such other cases as jurisdiction may be Constitutionally given.

§418. They have a general and original civil jurisdiction—

Civil jurisdiction.

1. Of all suits or attachments on any liquidated demand, or an account not exceeding fifty dollars, exclusive of interest, or where

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the debt has been larger, and the balance due is not more than said amount, or on the trial is reduced to said amount by *bona fide* payments, or other lawful setoff.

2. Of contests for the mere possession of personal property.

3. Of forcible entries and detainers, or either, with the aid of a jury of twelve men, as prescribed by this Code.

4. Of all other causes when jurisdiction is Constitutionally given them in their capacity as Courts or Justices.

Debts may be divided, &c.

§419. Debts which, in the aggregate, amount to more than Justices' Court jurisdiction, may be divided into liquidated demands, so as to bring them each within such jurisdiction.

Their criminal jurisdiction extends over their county, &c.

§420. Their criminal jurisdiction extends over persons of, or crimes committed in their respective counties, and their civil jurisdiction over persons residents of their respective districts, and itinerant persons, and to persons of other districts, in certain particular cases provided for in this Code.

May be sued in his own District.

§421. One Justice of the Peace may sue, or be sued before the other in his own district.

When the Justice is disqualified, who may act.

§422. When a Justice of the Peace is disqualified from presiding, and there is no other Justice of the Peace in his district, who is qualified, any Justice of the Peace of the county is qualified to issue all process, and to preside in his district, and if a Justice of the Peace is sued under such circumstances, the suit may be located in any adjoining district.

Suits—how to be brought when there is no Justice, or he refuses to serve.

§423. Where there is no Justice of the Peace in any district where a defendant resides, or there is one, and he refuses to serve generally, or in any particular case, the suit may be located in any adjoining district.

Suits may be transferred in certain cases.

§424. If suits are already commenced, and are suspended for the want of a Justice of the Peace to preside, such suits shall be removed to the adjoining districts, unless the evil is removed within sixty days.

May be transferred to the county site.

§325. If, from any cause, all such suits cannot be located, or prosecuted in some adjoining district, they may be commenced, or removed to the Justices' district, which embraces the county site.

The Justices and Constables may act, &c.

§426. The Justices of the Peace and Constables of any district, where a suit is thus begun or removed, have the same power as those officers have in the proper districts.

§427. Suits *vs.* makers and endorsers, and against co-obligors, or joint-makers, may be located in the district where the princi-

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pal debtor, or one of the co-obligors, or joint-makers can be sued, and the other parties, who may reside in a different district from such in the same county, may be joined in the suit on the same terms such persons residing in different counties may be sued in the Superior Courts, but by the process used in Justices' Courts; and in such cases, the Constable of the district where the suit is located, may serve such process in any part of the county.

Co-obligors,
joint con-
tractors and
makers and
Endorsers—
how sued.

§428. Persons resident in any portion of a county, whose residence, from any cause, is not embraced in any organized Justices' districts, are subjected to suit in the district whose Court-ground is nearest their residence, where there is an acting Justice of the Peace.

Persons re-
siding in any
portion of a
county, &c.

§429. Justices of the Peace have authority, and it is their duty—

Special pow-
ers and du-
ties of the
Justices
enumerated.

1. To select some central and convenient place in their respective districts, at which to hold their Courts, and some stated day in each month as the time of which they shall give ample public notice, and also to keep their offices within said districts; but in towns or cities, which embrace more than one district, they may hold their Courts and keep their offices at some central and convenient place within the limits of said towns or cities.

2. To fine not more than five dollars, nor imprison more than five hours, any person guilty of a contempt of Court, and to pay the fine to the County Treasurer for county purposes.

3. To issue attachments returnable to their own, and, in certain cases, to the Superior or Inferior Courts of the county.

4. To issue all process necessary to maintain their jurisdictions, and enforce their authority under the sanction of law.

5. To administer oaths and take affidavits, except the power is expressly restricted to some other officer, and to take the acknowledgement or probate of any conveyances required to be recorded.

6. To keep a docket of all causes brought before them, in which must be entered the names of the parties, the returns of the officer, and the entry of the judgment, specifying its amount, and the day of its rendition.

7. To carefully file away and label all papers appertaining to any cause, and all *fi. fas.* and other process returned, after being satisfied, entered "*nulla bona*," or have otherwise discharged their functions.

Article 1.—Justices of the Peace and their Courts.

8. To attend the Superior and Inferior Courts of their counties, whenever required, with such docket or papers of file.

9. To establish, when lost, in the manner prescribed by law, any paper appertaining to any suit, or other proceeding in their respective Courts.

10. To answer interrogatories from Courts of other counties, as to the contents or condition of any of the dockets, files or papers of their office, and to attach thereto copies of such, when such interrogatories are propounded, and such copies required.

11. To perform such other duties as are, or may be required by law, or which necessarily appertain to their office.

Justices' Courts, places of holding—how changed.

§430. If any Justices' Court is held at an inaccessible or inconvenient portion of any district, or such a place is hereafter selected, the qualified voters of such district may petition such Justice to change the place to some other place, naming it, and if he refuses to change, they may apply to the Justices of the Inferior Court, and if such Justices are satisfied that the place where such Court is held works an inconvenience to a majority of the citizens of such district, they shall change the place, to take effect after the expiration of thirty days, have it entered on their minutes, and published in the district.

The place and time of holding Justices' Courts, &c.

§431. When a place for holding such Court is once fixed, it cannot be changed, except in the manner stated, and then but once during the four years' official term, nor can the time be changed by the Justices but once.

New Justices may change the time and place of holding their Courts.

§432. When new Justices of the Peace are qualified, and they desire to change the place or time of holding such Courts, they may do so by giving public notice of the fact, stating the place, and the time to which changed, or either, and the first Court to be thus held, which change shall not go into effect short of sixty days from the time of advertising.

Time and place of holding Justices' Courts not disturbed by the adoption of this Code.

§433. The times and places now established for holding Justices' Courts are not disturbed by the enactment of this Code, and the militia districts now established by law remain the same, but they may be altered and new districts formed by Justices of the Inferior Court of each county as hereinafter prescribed.

Judgments—when void.

§434. All judgments of such Justices rendered in any civil cause anywhere else than at the place and time for holding their Courts lawfully appointed, are void.

Article 2.—Constables.

ARTICLE II.

CONSTABLES.

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§ 435. There shall be two Constables in each militia district of the several counties of this State, elected by the people of each district as hereinafter prescribed, who hold their offices for two years, unless sooner removed.

Two Constables for each district elected by the people for two years.

§ 436. They are subject to be removed from office on the same grounds and on the same proceedings as Clerks of the Superior Court are, and on conviction for malpractice in office, as Justices of the Peace are.

How removed from office.

§ 437. Vacancies are filled by appointment of the Justices of the Peace of the district in the following contingencies:

Vacancies—how filled.

1. When, from any cause, there is a failure to elect, qualify, and give bond, at the regular time.

Failure to elect.

2. When there is a death, resignation, or removal of Constable.

Death, resignation or removal.

3. When, from sickness or other providential cause, the district is without a Constable, there may be an appointment, if an emergency arises, to continue until the regular Constable enters on the discharge of his duties.

When absent from Providential cause.

4. When the Constables of the district are absent temporarily from the district, the like power may be exercised.

Temporary absence from the district.

§ 438. If there are two Justices of the Peace, and they cannot agree upon an appointment, the one who has served longer as such continuously, and immediately preceding, shall appoint; if there are two Constables to appoint, each Justice shall appoint one.

Justices failing to agree on appointment of Constables.

§ 439. If there is only one Justice of the Peace he may make the appointment, but it shall be in the discretion of the Justices, whether one or two, to appoint the second Constable or not, if there is one in office, or one or two if there is none in office.

When there is but one Justice he may appoint.

Article 2.—Constables.

In case Justice of the Peace fail to appoint, &c. § 440. If the Justices of the Peace of any district fail or refuse to have as much as one Constable in their district, for as long as thirty days from the time such a vacancy occurs, the Justices of the Inferior Court of the county shall fill the appointment.

Qualifications of a Constable. § 441. The eligibility for Constables is the same as that for Justices of the Peace, but any persons may be appointed Constable to fill vacancies, or to answer some emergency, who are at the time residents of the district.

Disqualifications. § 442. Constables cannot be Sheriffs, or Sheriff's deputies, nor can they be either Clerks of the Superior or Inferior Courts, nor can such officers be Constables.

Oath of a Constable. § 443. Each Constable, before entering on the duties of his office, must take and subscribe, beside the oath for all civil officers, before the Clerk of the Inferior Court of his county, the following oath: "I swear that I will duly and faithfully perform all the duties required of me as Constable of the county of—, according to the best of my ability and understanding. So help me God."

Constables appointed on an emergency—how qualified. § 444. Constables appointed to answer some sudden emergency, as in section 437, may take and subscribe said oath before the Justices of the Peace appointing them, who shall file the same in the office of the Clerk of the Inferior Court.

Constables must give bond and surety. § 445. All Constables, except those thus appointed, must, before entering on the discharge of their duties, give a bond, payable to the Justices of the Inferior Court of the county, and their successors, with two good sureties, resident in the county, in the sum of five hundred dollars, to be approved by such Justices, which shall be by the Clerk of said Court filed in his office, and recorded in a book kept for that purpose.

Bond—when filed. § 446. When such oath is taken and filed, and such bond given, such Clerk shall issue to such Constable a certificate of such facts, and make an entry thereof on his minutes, which certificate shall answer as his commission.

Clerk Superior Court must certify to filing affidavit and bond. § 447. Constables may be compelled to give additional bonds upon complaint made on oath before any one of the Justices of the Inferior Court, if, after the hearing, such Justices so order it done, and upon failure to do so, shall be removed by such Justices.

May be compelled to give additional surety. § 448. They are liable to rule, attachment, and penalties, in their respective districts, but in default of any Justice of the

Article 2.—Constables.

Peace in such district, or if there are such who refuse to serve, they may be ruled before any Justices' Court of an adjoining district, or the Superior Court. May be ruled, and how, in a Justice's Court.

§ 449. It is optional with parties to rule Constables before the Superior Court of their respective counties, in term time, on the same terms that Justices of the Peace are ruled. May be ruled in Superior Court.

§ 450. It is their duty—

1. To attend regularly all terms of the Justices' Court in their respective districts. Special duties enumerated.

2. To attend all terms of the Superior or Inferior Courts of their respective counties, when summoned by the Sheriff for that purpose.

3. To give receipts for notes, or other liquidated demands, placed in their hands for collection.

4. To pay over money promptly as collected, to the party entitled thereto, and in case of conflicting claims to any money, to report the same to the next Justices' Court of the district, where they are amenable, for its order in the premises.

5. To execute and return all warrants, summons, executions, and other process to them directed by lawful authority.

6. To perform such other duties as are or may be required of them by law, or which necessarily appertain to their offices.

§ 451. If any Constable exercises the duties of his office after removal from the district where he was elected or appointed, he is subject to a fine of fifty dollars for every such act, to be recovered before any Justice of the county in which he resides, by any one suing for the same, one half to the use of such person, the other half to the use of the county. Any person acting as Constable after he is out of office, subject to fine.

CHAPTER IX.

CORPORATE COURTS.

SECTION 452. Corporate and Police Courts—how affected by the Code.

§ 452. The organization of the various corporate and Police Courts of this State, and the laws relative thereto, are undisturbed by the adoption of this Code, unless additional, concurrent, or exclusive jurisdiction, or cumulative remedies are conferred by it upon them, or other Courts, or other magistracy, and then they are altered only to that extent. Corporate and Police Courts—how affected by this Code.

TITLE VI.

COUNTY ORGANIZATION.

CHAPTER 1. Militia Districts.

CHAPTER 2. Incorporation of Counties, County Contracts, &c.

CHAPTER 3. County Revenue.

CHAPTER 4. County Officers not before specified.

CHAPTER 5. Roads, Bridges, Ferries, Turnpikes, &c.

CHAPTER 6. The County Poor.

CHAPTER I.

MILITIA DISTRICTS.

SECTION.	SECTION.
453. Counties divided into Militia Dists.	458. Proceedings to be recorded.
454. Districts to remain the same.	459. To be transmitted to the Governor.
455. Must contain a Captain's Company.	460. Elections to be ordered by Clerk.
456. How laid out or changed.	461. Officers not removed by making.
457. Survey and compensation therefor.	462. Not to affect pending suits.

Counties divided into Militia Districts.

§453. Each county of this State is divided into Militia Districts, according to their respective territory and population liable to bear arms.

Districts to remain, &c.

§454. Such districts as at present organized, are to remain the same, until changed in the manner hereinafter prescribed.

Must contain a Captain's Company.

§455. Each district hereafter organized or changed, must contain, within its limits, at least as many persons resident at the time of the organization, liable to Militia duty, as are necessary to form a Captain's Company, according to the Militia laws, and in its formation, must not leave any older district with a less number.

How laid out or changed.

§456. Whenever it may be necessary and expedient to lay out a new Militia District, or to change the lines of old ones, the Justices of the Inferior Court may, at any time, appoint three Commissioners, citizens of the district or districts from which it is proposed to make the new district, or change the lines thereof, whose duty it shall be to lay out and define such lines, and report the same to the Clerk of such Inferior Court.

Survey and compensation therefor.

§457. Such Commissioners have authority to engage the services of a competent Surveyor, to assist them in their duties, who shall be paid for his services out of the County Treasury, the

Chapter 1.—Militia Districts.

same compensation County Surveyors have for similar services rendered a citizen.

§458. If the Inferior Courts approve their report, they shall have all proceedings in the matter entered on their minutes, after which the district laid out, or line changed or defined, shall be known and regarded accordingly. Proceedings recorded.

§459. It is the duty of such Clerk, if a new district is laid out, to transmit, instant, to the Governor, such proceedings from their minutes duly certified, and to publish them for thirty days, at the door of the Court-house, and in the public gazette where they do their official advertising. Proceedings to be transmitted to the Governor, and advertised thirty days.

§460. As soon as such is done, such Clerk must immediately order an election for the requisite number of Justices of the Peace and Constables, (for such district,) after advertising the same for thirty days, in three of the most public places of the new district. Clerk must order an election for Justices, &c.

§461. If, in laying out a new district, or in changing the lines of old districts, the residences of Justices of the Peace, or Constables, elected are included in the new district, or cut off from the district, for which they were elected, they have authority to discharge their duties for the district for which they were elected, until their terms of office expire, and their successors in such district are qualified, unless elected to the same office in the new district to which they are eligible. Making or changing Districts shall not remove officers.

§462. Suits pending in any Justices' Court, must not be changed because the residence of a defendant is included in the new district, or cut off into another district; but they must proceed as though no such change had been made. Does not affect suits pending.

CHAPTER II.

INCORPORATION OF COUNTIES, COUNTY CONTRACTS, PROPERTY AND CLAIMS.

SECTION.

- 463. Each county is a body corporate.
- 464. Suits against a county.
- 465. Contracts with the Inferior Court.
- 466. Grants, deeds, &c.
- 467. Property of the county.
- 468. County buildings—by whom erected.
- 469. Preservation of buildings, &c.
- 470. Occupancy of rooms in Court-house.
- 471. Court-houses, Jails, &c.

SECTION.

- 472. Injuries to public buildings, &c.
- 473. Dimensions & construction of Jails.
- 474. Tax—by whom levied.
- 475. On failure to levy such tax.
- 476. Public buildings, &c., to be inspected.
- 477. Duty of the Judge.
- 478. Claims against the county.
- 479. Must be presented in twelve months.
- 480. Judgments against the county.

Chapter 2.—Incorporation of Counties, County Contracts, Property and Claims.

Each county is a body corporate. §463. Every county which has been, or may be established in this State, is a body corporate with power to sue or be sued in any Court.

Suits vs. county—how brought. §464. Suits against a county must be against the Inferior Court, and personally served on the Clerk of such Court, who must make an entry thereof on his minutes, and suits by the county must be in the name of the Inferior Court.

Contracts with the Inferior Court must be in writing. §465. All contracts entered into by the Justices of the Inferior Court, with other persons in behalf of the county, must be in writing, and entered on their minutes.

Deeds made for the benefit of the county, &c. §466. All deeds, conveyances, grants, or other instruments, which have been, or may be made to any officer or person for the use and benefit of the county, vests in such county the title as fully as if made to such county by name.

The Justices of the Inferior Court control the property of the county. §467. The Justices of the Inferior Court have the control of all property belonging to the county, and may, by order, to be entered on their minutes, direct the disposal of any real property, which can lawfully be disposed of, and appoint a commission to make titles thereto, and the conveyance of such commission in accordance with such order, vests the grantee or vendee with the title of the county.

County buildings—by whom erected, &c. §468. The county buildings are to be erected and kept in order and repair at the expense of the county, under the direction of such Justices, who are authorized to make all necessary contracts for that purpose.

Duty of the Justices of the Inferior Court in relation to public buildings and records. §469. It is the duty of the Justices of the Inferior Court to erect or repair, when necessary, their respective Court Houses, and Jails, and all other necessary county buildings, to furnish each with all the furniture necessary for the different rooms, offices or cells, and to procure a fire-proof safe or safes, sufficient to hold at least all the minute books, and books containing records of judgments, books of officer's bonds, all recognizances, the bonds of administrators, and guardians, the record of wills, and of appraisements and sales, unless the Court House has a fire-proof vault; such books and papers, and all others that can, must be placed in such safes or vaults at night or when the officers are absent.

Rooms in the Court House. §470. Such Justices shall designate the rooms in the Court House to be occupied by each of the county officers, and enter the same on their minutes, which they may change from time to time as convenience may require.

Chapter 2.—Incorporation of Counties, County Contracts, Property and Claims.

§471. The Court Houses, as well as Jails, the public grounds, and other county property, are placed in the keeping of the Sheriffs of the respective counties, subject to the order of such Justices, and it is their duty to preserve them from injury or waste and to prevent intrusions upon them.

Court Houses, Jails, &c., in the keeping of the Sheriffs.

§472. If any person designedly destroy, injure or deface any of the public buildings, the appurtenances thereto, or the furniture inside, or shall use either for any indecent purpose, such person shall be guilty of a misdemeanor, and on conviction be fined, or imprisoned, or both, at the discretion of the Court, besides being liable for the damages.

Injuries to public buildings, &c.—how punished.

§473. The County Jails hereafter constructed must be of sufficient size and strength to contain and keep securely the prisoners and debtors which may be confined therein, and must contain at least three apartments, properly ventilated, so as to secure the health of those confined therein one for debtors, one for criminals, and one for females.

Dimensions and construction of jails.

§474. The Justices of the Inferior Courts of the several counties have the power to levy an extra tax sufficient to carry into effect sections 468 and 469, without a recommendation by the Grand Jury, whenever the necessities arise.

The Justices of the Inferior Courts may levy a tax.

§475. If such Justices fail to comply with the requirement of said sections, or to levy the tax, or levy an exorbitant tax, or levy one when unnecessary, their conduct may be reviewed by the Judge of the Superior Court, by mandamus or injunction, as the nature of the case may require, at the instance of any taxpayer of the county.

On failure to levy an extra tax a mandamus may issue.

§476. It is the duty of the Grand Juries to inspect all the public buildings and other property of the county, and the county records, and to report in their general presentments their condition, and if they report that such Justices have failed to comply with the law, touching the same, it is the duty of the Solicitor General of the circuit to commence proceedings against them, that they may be compelled so to do, if they do not in good faith comply by the next term of the Superior Court.

Grand Juries to inspect public buildings, records, &c.

§477. The Judges of the Superior Court shall, when necessary, call the attention of the Grand Jury to the duties required of such Justices in this chapter.

Duty of the Judge of the Superior Court.

§478. Such Justices must audit all claims against their respective counties, and every claim or such part thereof, as may be

All claims against the county to be audited.

Chapter 2.—Incorporation of Counties, County Contracts, Property and Claims.

allowed, must be registered, and the Clerk of said Justices must give the claimant an order on the Treasurer for the amount.

Must be presented within twelve months.

§479. All claims against counties must be presented within twelve months after they accrue or become payable, or the same are barred, unless held by minors or other persons laboring under disabilities, who are allowed twelve months after the removal of such disability.

Judgments against the county, how satisfied.

§480. The private property of the citizens of a county shall not be bound by any judgment obtained against the county, but such judgment, if binding, shall be satisfied from money raised by lawful taxation.

CHAPTER III.

COUNTY REVENUE.

ARTICLE 1. From Taxation.

ARTICLE 2. From other sources.

ARTICLE I.

FROM TAXATION.

SECTION.

- 481. Tax for county purposes.
- 482. Duty of Justices Inferior Court.
- 483. Failure of Grand Jury to recommend.
- 484. When there are several Grand Juries.
- 485. Creditors of the county.
- 486. Objects of a county tax.
- 487. When debts exceed amount raised.
- 488. The order must specify the object.
- 489. Must be advertised for 30 days.
- 490. Specific taxes.

SECTION.

- 491. How entered, collected, and paid out.
- 492. Collector's fees and liabilities.
- 493. Payment of county tax, &c.
- 494. Persons holding county tax.
- 495. Failing to pay, execution may issue.
- 496. Illegality—when—how tried.
- 497. Persons borrowing county funds.
- 498. Fi. Fa. or Ca. Sa. may issue.
- 499. The Inferior Court may remit.

Tax for county purposes—how levied.

§481. The Justices of the Inferior Court have power to raise a tax for county purposes, over and above the tax they are heretofore empowered to levy, and not to exceed fifty per cent. upon the amount of the State tax for the year it is levied, provided two-thirds of the Grand Jury at the first or Spring Term of their respective counties recommend such tax.

Two-thirds of Grand Jury must recommend.

Duty of Justices Inferior Court.

§482. It is the duty of such Justices to see that by the time of the organization of such Grand Jury, they shall have prepar-

Article 1.—From Taxation.

ed by their County Treasurer, under their supervision, a statement of the financial condition of the county, and the amount of tax required to discharge the county liabilities for that year, which shall be by the Treasurer presented to the Foreman of the Grand Jury, on the first day of Court, for inspection by that body.

County
Treasurer.Financial
condition of
the county.
&c.

§ 483. If from any cause such Grand Jury is not empanelled, or they adjourn without taking any action thereon, or they refuse to make such recommendation sufficient to discharge any judgment that may have been obtained against the county, or any debt for the payment whereof there is a *mandamus*, or the necessary current expenses of the year, such Justices may levy the necessary tax without such recommendation.

If the Grand
Jury fail to
recommend
a tax.

§ 484. When there are several Grand Juries empanelled during such term, the recommendation of either panel shall be sufficient authority, but if there are counter presentments on the subject, it shall be as though there had been an entire failure to report thereon.

If there be
several
Grand Ju-
ries, &c.

§ 485. The right of a creditor of a county to compel such tax levied, or of a tax payer to resist it, is the same as set forth in section 475, touching tax for building.

Creditors of
the county
and tax pay-
ers.

§ 486. County taxes shall be assessed for the following purposes:—

Objects of
levying a
county tax.

1. To pay the legal indebtedness of the county, due or to become due during the year, or past due.
2. To build or repair Court Houses or Jails, bridges or ferries, or other public improvements, according to the contract.
3. To pay Sheriffs, Jailors, or other officer's fees, that they may be legally entitled to, out of the county.
4. To pay Coroners all fees that may be due them by the county for holding inquests.
5. To pay the expenses of the county for Bailiffs at Courts, non-resident witnesses in criminal cases, fuel, servant hire, stationery and the like.
6. To pay Jurors, when by the local law they are allowed a per diem compensation.
7. To pay expenses incurred in supporting the poor of the county, and as otherwise prescribed by this Code.
8. To pay charges for educational purposes, to be levied only in strict compliance with the law.
9. To pay any other lawful charge against the county.

Article 1.—From Taxation.

When debts exceed amount raised by taxation, &c. §487. When debts have accumulated against the county so that one hundred per cent. on the State tax, or the amount specially allowed by local law, cannot pay the current expenses of the county and the debt in one year, they shall be paid off as rapidly as possible, at least twenty-five per cent. every year.

The order must specify the object, per cent. levied, and be entered on the minutes. §488. As soon as the county tax is assessed for the year, it shall be done by order of such Justices and entered on their minutes, which must specify the per cent. levied for each specific purpose. The assessment applies to every species of value or specifics which is taxed by the State.

The order to be advertised thirty days by the Clerk. §489. The Clerk of the Inferior Court must advertise, immediately, a copy of such order for thirty days, at the door of the Court House, and in a public gazette, if one is published within the limits of their respective counties, and furnish the Tax Collector with another copy, and if he fails so to do, shall be fined by such Justices not less than fifty dollars.

Taxes for a specified purpose. §490. Taxes raised for educational purposes, or the support of the poor, or any other specific purpose, must be used for such purpose respectively, and none other.

How entered, collected, and paid out. §491. All taxes so levied for county purposes must be assessed upon the Tax Receiver's books for each year, and collected by the Tax Collector, who shall pay the same to the County Treasurer, except educational tax, which shall be paid to the Ordinary.

Collector's fees and liability. §492. The Tax Collector shall be allowed the same commissions and fees for such collections as they are allowed by law for the collection of the State tax, and are liable to the same fines and forfeitures for any default or improper conduct.

Payment—how enforced. §493. Any other remedy or right allowed by law for the enforcement of the collection and payment of the State taxes, either by the Comptroller General or Tax Collector, may be used for the county taxes by the Justices of the Inferior Courts.

Persons holding county tax compelled to pay over the same. §494. Such Justices shall also have authority to compel all persons, their heirs, Executors or Administrators, who have, or may have in their hands any county money, collected for any county purpose whatever, to pay over the same.

On failure to pay, execution may issue. §495. On failure to pay the same, such Justices shall cause their Clerk to issue executions against such persons and their securities, if any, for the full amount appearing to be due, as the Comptroller General issues executions against defaulting Tax Collectors.

§496. If such execution shall issue for too much, or if defen-

Article 1.—From Taxation.

dant denies, on oath, owing any part thereof, he may, by filing an affidavit of illegality, according to the rules governing other illegalities, cause an issue to be formed thereon, which shall be tried by a special jury at the first term of the Superior Court thereafter.

Illegality—
on what
grounds.

When and
how tried.

§ 497. The provisions of the foregoing four sections are applicable to all persons and their sureties, who may borrow, or pretendedly borrow, any county money from any person having custody thereof, and shall be, in all respects, held as holders of county funds.

All persons
borrowing
money be-
longing to
the county
subject to
the 4 preced-
ing sec-
tions.

§ 498. Where the Justices of the Inferior Court are authorised to issue *fi. fas.*, they are also authorized to issue *ca. sas.* on the same terms as other plaintiffs.

Fi. fa. or
ca. sas. may
issue.

§ 499. In all cases where persons have been overtaxed, or for any other cause taxes are claimed to be remitted, refunded or in any manner claimed against, the Inferior Court shall be authorized to hear and determine such application to the extent of the interest of the county therein.

The Justices
of the Infe-
rior Court
may remit
the county
tax.

ARTICLE II.

FROM OTHER SOURCES THAN TAXATION.

SECTION.

- 500. Sources of the County Revenue.
- 501. Retail Licenses, Shows, &c.
- 502. License issued for one year.
- 503. Retailing spirits without license.
- 504. Exhibiting shows, &c.
- 505. Peddling without license.
- 506. Tax-payer may demand a license.

SECTION.

- 507. Violations of preceding sections.
- 508. Duty of Clerk in relation to shows.
- 509. Special defence—how made.
- 510. Damages against defendants.
- 511. Not to interfere with Penal Code.
- 512. Money raised—how appropriated.
- 513. The Clerk failing to pay over money.

§ 500. All sums which are paid into the County Treasury, for the following accounts, make a part of the county revenue, viz:

Sources of
county reve-
nue other
than by tax-
ation.

1. For the authorized sale of any county property, unless otherwise directed.
2. For the rent or hire of any county property.
3. For shows or exhibitions.
4. For licenses to sell spirituous liquors in any quantities.
5. From estrays.
6. From licenses to peddle.
7. From any other sources.

Article 2.—From other Sources.

Retail li-
censes, exhi-
bitions and
shows.

§ 501. The county charges for such licenses are as follows :

- To retail spirituous liquors,..... \$25 00
- To sell spirituous liquors, not by retail, in quantities less than one gallon..... 5 00
- To peddle within the county, unless otherwise provided by the Inferior Court under the law,..... 50 00
- To exhibit shows with horses,..... 10 00
- To exhibit animals, beasts and the like,..... 10 00
- To exhibit pictures or figures..... 5 00
- To exhibit any other show, not less than \$5, nor more than \$25, as the Justices of the Inferior Court may order.
- To exhibit theatricals, or musical entertainments, for profits to the proprietor, not more than \$5 on each exhibition, and subject to contract with the Court.

Licenses, ex-
cept for ex-
hibitions, is-
sue for one
year.

§ 502. All such licenses, except exhibitions, are for the term of one year, extending to the county limits ; but license to retail or sell spirituous liquors, will only authorize, either by the person in whose name it issues, or his clerk, to sell at some one fixed place in the county, which must be specified in the license.

Retailing
without li-
cense.

§ 503. If any person retails or sells spirituous liquors, without first obtaining such license, or, having obtained it, sells at any other or more places than the one fixed in the license, or transfers it, and allows it used by any other person than himself, or an authorized clerk, he forfeits to the county, for each violation, twenty-five dollars.

Exhibiting
shows, &c.,
without li-
cense.

§ 504. If any person exhibits any show, without first obtaining such license, or exhibits a show different from that for which he obtained license, he forfeits to the county three times the cost of license for each exhibition.

Peddling
without li-
cense.

§ 505. If any person peddles without first obtaining such license in counties where the Justices of the Inferior Court take no action regulating peddling, he forfeits to the county one hundred dollars for the first act of peddling, and for each month thereafter, twenty-five dollars more.

Any Tax-
payer may
demand a li-
cense.

§ 506. Any Tax-payer of a county may call upon any person in pursuit of any occupation for which a license must be obtained, to exhibit his license, and if he fails so to do, it shall be sufficient grounds, on making affidavit of the fact, to cause such forfeiture, and if, on investigation, it appears that he has such license, he forfeits the sum of ten dollars and costs.

§ 507. If any Justice of the Inferior Court, or Clerk thereof, of

Article 2 —From other Sources.

their own knowledge, knows of the violation of the foregoing three sections, or if any person will make affidavit of such fact, it is the duty of the several Clerks of the Inferior Courts of this State, unless they know to the contrary, to issue a process directed to all, and singular the Sheriffs and Constables of this State, for the amount of such forfeit, commanding them to levy on sufficient of the property, real or personal of the defendant, to satisfy the same and costs, and to levy and sell the same as in case of attachments, and in default of finding goods enough for such purpose, to arrest such defendant, and him safely keep as in cases of persons arrested under *ca. sa.*; such process must be returned to the Court from whence it issues.

Violations of the 3 preceding sections—how punished.

Clerk to issue process.

Levy, sale, &c.

Def. may be arrested.

§ 508. If any show is on exhibition in any county without the license required, it is the duty of the Clerk of the Inferior Court, instanter, to place such process in the hands of such officer, and if, on presentation, the license fee required, and all costs are instanter paid, it shall discharge the same, but not otherwise; but if such course is not taken, it is no waiver of such forfeiture.

Duty of the Clerk of the Inferior Court in relation to shows.

§ 509. Persons against whom such process may issue may arrest the same by swearing that they have not violated the law, on account of which process has issued, and by otherwise complying with the provisions of the section against persons holding county funds, and which shall be returned and tried in the same manner.

Persons proceeded against may defend.

§ 510. If on the trial of such issue the jury who tries shall believe that such affidavit was filed for delay only, or is without any excuse to sustain it, they shall so state in their verdict, and if they so find, the defendant shall pay twenty-five per cent. additional.

Damages against defendants.

§ 511. The penalties and forfeitures herein before set forth are not to interfere with any provision of the Penal Code, that is or may be enacted, making such acts penal.

Not to interfere with the Penal Code.

§ 512. The moneys arising from such licenses are to be paid to the County Treasurer, to be used for county purposes, but one-half of moneys arising from forfeitures go to the informers.

Money how appropriated.

§ 513. When any Clerk of the Inferior Court shall neglect to pay over to the County Treasurer, if *he* is not County Treasurer, or shall retain in his hands any money collected on account of the county or belonging thereto, the Justices of the Inferior Court may compel him to do so by rule at any time, and if he then fails so to do they may issue *fi. fa.* against him and his

Proceedings against for failing to pay over money in his hands.

Article 1.—County Treasurers.

securities as against defaulting tax collectors, and the proceedings then and afterwards shall in every respect be the same.

CHAPTER IV.

COUNTY OFFICERS NOT HEREIN BEFORE SPECIFIED.

ARTICLE 1. County Treasurer.

ARTICLE 2. County Surveyor.

ARTICLE 3. County Coroner.

ARTICLE I.

COUNTY TREASURERS.

SECTION.

- 514. Election and term of office.
- 515. Failure to elect at a regular time.
- 516. When such election should be held.
- 517. Must give bond and take an oath.
- 518. Term of office.
- 519. Vacancies how filled.
- 520. Qualifications.
- 521. Clerk being appointed Treasurer.
- 522. Oath of the County Treasurer.
- 523. Amount of his bond.
- 524. Appointees to fill vacancies.
- 525. County funds by whom received, &c.
- 526. His office—where kept.
- 527. Treasurer's duty, &c.
- 528. His duty in making payments.

SECTION.

- 529. Books to be furnished.
- 530. Books, &c., where deposited.
- 531. Debts of county, what order paid.
- 532. County orders—when payable.
- 533. Persons holding orders.
- 534. Orders not paid for want of funds.
- 535. County orders negotiable.
- 536. Treasurer shall not purchase.
- 537. Buying at a discount, &c.
- 538. Clerk failing to render a statement.
- 539. Duty of the Treasurer, &c.
- 540. Both offices held by same person.
- 541. Treasurer failing to pay over.
- 542. Must turn over books, &c.
- 543. Final settlement on retiring.

County
Treasurer—
how elected,
and term of
office.

§514. County Treasurers are annually on the second Monday in January appointed by the Justices of the Inferior Court of each county, except every fourth year, when there is a regular election for such Justices, when it must be done as soon after their qualification as possible.

Justices of
the Inferior
Court failing
to attend.

§515. If there are not as many as three of such Justices in commission, who meet at the time designated for such appointment, it may be adjourned from time to time until there are at least three present.

When the
appointment
should be
made.

§516. Such appointment should take place as long as possible before the first session of the Superior Courts in each county for the year.

Must take an
oath and
give bond.

§517. No appointment is effectual until bond and security is given and the oath of office taken.

Article 1.—Connty Treasurers.

§518. When once appointed or elected, and qualified, they hold their offices until their successors are qualified, unless sooner removed, and they may be removed in the same manner that Clerks of the Superior Courts may be, to be judged of by the Justices of the Inferior Court, unless elected by the people, and in that case by the Superior Court.

May be re-
moved from
office, and
how.

§519. Vacancies are filled by the appointment of such Justices, whether the Treasurers are originally elected by the people or appointed by them.

Vacancies—
how filled.

§520. No other conditions of eligibility are required save those that apply to all other officers, but no other officer can be County Treasurer except a Clerk of the Inferior Court.

His qualifi-
cations.

§521. When a Clerk of the Inferior Court is thus elected or appointed, he shall take the oath and give the bond required of a County Treasurer, but the securities on his Treasurer's bond shall be different from those on his Clerk's bond, unless they are clearly able to satisfy both. His oath of office must be entered on the minutes of the Inferior Court and filed in the office of the Ordinary, and his official bond must be filed and recorded in said office.

The Clerk of
the Inferior
Court being
appointed
Treasurer
must take an
oath and
give bond.

The oath and
bond must
be recorded.

§522. County Treasurers before entering on the duties of their office, besides the oath required of all civil officers, must take the following oath, viz: "I, ——, do swear I will faithfully collect, disburse and account for all monies or other effects of the county, and otherwise faithfully discharge all the duties required of me by law, as County Treasurer. So help me God."

The form of
the oath.

§523. They shall also within ten days from their election or appointment, give a bond payable to the Justices of the Inferior Court of the county with securities to be by them approved, in a sum which in their judgments will be double the amount of the county tax for the ensuing year, receipts from other sources and cash on hand.

Amount of
his bond.

§524. The bonds of appointees to fill vacancies shall be likewise in their discretion, taking into consideration the amount that may come to their hands and for double such amount.

Appointees
to fill vacan-
cies must
give bond.

§525. All county funds are to be paid to and disbursed by the County Treasurer, except such as may be specially excepted by law, and then to be collected and disbursed as specially directed.

County
funds, by
whom re-
ceived and
paid out.

§526. He must keep his office at the County Site, or at some place within one mile of the Court House.

Office—
where kept.

Article 1.—County Treasurers.

Duty of the County Treasurer in collecting.

§527. It is their duty—

1. To diligently collect from all officers and others all county dues.

2. To examine the minutes and execution docketts of the different Courts of the counties, to demand and receive all monies appearing to be due thereon, and to institute proceedings against defaulters.

Duty of County Treasurer in paying out.

3. To pay without delay, when in funds, all orders, according to their dates, (or other debts due) and when not in funds as hereinafter prescribed.

Must take receipts.

4. To take a receipt on each order when paid and carefully file it away.

5. To keep a well bound book in which shall be entered all receipts, stating when received, who from, and on what account, and all amounts paid out, stating when paid, to whom, and on what account.

Shall keep a record of the indebtedness of the county.

6. To keep a well bound book in which shall be entered a full description of all county orders, or other forms of indebtedness, as they are presented, to record a copy of the orders of the Inferior Court levying county taxes.

Shall exhibit the same to the Grand Jury.

7. To exhibit to the first Grand Jury at the first session of the Superior Court of each year, a full statement of the condition of the County Treasury up to that time, and on the second Monday in January annually to file with the Clerk of the Inferior Court a full statement of his account, accompanied by his vouchers for the preceding year, together with his estimate of the indebtedness of the county for the ensuing year, and the means of providing therefor, and to place his books before either of said bodies for examination when called upon.

A statement of the county funds to be filed with the Clerk of the Inferior Court.

8. To appear before either of said bodies to render an account of his actings and doings as County Treasurer, and to exhibit his books and vouchers whenever ratified.

Annual statement to be advertised.

9. To publish at the door of the Court House, and in a public gazette, if there is one published in the county, a copy of his annual statement to the Justices of the Inferior Court.

Books, &c., to be furnished at the county.

§528. All books and stationery the County Treasurer may require must be furnished at the expense of the county.

Books, vouchers, &c.—when deposited.

§529. When the books of such Treasurer are full, they, together with the vouchers or other files relating thereto, or connected with the office, must be deposited in the office of the

Article 1.—County Treasurers.

Clerk of the Inferior Court and afterwards be part of their records.

§ 530. When there are funds enough to pay all outstanding orders and other forms of indebtedness due, which the Treasurer may be authorized to pay, they may be paid indiscriminately without regard to their dates; when there is enough to pay all dated anterior to some particular dates, all such may be likewise paid indiscriminately; when there is not enough to pay all of equal degree, they shall be paid rateably; under all other circumstances they shall be paid in the order of their dates.

The order in which the debts of the county shall be paid.

§ 531. No order shall be paid until after five days from its date and delivery, unless otherwise specially ordered, that the Clerk of the Inferior Court may furnish in the meantime the County Treasurer with a full statement of all orders issued, which shall be by him immediately registered, and when so registered shall be paid according to law without further notice to the Treasurer previous to the time of payment.

County orders—how paid.

§ 532. If any person holding county orders shall fail to present them by the first day of December of each year, to the County Treasurer for payment, they shall be postponed, to all orders which were so presented and not paid for want of funds.

Persons holding county orders failing to present them.

§ 533. On the first day in December of each year such Treasurer shall make an entry of all orders entitled to payment, which were not so presented for payment, and what orders not of equal dignity have been paid instead, in whole or in part, and what others are entitled to payment before such non-presented orders. Persons holding such orders, who present them without receiving their pay before said day, may have the Treasurer annually to mark thereon "*presented*," the day of presentation, and not paid for want of funds.

Orders not paid for want of funds.

§ 534. All county orders are negotiable by delivery or endorsement, and the endorser liable according to the terms of his endorsement, as in commercial paper, but no such transfer can take place so as to prevent a Treasurer from setting off any sum that the payee may be due the county at the date of the order.

County orders negotiable.

§ 535. Such Treasurer is forbid to buy up any county orders or claims for less than their full par value, either by himself or agents, directly or indirectly, or by paying for them in property at an estimated value above its true value.

Treasurer shall not purchase orders at a discount.

§ 536. If any County Treasurer shall thus buy up any county order or claim, or refuse to pay an order when he has funds to

Article 1.—County Treasurers.

Penalty for buying orders at a discount, or refusing to pay.

pay the same, or illegally postpone one, he shall be removed from office on complaint and proof being made to the Justices of the Inferior Court, and is moreover guilty of a misdemeanor, and upon conviction shall be fined not less than \$100 nor more than \$500.

The Clerk failing to render a statement to the Treasurer.

§ 537. If any Clerk of the Inferior Court shall fail to render in at the time required, to the County Treasurer, a full statement of the county orders as they are passed, (except from Providential cause or unavoidable accident,) he is guilty of a contempt of Court, and shall be fined not less than \$100 for each failure; and in case such Justices fail so to fine such Clerk, he is also guilty of a misdemeanor, and, on conviction, shall be likewise fined.

Shall be fined not less than \$100.

Duty of the Treasurer on the failure of the Clerk to make returns.

§ 538. If the Clerk is unable to render such schedule, or fails so to do by the end of five days, it is the duty of the County Treasurer to examine the proper books, minutes or files of such Clerk, and take therefrom such schedule, and on failure so to do, except from Providential cause, he incurs the same penalty that the Clerk does.

When the office of Treasurer and Clerk is held by the same person.

§ 539. When the Treasurer and the Clerk of the Inferior Court are the same person, separate books must be kept, the same separate duties must be performed, so far as possible, and if a Clerk who is Treasurer is removed as Clerk, it works his removal as Treasurer.

County Treasurer failing to pay over money, execution may issue.

§ 540. When the County Treasurer, at any time, fails to pay any order which is entitled to payment, or other legal demand upon him, or to pay any balance that may be in his hands to his successor, or to the person entitled to receive it, the Justices of the several Inferior Courts may issue execution against him and his sureties for the amount due, as against a defaulting Tax Collector.

County Treasurer must turn over to his successor books, &c.

§ 541. In case of the resignation, expiration of the term, or removal from office, such Treasurer, or if he is dead, his personal representative must state his accounts, and deliver all the money, books, papers and property of the county to his successor, as other officers do, who must report the same immediately to the Justices of the Inferior Court.

Final settlement of retiring Treasurer.

§ 542. When such County Treasurer, or his representative, has made a fair and full statement of all his accounts and liabilities as such, an exoneration of himself and sureties, together with the details of such settlement, must be entered on the minutes of the Inferior Court, and be final except for fraud.

NOTE.—In many counties the Treasurer is elected by the people—see local acts as to each county, none of which are included in this Code, or repealed by its adoption, unless expressly mentioned.

Article 2—County Surveyors.

ARTICLE II.

COUNTY SURVEYORS.

SECTION.

543. How elected & removed from office.
 544. Failing to elect at the regular term.
 545. Appointed by the Court.
 546. His oath and bond.
 547. May be removed from office.
 548. One for each county.
 549. Assistant must take an oath.
 550. May keep his office at his residence.

SECTION.

551. General duty of County Surveyor.
 552. Fees for surveys—how paid.
 553. Survey made between counties.
 554. Charges for surveys—how contested.
 555. Surveys and plats—when evidence.
 556. When there is no County Surveyor.
 557. Others acting as County Surveyors.
 558. Making false survey—how punished.

§ 543. County Surveyors are elected, commissioned, qualified and removed as Clerks of the Superior Courts are, and hold their offices two years. County Surveyor—how elected, &c.

§ 544. In case there is a failure to elect a person who is commissioned and qualified at the regular time, or a vacancy occurs, the Justices of the Inferior Court must appoint such Surveyors, which appointment takes effect as prescribed in the case of County Treasurers. On failure to elect at regular time.

§ 545. If a County Surveyor derives his authority from appointment, he needs no commission beyond the order of such Justices entered on their minutes, of which appointment the Governor of the State must be informed by their Clerk without delay. If appointed by the Court he needs no commission.

§ 546. Before entering on the duties of his office, besides the oath required of all civil officers, he must take the following: His oath.

“I, ———, swear that I will, to the best of my skill and knowledge, discharge the duties of Surveyor of ——— county, and that I will not admeasure, survey or lay out any land in my capacity as such, or knowingly permit or cause it to be done, without a warrant first obtained for that purpose. So help me God.” He shall also, at the same time, give bond and security in the sum of one thousand dollars.

§ 547. Whether appointed or elected, besides the causes of removal, which apply to all officers, he may be removed by the Justices of the Inferior Court, for want of capacity, on the same proceeding before them and by them to be decided, that officers are removed in the Superior Courts. May be removed by the Justices of the Inferior Court.

§ 548. There must be one for each county, and he is empowered to appoint one or more assistants or deputies, for whose conduct he is responsible. Must be one for each county. May have an assistant.

Article 2.—County Surveyors.

Must take an oath. § 549. When such an assistant is appointed, he must take the same oath the Surveyor takes, and the fact of the appointment must, at the same time, be entered on the minutes of the Inferior Court.

May keep his office at his residence. § 550. The County Surveyor may keep his office at his place of abode, if within the limits of the county.

§ 551. It is his duty—

The duty of the County Surveyor. 1. To punctually observe and carry into effect all such orders as he may receive from the Surveyor General, or other officer who may lawfully command him.

2. To admeasure and lay off dower, to partition lands, to make re-surveys, to give plats of all surveys, and to administer all oaths required by law in such cases.

Must survey county and district lines. 3. To survey county lines and district lines, or other surveys, in which his county may be interested, whenever required by the Justices of the Inferior Court.

4. To execute all surveys required by the rule of any Court of competent jurisdiction.

Must keep a record. 5. To keep a well bound book in which shall be entered plats of all surveys made by him, with a minute of the names of the chain-bearers, when executed, by whose order and to whom plat delivered, if any, which book shall belong to his office, and be turned over to his successor, and, when full, shall be deposited in the office of the Clerk of the Inferior Court.

Fees for surveys—how paid. § 552. When surveys are made for private or corporate benefit, the fees are to be paid by the person or persons, or corporation who orders the survey, when by order of the Justices of the Inferior Court, out of the county funds, and when, by rule of Court, unless otherwise agreed upon, they are to be taxed in the bill of costs, and shall have the effect of a judgment lien upon the land surveyed, if not paid by the party bound for costs.

Survey between counties. § 553. When a survey is made by agreement, or in compliance with the law, between two or more counties, the County Surveyor who performs the survey is to be paid by his county, who must collect from the other counties their proportion.

Payment of Surveyor's fees—how enforced. § 554. If after a County Surveyor has made a survey for any person, who neglects to pay him, such Surveyor, upon making oath before the Clerk of the Inferior Court of his county of the performance of such service, and its value, such Clerk shall issue a *fi. fa.*, in the name of the Justices of the Inferior Court, for the use of such Surveyor, against such defaulter, who may defend

Article 3.—County Surveyors.

himself therefor, in the same manner as persons against whom executions issue who detain county funds.

§ 555. Surveys or plats of land made by the County Surveyor, under order of Court, and on notice to all the parties of lands within his county, signed by him officially, and stating the contents, courses, distances, of any land surveyed by him, are presumptive evidence of the facts, if all the requisites of the law touching such surveys and the reports thereof are complied with.

Surveys or
plats of land
when evi-
dence.

§ 556. When there is no County Surveyor any competent person, a citizen of the county, may perform his duties, when specially required, if first sworn to do the same skillfully, faithfully, and impartially, to the best of his knowledge, or in default of such person the County Surveyor of any adjoining county may officiate.

When there
is no County
Surveyor,
who may
act.

§ 557. Persons performing such service are on the same footing as County Surveyors as to the special service rendered, and are personally liable as such Surveyors are officially.

Persons act-
ing as Coun-
ty Surveyor
liable as
such.

§ 558. When any County Surveyor, or other person acting as such, has knowingly surveyed land as vacant land which is not, or so made any other false survey, he is guilty of a misdemeanor, and on indictment and conviction, shall be imprisoned not longer than six months.

False survey
and penalty.

ARTICLE III.

CORONERS.

SECTION.	SECTION.
559. How elected and removed from office.	567. May disinter dead bodies.
560. Justices Inferior Court may appoint.	568. Subject to indictment.
561. Coroner's oath.	569. Inquest unnecessary in certain cases.
562. Must give bond and surety.	570. Death by accident, &c.
563. Additional surety may be required.	571. Costs paid out of county funds, &c.
564. Jailor, when Sheriff is imprisoned.	572. On conviction, costs a part thereof.
565. Shall serve process in certain cases.	573. Justice of the Peace may act, &c.
566. Shall hold inquests in certain cases.	

§ 559. Coroners are elected, commissioned, qualified and removed, as Clerks of the Superior Courts are, and hold their offices for two years.

Coroners—
how elected
and remov-
ed.

§ 560. The Justices of the Inferior Courts appoint Coroners, on the same terms and in the same manner that they do County

Article 3.—County Coroners.

Justices of the Inferior Court may appoint.

Coroner's oath.

Surveyors, and which appointments take effect as those of County Treasurers.

§ 561. Before entering on the duties of his office, besides the oath required of all civil officers, he must take the following: "I swear that I will well and truly serve the State of Georgia in said office, and will faithfully and truly execute all writs and precepts to me directed, or which I may lawfully execute, when placed in my charge, and return the same according to the best of my knowledge, skill, and judgment; that I will, in no case, knowingly use or exercise my office illegally, corruptly, or unjustly, and that I will not, under any pretence, take, accept, or enjoy, any fee or reward pertaining to my office, other than such as are allowed by law, but that I will, in all things touching the duties of my office, demean myself honestly, fairly and impartially, according to the best of my ability. So help me God."

Must give bond and surety.

Liable as Sheriffs.

Additional bond may be required.

Keeper of Jails—when.

Shall serve process—in what cases.

Shall hold inquests—in what cases.

§ 562. He must likewise, at the same time, give bond and surety in the sum of five hundred dollars, which may be for a greater or less amount, according to the local law now or hereafter in force. He is liable for retaining monies collected, or otherwise failing to do his duty, as Sheriffs are, and are subject to the same proceedings.

§ 563. When a Coroner has to act in the place of a Sheriff, generally or specially, the Justices of the Inferior Court may require of him an additional bond, in such sum and with such sureties as in their discretion they may think sufficient to meet the contingency.

§ 564. He is keeper of the Jail, when the Sheriff is imprisoned or absent from the county leaving no deputy.

§ 565. When a Sheriff is disqualified, and it does not appear upon the face of the proceedings, or he or his deputy refuses to perform a service, if any person makes affidavit thereof, the Clerk of the Court from which it issues shall place the process in the hands of the Coroner for execution, and may compel its return to his office for such purpose.

§ 566. It is the duty of the Coroner to take inquests—

1. Of all violent, sudden, or casual deaths.
2. Of all deaths in prison, without an attending physician.
3. Of all dead bodies found, whether of persons known or unknown.
4. Of all dead bodies of persons who have died or disappeared under suspicious circumstances.

Article 1.—County Coroners.

5. Of the dead bodies of persons of whom affidavit may be made, that they came to their death by violence or foul play.

6. Whenever ordered by a Court having criminal jurisdiction.

§ 567. They are authorized, in order to carry into effect the preceding section, to disinter any body already buried, and, like a Sheriff, to command the power of the county for that purpose.

May disinter dead bodies.

§ 568. If any person makes affidavit to facts to authorize such proceeding by the Coroner, or the Coroner does so of his own motion, and it is done without good grounds, or from malice or mischief, the person so swearing, or the Coroner so officiating, is subject to indictment, and if convicted shall be fined not less than one hundred dollars and imprisoned not less than thirty days. In such cases all the circumstances shall go to the jury, and if they believe there were reasonable grounds for the disinterment at the time it took place, it is their duty to acquit.

Person making affidavit subject to indictment.

On conviction shall be fined and imprisoned.

§ 569. When persons have come to their death by violence, and there are witnesses to it, and the person accused is under arrest and undergoes an examination before a competent tribunal, there need not be an inquest.

An inquest unnecessary.

§ 570. There also need be no inquest where persons come to their death by accident or act of God, in presence of witnesses, and there is no reason to suspect foul play, and no person makes affidavit of facts raising such suspicions.

Death by accident or the act of God.

§ 571. The costs of such inquest shall be paid out of the county funds.

Cost to be paid by the county.

§ 572. If any person is convicted of murder or manslaughter in a case where an inquest has been held over the body of the person for slaying whom he is convicted, the costs of the inquest makes a part of the costs of the conviction, and must be so charged.

If the party charged is convicted, the costs make a part of the conviction.

§ 573. When there is no Coroner in a county, or he is absent from the county when needed, or will not or cannot take an inquest, any Justice of the Peace of the county may act as Coroner.

A Justice of the Peace may act.

Article 1.—Public Roads.

CHAPTER V.

ROADS, BRIDGES, FERRIES, TURNPIKES, CAUSEWAYS, CROSSINGS, &c.

ARTICLE 1. Public Roads.

ARTICLE 2. Road Commissioners and their Duties.

ARTICLE 3. Bridges, Ferries, Turnpikes and Causeways.

ARTICLE 4. Railroad Crossings.

ARTICLE 5. Private Ways.

ARTICLE I.

PUBLIC ROADS.

SECTION.

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 584. Laid out the nearest and best way.
 585. Persons subject to road duty.
 586. What roads to be worked.
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 589. Must be summoned one day.
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 591. Duty of the overseer.
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 594. Defaulters fined one to three dollars.
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 599. Failing to work after acceptance.
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SECTION.

601. Defaulters may file excuse.
 602. Executions against defaulters.
 603. Fine money—how appropriated.
 604. Constables collecting, &c.
 605. Lien of *ji. fa.*
 606. Timbers used for road purposes.
 607. Public roads measured and posted.
 608. Sign boards to be put up at forks.
 609. Failure to put up posts, &c.
 610. Overseer may be indicted.
 611. Railroad hands—how exempted.
 612. Land owners aggrieved, &c.
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 614. Trial—how conducted.
 615. Notice to Justices, &c.
 616. The time and place of meeting.
 617. Objections to jurors.
 618. Continuances, &c.
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 620. Certiorari.
 621. Final judgment and payment.
 622. Value of the land—how estimated.
 623. Consequential damages.
 624. Overseer may be fined.
 625. Altering or obstructing public roads.
 626. By a fence or tree.
 627. Main streets in towns or cities.

Public roads §574. All roads laid out for public use by an act of the General Assembly, if not otherwise provided, or by an order of the Justices of the Inferior Court, are declared to be public roads.

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§575. They shall be cleared of all trees, stumps, grubs and bushes, at least thirty feet wide, and of such limbs of trees as may incommode horsemen or carriages; stumps must be cut as nearly even with the surface as possible, and the carriage track must be at least five feet six inches wide.

Shall be thirty feet wide.

§576. All bridges or causeways over small water courses, and causeways over swamps or low lands, shall be made and kept in repair by hands subject to work on roads, the pieces shall be laid across the road at least sixteen feet long, well secured, made fast, and covered with earth.

Bridges and causeways.

Shall be sixteen feet wide.

§577. The Justices of the Inferior Court must lay off their respective counties into road districts, and apportion the roads and hands so as to divide the labor and expense, on account of roads, causeways and bridges, equally throughout said counties, all of which proceedings must be entered on the minutes.

Road districts laid off and hands apportioned.

§578. They must cause their Clerk to keep registered in a book in his office a list of all public roads, and road districts, in the county, to be added to and corrected from time to time as new roads or new districts are laid out or old ones altered or discontinued.

Public roads and road districts to be registered.

§579. On application to them for any new road, or alteration in an old road, they shall appoint three road commissioners, residing as near where such road is intended to pass as possible, and if they find it of public utility they must proceed to mark it out, and make their report under oath to such Justices, that it was laid out and marked conformably to law.

Public roads—how laid out or altered.

§580. If such Justices, on the investigation had, are willing to grant such road, or make alteration in an old road, they shall cause the Clerk to publish a citation for thirty days at the door of the Court House, and in a public gazette, if there is one in the county, giving a particular description of the new road, or the alteration, notifying all persons that on and after a certain day therein named, said new road or alteration will be finally granted, if no good cause is shown to the contrary.

Notice of application must be advertised for thirty days.

§581. All persons, their overseers or agents, residing on land which such road goes through, except the applicants for the road or alteration, must be at the same time notified in writing, personally or by leaving it at their most notorious place of abode, that they may put in their claim for damages or forever after be estopped.

Persons in possession to be notified.

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Void roads. §582. All public roads established without a substantial compliance with the provisions of the last named sections, are void.

Application must be in writing. §583. Applications for the discontinuance of an old road, in whole or in part, must likewise be made to such Justices in writing, and likewise published before it shall take effect.

Must be laid out the nearest and best way. §584. All public roads shall be laid out the nearest and best way to the place to which they are intended, and as little as can be to the prejudice of any private person's enclosed grounds.

Persons subject to do road duty. §585. All white male inhabitants between the ages of sixteen and forty-five, all free male negroes and male slaves not under sixteen nor exceeding sixty years of age, are subject to work on the public roads, except such as are specially exempted.

On what roads hands compelled to work. §586. The same road hands shall not be compelled to work on more than one public road, which must come within three miles of their residence, except in opening a new road, when all the road hands of the road district are subject to work upon it.

Not required to work more than five days. §587. Road hands are not required to work exceeding five days at one time consecutively, nor more than fifteen days altogether, in twelve months, unless sudden emergencies require the immediate repairing of the roads, causeways and bridges within their respective districts.

A list of hands to be furnished. §588. The several owners, managers or employers of male slaves shall, whenever required, furnish the overseers of the district with a list of them in writing, who are liable to work on the public roads, signed by them, under a penalty of paying three dollars for each male slave so liable to road duty and whose names are not furnished, to be collected as fines for not working the road.

Penalty for refusing. §589. Overseers of roads in their respective districts shall summon all persons liable to road duty, within the district, at least one day before the time of working.

Hands to be summoned one day. §590. Such summons must state the road to be worked, the time and place for meeting, and the implements required.

What the notice must contain. §591. Such overseers shall superintend the working on the roads assigned them by the commissioners, cause the same to be worked and repaired in the best possible manner, and make a return thereof to the commissioners in writing within five days after each time of working, of all defaults and deficiencies which may have taken place.

Overseer—his duty. §592. When any road or bridge or causeway may become suddenly impassable, it is the duty of such overseer to call out as

Defaulters to be returned.

Roads, &c., suddenly becoming impassable.

Article 1.—Public Roads.

many hands as necessary to repair the same after giving one day's notice.

§ 593. They shall take notice of the time such hands are employed on such special workings, and shall excuse them from road duty an equal number of days out of the whole number all hands are required to work during the year.

Time of special working to be deducted.

§ 594. Every individual, by himself or slaves, liable to road duty, who, being duly summoned to work, shall neglect to obey such summons, and to carry the implements as ordered, or appearing with or without the implements, neglects or refuses faithfully to work, forfeits not less than one, nor more than three dollars for each hand for every day he or they fail to work.

Defaulters to be fined not less than \$1 or more than \$3.

§ 595. If any other instrument than ordinary farming tools are necessary to keep the road in repair, the overseer may receive them in exchange for the labor of hands, or may apply to the Justices of the Inferior Court, who may authorize him to contract for such as may be necessary, and pay for the same out of the County Treasury.

Extraordinary implements—how obtained.

§ 596. When a person liable to road duty makes an application to the Road Commissioners for a proportion of road for himself and hands to work on and keep in repair, they shall parcel off to each applicant some equal and just portion of said road, to be increased or diminished, according to the number of hands, and to be judged of by the commissioners.

Public roads may be apportioned to applicants.

§ 597. Persons to whom portions of roads are thus apportioned, must make annual returns to their respective commissioners, whenever they require them, of the number and names of their hands liable to road work, and after they have received and put in good repair their respective portions, such hands shall not be transferred to any other part of the road, or compelled to do any other road work, so long as they perform their work satisfactorily to the commissioners.

Duty of persons taking a portion of the road to work.

§ 598. If the applicants do not accept the portion of road assigned them by the commissioners, they must still work in common with the other hands of their road districts.

Persons refusing to accept a portion of such roads.

§ 599. If, after having accepted such portions, they neglect to keep them in good repair, they are liable to all the penalties and forfeitures to which commissioners are liable for neglect of duty, besides the usual road fines on the hands.

Penalty for failing to keep such portion up.

§ 600. If such commissioners assign any person a portion of road thus to work, which, taking into consideration his number

Complaint against commissioners.

Article 1.—Public Roads.

of hands as compared to the number liable to do road duty on such road, is not an equal share of the labor, any white male road-worker of the same road and district, may complain to the Justices of the Inferior Court at any time, and on giving such person three days' notice thereof in writing, such Justices may summarily hear all the evidence, and if they believe the complaint is just, they shall revoke such grant by the commissioners, and so have them instantly informed by their Clerk.

Three days' notice.

Defaulters may file excuse.

Commissioners must give ten days' notice.

§ 601. All defaulters must file their excuses, if any, on oath before the commissioners, who must meet at some place within the district for fining defaulters, of which place of meeting they shall give ten days' notice, in writing, at one or more of the most public places in the district, and no other notice shall be necessary.

Executions against defaulters.

§ 602. Such commissioners must issue executions under their hands and seals, against all defaulters who fail to render a good excuse, directed to any lawful Constable, who shall levy and collect the same as executions issued from the Justices' Courts.

Fines—how disposed of.

§ 603. When such *fi. fas.* are collected within ten days thereafter, the amounts must be paid to any one of the commissioners, one-half of which shall be paid to the overseer having had charge of the hands fined; the other half to the County Treasurer, to be used in the building or repairing of bridges.

Constables may be ruled.

§ 604. If Constables neglect their duty in collecting such *fi. fas.*, or fail to pay over the money, they are subject to rule and suit at the instance of such commissioners, as though the *fi. fas.* had issued from a Justices' Court.

Lien of commissioners' judgment.

§ 605. The liens of such judgments are the same as any other judgment, and claim according to their priority in the distribution of money, except that no property is exempt therefrom, and if illegalities or claims are interposed, they must be returned as though issued from a Justices' Court, in which the road district is situated in whole or in part.

Illegality or claim.

Timbers may be used.

§ 606. Overseers are authorized to make use of any timbers for the use of the roads, and may make contracts with owners of land for other timber, if indispensable, and if they disagree as to the value, the overseer shall appoint one arbitrator and the owner another, who, without further formality, shall assess the value, and if they disagree, to call in an umpire, whose decision is final, the valuation so awarded must then be reduced to writing, and signed by the arbitrators, and upon the production of the same,

Timber for road purposes to be paid for in certain cases.

Article 1.—Public Roads.

with a certificate of the overseer, that he used the timber assessed, must be allowed by the Justices of the Inferior Court, and paid out of the County Treasury.

§ 607. They shall measure all that part of the road to which they may be appointed, beginning at the Court House, and at the end of each mile set up a post or mark on some conspicuous place, which shall designate the number of miles from thence to said Court House, and the overseer in the next adjoining district shall likewise begin to measure and mark at the last mile post in the district thus measured; but when such district shall end at some county line he shall, by some post or mark, designate the distance from such county line to their respective Court Houses.

§ 608. They shall, at the fork of each public road, place in some substantial and conspicuous manner a board or other mark, designating thereon the most public place to which each road directs, and if any road is altered so as to make the fork at some other place, or as not to make necessary such sign-boards, they shall be removed and replaced, or either if necessary.

§ 609. If any overseer fails to comply with the provisions of the two immediately preceding sections he forfeits not exceeding fifty dollars, to be imposed and collected as other fines against him.

§ 610. If any overseer omits to do his duty with respect to the roads, bridges, and causeways under his charge, for as much as thirty days from the time the necessity for any immediate work occurs, unless hindered by extreme bad weather, or other Providential cause, he shall be indicted for a misdemeanor, and on conviction shall be fined or imprisoned, at the discretion of the Court, and is also liable for all damages at the suit of any person injured by such omission.

§ 611. Hands liable to road work, employed as laborers on the line of any Railroad of this State belonging to an incorporated Company, or by any contractors constructing Railroads, are exempt from work on the public roads, provided the public road overseer having charge of them respectively are paid one dollar per day for each hand so liable, which money shall be expended in hiring hands to work on the roads.

§ 612. When any person shall feel aggrieved by any road proposed to be laid out through any of his land, unless otherwise provided in the Charter thereof, or some special law, he may petition in writing the Justices of the Inferior Court, either of whom shall direct their Clerk to issue a warrant under his hand,

Article 1.—Public Roads.

directed to the Sheriff of the county, to summon from the vicinage a jury of freeholders to try such question of damage, who shall be sworn by some Justice of the Peace to truly and impartially assess any damage the owner will sustain by means of such new or altered road, and said Justice shall preside over their deliberations.

Trial by jury.

§ 613. No person is competent as a juror who claims any damage of the county or person for the same or any similar road, or who would be disqualified if the trial was before the Superior Court.

Incompetency of jurors.

§ 614. The jury shall inspect the road and land in person, unless already familiar with them, and swear any witnesses that the owner or any person on the part of the county may offer, as to their opinion of the damages sustained.

Trial—how conducted.

§ 615. The Sheriff shall notify the Justice of the Peace and the Road Commissioners of the district where the road lies, and the owner of the land, the day and place of trial, and shall notify to attend then and there, as witnesses, any persons he may be requested to by such commissioners, or the owner.

Justices and Road Commissioners to be notified.

Land owners and witnesses to be notified.

§ 616. He shall fix the time and place, the time not less than five nor more than twenty days, and the place as near the land as the proper house-room can be obtained.

Sheriff shall fix time and place of meeting.

§ 617. At the trial any person in interest may object to the empanelling of any juror for cause, and if from this or any other cause there are not twelve jurors empaneled and sworn, the Sheriff must proceed to procure tales jurors.

Objections to jurors.

§ 618. The trial may be postponed or continued from day to day until completed, and if the Justice of the Peace summoned to attend should fail to preside, the Sheriff must supply the vacancy, if necessary, from some other district.

Trial may be postponed.

Justice failing to attend.

§ 619. If a mis-trial occurs, the Sheriff shall proceed *de novo* to summon other jurors, and all the proceedings shall be as at first, and so on until there is a verdict.

Mis-trial.

§ 620. The judgment in such cases may be *certiorari* by the county or the owner of the land, as in *certiorari* from forcible entry and detainer trials, and if a new trial is ordered, they shall proceed to procure a trial as previously.

Certiorari.

§ 621. When such judgment becomes final all the papers appertaining thereto must be filed in the Clerk's office of the Inferior Court; the Justices thereof must grant an order for the damages assessed in favor of the land owner, but if such Justices are sat-

Final judgment.

Damages—how paid.

Article 1.—Public Roads.

ified that such damages transcend the utility of such road, or that part of it, they may revoke the road altogether, or order the same altered so as to avoid the land so damaged, or make the owner an offer of such compensation as they may think just.

§ 622. In estimating the value of land when taken for public uses, it is not restricted to its agricultural or productive qualities, but inquiry may be made as to all other legitimate purposes to which the property could be appropriated.

Value of land—how estimated.

§ 623. Prospective and consequential damages resulting therefrom may be also taken into consideration, if the same are plain and appreciable, and on the other hand, the increase of the value of the land from the proposed public improvement may be considered, but in no case shall the owner be deprived of the actual damages by such estimated increase.

Consequential damages.

§ 624. If any overseer, within twelve months after his appointment, neglects faithfully to discharge the duties required of him he is subject to a fine not exceeding fifty dollars by the commissioners under whom he serves, who shall notify him of his neglect, and unless a good excuse is rendered to them within twenty days from the time of such notice they shall issue execution for the fine assessed.

Overseer neglecting his duty, &c.

Fine imposed and collected.

§ 625. If any person shall alter any public road or cut any ditch across, or alter the location of any bridge, or make any new bridge necessary by his act, without first obtaining an order therefor, he is guilty of a misdemeanor, and on conviction thereof shall be fined not less than twenty-five nor more than one thousand dollars, and shall be liable besides, by suit, for all damages any person may sustain thereby.

Altering or obstructing public road.

Fine not less than \$25 nor more than \$1000.

§ 626. When any person shall make any fence or cut any tree, or make other like obstructions in or across any public road, which is not removed in two days and a safe and convenient way, at the time of the obstruction, made for travelers, he shall pay a fine of twenty dollars for each obstruction, to be recovered by execution issued by the commissioners, as in cases of road fines, and shall be liable for any damages caused by the obstruction, from the first to the last, if the person injured used ordinary caution.

Obstructions by a fence or tree, if not removed.

Fine \$20 for each offence.

§ 627. And when the main streets of any incorporated town or city continue in a state of neglect for three months, the Justices of the Peace therein are, by virtue of their office, Road Commissioners, and shall appoint overseers, apportion the hands that

Main streets in towns or cities neglected for 3 months, &c.

Article I.—Public Roads.

Justices to act as Road Commissioners.

May be fined for neglect.

would be liable to road duty, throughout the town, have the streets worked on, as though they were public roads, and must, in every other respect, perform the duties of Road Commissioners, and for neglect of any other duty, or violation of any of the road laws, are liable to fine as such commissioners.

ARTICLE II.

COMMISSIONERS OF PUBLIC ROADS.

SECTION.

628. Three for each district.
 629. How appointed.
 630. Compelled to serve unless excused.
 631. Must be notified within ten days.
 632. Clerk failing to give such notice.
 633. Exempt from patrol & militia duty.
 634. Duty of commissioners generally.
 635. Persons exempt from road duty.
 636. Overseer of roads receive \$2 per day.

SECTION.

637. Commissioners failing to do duty.
 638. Proceedings against for neglect.
 639. May be removed from office.
 640. Failing to appear when cited.
 641. Executions against commissioners.
 642. A public road being a district line.
 643. Necessary books shall be furnished.
 644. Certificate of discharge.

Three commissioners for each district, two may act.

§ 628. There shall be three commissioners for each road district, any two of whom may act, and in case there is only one in a district, that one is invested with all the powers of the three, until the vacancies are filled.

Commissioners—how appointed.

§ 629. Such commissioners are appointed or re-appointed by the Justices of the Inferior Court, biennially, at their first meeting of the years of the appointments, and, whenever necessary, to fill vacancies at any time.

Compelled to serve.

§ 630. Those thus appointed are compelled to serve, unless excused by such Justices, who shall receive for such excuse Provisional cause only.

Must be notified in writing within ten days.

§ 631. As soon as appointed, they shall be notified thereof in writing within ten days thereafter by the Clerk of the Inferior Court, and if such appointees do not, within ten days after receiving such notice, file their excuse in writing, under oath, in such Clerk's office, they shall be considered as having accepted.

The Clerk failing to notify commissioners.

§ 632. If a Clerk fails to give such notice, he is guilty of a contempt, and shall be, by such Justices, fined twenty dollars for each neglect.

Road Commissioners exempt from patrol and militia duty.

§ 633. Such commissioners, while in office, are exempt from all jury, patrol, militia and other road duty, and are exempt from road duty after they go out of office, for the next two years, if they have served faithfully through their official terms.

Article 2 —Commissioners of Public Roads.

§ 634. It is their duty—

1. To appoint, within fifteen days, one or more persons in their respective districts as overseers of the road. Commissioners must appoint overseers.

2. To apportion the roads and hands under their charge at the same time as equally and fairly as possible, and to furnish the several overseers with a list of the roads and hands under their respective charge. Apportion the roads.

3. To hear and determine upon all cases of default or other violation of the road laws within their jurisdiction, (if not indictable only,) at a Court to be held by them twenty days after every road working, or as often as emergencies may require, and to issue executions or other process against the convicted. Try defaulters.

4. To keep a book in which to enter—

First. The several hands in their respective districts subject to road duty; to what roads and what parts thereof assigned, and under what overseer; changing and correcting it from time to time, as may be necessary. Names of road-hands to be registered.

Second. A list of all defaulters and persons fined, the amounts fined, amounts paid, what disposition made of the money, what executions issued and unpaid. A list of defaulters and persons fined.

5. To pay to the County Treasurer, as soon as collected, that portion of the fine money belonging to the county, to be used in the repairing or building of public bridges and causeways, and annually, on the first of December, to report to the Justices of the Inferior Court the condition of the public roads and bridges in their respective districts, the state of the finances, what executions are outstanding unpaid, and their condition. Disposition of money raised from fines. The condition of public roads, bridges, &c.

6. To inspect, from time to time, the public roads, bridges and ferries within their districts, notice the character of the repairs, and observe if such road is regularly posted, and direction boards put up as required by law, and if said bridges and ferries are in proper repair. Roads, bridges and ferries to be inspected.

7. To exercise a general supervision over their respective overseers, and to fine them for neglect of duty, and to see that persons are indicted for the offences set forth in the road laws. Commissioners' general duty.

8. To administer all oaths, relative to the road laws, connected with their duties.

§ 635. In making up the list of road-workers, they must not include the following description of persons who are exempt from such duty, viz: Licensed ministers, teachers and students of colleges and schools, keepers of public grist mills, public ferrymen, Ministers, teachers, and others, exempt from road duty.

Article 2.—Commissioners of Public Roads.

keepers of toll bridges, turnpikes, causeways and plank roads, engineers and white persons in charge of cars or trains running on railroads, officers of the Confederate States, this State or any county thereof, and all others exempted by any special law.

Overseer of roads receives \$2 per day.

§ 636. They are authorized to pay overseers two dollars per day for every day in actual service, out of the fine money, besides one-half of the balance of the fine money as compensation to him as informer, and if, by the end of each year, the fine money does not furnish enough to pay such overseers said per diem, it must be paid out of the County Treasury, if the proper commissioners certify to the Justices the amount such overseers are entitled to.

How collected.

Commissioners failing to do their duty may be fined.

§ 637. If commissioners fail to discharge their duties, or any duty required of them as such, they, and each of them, shall be fined, by the Justices of the Inferior Court, not less than fifty, nor more than two hundred dollars.

Proceedings against commissioners for neglect of duty.

§ 638. When any person shall file his affidavit in writing in the Clerk's office of the Inferior Court, that any commissioner or set of commissioners have neglected their duty generally, or in any particular, or when the Grand Jury makes presentment of the same, or of the bad condition of any portion of the public roads, or the said Justices, or any one of them, are satisfied such is the fact, and so inform their Clerk, it is his duty to issue a summons in writing, directed to said defaulting commissioners, commanding them to appear at a certain day therein named, before such Justices, to answer for their conduct, which shall be served on them by any officer or private person.

May be removed from office.

§ 639. If, on the hearing, the Justices fine the commissioners cited, they shall also pass an order removing them from office, and forthwith appoint other commissioners.

Failing to appear.

§ 640. If they have been duly cited and served, and fail to appear, such Justices may proceed *ex parte*.

Execution to issue by the Clerk of the Inferior Court.

§ 641. The Clerk of the Inferior Court is directed to issue executions against them for the fine and costs, which shall be executed by the Sheriff. The lien of such executions, and the property subject thereto, are the same as those against defaulting road-workers.

A public road being a district line.

§ 642. When any public road may be on a road district line, and the Justices of the Inferior Court have not specially assigned it to any particular district or set of commissioners, the commissioners of each district shall co-operate in arranging the hands and appointing the overseers for such road.

Article 2.—Commissioners of Public Roads.

§ 643. The books such commissioners are required to keep must be furnished by the Justices of the Inferior Court at the expense of the county, and out of the road money, if any, and when full must be deposited in the office of the Clerk of the Inferior Court.

Books shall be furnished by Inferior Court.

Shall be deposited in Clerk's office.

§ 644. After the commissioner has faithfully served through the term of his appointment, he may obtain from the Clerk of the Inferior Court a certificate of such fact.

Certificate of discharge—by whom granted.

ARTICLE III.

BRIDGES, FERRIES, TURNPIKES, AND CAUSEWAYS.

SECTION.

- 645. Public bridges, ferries, &c.
- 646. Regulations concerning the same.
- 647. Erected for benefit of the county.
- 648. Power and duty of Inferior Court.
- 649. Condition of contractors bond.
- 650. Bond must be approved.
- 651. Additional bond may be required.
- 652. Roads, bridges, &c.
- 653. Contractor failing.
- 654. Defendant resisting payment.
- 655. Contractors incompetent as jurors.
- 656. Bridges, &c., crossing county lines.
- 657. County refusing to contribute.
- 658. Toll bridges crossing county lines.
- 659. Private bridges, &c.
- 660. Distance in such cases.
- 661. Rates of toll to be posted up.

SECTION.

- 662. Land owner may erect a bridge, &c.
- 663. Excessive rates shall not be charged.
- 664. Rates to be examined annually.
- 665. Persons making excessive charges
- 666. Fords, bridges, &c.
- 667. Public bridges, &c.
- 668. Proprietors liable for neglect.
- 669. County—when liable for damages.
- 670. Persons detained at public crossings.
- 671. No toll after expiration of charter.
- 672. Owner of private ferry, &c., liable.
- 673. Breaking toll gate, &c.
- 674. Right of way.
- 675. Grant to land—what passes.
- 676. Grant for a ferry.
- 677. Value of land taken—how.

§ 645. All bridges or ferries, turnpikes or causeways, erected or permitted by any act of the General Assembly, if not otherwise provided, or by order of the Justices of the Inferior Court, for public purposes, are declared to be public.

Public bridges, ferries, causeways, &c.

§ 646. They are divided—

Bridges, ferries &c.

1. Those established by the county which are free to every one.
2. Those established by the county where toll is charged generally or specially.
3. Those established by individuals under the authority of law or by virtue of a prescriptive right.
4. Those established by individuals without such rights, who accommodate the public or any portion of them for compensation.

Article 3.—Bridges, Ferries, Turnpikes and Causeways.

Justices Inferior Court may establish for benefit of county.

§ 647. The Justices of the Inferior Court may put a ferry or causeway, or both, or may establish a toll bridge for the benefit of the county, but when on any such county bridge, ferry or causeway, toll is charged, the county is liable as individuals owning them, and the owners of lands must be compensated as in other cases.

Power of Inferior Court over public bridges, ferries, causeways, &c.

§ 648. The Justices of the Inferior Court of the several counties have authority—

1. To appoint the places for the erection of public bridges, county ferries, turnpikes and causeways, and to make suitable provision for their erection and repairs by letting them out to the lowest bidder, hiring hands, or in any other way that may be for the public good and agreeable to law.

Undertaker to give bond.

2. To require sufficient bond and good security for the faithful performance of all such work and contracts, and to indemnify for all damages occasioned by a failure so to do.

License to establish.

3. To license any person to establish such bridge, ferry, turnpike or causeway, not exceeding ten years, which may be renewed at the expiration thereof.

Rates of toll to be fixed.

4. To fix the rates of toll for crossing any such, where the toll can lawfully be charged, and regulate those previously established or that may afterwards be established, so as to conform to what is both reasonable and usage on such water courses, provided such charges are not specially regulated by the General Assembly in some act of incorporation to the exclusion of such Justices.

General supervision over public bridges, ferries, &c.

5. To exercise a general supervision over such, and see that they are kept in proper order and properly attended to, and to require from time to time, as the occasion may demand, sufficient bond and good surety from the proprietors thereof, conditioned for their keeping in repair a sufficient and safe bridge, flat rope, turnpike or causeway, and all other appointments necessary for a good ferry and competent and faithful attendance by day and night, and to indemnify the public against all damages by reason of a failure so to do.

Condition of the bond of contractors.

§ 649. When a public bridge, ferry, turnpike or causeway is let out, the contractor must, in his bond, make a condition also to keep it in good repair for at least seven years, and as many more years as the contract may be for.

Bond must be approved.

§ 650. All bonds taken from contractors or proprietors must be approved by the Justices of the Inferior Court, filed in the office

of the Clerk of the Inferior Court, and by him recorded in books kept for that purpose.

§ 651. If when an additional bond is required it is not given within ten days from the time the proprietor or his agent is notified by the Clerk of the Inferior Court, the license must be revoked. Additional bond may be required.

§ 652. When any such work shall require repairing it is the duty of any one or more Road Commissioners in whose road district the same is, to give notice in writing to the contractor, or one of his sureties, stating the repairs necessary to be made, and requiring them to be done within a reasonable time, stating the time. Roads, bridges, &c., to be kept in repair.

§ 653. If such repairs are not made within the time required, they shall employ some other person forthwith to make them, and upon report to the Clerk of the Inferior Court of their cost, he shall issue an execution against such contractor and his sureties for the expense of such repairs and the costs. Repairs—by whom to be made. Contractor failing, execution may issue against him.

§ 654. If the defendant resists the payment of said execution at law, it must be returned for trial by jury, if demanded, either to the Justices' Court of the district where the defendant resides upon whose property the levy is made, or to the Superior Court of the county, according to the principal amount thereof. If defendant resists payment of such execution, how tried.

§ 655. Persons who have undertaken the building or keeping in repair any bridge, ferry, turnpike or causeway, or are surety for such persons, cannot be Road Commissioners of the road district which embraces such, and if after having been appointed they become such contractor or surety, the Justices of the Inferior Court must declare a vacancy and appoint some other persons in their stead. Contractors cannot be Road Commissioners.

§ 656. When a bridge or ferry is necessary over any water course, which divides one county or more counties from each other, each county must contribute equally towards the building and keeping the same in repair, or in such proportion as would be just, taking into consideration the taxable property of each, and the amount expended by each in the construction of bridges and other passways. Bridges, &c., crossing county lines to be kept up by such counties jointly.

§ 657. If any county refuses to undergo its fair proportion of such expenses, the other county or counties may construct the work, compel the other to contribute by suit, and until such contribution takes place, may have exclusive control thereof, and charge toll thereon against all the citizens of the refusing county. The remedy when one county refuses to contribute.

Article 3.—Bridges, Ferries, Turnpikes and Causeways.

Toll bridges, &c., crossing county lines may be licensed by either. § 658. The toll bridges or ferries over water courses making county lines, may be licensed by either county, and in such cases the bonds must be approved, filed and recorded in the county where the license is granted.

No private ferry, shall be established within 3 miles of a public bridge. § 659. No private ferry charging toll shall be established on any water course within three miles of where public bridges are previously erected and kept up, but bridges may be erected at the public expense at places on the same stream, other than those where bridges are previously erected, if not violative of any special provision of the law.

Distance—how computed. § 660. When exclusive right is granted to any person to prevent others from erecting bridges or ferries, or the like, within a given distance from the same, it shall be computed by the course of the stream.

Rates of toll to be posted up. § 661. Every proprietor of bridges, ferries, turnpikes and causeways, where toll is allowed to be charged, must fix a board in a conspicuous place, as near the same as practicable, with black ground, on which shall be the various rates of toll; and if such is neglected, he shall be subject to indictment, and, on conviction, shall be fined not less than fifty dollars for every week he so neglects.

Penalty for neglect. § 662. Any person who may be the owner of any land through which a stream may pass on both sides thereof, may establish any bridge or ferry thereon, at his expense, and may charge lawful toll for crossing, according to the rates of other bridges and ferries on the same stream, or if none other, the customary rates over such streams elsewhere.

Excessive rates shall not be demanded. § 663. If such person shall demand excessive rates, any person may complain to the Justices of the Inferior Court of the county, and if the rates are excessive they must reduce and fix them.

Rates to be examined annually. § 664. The Justices of the Inferior Court of each county must once each year examine the rates charged in their counties, and keep fixed the rates of toll for the several bridges, ferries, turnpikes and causeways within the limits of their county which have the right to charge them, and must enter the same on their minutes.

Persons making excessive charges—how punished. § 665. If any person shall charge more than the lawful rates, or more than indicated by the board, he is guilty of a misdemeanor, and on conviction must be fined in the discretion of the Court, and for the second offence, in addition to the fine, he forfeits his franchise.

Article 3.—Bridges, Ferries, Turnpikes and Causeways.

§ 666. No person authorized to have a bridge or ferry on his own land will be permitted to stop up or obstruct any ford, bridge or ferry, and upon so doing he is guilty of a misdemeanor, and on conviction must be fined or imprisoned, or both, in the discretion of the Court.

Fords, bridges, &c., not to be obstructed.

§ 667. After a person has once established such bridge or ferry he shall not discontinue the same without first giving public notice thereof, by advertisement posted on the Court House door, and in a public gazette, if there is one published in the county, for at least sixty days.

Public bridges, &c. not to be discontinued.

§ 668. Any proprietor of any bridge, ferry, turnpike or causeway, whether by charter or prescription or without, or whether by right of owning the lands on the stream, are bound to prompt and faithful attention to all their duties as such, and if any damage shall occur by reason of non-attendance, neglect, carelessness or bad conduct, he is bound for all damages, even if over and beyond the amount of any bond that may be given.

Proprietors liable for neglect.

§ 669. The provisions of the preceding section apply to all contractors for the establishment of such, when damages accrue from a want of good faith in performing their several contracts, and if no bond or sufficient guarantee has been taken by the Justices of the Inferior Court, the county is also liable for the damages.

On failure to take bond the county is liable for damages.

§ 670. Any person unreasonably detained at a public ferry, toll bridge, turnpike or causeway, may, for each detention, recover of the owner ten dollars before any Justice of the county.

Persons shall not be detained at public crossings.

§ 671. If any person demands or receives toll for crossing any ferry, bridge or causeway, or turnpike, after the revocation of his license or forfeiture of his charter, or having a right for a ferry allows the banks on either side to be out of repair for more than five days at any one time, or to provide good and safe boats of a size sufficient for the accommodation of the public, furnished with competent and sufficient ferrymen, for the safe and speedy passage of all persons, vehicles, horses and stock, or in case of a toll bridge or causeway, fails to keep the same in good repair, without a reasonable excuse for such failures, to be determined by the Court, he is guilty of a misdemeanor, and on conviction must be fined not less than twenty dollars.

Persons charging toll after expiration of charter, or failing to keep banks and boats in order.

Shall be fined \$20.

§ 672. If any person who keeps a private bridge, ferry, turnpike or causeway, passes any person for toll, the owners incur the same liability and penalties as those permitted by law.

Owners of private ferries liable.

Article 3.—Bridges, Ferries, Turnpikes and Causeways.

Breaking or
injuring gate
or avoiding
payment.

§ 673. If any person break or injure any gate to a toll bridge, turnpike or causeway, or obstruct, injure or destroy such bridge or causeway, pass round or under the same with intent to avoid the payment of toll, such person forfeits to the owner ten dollars for each of such acts, and is also liable for the damages.

Right of
way.

§ 674. Damages for the right of way are to be assessed in the manner prescribed for public roads and private ways.

Grants to
land.

§ 675. Grants to land on water courses with the appurtenances, convey no right of public bridge or ferry.

Grant for a
ferry.

§ 676. The grant of a ferry franchise conveys no right to build a bridge, or the contrary.

Value of
land taken
for a bridge
—how esti-
mated.

§ 677. In determining the value of land taken for a bridge, its prospective value as a bridge site and its present value as a ferry, if one is in use, may be taken into the calculation.

ARTICLE IV.

RAILROAD AND OTHER CROSSINGS.

SECTION.

- 678. Roads at Railroad crossings.
- 679. Extent of such crossings.
- 680. Erecting posts and blowing whistle.
- 681. Neglecting to erect such posts.
- 682. Failing to blow the whistle.
- 683. Proof of damage—*onus* on Company.
- 684. Suits—when to be brought.

SECTION.

- 685. Failing to keep crossings in order.
- 686. Must be done by overseer of Roads.
- 687. Executions against defaulting Co.
- 688. Money raised—to whom paid.
- 689. Railroad Company may defend.
- 690. Plank, Macadamized and other roads.
- 691. Public highways, bridges, &c.

Public and
private ways
to be kept up
at crossings
of Railroads.

§ 678. All Railroad Companies shall keep in good order, at their expense, the public roads or private ways established pursuant to law, where crossed by their several roads, and build suitable bridges and make proper excavations or embankments, according to the spirit of the road laws.

Extent of
such cross-
ings.

§ 679. Such crossings include the width of land on both sides of the road allowed by charter or appropriated by the Company therefor, and for as many feet beyond, each way, as is necessary for a traveller to get on and off the crossing safely and conveniently.

A post to be
erected.

§ 680. There must be fixed on the line of said roads, and at the distance of four hundred yards from the centre of each of such road crossings, and on each side thereof, a post, and the engineer

Blowing the
whistle.

shall be required, whenever he shall arrive at either of said posts, to blow the whistle of the locomotive until it arrives at the pub-

Article 4.—Railroad and other Crossings.

lie road, and to simultaneously check, and keep checking, the speed thereof, so as to stop in time should any person or thing be crossing said track on said road.

§ 681. Should any Company fail or neglect to put up said posts Neglecting to erect such post. the Superintendent thereof shall be guilty of a misdemeanor, and upon indictment and conviction thereof in the county where such failure occurs, shall be subject to a fine of not less than five hundred dollars nor more than one thousand dollars.

§ 682. If any engineer neglects to blow said whistle, as required, and to check the speed as required in section 680, he is guilty of a misdemeanor, and on indictment and conviction in the county where such failure occurs, he shall be punished by fine, not exceeding five hundred dollars and imprisoned not exceeding ninety days, or either, which the Company by whom he is employed is bound to pay. Failing to blow the whistle. Fine and Imprisonment.

§ 683. When such injury occurs, the *onus* is upon the Company to prove such fault on the part of the injured persons. When an injury occurs.

§ 684. Such suits may be located in the county where the injury occurs, and service perfected as in case for killing stock. Suits in the county where injury occurs.

§ 685. When any road over which a crossing is required shall be obstructed, or not in good order at such crossing, a Road Commissioner, or an overseer of the road district where the crossing is, must notify the nearest agent or employee of the company, in writing, to remove such obstructions, or to put such crossing in proper order within thirty days from the date of such notice. Railroads over which crossings are required.

§ 686. If such requisition is not complied with, it must be done by the overseer of the road, and within five days after he shall have discharged such duty, he must report, under oath, in writing, to the commissioners of the district, the amount and value of the services performed. Requisition must be complied with in five days.

§ 687. The commissioners shall then issue execution, under their hands and seal, directed to any lawful officer, for the amount of such value, and the costs of the proceeding against such defaulting Railroad Company as in case of other road defaulters. Execution shall issue.

§ 688. The amount, when collected, must be paid to the persons who performed the labor, *pro rata*, and according to the labor performed by each, and for other expenses of said work, if any. Money raised—how disposed of.

§ 689. The defendants may defend themselves from such *fi. fas.* Defences—how made. as other defaulting road-workers may.

§ 690. The provisions of this article are, so far as applicable,

Article 4.—Railroad and other Crossings.

Plank and other roads subject to the same provisions. Public bridges, highways, &c.

extended to any plank, Macadamized, turnpike or other road belonging to private individuals or a joint-stock company.

§ 691. Public highways, bridges or ferries cannot be appropriated to railroads, plank roads or any other species of road, unless express authority is granted by some Constitutional provision in their charters.

ARTICLE V.

PRIVATE WAYS.

SECTION.

692. Private ways—by whom granted.
 693. Must be kept open.
 694. How obtained.
 695. How laid out—notice of application.
 696. Damages—how assessed.
 697. Applicant may decline to open.
 698. May be established by agreement.
 699. Protected as public roads.
 700. Persons may join in opening, &c.

SECTION.

701. May apportion work, &c.
 702. Private way over wild lands.
 703. Seven years' uninterrupted use.
 704. Cannot be closed after one year.
 705. Special damages in certain cases.
 706. When there is but one bluff, &c.
 707. Application for use of landing.
 708. Damages omitted in the grant.
 709. May be converted into a public road.

Private ways—by whom granted.

§ 692. The Justices of the Inferior Court have authority to grant private ways to individuals to go from and return to their farms or places of residence.

Not more than 15 feet wide.

§ 693. They must not exceed fifteen feet in width, and must be kept open and in repair by the persons on whose application they are established, and may be as much less as the applicant may choose.

How obtained.

§ 694. Any person desiring such passway over the land of another, must petition the Justices of the Inferior Court, setting forth particularly the distance and direction of such road, over whose land it is to go, through what improvements, if any, and their nature, and the special purpose for which it is desired.

Land owners must have 20 days' notice.

§ 695. After all persons over whose land said passway is to be made shall have had twenty days' notice, in writing, of such application, and such Justices shall be satisfied such applicant is entitled to the same, they shall appoint five commissioners, who shall be disinterested persons, any three or five of whom may act, to view and lay out such road, so as to do the least possible damage and inconvenience to the land-owners, who shall make their report within thirty days from their appointment. They shall make out their report in writing, and furnish all the parties in interest with copies thereof, and if either party is dissatisfied with

Private ways—how laid out.

Article 5.—Private Ways.

such report, by giving the other five days' notice in writing, he may take an appeal to the Justices of the Inferior Court, who, after having all the evidence, *pro* and *con*, may confirm said report, or alter the same, which, when done, shall be final.

Either party may appeal.

§ 696. If the person then, over whose land the passway is, receives that he will be damaged thereby, he may proceed to have the damages assessed in the same manner that damages are assessed in case of public roads, and the applicant therefor stands in the place of the County and Road Commissioners.

Damages—how assessed.

§ 697. After the damages are thus assessed, the person who has them to pay may decline to open the same, but he is bound for the costs of all the proceedings, whether he uses the passway or not, for which the Clerk of the Inferior Court may issue an execution, and in all cases the damages must be paid before the way is opened.

Applicant may decline to open the way.

Costs.

Damages must be paid.

§ 698. Private ways may be established by an agreement, in writing, of all parties concerned, in which may be stipulated any damages, which must be spread on the road book of the county, and, when so done, has the same effect as though established by the forms of law.

May be established by agreement.

§ 699. When a private way becomes established, it must be entered on and fully described in the road book, and the owner thereof is entitled to be protected in the use of the same as a public road.

Recorded and protected as public roads.

§ 700. Several land owners may join together in opening a private way, or in keeping it up afterwards, or both, and when so done and entered on the road book, the duties and privileges extend to vendees of the same real estate.

Several land holders may join in opening a way.

§ 701. When several so join they may apportion the road for work among themselves, or work it under the road laws, selecting one of their number as Road Commissioners, whose powers are the same touching such road and the hands thereof as the three Road Commissioners of the district.

May apportion the work.

§ 702. If a private way is established over the wild lands of a person who has no notice of the proceeding, as soon as he does have such notice, and within six months thereafter, he may proceed to have his damages assessed against all persons who are land owners, and are in the habitual use of such private way, and not after.

On wild lands.

§ 703. When a person has laid out a private way, and has been in the use and enjoyment of it as much as seven years, of which

Seven years uninterrupted use.

Article 5.—Private Ways.

the owners have had six months' knowledge, without moving for damages, his right to use becomes complete, and such owners are barred of damages.

Cannot be closed after one year without notice.

§ 704. When a road has been used as a private way for as much as one year, an owner of land over which it passes cannot close it up without first giving the common users of the way thirty days' notice in writing, that they may take steps to have it made permanent.

Special ways.

§ 705. When a private way is established over the land of another, for the purpose of hauling wood or timber, or other commodity, to any place of landing whereat the business of rafting or shipping is carried on, or to any railroad depot, it shall not extend to the use of any landing erected by a person for his own benefit.

If there is but one bluff.

§ 706. If, however, there should be but one bluff or place of landing, the owner cannot appropriate such to himself exclusively, if he will not be damaged by the admission of others to its use, or if damaged he is properly compensated therefor, but no person shall be entitled to use the wood-slide or other improvement erected for one's own use, nor timber landing, while he is using it.

The use of another's landing.

§ 707. When the applicant for a private way desires also to use another's landing he must so state in his petition, that proper damages may be assessed therefor.

Omission to assess damages.

§ 708. If a private way is established and there is an omission to have considered the damages for using such, it may be done afterwards if within a reasonable time.

May be converted into a public road.

§ 709. When a private way is once established it is in the power of the Justices of the Inferior Court to declare it a public road, provided it is of sufficient length and importance, and the number of persons who habitually use it can and will do as much work thereon as is their proper share, in working the same alone, or in connection with adjacent public roads.

Chapter 6.—The County Poor.

CHAPTER VI.

THE COUNTY POOR.

SECTION.

710. Paupers.
 711. Poor House.
 712. Commissioners of the Poor.
 713. Receipts, disbursements & amounts.
 714. Applications by the poor, &c.
 715. Who are considered paupers.
 716. Parents and children bound, &c.
 717. Certificate of the Clerk.
 718. Persons removing paupers.
 719. Such person being insolvent.

SECTION.

720. Paupers left by companies, &c.
 721. Security required, &c.
 722. Bond filed with Clerk Inferior Court.
 723. Party failing to give security.
 724. Pauper found to be a lunatic.
 725. Poor children bound out—how.
 726. For what length of time.
 727. Master violating his contract.
 728. May appeal—Custody of minor, &c.

§ 710. The general supervision of all paupers is vested in the ^{paupers.} Justices of the Inferior Court of each county.

§ 711. They have authority to purchase lands for a ^{Poor Houses} Poor House, the title thereto vesting in the county, or to rent improvements for such purpose, or to board out the poor and to make all necessary contracts in relation to them.

§ 712. They shall, if necessary, appoint a Commissioner of the Poor, and the money arising from the poor tax shall be paid into ^{Commissioners of the Poor.} his hands by the County Treasurer on orders granted in his favor by such Justices, or in favor of any other person.

§ 713. Whoever receives and disburses such fund must once in every year, at the time such Justices may order, or oftener if they require, make up his accounts and lay the same before them, who shall allow or disallow, and whenever there is a deficiency or liability on the part of such person he may be ruled ^{Receiver & disburser.} for the amount as an officer of Court. ^{May be ruled.}

§ 714. Application to be provided for as a pauper may be ^{Application of pauper—to whom made.} made at any time to the Commissioner of the Poor, a Justice of the Inferior Court or a Clerk of such Court, upon which a hearing must be had, with the least possible delay, by the Justices, and the person to whom such application is made, is authorized to provide for such applicant as other county poor until the hearing is had.

§ 715. No person shall be entitled to the benefits of the provision for the poor who is able to maintain himself or herself by ^{Who are paupers.} labor, or if not, has sufficient means, and in cases where females are unable to maintain themselves and the helpless children they may have also, they may be aided to the extent required in the furnishing of food, clothing or shelter.

Parents and children bound to support each other.

§ 716. If any such person has father, mother or child of sufficient ability, he or she must be supported by them, and failing so to do any county in the State having made provision for such persons may sue persons of full age standing in such relation to them, and recover for the time such county has made provision for such person, always provided, the person sued was possessed of such ability.

Certificate of the Clerk evidence.

§ 717. On the trial the certificate of the Clerk of the Inferior Court that the person was poor and unable to sustain himself, and that he was maintained for such a time at the expense of the county is presumptive evidence of such maintenance and the costs thereof.

Persons removing paupers personally responsible.

§ 718. When any inhabitant of any county, city, town or village, in or out of the State, sends a pauper to some county in this State, by paying the expense of transportation, or otherwise has him removed for the purpose of burdening some other community, the person so engaged shall be personally liable for the support of the pauper in the county where he locates.

Such person being insolvent the county is liable.

§ 719. If the person so engaged in transporting a pauper is insolvent or does not respond to such demand from any cause, the county from which the transportation took place shall be liable.

Paupers left by migratory companies.

§ 720. If any person commanding any vessel, or the manager or proprietor of any theatrical circus, or any other migratory company, or their agents, or any person, passing or moving through this State, shall bring and leave, or abandon herein, any infant, lunatic, maimed, deaf and dumb, blind, aged or infirm person, who is or is likely to become chargeable to the county, he may be brought by warrant before any judicial officer.

May be required to give bond.

§ 721. If such officer is satisfied that such person is or will probably become such charge, he must require such person to enter into bond, payable to the Governor of the State and his successors in office, with sufficient securities, resident in the State, for the sum of five hundred dollars, for each of such persons so brought, conditioned to pay all such expenses, as any county in the State may lawfully incur in their support.

Such bond must be filed in the Clerk's office of the Inferior Court.

§ 722. Said bond must be filed in the Clerk's office of the Inferior Court of the county where the paupers are at the time of its execution, and upon condition broken may be sued on and recoveries had, until exhausted in different actions in behalf of any county or person who may have property contributed to the maintenance of such pauper.

Chapter 6.—The County Poor.

§ 723. On failure to give such bond such person must be committed to jail until it is done, or until the next term of the Superior Court of the county, when if not done, or he does not take care of said pauper and pay all costs, he is guilty of a misdemeanor, and on conviction shall be fined five hundred dollars, and in default thereof shall be imprisoned ninety days.

Failure to give bond.

May be fined five hundred dollars.

§ 724. When a pauper is found to be a lunatic, idiot, deaf and dumb, or blind, they must be dealt with according to the laws relating to them.

Lunatics.

§ 725. All orphan poor children, or others whose parents do not maintain them, and are on the county, of sufficient age and bodily strength to support themselves, must be bound out by the Ordinaries of the counties to learn a trade, or some useful occupation, for such time as they may deem best, and the person to whom they are bound shall undertake to clothe and maintain them in such manner as the Court may direct, and shall have them taught to read and write the English language, and the common rules of arithmetic, which undertaking must be in writing and entered on the minutes of the Court.

Poor children may be bound out.

Obligation of master.

Must be in writing.

§ 726. Boys may be bound out from time to time until twenty-one years of age, and girls until they are eighteen or marry.

Bound for what time.

§ 727. If any such person shall violate his contract, misuse or ill-treat such apprentice, the Ordinaries shall take them away, after giving the master a hearing, and bind them to some other person.

Master violating his contract.

§ 728. Such master may appeal to a trial by jury in the Superior Court, as in other cases of appeal, but in the meantime the minor shall be placed in the custody of the Ordinary, who may procure some person to take charge of him until the trial.

May appeal.

Custody of minor pending appeal.

Article 1.—Persons and Property Exempt.

TITLE VII.

PUBLIC REVENUE.

CHAPTER I.

TAXATION BY THE STATE.

- ARTICLE 1. Persons and property exempt.
- ARTICLE 2. System of taxation—persons and property taxed.
- ARTICLE 3. Taxes on Banks, Railroads, &c.
- ARTICLE 4. Taxes—how returned and collected.
- ARTICLE 5. Proceedings against delinquent Tax Payers.
- ARTICLE 6. Delinquent Collectors and Receivers, &c.
- ARTICLE 7. Tax Receivers.
- ARTICLE 8. Tax Collectors.
- ARTICLE 9. Compensation of Collectors and Receivers.
- ARTICLE 10. Miscellaneous provisions.

ARTICLE I.

PERSONS AND PROPERTY EXEMPT.

SECTION 729. Persons and property exempt from taxation enumerated.

§ 729. The following persons and property are exempt from taxation:

Property exempt from taxation.

1. All property specially exempted by the Constitution of the Confederate States or of this State.
2. All lands, mines and minerals, belonging to this State or the Confederate States.
3. All buildings erected for and used as a College, incorporated Academy, or other seminary of learning.
4. All buildings erected for and used for public worship, or for school houses, or both.
5. All Court Houses, Jails, or other county buildings.
6. All poor houses, alms houses, houses of industry, and any house belonging to any charitable institution.
7. The real and personal estate of any public library and that of any other literary association.
8. The several lots and buildings attached to the five last men-

Article 1.—Persons and Property Exempt.

tioned exemptions, including all necessary furniture belonging to each.

9. All books and philosophical apparatus, and all paintings and statuary of a company or association kept in a public hall, not held as merchandise or for the purpose of sale.

10. All stocks owned by the State, or by literary or charitable institutions for the legitimate purpose of such.

11. All plantation and mechanical tools, and all household and kitchen furniture not above the value of three hundred dollars, not held for sale or as merchandise.

12. All poultry, and two hundred dollars in value of other property, besides the special exemptions, but which latter do not obtain in favor of non-residents.

13. All annual crops and provisions; all fire-arms and all munitions, and all wearing apparel not held as merchandise.

14. All owners of stocks in any incorporated company liable to taxation on its capital for such stock, shall not be taxed as individuals. Stockholders—when exempt.

15. All places and monuments of the dead and implements of burial.

16. The property of revolutionary soldiers and their widows, to the value of one thousand dollars.

ARTICLE II.

SYSTEM OF TAXATION, AND PERSONS AND PROPERTY TAXED.

SECTION.

730. Taxable property—what.
 731. Bonds, notes and other obligations.
 732. Lands held by warrant or ungranted.
 733. Lands, &c., held by non-residents.
 734. Taxable property—assessments.
 735. Assessments—when and by whom.
 736. Amount of taxes to be assessed.
 737. Tax—in what funds to be paid.

SECTION.

738. Default and insolvent list.
 739. Specific taxes—items enumerated.
 740. Property specifically taxed, &c.
 741. License to exercise a privilege.
 742. Taxes to be paid before other debts.
 743. Conveyances and Judgments, &c.
 744. Person to whom conveyance is made.

§730. All real and personal estate, whether owned by individuals or corporations, resident or non-resident, are liable to Taxable property. taxation, unless specially exempted.

§731. Bonds, notes, or other obligations for money, on persons in other States, or bonds of the Confederate States, or of other States, or bonds of corporations of other States, and shipping, are Bonds, notes &c., of non-residents, bonds of other States, &c. may be taxed. the subjects of return and taxation in this State.

Article 2 —System of Taxation, and Persons and Property Taxed.

Ungranted
lands and
stock corpo-
rations.

§ 732. All lands held under warrants and certificates, but not granted, are liable to taxation, and all monied or stock corporations, unless exempted or differently provided for in their charters, are liable to taxation upon such capital stock, as other property.

Non-resi-
dent owners
subject to
same tax as
citizens.

§ 733. Lands, or other property, belonging to citizens of the Confederate States, not resident of this State, cannot be taxed higher than the property of residents, but all the property of such non-residents, whether their property be real or personal in this State, must pay taxes on the same herein.

Taxable
property to
be assessed
ad valorem,
and by
whom.

§ 734. All property, or other thing of value subject to taxation, must be given in by the tax payers as hereinafter set forth, at its fair market value, and must be taxed according to its value on an assessment to be made by the Governor, which must not exceed one-eighth of one per cent. per annum, without the assent of the General Assembly.

Assessment,
when and by
whom made.

§ 735. Such assessment must be made each year as soon as the value of the taxable property is substantially known by the Comptroller General, who shall assist the Governor in making the assessment, and immediately send written or printed notices to each Tax Collector, of the Governor's order, and publish also a copy thereof for the space of thirty days, in some public gazette at the Seat of Government.

Amount of
taxes to be
assessed.

§ 736. The amount of taxes assessed shall not exceed the actual annual wants of the State Government, exclusive of the commissions of Collectors and Receivers, and any other expense that may be lawfully incurred in assessing and collecting them.

How paid.

§ 737. Taxes must be paid in gold or silver, or in the bills of such banks as pay specie promptly, unless specially excluded by law, or otherwise directed by the Governor.

Default and
insolvent
lists.

§ 738. In netting the digest the default list shall be deducted for the Receivers, and the insolvent list for the Collectors.

Specific tax-
es.

§ 739. Besides the *ad valorem* tax, the following specific taxes shall be assessed per annum, and estimated in fixing the rate per cent.:

1. Practitioners of law, physic and dentistry, five dollars each.
2. Daguerrean, Ambrotype, Photographic and similar artists, five dollars.
3. Every free white person between the ages of twenty-one and sixty, twenty-five cents.

Article 2.—System of Taxation, and Persons and Property Taxed.

4. Every free person of color between the ages of eighteen and fifty, not valueless from decrepitude or disease, five dollars.
5. To carry on the business of an auctioneer, ten dollars. Auctioneers.
6. To keep a pool or billiard table for public play, twenty-five dollars.
7. To keep a bagatelle table for public play, ten dollars. Bagatelle table.
8. To keep a ten pin alley, or alley of like kind for public play, ten dollars. Ten pin alley.
9. To keep any other table, stand or place, for any other game or play, with or without a name, unless for exercise or amusement only, and not prohibited by law, ten dollars. Any other table, with or without a name.
10. To keep a public race-track, fifty dollars.
- § 740. Where persons are taxed specifically for keeping a billiard or pool table, bagatelle table or ten pin alley, they need not give in the value thereof. Property specifically taxed not to be returned.
- § 741. No assessment or payment of tax to the State is to exonerate the person from taking out license from the county, or city or incorporated town, in cases where they are required by law so to do. License—when necessary after payment of tax.
- § 742. Taxes shall be paid before any other debt, lien or claim whatsoever, and the property returned or held at the time of giving in, or after, is always subject. Taxes to be first paid, and property always subject.
- § 743. All deeds of gift, mortgages, sales and assignments of property of any kind, made to avoid paying taxes, or judgments procured to be rendered for the same purpose, are null and void. Conveyances and judgments to avoid payment of taxes, void.
- § 744. The person holding such property, or to whom such conveyance may be made, is liable for such taxes, and the property also, whenever found, no matter in whose possession it may be. Donee, &c., property liable.

ARTICLE III.

TAXES ON BANKS, RAILROADS AND OTHER CORPORATIONS.

SECTION.

745. Banks, &c.—how taxed.
746. Railroads and other corporations.
747. Private banks and bankers.
748. Special provisions for railroads.
749. Foreign banks—agents.

SECTION.

750. Foreign Insurance Companies.
751. Express Companies.
752. Lotteries.
753. Illegal sale of lottery tickets.
754. How contested by defendant.

§ 745. The several banks or other corporations in this State, having banking privileges, shall pay a tax annually of forty cents Banks—how taxed.

Article 3.—Taxes on Banks, Railroads and other Corporations.

on every hundred dollars of the highest amount of their capital stock paid in within the limits of their respective charters.

Tax on railroads and other companies.

§ 746. The several railroads and other incorporated or unincorporated companies of every kind, except banks, which are not exempt by their charter or otherwise, or for which there is not a different method of taxation specially prescribed, pay the same rate per cent. upon the whole amount of their capital stock paid in as is levied on other capital, together with the same rate per cent. upon their net annual profits.

Private bankers, &c.

§ 747. The provisions of the preceding sections apply to private bankers, brokers or exchange merchants.

Railroads—when to pay one-half of one per cent.

§ 748. The several railroads, by whose charters a higher tax is forbidden, and such as are now, or may hereafter be in operation, that do not pay a dividend exceeding six per cent., shall pay only one-half of one per cent. upon the net annual income of each, until they pay a dividend of eight per cent. per annum, in which shall be included the reserved fund, at which time they are to be taxed as other capital.

When otherwise taxed.

§ 749. Every agent of any foreign bank or individual not a citizen of this State, doing business herein, with or without an office, or through a citizen of this State or other person, shall pay the same rate of tax as is imposed upon the chartered banks upon one-third of the highest amount of loans or paper discounted, or exchange purchased by him and running to maturity at any one time during twelve months immediately preceding such returns, together with the same rate per cent. upon the net annual profits of the agency.

Agent of foreign bank and non-resident broker—how taxed.

Tax on foreign Insurance companies.

§ 750. All Insurance Companies out of this State, doing business herein, shall pay one per cent. upon premiums received.

On Express Companies.

§ 751. Every Express Company doing business in this State, shall pay a tax of one per cent. upon the gross amount of their profits for each year on business done at offices in this State.

On lotteries.

§ 752. Each manager of any lottery, if authorized by the laws of this State, shall pay to the State Treasurer one thousand dollars annually, free of all costs of collection.

Illegal sale of lottery tickets—how punished.

§ 753. If any person makes affidavit that any one is selling lottery tickets without the authority of the laws of this State, the Tax Collector of any county shall issue a *fi. fa.* or *ca. sa.*, or both, for the sum of one hundred dollars for each act, sworn to against the offending person as tax executions are issued.

Fi. fa. may be contested.

§ 754. The defendant may contest the collection of such process as defendants *fi. fas.* may.

ARTICLE IV.

TAXES—HOW RETURNED AND COLLECTED.

SECTION.

755. Returns of banks, &c.—how made.
 756. Other returns—to whom made.
 757. Mines and farms—where taxed.
 758. Mine or farm on county line.
 759. Non-residents.
 760. Lands, &c., of non-residents.
 761. Returns to Comptroller—how made.
 762. In what funds taxes payable.
 763. Returns may be by agent.
 764. Oath on special return.
 765. Oath on general return.
 766. Exceptions in oath.
 767. Oath of agent.
 768. By one of a firm sufficient.
 769. Who may administer oath.
 770. Evidence of oath.
 771. When Receiver must assess.
 772. Proceedings thereon.
 773. Who may complain of returns.
 774. Oath of assessors.
 775. Defaulting tax-payers.
 776. Relief against double tax.
 777. Defaulter's oath.

SECTION.

778. Blanks—by whom furnished.
 779. Lands—how returned.
 780. How entered in digest.
 781. Digests—when and where filed.
 782. Mistakes—how rectified.
 783. Tax overpaid refunded.
 784. Before reaching Treasury.
 785. Doubtful cases.
 786. Defaulters double taxed.
 787. Double tax on property.
 788. Double tax—how avoided.
 789. Agent of non-resident liable.
 790. When Collector must pay, &c.
 791. Insolvent list.
 792. Credit for—how allowed.
 793. When not allowed.
 794. New officers excused.
 795. When their liability attaches.
 796. Collector's duty as to digests.
 797. Further time may be allowed.
 798. Taxes for former years.
 799. Estates not liable—when.

§ 755. The returns of all Banks, Railroad and Insurance and Express Companies and Agents of foreign Companies, authorized in this State, shall be made to the Comptroller General by the first day of May in each year, and the taxes thereof shall be paid to the State Treasurer by the first day of October in each year. Returns and taxes of banks, &c.

§ 756. All other companies or persons taxed shall make their returns to the Receiver of the respective counties where the persons reside, or the office of the company is located, except in case of mining companies, and of persons who cultivate lands in counties not their residence. Returns—to whom made.

§ 757. Mining Companies must make their returns in the county where the mine is worked, and those who have such plantations must make the returns for them, together with the slaves and stock and other property employed thereon in the counties where they are respectively situated. Returns of Mining Companies, &c.

§ 758. If there is a mine or plantation on the line between two counties, and in two or more counties, the returns shall be Mine or plantation on county line.

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made in the county where the improvements or most of the improvements are.

Non-residents included.

§ 759. The provisions of the two preceding sections apply to non-residents who hold such property in this State.

Returns of non-residents, &c.

§ 760. Lands and slaves, and other property of non-residents, must be returned and paid for in the county where the lands, slaves or other property are respectively situated.

Returns made to Comptroller General, &c.

§ 761. The returns of all banks, or companies, or persons, required to be made to the Comptroller General, must be in writing and sworn to by the presiding officer or agent of a foreign company to be a just, true and full return of the capital stock, net annual profits or other property or effects, for which said bank or company is subject to taxation by the laws of this State.

Payment—how made.

§ 762. Such payments must be made in the funds in which taxes may be paid at the State Treasury free of any expense to the State.

Other returns—how made; tax—how paid.

§ 763. Returns of other companies and individuals may be made by themselves or agents, to the proper Tax Receiver, by the first day of July in each year, for property held and subject to taxation on the first day of April previously; and payments to the Tax Collector by the first day of October in each year.

Oath on a special return of non-residents.

§ 764. Persons making a special return in counties of which they are not residents, shall take a special oath as follows:

“You, A. B., do swear that you are not a citizen of the county of ———, and that the account you now give in is a just and true return of all the property which, by the law, you are required to give in and pay for in the county of ———, and that it is not worth more than the valuations you have affixed to it to the best of your knowledge and belief. So help you God.”

Oath on general returns.

§ 765. Persons making a general return must take the following oath:

“You do solemnly swear or affirm, that the account you now give in is a just and true return of all the taxable property, including solvent notes, bonds, open accounts or other obligations for money on persons in other States, or bonds of the Confederate States or of other States, or bonds of corporations or companies of other States, or shipping at sea, which you were possessed of, held or claimed on the first day of April last, or was interested in, or entitled unto either in your own right or in the right of any other person or persons whatsoever, as parent, guardian, ex-

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ecutor, administrator, agent, trustee, or in any other manner whatsoever, and that the value you have affixed to it is a just and true valuation to the best of your knowledge and belief, and that you have given in, by number and district, to the best of your ability, all the wild and unimproved lands you own in this State. So help you God.”

§ 766. If a person so making his return is liable under the law to make a special return, he shall insert, at the proper place in said affidavit, these words, “except such property as by law, I am compelled to return in some particular county or counties.” Exception inserted in oath.

§ 767. When any of the oaths aforesaid are taken by an agent, there shall also, at the proper place, be inserted, that he does so as agent for a certain person or persons, or company, naming them. Oath of agent.

§ 768. Such oaths taken by any one member of a firm or unincorporated company, without a presiding officer, shall be sufficient as to said firm or company property. Oath of one partner sufficient.

§ 769. They are taken before the Tax Receiver, who is authorized to administer them, but the oath of non-residents, females, absentees and sick persons may be written out in full and taken before any person authorized to administer an oath and delivered to the Receiver, who shall file such oaths in the office of the Clerk of the Inferior Courts. Oaths—how taken.

§ 770. The entry in the digests of the tax payers returns shall be *prima facie* evidence of his having taken such oath, and if false he is guilty of false swearing, and is liable to be indicted and to be punished therefor, as prescribed for other cases of false swearing in the Penal Code. Digest—when evidence; penalty for false oath.

§ 771. Each return shall be scrutinized carefully by the Tax Receiver, and if in his judgment he shall find the property embraced in the return, or any portion of it, returned below its value, he shall assess the value at once or within thirty days thereafter. In case of false return Tax Receiver to assess value.

§ 772. If such assessment is not made by the Receiver instantler, he shall give the tax payer notice of his assessment, and in either case it shall be the tax payer's privilege to have it left to three disinterested persons, one of whom he shall select, the other shall be selected by the Receiver, and these two shall select a third if they disagree, a majority of whom shall fix the assessment. Subsequent proceedings.

§ 773. It is the privilege of any tax payer of the county,

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Property re-
turned be-
low its value.

where a return is made, to complain to the Receiver at any time before his digest is completed, that any return is below the true value of the property, in which case he shall notify the person who made the return complained of, if practicable, verbally or by writing, giving him the name of the complainant and the ground of complaint, and shall proceed to have a new assessment in the terms of the preceding section.

Oath of as-
sessors.

§ 774. Whenever such assessors are called in, they shall take an oath before the Receiver to do justice between the parties at variance touching the true assessment of the tax return.

Defaulting
tax payer—
how re-
lieved when
doubled
taxed.

§ 775. When a tax payer has been returned as a defaulter and double taxed, either by the Receiver or Collector, the Justices of the Inferior Court are authorized to relieve the defaulter of the penalty for default at the time said Justices allow the Collector his resolvent lists, provided, that said tax payer shows to such Justices by satisfactory evidence that either from Providential or other good cause he had not an opportunity to make his return to the Receiver of Tax Returns and at the time of such release promptly pays his proper tax and one dollar to the Collector as his fee, the Collector shall promptly inform the Comptroller General of such release and the amount of taxes paid.

Defaulters—
how relieved
from double
tax.

§ 776. All defaulters may at any time and for the same causes, before the digest is made up and ready to be sent to the Comptroller, save the double tax, by likewise giving in to the Clerk of the Inferior Court and paying him one dollar, who shall give a copy of such returns instanter to the Receiver and he shall enter it in the several digests.

Defaulter's
oath.

§ 777. The Clerk, in the cases set forth in sections 775 and 776, shall require the tax payer to swear to the cause of his delay, and shall state the same in the copies furnished the Comptroller or Receiver.

Comptroller
General to
furnish Re-
ceivers
blank forms.

§ 778. The Comptroller General shall furnish all the Receivers of Tax Returns with a sufficient number of blank forms to conform to the tax laws, by which they shall make out their three digests and each digest shall be of uniform size, and when returned shall be bound and labelled.

Digests—
how made.

Return of
land—how
made.

§ 779. In making a return of taxable property the person returning, when making a general return, shall give in each tract or lot of land he may own, specifying its location by number, district and section, if known, the number of acres, if known, and its aggregate value, in which must be included the value of

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the buildings, machinery, toll bridges, ferries, or other improvements thereon or appurtenant thereto.

§ 780. Such together with the returns of personal estate and other interests, the subject of taxation, must be returned and set down in the digest in separate columns according to the classification furnished the Receivers by the Comptroller General in each year, and their aggregate value carried out, less the exemptions, such being specified.

Returns—
how entered
in digests.

§ 781. The Receiver must make out three of such digests in a fair and legible hand writing, and furnish by the first day of August, in each year, one to the Comptroller General, one to the Clerk of the Inferior Court and one to the Tax Collector.

Number of
digests—to
whom fur-
nished.

§ 782. If a Receiver makes a mistake in his digest, it is the duty of the Comptroller General, with the sanction of the Governor, to correct such mistake by making the necessary entries in the digest furnished the Comptroller, and must in writing notify the Clerk of the Inferior Court and the Tax Collector of the county from which such digest comes, of such mistake and correction.

Mistakes in
—how cor-
rected.

§ 783. If by reason of such mistake, or from any other cause, a tax payer's money is in the treasury for a greater amount than he is liable for, of which such officer is clearly satisfied, he may certify the same to the Governor, who shall, if he approves, draw his warrant on the Treasurer in favor of such tax payer for the proper amount, out of any monies not otherwise appropriated.

Tax over-
paid to be
refunded
when in the
Treasury.

§ 784. If such mistake is ascertained before the Tax Collector has paid the amount into the treasury, the Comptroller General, with the sanction of the Governor, shall authorize such Collector to refund the amount, or if he has not collected it, to order him to desist.

And before
reaching the
Treasury.

§ 785. When any similar cases arise, which are doubtful in the opinion of the Governor, he shall refer the matter to the General Assembly.

Doubtful
cases.

§ 786. If a person fails to make a return in whole or in part, or fails to affix a value to his property, it is the duty of the Receiver to make the valuation and assess the taxation thereon, and in all other respects to make the return for the defaulting person, from the best information he can obtain, and having done so, he shall double the tax in the last column of the digest against such defaulters, after having placed the proper market value or specific return in the proper column.

Defaulters
to be doubly
taxed.

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Property not returned to be doubly taxed by Receiver or Collector.

§ 787. If there is taxable property, real or personal, in a county, except vacant or wild lands, that to the satisfaction of the Receiver, when he comes to conclude his digest, is not returned by any person, and he does not know the owner or possessor, it is his duty to assess and double tax it, describing it particularly, and the same power is conferred on the Tax Collector, as to such property, when not assessed or overlooked by the Receiver.

When defaulters not liable for double tax.

§ 788. If persons who are required to give in land and negroes in the counties where situate fail so to do, they shall be liable only for the real tax assessed by the Receiver, unless they fail to pay the amount by the time required, in which event the Collector shall collect the double tax and issue process therefor.

Agents of non-residents personally liable.

§ 789. All persons who give in property for persons not resident in the State, shall be personally liable for the taxes, as well as the principal and his property.

When Collectors to pay taxes into Treasury and present insolvent list.

§ 790. The several Tax Collectors must pay into the State Treasury the taxes of their respective counties by the twentieth day of December of each year, and shall at the same time, present their insolvent list, duly certified to have been allowed them by the Grand Jury, or the Justices of the Inferior Court if the Grand Jury has not acted in the premises.

Disposition of insolvent list—when allowed.

§ 791. When such lists are allowed they must be entered on the minutes of the Inferior Court, and the Clerk thereof must furnish the Collector certified copies thereof, stating in the certificate when and by what tribunal allowed.

Unallowed insolvent list—when to be placed to Collector's credit.

§ 792. Collectors shall not be credited by the Comptroller General with an insolvent list, without being thus allowed, unless they have first made *bona fide* applications, as required by law, to the proper tribunals and have failed to have them allowed, from some cause not of their fault, as the failure of the Court or Justices to meet, or for some Providential cause, which fact shall be certified to the Comptroller General by the Clerk of the Superior Court, when sufficient evidence shall be produced to show that the list was insolvent.

When not.

§ 793. They shall not, under any circumstances, be allowed or credited with such lists after executions are issued against them for taxes, until they go to the Comptroller General and settle fairly and fully with him.

When time shall be granted to Receivers and Collectors.

§ 794. The time by which digests shall be completed, and the taxes paid, does not apply to Receivers and Collectors who have not been in office long enough to make such compliance, but in

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all such cases such officer must respond to the requirements of the Comptroller General.

§ 795. Such officers are not liable for the penalties fixed for those regularly elected, until after the time allowed by the Comptroller General has expired, unless they have been so long in office as would have been sufficient for the regular officers.

§ 796. It is the duty of the Collector to examine the digest of the Receiver, and if he knows of any default not entered, to make a schedule of such in the same manner as done by the Receiver, and of any other that he may then or afterwards learn, and of their property, and assess a double tax in the same manner the Receiver is allowed to do, one copy of which shall be furnished to the Comptroller General to add to the digest in his office, and another to the Receiver, who shall likewise correct his digest.

§ 797. And in other cases where any unexpected obstacles occur to completing the digest or paying over the taxes within the time prescribed, it is in the discretion of the Comptroller General to allow further and sufficient time.

§ 798. Receivers and Collectors are required to receive the returns and to collect the taxes thereon for former years, when any person or county are in default, which taxes shall be assessed according to the law in force at the time the default occurred, and shall be so specified in the digest.

§ 799. The estate of any person shall not be liable for default when said person may have died before the time expired for giving in taxes for the year, and the representatives or any heir may give in the same, and in any event, for that year, such estate shall not be liable to double tax.

Newly elected Receivers and Collector to have time.

Collector to examine digest of Receiver, to make a schedule of defaulters and to double tax the same.

Comptroller General may allow further time.

Taxes for former years—how returned and collected.

Estate not liable for default—when; and in no event to be doubly taxed the first year.

ARTICLE V.

DELINQUENT TAX PAYERS AND PROCEEDINGS AGAINST THEM.

SECTION.

800. Defaulting corporations.
 801. Forfeiture of charter, &c.
 802. Penalty where none is fixed.
 803. Default tax on foreign corporations.
 804. Penalty on lottery dealers.
 805. Assessments in absence of returns.
 806. *Fi. fa.* vs. corporation.
 807. *Fi. fa.* vs. agent—how executed.
 808. Duty of collecting officer.
 809. Relief of one unjustly put in default.
 810. Collector's *fi. fa.*—how issued, &c.
 811. By whom and how executed.
 812. Authority of Constable.

SECTION.

813. Sales under tax *fi. fas.*
 814. Excess—how disposed of.
 815. Conveyance to purchaser.
 816. Purchaser to have possession.
 817. Property exempt from sale.
 818. Claims—condition of claim bond.
 819. Unreturned property—proceeding.
 820. Owner may redeem land sold.
 821. Defaulting free negroes, &c.
 822. Tax *fi. fa.* runs to any county.
 823. Penalty against defaulting brokers.
 824. Defaulting corporations, &c.

Comptroller
General to
issue *fi. fa.*
against cer-
tain delin-
quents.

§ 800. If any corporation, company, person, agency or institution, who are required to make their returns to the Comptroller General, shall fail to return the taxable property or specifics, or pay annually the taxes for which they are liable to the State Treasurer, the Comptroller General shall issue against them an execution for the amount of taxes due, according to law, together with the costs and penalties.

Penalty
against de-
linquent in-
corporations

§ 801. The penalty against all such corporations shall be the forfeiture of their charters, and if not chartered by this State, then the immediate suspension of their business therein.

Penalty
against cor-
porations
&c.

§ 802. The penalty or default tax on banks, railroads, and other corporations, where there is no special provision, shall be three times the amount of their lawful tax.

Penalty
against for-
eign insur-
ance Compa-
nies, &c.

§ 803. The penalty or default tax on foreign insurance companies shall be five hundred dollars, on foreign bank agencies two thousand dollars, on express companies ten thousand dollars.

Penalty
against lot-
tery dealers.

§ 804. The penalty on lottery dealers, if there should be any authorized by the laws of this State, shall be three times the amount of the taxes assessed.

Where no
return
Comptroller
General to
assess tax.

§ 805. When there is no return by which to assess the tax, the Comptroller General shall, from the best information he can procure, assess in his discretion.

Fi. fas. is-
sued by
Comptroller
General
against a
Company—
how direct-
ed, &c.

§ 806. The executions issued by the Comptroller General against any bank or other company, shall be directed to all and singular the Sheriffs and other lawful officers of this State, with directions to levy the same on the property of the corporation or

Article 5.—Delinquent Tax Payers and Proceedings against them.

company, with power to issue and serve garnishments upon the debtors of the corporation.

§ 807. The executions against agents of foreign institutions *fi. fas.*, vs. agents of foreign Companies, as aforesaid, shall be against the principal, agent, or his successor, and shall authorize the officer to levy on all the property of the agency, to seize its money, notes, or other effects.

§ 808. When an officer collects money on such process or on any other issued by the Comptroller General, he shall, without delay, remit the same to him by some safe and speedy method, and on failure to do so is liable as he would be to other plaintiffs. Money raised on above *fi. fas.* to be immediately sent to Comptroller General.

§ 809. When a person shall have lawfully returned and paid his taxes in one county, and is treated as a defaulter in another for the same tax, or any portion thereof, the Grand Jury or the Justices of the Inferior Court of the county claiming the tax, may discharge said defaulter, which will exempt him from liability for it, and shall authorize the Comptroller to credit the Collector for the same, and the Governor to draw his warrant therefor. One wrongly judged a defaulter—how relieved.

§ 810. Executions for non-payment of taxes, against persons who are not required to pay to the Treasurer, are issued by the Tax Collectors of their respective counties as soon as the last day for payment has arrived, and must be directed to all and singular, the Sheriffs and Constables of this State. Tax Collector's *fi. fas.*—when and how issued.

§ 811. Executions may be levied by either of the officers to whom directed, or other officer, who by law may be authorized in their place; when the principal amount does not exceed fifty dollars, the levy and sale must be made by a Constable and not otherwise; if the Constable levies on land or negroes, they must be returned to and sold by the Sheriff of the county. By whom levied and sales under.

§ 812. The Tax Collector may place his *fi. fas.* in the hands of any one Constable of the county, who shall be authorized to collect or levy the same in any part of the county. Constable may levy in any part of the county.

§ 813. Sales under tax *fi. fas.* shall be made under the same rules governing other judicial sales. Sales under tax *fi. fas.*

§ 814. If there is any excess, after paying taxes and all expenses, it shall be immediately paid to the person authorized to receive it. Excess—how paid.

§ 815. The deed or bill of sale made by such officer shall be just as valid to the purchaser as if made under the ordinary process of law issuing from the Superior Court. Deed made at sale under tax *fi. fas.* valid.

§ 816. The officer selling has the authority to put purchasers in possession of land sold, as in other cases. Officer to put purchaser in possession of land.

Article 5.—Delinquent Tax Payers and Proceedings against them.

Property exempt from sale.

§ 817. Property exempted from levy and sale ordinarily, is exempted from levy and sale for taxes.

Claim may be interposed when tax *fi. fa.* is levied; claimant to give bond, and to be liable as on appeal bond.

§ 818. When property is levied on under a tax *fi. fa.*, issued either by the Comptroller General or Tax Collector, it may be claimed by a third person, and tried in the same manner as other claims are, except that the claimant shall give a bond and security for the eventual condemnation money, and if found subject, such claimant and his sureties shall be in all respects liable as on appeal bond.

Property not returned but assessed to be sold or hired, overplus paid to Ordinary, and may be claimed by true owner.

§ 819. When property is assessed for taxes which has not been returned by any one, as soon as assessed, the Tax Collector shall at once issue an execution against it for the amount due and costs, and the Sheriff shall advertise it for sale in some public gazette ninety days before the day of sale, and if, by said day, the taxes are not paid, it shall be sold, provided, renting or hiring will not bring the requisite amount. Whatever overplus there may be shall be paid over to the Ordinary as a part of the Educational Fund, with a statement of the property and account of sales, subject to the claim of the true owner within four years.

Land sold under tax *fi. fa.* may be redeemed by owner.

§ 820. Whenever any land is sold by virtue of a tax execution issued under this Code, the owner thereof shall have the privilege of redeeming said land thus sold, within one year, by paying the purchaser the amount paid by said purchaser for said land, with ten per cent. premium thereon, from the date of the purchase to the time of payment.

Free negroes in default to be hired out.

§ 821. Free persons of color, whose taxes are not paid and have not property sufficient, shall be hired out, from year to year, at any time, on ten days' public notice, and the overplus, if any, paid to the guardian. A written direction from the Tax Collector shall be sufficient authority for such hiring by the Sheriff. The status of the free person of color, during the time of hiring, is that of a slave.

Status when hired out that of a slave.

Tax *fi. fa.* runs in any county.

§ 822. If there is not sufficient property in the county where the tax payer resides to satisfy the taxes, property situated in any other county, is the subject of levy and sale.

Brokers, &c., failing to return amount of capital, taxed \$500.

§ 823. If any Broker, Private Banker, or Exchange Merchant, or their Agents, in this State, fail to return the amount of capital they intend to employ during the year, they shall pay a tax of five hundred dollars, to be levied and collected as other taxes.

Defaulting companies.

§ 824. Any incorporated, or other company, making default, shall be taxed by the Collector as such defaulters are by the Comptroller General.

ARTICLE VI.

DELINQUENT TAX RECEIVERS AND COLLECTORS AND PROCEEDINGS
AGAINST THEM.

SECTION.

825. Penalty for not completing Digest.
826. Penalty for improper Digest.
827. Penalty for useless Digest.
828. Receivers' liability—how enforced.
829. Penalty for false Digest.
830. Penalty for deceiving tax payer.
831. Altering Digest by Collector.
832. *Pi. fa.* vs. Collector and Sureties.

SECTION.

833. Amount of penalty.
834. *Pi. fas.* vs. Tax Officers.
835. How *fi. fa.* may be suspended.
836. Property bound from date of bond.
837. Sales under *fi. fas.* vs. Tax Officers.
838. Collector must await digest.
839. Must give bond, &c., before he collect.
840. Governor may vacate commissions.

§ 825. If a Tax Receiver fails to have his digest completed and deposited by the first day of August in each year, unless excused by the terms of the law or by the Comptroller General, he forfeits, for every week's delay, one-tenth of his commissions; and if the delay extends beyond thirty days he forfeits one-half his commissions; and if beyond the time when the Governor and Comptroller fix the rate per cent., he forfeits all his commissions.

Receiver failing to complete digest to forfeit commissions.

§ 826. If he fails to make out his digest in the manner prescribed by law, or to comply with the directions given him by the Comptroller General, in so doing he forfeits one-half his commissions.

Failing to make a proper digest, to forfeit half commissions.

§ 827. If such digest is made out so badly as not to answer the purpose of the tax laws, he forfeits all his commissions, and must be removed from office by the Justices of the Inferior Court, on the request of the Comptroller General.

Making a useless digest, to forfeit all commissions and be removed.

§ 828. If he receives commissions, which he is not entitled to receive or retain, or in any other manner becomes possessed of any money belonging to the State, or incurs any liability thereto, the Comptroller General is authorized to issue execution or other legal process against him.

Becoming indebted to the State—process to issue against him.

§ 829. If a Receiver makes a false return in either of his digests, expressive of more than is returned, he shall forfeit to the party aggrieved, in all cases, one hundred dollars, and if the amount out of which such party is defrauded by such return is more than one hundred dollars, then ten dollars for every one dollar over that amount, to be recovered by a *qui-tam* action.

Making false return to answer to party aggrieved.

§ 830. If, by any device, intentionally, he causes the tax payer to pay more than his lawful tax, the provisions of the preceding section apply.

Liable for deceiving tax payer.

Article 6 —Delinquent Tax Receivers and Collectors and Proceedings against them.

Collector fraudulently altering digest, guilty of forgery.

§ 831. If any Collector, with fraudulent intent, alters the digest rendered to him, or any other of the digests of his county, he is guilty of forgery, and, on conviction, shall be punished by imprisonment in the Penitentiary for not less than two nor longer than ten years.

Execution to issue against him on failure to settle his accounts.

§ 832. If any Collector shall fail to settle his accounts with the Comptroller General in the terms of the law, he shall issue execution against him and his sureties for the principal amount, with the penalty and costs.

Amount of penalty.

§ 833. The penalty is twenty per cent. per annum, upon the amount retained, from the time of default until paid, which includes interest.

Fi. fas. Collectors, how directed and executed.

§ 834. All executions and other process against Collectors and Receivers must be directed to all and singular the Sheriffs of this State, and must be executed by them, their lawful deputy, or other officer lawfully in their stead.

Not to be suspended, &c.

§ 835. Executions so issued shall not be suspended or delayed by any judicial interference with them, but the Governor may suspend the collection not longer than the next meeting of the General Assembly.

Property of Collectors, Receivers, &c.

§ 836. The property of Collectors, Receivers and of their sureties, are bound, from the execution of their bonds, for the payment of taxes collected and the discharge of their duties.

Levy and sale under *fi. fas.*, &c.

§ 837. The proceedings in selling property under such executions must be the same as under *fi. fas.* issued from the Superior Court.

Collector not to collect taxes, &c.

§ 838. If any Collector shall collect, or attempt to collect any taxes before the Receiver has completed and transmitted his digest to the Comptroller General, unless specially so ordered by such officer, or allowed by special enactment, he forfeits to the State double the amount so collected, or attempted to be collected, to be recovered by execution issued by the Comptroller General.

Collector not to collect tax before giving bond, &c.

§ 839. If any Collector collects, or attempts to collect, any tax before he has given, and had approved the necessary bonds and security, and taken the oaths of office, he is guilty of a misdemeanor, and, upon indictment and conviction, shall be fined not less than one hundred dollars, and, in addition, double the amount so collected, and in default of payment three months' imprisonment in the common jail. The Governor may vacate the commissions of defaulting Tax Collectors, or of Tax Receivers failing

Governor may vacate commission.

Article 7.—Tax Receivers.

or refusing to do their duty, and in such event the vacancy shall be filled in the manner prescribed for other vacancies.

ARTICLE VII.

TAX RECEIVERS.

SECTION.

840. How Receivers are elected, &c.
 841. Vacancies—how filled.
 842. Receiver's oath.
 843. Liability on bond.
 844. Receiver's duties specified.
 845. His failure to advertise—no excuse.

SECTION.

846. Penalty for refusing return.
 847. Party refused, &c.
 848. Clerk must forward returns.
 849. Claim of right to assess—no refusal.
 850. Receiver's pay from county.

§840. Tax Receivers shall be elected on the first Wednesday in January of each year, for the term of one year, and are commissioned and qualified as Clerks of the Superior Court are. Tax Receivers—how elected, &c.

§841. Vacancies are filled as vacancies for such Clerks, but if there is not time to fill the same by the first day of May in each year by election, the Justices of the Inferior Court shall appoint one, who shall discharge the duties of the office for the balance of the year. Vacancies—how filled.

§842. Such Receiver, whether elected or appointed, before entering on the duties of his office, besides the oath required of all civil officers, must take and subscribe the following oath: Receiver's oath.

“I swear that I will truly and faithfully perform the duties of Receiver of returns of taxable property, or of persons or things specially taxed in the county to which I am appointed, as required of me by the laws, and will not receive any return but on oath or affirmation, and will, before receiving returns, carefully examine each, and will, to the best of my ability, carry out all the requirements made upon me by the tax law. So help me God.”

He shall also, at the same time, give bond and security in double the amount of the taxes due the State in his county, taking the taxes of the previous year as a basis, subject to be increased or diminished according to the rate per cent. of taxation and the directions of the Comptroller General. Amount of Receiver's bond.

§843. Receivers and their sureties are liable on their bonds for all penalties or forfeitures they may incur under the law, and for all losses, or damage, or expense the State may sustain by reason of their conduct. Liability of Receivers, &c.

Article 7.—Tax Receivers.

Duties of
Receiver
enumerated.

§ 844. It is his duty—

1. To receive all returns of taxes within the time and in the manner prescribed by law.

2. To make out and perfect the three digests in writing and figures plainly, legibly and neatly, and to properly deposit them.

3. To give ten days' notice in writing of the several times and places at which he will attend in the several Militia Districts of the county, for the purpose of receiving tax returns.

4. To attend at such place at least three times during the time allowed in which to make returns.

5. To keep a standing advertisement as to the day or days when he will be at the county site for such purpose.

6. To receive tax returns at any time when a tax payer applies to give in.

7. To embrace in his digest to the Comptroller General, the Clerk of the Inferior Court and the Tax Collector, respectively, a list of all defaulters, and the amount of their true and double tax, and of all property assessed by them and returned by no one, or other special action had in conformity to the laws.

8. To publish at the door of the Court House for thirty days lists of all the defaulters and the amount of their double taxes.

9. To take from each tax payer resident of the county at the time of receiving his tax returns the number of his own children between the ages of six and eighteen years, and those for whom he is guardian, and enter the same in the proper place and column in the digests.

10. To assess upon the digests deposited with the Clerk of the Inferior Court the county taxes according to law, and the rate per cent. levied by the Justices of the Inferior Court.

11. To conform to such rules as he may be furnished with, and to obey such orders as may be given by the Comptroller General.

12. To perform all other duties that the law requires, and which necessarily under the law appertain to his office.

Negligence
of Receiver,
&c.

§ 845. It shall not be an excuse to any person for not making a return of his taxes as the law requires, that the Receiver should fail to advertise or fill his appointments.

Refusal of
Receiver to
receive re-
turns, &c.

§ 846. If any Receiver refuses to receive any return of taxes when properly tendered, and in presence of a witness, and in the time the law requires, he is guilty of a misdemeanor, and, on indictment and conviction, shall be fined not less than fifty dollars.

Article 7.—Tax Receivers.

§ 847. The person whose return is thus refused may save a double tax by making his return to the Clerk of the Inferior Court, together with an affidavit in writing that he tendered said return to the Receiver, stating the time when, place where, and persons present, and that it was refused. One whose return has not been received, &c.

§ 848. Such Clerk shall forward a copy of said return and affidavit to the Comptroller General instantler, and retain the originals for which he shall be entitled to one dollar from the tax payer. Where return is made to Clerk of Inferior Court.

§ 849. The claim of the Receiver to assess a tax payer's property is not a refusal to receive a return. No refusal of a return &c.

§ 850. The county shall pay the Receiver one-half of what the Collector gets for collecting the county tax. Receiver's pay, &c.

ARTICLE VIII.

TAX COLLECTOR.

SECTION.

851. Election & qualification of Collectors.
852. Vacancies—how filled.
853. Collector's oath.
854. Collector's bond.
855. Bond for county tax—how approv'd.

SECTION.

856. Must give bond before he collects.
857. County Collector appointed—when.
858. Collector's duties specified.
859. His failures no excuse for others.

§ 851. Tax Collectors are elected at the same time, in the same manner, for the same term of office, and are commissioned and qualified as Tax Receivers. Election, commission of Tax Collectors, &c.

§ 852. Vacancies are filled as they are in the office of Receiver, and section No. 841 respecting Receivers, applies to Collectors, except so much thereof as fixes the first day of May, and in lieu thereof for Collectors the first day of August shall be the time. Vacancies—how filled.

§ 853. Before entering on the duties of his office, besides the oath required of all civil officers, he shall take and subscribe the following oath: Collector's oath.

“I, ——, Tax Collector of the county of ——, do swear that I will faithfully discharge the duties required of me by law as Tax Collector, and that I will search out and make a true return of all defaulters, polls, professions, free persons of color, and all taxable property not found on the Tax Receiver's digest, or not returned to the Clerk of the Superior Court by the fifteenth of

Article 8.—Tax Collectors.

August, and that I will pay over all taxes collected by me as required by law. So help me God.”

Bond and security to be given.

§ 854. He shall also give bond and security for the State tax on the same basis and the same terms that the Receiver is required to do, and shall give another bond with sufficient security, payable to the Justices of the Inferior Court, conditioned for the faithful performance of his duties as Collector of the county tax, in a sum to be fixed by such Justices.

Approved by Inferior Court.

§ 855. Such bond for county taxes, when given, must be approved by three Justices of the Inferior Court, filed in the office of their Clerk, recorded in the book with other official bonds, and in all respects is an official bond.

Bond to be given, &c.

§ 856. Tax Collectors shall not collect any portion of the county tax until such bond is given, and if they fail to give such a bond, or one satisfactory to such Justices, they may appoint some competent person to collect the county tax.

Duty of person so appointed.

§ 857. When such an appointment is made, the person appointed shall give such a bond as is required of a Tax Collector, and he shall take an oath faithfully to collect and pay over the county tax, and in all respects shall have the same privileges, discharge the same duties and incur the same penalties as the Tax Collector would in collecting the county tax.

Collector's duties enumerated.

§ 858. It is the duty of the Tax Collector—

1. To diligently collect and promptly pay over in the funds allowed by law the State and county taxes to the Comptroller General and County Treasurer respectively.

2. To search out and ascertain as far as possible, all polls, professions, free persons of color, and all taxable property not returned to the Receiver or not found in his digests.

3. To enter all of such defaults in a book kept for that purpose, to assess and collect thereon a double tax and pay the same over to the Comptroller General and County Treasurer respectively, after deducting double commissions, and to deposit said book with the Comptroller General, and a copy with the Clerk of the Inferior Court, before the day of final settlement.

4. To have his insolvent lists allowed in the manner required by law before final settlement with the Comptroller General.

5. To issue executions against all defaulters and insolvents, and place them with the proper officer for collection.

6. To give notice of the time and places of his attending to collect the taxes, and of the days he will be at the Court House,

Article 9.—Compensation of Collectors and Receivers.

and there to attend during the time for collection as required of the Receiver.

7. To publish at the door of the Court House, for thirty days, his insolvent lists, including the taxes of each person thereon. To furnish to election managers of the county, lists of all persons who have not paid their taxes.

8. To pay the Receiver his commissions upon the production of the Comptroller General's receipt, for his digest, with a specification therein of the amount of commissions to which he is entitled, and not otherwise, and to produce said Receiver's receipts, with his receipts thereon, to the Comptroller General before he shall be allowed credits for such commissions.

9. To conform to such rules as may be furnished, and to obey such orders as may be given by the Comptroller General.

10. To perform all other duties that the law requires, and which necessarily, under the law, appertain to his office.

§859. It is no excuse to any person for not paying his taxes as the law requires, that the Collector should fail to advertise or fill his appointments.

Collector's negligence no excuse to defaulting tax payer.

ARTICLE IX.

COMPENSATION OF COLLECTORS AND RECEIVERS.

SECTION 860. Pay of Receivers and Collectors.

§860. The following rates of commissions shall be allowed in the net amount of each digest to each Receiver and Collector of the State taxes, to wit:

Commissions of Receiver and Collector.

On all digests over	§20,000	3 per cent.
" " " "	10,000 and under §20,000	4 " "
" " " "	6,000 " "	10,000 5 " "
" " " "	4,000 " "	6,000 6 " "
" " " "	3,000 " "	4,000 7 " "
" " " "	2,000 " "	3,000 8 " "
" " " "	1,000 " "	2,000 9 " "
" " " "	under 1,000	10 " "

ARTICLE X.

MISCELLANEOUS PROVISIONS.

SECTION.

- §61. Comptroller may make rules.
 §62. Rules to be furnished tax officers.

SECTION.

- §63. Rules to be published.
 §64. Bonds of tax officers sued on.

Comptroller
 General to
 make rules
 for Collec-
 tors and Re-
 ceivers.

§ 861. The Comptroller General has authority to make all needful rules and regulations for the government of Tax Collectors and Receivers, and any other rules that may be necessary to insure the prompt and faithful execution of the tax laws, if not in violation of or inconsistent therewith.

Enter the
 same in a
 book and
 furnish
 them to Re-
 ceivers and
 Collectors.

§. 862. These rules, when made, shall be entered in a book in his office, kept for that purpose, and be binding on all successors until amended or repealed, copies of which shall be printed and furnished to Receivers and Collectors at the time of sending them the forms required.

And may
 publish
 them in a
 newspaper.

§863. They shall also be printed during the month of March, every year, in a public gazette, published at the Seat of Government, if in the discretion of the Comptroller he shall deem it beneficial.

Bonds of
 Collectors &
 Receivers
 subject to be
 sued on.

§864. Nothing shall be so construed as to make the Collector's and Receiver's bonds not subject to be sued according to due process of law, but which is not to be done unless some emergency should make it necessary.

CHAPTER II.

REVENUE FROM OTHER SOURCES.

SECTION.

- §65. Sources of revenue, &c.
 §66. What monies go into Treasury.

SECTION.

- §67. What fees go into Treasury.

Revenue of
 the State
 from sources
 other than
 taxation
 enumerated.

§865. The sources from which the State does or may derive revenue, other than by taxation, are as follows:

1. The net earnings of the Western and Atlantic Railroad.
2. Dividends on the Bank Stock owned by the State.
3. Dividends or interests on the stock owned in the Main Trunk Railroad.
4. Sale of State Bonds at a premium.
5. The use by individuals of any other property of the State.

Chapter 2.—Revenue from other Sources.

6. Receipts for military or other claims against the Confederate States.

7. Receipts from assets of the Central Bank and other old claims.

8. Receipts on claims from Tax Collectors or other officers for previous years, which were in litigation or regarded as insolvent.

9. Dues for the sale of reverted or other land, to which the State may have the title.

10. Fees which the Secretaries of the Governor, the Secretary of State, the Treasurer, the Comptroller General and Surveyor General and Librarian may receive for official duties.

§866. All the receipts from the resources mentioned in the preceding section, all fees not specially awarded to any particular officer, all fines and forfeitures, not otherwise disposed of, all monies collected from any source, or on any account, to which the State is entitled, not otherwise directed, must be paid into the State Treasury.

Miscellaneous revenue to be paid into the Treasury.

§867. The fees which officers are allowed to charge and which, when collected, must be paid to the Treasurer, are as follows:

Fees to be paid to Treasurer. Those of Governor's Secretary

1. Those by the Secretaries of the Governor—

A grant for 100 acres or under,.....	\$1 00
“ “ “ over 100 acres or under 300,.....	2 00
“ “ “ “ 300 “ “ “ 500,.....	3 00
“ “ “ “ 500 “ “ “ 1000,.....	4 00
“ “ “ 1000, and over, one per cent. per acre for every additional acre.	

Affixing the Great Seal of the State by order of the Governor, to anything of a private nature.....

For every examination of records per request,..... 50

Administering oath of office to a salaried officer and giving certificate thereof..... 1 00

Entering a testimonial,..... 50

Attaching the seal of the Executive Department..... 1 00

Certified copy of any record not more than 300 words.... 1 00

If more than 300 words, per hundred words..... 10

2. Those by the Secretary of State—

Secretary of State.

For a grant of land, and affixing the seal thereto, the same as is allowed the Secretaries of the Governor, according to the number of acres.

For registering each grant.....§ 50

For registering bond or other similar writing..... 1 00

Chapter 2.—Revenue from other Sources.

	For a testimonial, without the Great Seal,.....	1 00
	For a testimonial, with the Great Seal,.....	2 00
	Affixing the Great Seal to any other paper,.....	1 00
	For a certified copy of a grant to land,.....	1 00
	For a certified copy of any other paper not of more words,	1 00
	For more words, per hundred,	10
	For every search, per request.....	25
Treasurer.	3. Those by the Treasurer—	
	For every extract or copy from any book, minutes or file of office, not more than 300 words,.....	\$1 00
	For every additional 100 words,.....	10
	For every search, by request,.....	25
Comptroller General.	4. Those by the Comptroller General—	
	Every extract or copy from any book, minutes or file of office, not more than 300 words,.....	\$1 00
	For every additional 100 words,.....	10
	For every search, by request,.....	25
Surveyor General.	5. Those by the Surveyor General—	
	For examining a plat,.....	\$ 50
	“ recording a plat,.....	1 25
	“ recording a plat of a town, township or village,.....	10 00
	Transmitting a <i>caveat</i> to Governor and attending thereon,	1 00
	Certified copy of any original record, not more than 300 words,	1 00
	For every additional hundred words,.....	10
	Certified copy of an original warrant,.....	50
	Issuing a certificate of a record,.....	50
	For every search, per request,.....	25
Librarian.	6. Those by the Librarian—	
	Certifying to the existence or contents of any manuscript, map, or other document entrusted to his keeping,.....	\$1 00
	Furnishing copies of his catalogue of books,.....	50

Chapter 1.—Public Debt.

TITLE VIII.

THE PUBLIC DEBT.

CHAPTER I.

THE PUBLIC DEBT.

SECTION.

- 868. Of what bonds the public debt, &c.
- 869. State bonds—how authenticated.
- 870. Amount of bonds, time of payment.
- 871. Coupons—how signed and paid.
- 872. Bond must accompany coupon, &c.
- 873. State bonds—where payable.
- 874. Bonds may be exchanged—when.
- 875. Bonds taken up not to be re-issued.
- 876. New bonds may issue for lost ones.

SECTION.

- 877. On what showing new bonds issue.
- 878. State must be indemnified.
- 879. Bonds, &c., paid off—how kept.
- 880. Payment of bonds provided for.
- 881. Surplus set apart.
- 882. Overplus paid to bonds not due.
- 883. Bonds paid before due to be reported.
- 884. Provisions for education, &c.

§ 868. The public debt of this State consists of the following bonds : Bonds issued for public debt.

Date of Emission.	Rate of Interest.	When Payable.	Place of Payment.	Outstanding.	Remarks.
Jan. 25, 1840	6 per cent.	June 1, 1870	State Treasury,	\$102,500 00	} On account of Western & Atlantic R. R.
Jan. 25, 1841	6 per cent.	July 1, 1871	" "	156,250 00	
Jan. 1, 1842	6 per cent.	June 1, 1872	" "	97,000 00	" "
June 1, 1842	6 per cent.	Jan. 1, 1873	" "	101,500 00	" "
Jan. 1, 1843	6 per cent.	Jan. 1, 1873	" "	69,500 00	" "
May 1, 1844	7 per cent.	May 1, 1874	" "	75,000 00	" "
July 15, 1844	6 per cent.	Sept. 1, 1869	" "	262,500 00	" "
July 1, 1848	6 per cent.	July 1, 1868	Augusta, Georgia,	190,000 00	} Redeemable at option of State after 10 years.
July 1, 1848	6 per cent.	July 1, 1868	Savannah, "	28,000 00	
May 1, 1848	7 per cent.	May 1, 1874	Augusta, Sav. or Treas.	177,000 00	} 10 years, redeemable as above.
Jan. 1, 1852	7 per cent.	Jan. 1, 1862	Bank State of Ga., Sav.	100,000 00	
Jan. 1, 1852	7 per cent.	Jan. 1, 1872	" "	100,000 00	} Redeemable at option of State after 10 years.
Jan. 1, 1852	6 per cent.	July 1, 1872	Bank Republic, N. Y.	528,000 00	
July 1, 1855	6 per cent.	July 1, 1865	Bank State of Ga., Sav.	16,500 00	
Feb. 1, 1858	6 per cent.	Feb. 1, 1878	New York,	100,000 00	For Atlantic & G. R. R.
Feb. 1, 1859	6 per cent.	Feb. 1, 1879	" "	150,000 00	" "
Aug. 1, 1859	6 per cent.	Aug. 1, 1879	" "	50,000 00	" "
Feb. 1, 1860	6 per cent.	Feb. 1, 1880	" "	150,000 00	" "
Jan. 20, 1848	7 per cent.	Jan. 1, 1861	State Treasury,	50,000 00	} For Central Bank.
Jan. 20, 1848	7 per cent.	Jan. 1, 1862	" "	20,000 00	
Aug. 1, 1848	7 per cent.	Aug. 7, 1860	" "	" "	" "
Feb. 14, 1848	7 per cent.	Feb. 14, 1862	" "	" "	" "
Feb. 1, 1849	7 per cent.	Feb. 1, 1860	" "	" "	" "
Feb. 1, 1849	7 per cent.	Feb. 1, 1863	" "	45,500 00	" "
Jan. 20, 1849	7 per cent.	Jan. 1, 1861	" "	5,000 00	" "
Jan. 20, 1849	7 per cent.	Jan. 1, 1862	" "	12,500 00	" "
Feb. 1, 1849	7 per cent.	Feb. 1, 1864	" "	60,000 00	" "
1839	5 per cent.	1869	City of London,	72,000 00	Sterling bonds.

§ 869. All bonds or certificates of the State for the State debt

Chapter 1.—Public Debt.

State bonds and certificates—how authenticated.

must be authenticated by the signature of the Governor, the Secretary of State, and stamped with one side of the seal of the State, to wit, that side which has on it the motto "Wisdom, Justice and Moderation.

Amounts of, and how payable.

§ 870. They shall be, unless otherwise specially ordered by the General Assembly, in sums of five hundred and one thousand dollars each, payable in twenty years after their date, bearing interest at six per cent. per annum, which interest is payable semi-annually by coupons thereto annexed.

Coupons—how signed and paid.

§ 871. They may, before or after issued, be presented to the State Treasurer, who shall sign, in his official capacity, all the coupons thereto attached, which then may be paid at maturity by the Treasurer, without the presentation of the bond or further warrant or authority.

When unsigned not to be paid, unless accompanied by the bond.

§ 872. If coupons are not thus signed they shall not be paid, unless accompanied by the bond to which they belong, and before payment shall be by the Treasurer detached.

When public debt to be paid.

§ 873. The principal and interest shall be made payable at such place in this State or other of the Confederate States as the Governor may in his discretion direct, and he may direct the principal payable at one place and the interest at another.

Bonds payable out of the State, held by citizens, may be exchanged.

§ 874. Where citizens of this State become possessed of State bonds, payable out of this State, the Governor may give in exchange for them, bonds payable herein, provided there is no loss to the State by the exchange, and the expense thereof, if any, is borne by the holders of the bonds.

Such original bonds not to be re-issued.

§ 875. When such exchange occurs the original bonds so taken up shall not be re-issued on any account whatever, unless specially provided for by the General Assembly.

Lost bonds or coupons.

§ 876. When any bond or coupons shall be lost, mutilated or destroyed, the Governor may issue to the holder a new bond, with proper coupons attached.

New bonds—how obtained.

§ 877. When mutilated, the mutilated bonds must be surrendered; when lost or destroyed, the holder must make affidavit of such fact, that they were his, in his own or some other right, at the time of the loss or destruction; if lost, that he has made diligent search without avail, and despairs of ever finding them, and that he does not believe they are possessed by any person.

Bond and surety to be given.

§ 878. Having made such affidavit, he shall then, before receiving the new bond, give bond and surety to the Governor in a sum double the amount of the principal thereof and the unpaid

Chapter 1.—Public Debt.

interest thereon, conditioned to save the State harmless on account of issuing such new bond.

§ 879. When bonds or coupons are paid they must be stamped as paid, and preserved in the Treasurer's office with the same care as the funds of the State.

Disposition of bonds and coupons when paid.

§ 880. An amount of money stands annually appropriated sufficient to pay the principal and interest of any bonded debt of the State becoming due during the year.

Appropriation annually for bonded debt.

§ 881. Any surplus in the Treasury, after allowing for all the annual charges against it, including such claims, is likewise appropriated to the same object.

Surplus in Treasury appropriated to bonded debt.

§ 882. Whatever amount may remain from the appropriations contained in the two preceding sections, more than enough to pay such debts, may be applied, by the order of the Governor, to redeeming any particular class of bonds not due as he may order, and which, in his judgment, it is to the interest of the State to prefer and anticipate.

Surplus appropriation may be applied by the Governor.

§ 883. All bonds redeemed before maturity must be by the Governor annually reported to the General Assembly, particularly described, and the terms upon which they were so redeemed.

Bonds redeemed before due.

§ 884. For the purpose of carrying into effect, the changing of the public debt, paid with the net earnings of the Western & Atlantic Railroad, into a permanent Educational Fund, the Governor is authorized to substitute other State bonds bearing the same rate of interest for those in the hands of holders, and to issue new bonds and arrange them upon such schedule, and payable at such periods as that by providing annually a sinking fund, the whole principal of the public debt shall be extinguished by the time the last bonds shall become due. This sinking fund, when ascertained, shall be paid out of the net earnings of the Western & Atlantic Railroad, and until ascertained the Governor shall use so much of the earnings of said road as shall be necessary to meet said bonds annually falling due.

Provision for applying proceeds of W. & A. R. R. to Educational Fund.

Annual sinking fund—how paid—public debt—when paid.

TITLE IX.

PUBLIC PROPERTY.

CHAPTER I.

PUBLIC BUILDINGS.

SECTION.

885. Buildings owned by the State.

SECTION.

886. Buildings the State is interested in.

Buildings
owned by
the State.

§ 885. The buildings, and those appurtenant thereto, belonging to the State are—

The State Capitol.

The Governor's Mansion.

The State Arsenals at Milledgeville and Savannah, and the Military Institute at Marietta; the Deaf and Dumb Asylum at Cave Spring; the Lunatic Asylum near Milledgeville; the Penitentiary at Milledgeville; the buildings of the Western & Atlantic Railroad.

Partly own-
ed by the
State.

§ 886. The State has an interest in—

The University of Georgia at Athens.

The Asylum for the Blind at Macon.*

CHAPTER II.

THE LANDS OF THE STATE.

SECTION 887. Lands reserved to the State.

Lands own-
ed by the
State.

§ 887. The lands specially reserved to the State are—

The lands known as the "Macon Reserve" on the Ocmulgee river; the lands known as the "McIntosh Reserve," on which is situated the Indian Spring; the lands known as the "Old Agency Reserve" on the Flint river; a quantity of land on Flint river, opposite the Old Agency; one mile square on the Chattahoochee river at McIntosh Ferry; one mile square at Marshall's Ferry on Flint river, including the ferry; five miles square on Chattahoochee river at Cusseta Falls, including the falls; all islands contained in any of the navigable waters not disposed of, and the Western bank of the Chattahoochee river to high-water

* A considerable portion of the above mentioned reservations have been conveyed by the State to private companies or individuals, which will appear by reference to the proper records.

mark, where it forms the boundary between Georgia and Alabama; so much of the Okefenokee Swamp as is in this State and ungranted; the lots whereon all the public buildings of the State are erected; the fractional parts of surveys created by the different land divisions which are not granted or otherwise disposed of; all lands omitted to be surveyed, granted or sold; parcels of land in certain cities, to-wit:

- In the city of Atlanta;
- In the city of Columbus;
- In the city of Chattanooga.

CHAPTER III.

THE WESTERN & ATLANTIC RAILROAD AND ITS GOVERNMENT.

SECTION.

- 888. W. & A. R. R. belongs to State, &c.
- 889. Obligations relative to W. & A. R. R.
- 890. What laws apply to W. & A. R. R.
- 891. Former laws still of force.
- 892. Appointment of Superintendent.
- 893. Superintendent's bond.
- 894. His oath and commission.
- 895. Superintendent's authority.
- 896. Rules of road to be recorded, &c.
- 897. Such rules are law.
- 898. Where the road may be sued.
- 899. Demand must be made before suit.
- 900. Books of road *prima facie* evidence.
- 901. Debtors to road—public debtors.
- 902. Appointment, &c., of Treasurer.
- 903. Treasurer's oath.
- 904. His bond; oath & bond—where filed.
- 905. Treasurer's duties specified.
- 906. Auditor's appointment, &c.
- 907. Auditor's oath.
- 908. His bond.
- 909. His bond and oath—where filed.
- 910. Auditor's duties specified.
- 911. Remedy against officers W. & A. R. R.

SECTION.

- 912. Compellable to give other security.
- 913. Agents must report monthly.
- 914. Officer failing to pay, &c., dismissed.
- 915. Accounts of dismissed officers.
- 916. Indebtedness of defaulters, &c.
- 917. Oath of all agents of the road.
- 918. Their bonds.
- 919. Bonds renewed annually.
- 920. Settlements with agents.
- 921. Governor to examine bonds, &c.
- 922. Conductor's oath.
- 923. No credit to be given for freights.
- 924. Conductor's settlements.
- 925. Disbursements—how made.
- 926. How Auditor's decisions reviewed.
- 927. Proceeds of road—how disposed of.
- 928. Useless iron & tackle may be sold.
- 929. Sale may be for cash or on credit.
- 930. No officer of road can buy at sale.
- 931. Sale bill to be kept and reported.
- 932. Useless land of road may be sold.
- 933. Who may go over road free of charge.
- 934. Laws of road enforced by Sup't.
- 935. Transportation of line.

§ 888. The railroad communication from Atlanta, in Fulton county, to Chattanooga, on the Tennessee river, is the property of this State exclusively, and shall be known as the Western & Atlantic Railroad. Said road may be run by the town of Cassville upon the conditions of an act approved January 12th, 1852,

W. & A. R.
Is the property of the State.

May run by town of Cassville.

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and which is hereby kept in force until the first day of January, 1863.

Relation of State to the W. & A. R. R.; reciprocal obligations of the road and the public.

§ 889. The State occupies the same relation to said road as owner, that any company or incorporation does to its railroad, and the obligations of the State to the public concerning said road, and of the public to said road, are the same as govern the other railroads of this State, so far as is consistent with the sovereign attributes of this State, and the laws of force for its conduct.

Road laws and penal laws apply to W. & A. R. R. proviso.

§ 890. All the public road laws and penal laws touching the railroads of this State, whether to obligate or protect, apply to the State Road, unless specially excepted, or some other provision is prescribed in lieu of some one or more thereof.

Preceding laws of force.

§ 891. All laws heretofore enacted, having a special or local application to said road, and in force at the time of the adoption of this Code, are kept in force, unless herein repealed expressly, or by implication.

Superintendent of W. & A. R. R. appointed by Governor.

§ 892. The principal officer of said road shall be styled the Superintendent, who is appointed by the Governor, and holds his office during his term, unless sooner removed at his pleasure.

To give bond and security.

§ 893. Before entering on the duties of his office, he shall give bond and security, to be approved by the Governor, in the sum of twenty thousand dollars, which shall be filed in the office of the Comptroller General and recorded therein.

To take oath.

§ 894. He shall also, at the same time, besides the oath required of all civil officers, take and subscribe before the Governor the following oath, which shall be filed in the Executive office:

“I, ——, swear that I will faithfully and impartially perform all the duties of my office; that I will make no appointment, nor do any act from fear, favor, reward or the hope thereof, but in all things I will be governed solely with regard to the interest of the State of Georgia, and in the discharge of my duties I will neither make, nor permit to be made any discrimination, unless so directed by legislative authority, in favor or against any Railroad Company, or other persons or parties having business connections with, or relations to said road. So help me God.”

Powers of Superintendent enumerated.

§ 895. The Superintendent has authority—

1. To conduct all the operations of said road connected with its repairs, equipment and management, including its financial affairs.

2. To appoint or remove all the subordinate officers subject to the approval of the Governor, except the officers of Auditor and Treasurer.

3. To fix the rate of passage and freight and to make all necessary arrangements touching such rates and other business with other Railroads.

4. To contract for and purchase machinery, cars, materials, workshops and all other contracts necessary for the general working and business of said road not exceeding three thousand dollars, and over that amount subject to the approval of the Governor in writing.

5. To make contracts with the Government of the Confederate States, with the consent of the Governor, for the transportation of the mails over said road.

6. To arrange the schedules for running trains at such times, either by day or night, as he may deem expedient.

7. To settle all claims against said road, with the approval of the Governor.

8. To sue officially for any claim due the State on account of said road, and defend all brought against the road.

9. To make all necessary rules for the proper conduct of the business of the road and the enforcement of discipline.

10. To impose penalties for a violation of said rules and for breaches of duty by all persons in the employment of the road.

11. To see that the books and accounts of the road are so kept as at all times to shew accurately its fiscal affairs.

12. To have settlements weekly with all fiscal agents of said road for all money received by them, by himself or through some authorized person, and to discharge them for neglecting or refusing to do so.

13. To fix the compensation of all employees of said road, with the approval of the Governor, whose compensation is not fixed by law.

14. To draw his warrant on the Treasurer in favor of claimants according to the law.

15. To sue and cause all moneys belonging to or collected on account of the road to be paid promptly to the Treasurer.

16. To exercise a general supervision over all officers, agents and employees under his charge, and see that they strictly comply with all the requisitions of the law.

17. To make out and transmit to the Governor a quarterly

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statement exhibiting the receipts and expenditures of the road, and once every year a full statement of all the transactions of the road in detail, which report shall be published in one or more of the public gazettes at the Seat of Government and at the City of Atlanta.

Rules to be recorded, printed and furnished to officers.

§896. The rules adopted by the Superintendent for the government of said road shall be recorded in a book kept for that purpose, shall be printed and posted in a conspicuous part of his office and copies placed in the hands of each officer of the road, who shall also be promptly supplied with copies of any alterations thereof.

Force of said rules.

§897. Such rules shall have the force and effect of law when necessary to carry into full effect any law in regard to said road and to improve its organization when not inconsistent with the law.

Suits against Western and Atlantic Railroad.

§898. All suits against the road must be brought against the Superintendent in his official capacity in the County of Fulton, where the office of said road is located, except in those cases of claims where by the law other railroads are allowed to be sued elsewhere, but under no circumstances are suits against such road to be allowed against such road, its officers or agents in the State of Tennessee, beyond the right, if any, that may exist under the authority granted to this State to extend said road into Tennessee.

Demand necessary before suit brought.

§899. No suits shall be brought against the Superintendent until a demand has been made upon him for payment, accompanied by a statement of the nature of the claim, and ten days shall be allowed the Superintendent to pass upon such claim before suit shall be brought.

Books of road *prima facie* evidence.

§900. In suits pending or to be brought by or against said road, the books of said road shall be *prima facie* evidence of what they contain pertinent to the points in issue.

Its debtors public debtors.

§901. All debtors to said road are as debtors to the State or public, and when any question arises warranting it, the right or obligations of both parties are to be determined upon by the laws governing such relation.

Governor to appoint a Treasurer.

§902. The Governor shall appoint an officer for said road, who shall be styled the Treasurer, who holds his office for the same time and term that the Superintendent does.

His oath.

§903. Before entering on the duties of his office, besides the

oaths required of all civil officers, he shall take and subscribe before the Governor the following oath :

“I, ——, do swear that I will faithfully and diligently receive, keep and disburse the funds of the State Road according to law, in my capacity as Treasurer, and do all other acts that are or may be required of me by law as Treasurer of said road, to the best of my skill and knowledge. So help me God.”

§904. He shall at the same time give bond and security to be approved by the Governor in the sum of one hundred thousand dollars. Said bond and oath of office shall be filed and recorded as the Superintendents.

Bond and security.

Bond and oath filed and recorded.

Duties of Treasurer enumerated.

§905. It is the duty of the Treasurer—

1. To take custody of all funds appertaining to the road, to receive all monies from officers or agents holding the same and receipt them.

2. To receive all such sums as may be appropriated by law for the use of the road.

3. To pay all warrants drawn by the Superintendent in the terms of the law.

4. To pay the State Treasurer monthly all balance in his treasury after paying all the current expenses of the road and other lawful claims upon it, and to take his receipt for the same, retaining such amount as the Superintendent may direct.

5. To keep a book or books to enter all his receipts and payments and other official transactions.

6. To make a quarterly statement to the Superintendent of the receipts and disbursements of his office, which shall be published with the Superintendent's report to the Governor.

7. To discharge such other duties as the laws do or may require.

§906. The Governor shall appoint an officer for said road who shall be styled the Auditor.

Auditor appointed by Governor.

§907. Before entering on the duties of his office, besides the oath required of all civil officers, he shall take and subscribe before the Governor the following oath:

“I, ——, swear that I will promptly, justly, fairly and impartially approve or reject all claims against the State Road presented to me for such purpose, and that I will faithfully and diligently discharge all other duties that are or may be required of me by law as Auditor, to the best of my skill and knowledge. So help me God.”

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Give bond and surety.

§ 908. He shall, at the same time, give bond and surety, to be approved by the Governor, in the sum of twenty thousand dollars.

Bond and oath filed and recorded.

§ 909. Such bond and oath of office shall be filed and recorded as the Superintendent's.

Auditor's duties enumerated.

§ 910. It is the duty of the Auditor—

1. To examine and approve or reject, without unnecessary delay, all bills and accounts against said road before the Superintendent shall draw a warrant for the same on the Treasurer.

2. To keep a book to enter all accounts passed, stating the person, amount, account and time.

3. To examine, supervise and control, all books kept by the subordinate accounting officers or Clerks of the road.

4. To discharge such other duties as the laws do or may require.

Remedy of the State against officers of W. & A. Railroad.

§ 911. The remedy of the State against the Superintendent, the Treasurer, Auditor and other officers and agents, is the same as against Tax Collectors or Receivers.

Additional bond may be required.

§ 912. The Governor may require each of such officers to give additional bond and surety on the same terms and conditions that he may require it of the Comptroller General or the State Treasurer.

Monthly reports of agents.

§ 913. Each agent of such road, having the funds thereof in his hands, shall make out monthly, and from month to month, on such day as the Superintendent may require, a full statement of his account, and particularly specify what amount of cash on hand, what amount due from freight delivered or to be delivered, showing the full amount due from all sources whatever, and shall sign such account.

Defaulting officer or agent dismissed.

§ 914. Any officer or agent failing to pay over the funds collected by him weekly, or failing to furnish the Superintendent with a monthly statement of the financial condition of his office, except for Providential cause, shall be immediately dismissed by the Superintendent.

Proceedings on a dismissal.

§ 915. When such dismissal shall take place, an account shall at once be had of all the freight on hand, giving the person dismissed a credit or receipt therefor, so as to show the amount of his indebtedness.

Amount due by defaulter treated as earnings of the road.

§ 916. As soon as an agent, or any other person having funds of the road unaccounted for, is in default, and fails to pay over said funds on demand made by the Superintendent, or by his an-

thority, or shall abscond or conceal himself, or in any other way evade or prevent a settlement, said officer shall promptly cause the true amount due by such person to be ascertained, and transmit the same to the Comptroller General, as earnings of the road stating also the date of the default.

§ 917. Every agent of said road, before entering on the discharge of his duties must, besides the oath required of all civil officers, take and subscribe before the Superintendent, who is hereby made an officer for such purpose, the following oath: "I, ———, swear that I will faithfully perform all the duties of my appointment that are or may be required of me by law, to the best of my skill and knowledge, and that I will render a true account of my official conduct, and of all monies received by me as such, and pay the same over to the person authorized to receive them, as often as the law may require. So help me God."

§ 918. They shall, at the same time, give bond and surety, payable to the Governor and his successors in office, to be approved by the Superintendent, in such sum as he may require.

§ 919. The oaths shall be filed in the office of the Superintendent, the original bonds transmitted to the Comptroller General, and copies retained by the Superintendent in a book kept for that purpose in his office.

§ 920. Such bonds shall be renewed annually, by the tenth day of January, after a full and satisfactory settlement has been had with the agents, and not before.

§ 921. Said settlement must be in writing, and signed by the agent and Superintendent, and shall contain a full statement of the agent's account with the road, whether for cash received, freight on hand, or from any other source whatever.

§ 922. The Governor shall examine every bond transmitted to the Comptroller General by the Superintendent, and in case of defect therein, as to matter or surety, may order another bond given in lieu thereof to the Superintendent, and he or the Superintendent may, at any time, when in the judgment of either the interest of the State requires it, require such officer to give additional bond and sureties, as he requires of other officers.

§ 923. Every conductor must, in the same manner, take and subscribe this oath: "I, ———, swear that I will faithfully discharge the duties of my office to the best of my skill and knowledge, and that I will pay over all the money that may come to

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my hands belonging to the State road, as required by law, or the order of the Superintendent. So help me God.”

No credit for freight.

§ 924. No agent at any station of said road is permitted to give credit for any freight or any produce, goods, or other commodity conveyed, but shall collect the freights before the articles are taken away, except in cases when the freights, by arrangement, is chargeable to some other railroad company.

Conductor's settlements.

§ 925. Every conductor of passenger or freight trains shall make a settlement of the tickets and money received by them with the Treasurer at the end of each trip. All disbursements made on account of said road shall be by warrant of the Superintendent, drawn upon the Treasurer, and be first passed by the Auditor.

Disbursements—how made.

Cases where Superintendent and Auditor differ.

§ 926. The Superintendent may refuse to ratify the approval of the Auditor, and when so refusing the claim shall be presented to the Governor to decide; if he allows the claim, or any part thereof, the Superintendent shall draw his warrant and express therein “by approval of the Governor.” If he concurs with the Superintendent the party may accept the decision or bring suit.

Proceeds to be paid monthly into Treasury.

How applied

§ 927. The proceeds of said road, after deducting expenses and all debts, which are liens upon its income, shall be paid into the treasury of the State monthly, and shall first be applied to the payment of the principal and interest of the bonds of the State issued on account of said road.

Useless iron, &c., shall be sold on 30 days notice.

§ 928. Whenever any iron, or any tackle or apparel may become useless to said road, and the Superintendent cannot have the same converted into new iron, on reasonable terms, or for any other good reason, he shall sell the same at public outcry, at whatever point it may be most to the interest and convenience of the road, to the highest bidder, after giving at least thirty day's notice of the time and place of said sale, with a description of the property in a public gazette at Atlanta.

Sale may be for cash or on credit. Proviso.

§ 929. He may sell said property for cash or credit, as in his discretion it may be best for the State; *Provided*, That, if on credit, it shall not be longer than twelve months, with note or bond and personal security thereto, payable to the Governor and his successor in office, or bearer, which shall be deposited in the State Treasury, and when collected, be as part of the net earnings of the road.

Proceeds of sale.

Officer not to be a purchaser.

§ 930. Neither the Superintendent, or any officer of the State Road, shall be a purchaser, directly or indirectly, at said sales,

on pain of forfeiting to the State the property purchased and price paid, and of being removed by the Governor.

§ 931. The Superintendent shall keep a record of all such property sold, to whom sold, and what price, and on what terms, and shall embrace the same in his report to the Governor.

Record of sales to be kept.

§ 932. The Governor or Superintendent shall not sell any part of the right of way, nor any property or land of the road, that may be necessary for the erection of depots, wood yards, water stations, or for any other improvement to the convenience or interest of said road; but they may sell any land of the road if of no use to it, in the manner iron is sold—advertising it in a public gazette at Atlanta, and in the county where it lies, and in a public gazette thereof, if one, and the Superintendent shall execute deeds thereto in his official capacity.

Restriction on sale of road property.

Land may be sold.

§ 933. All lunatics and idiots, and the persons having them in charge, not more than one to each of such, when sent from any county to the Lunatic Asylum, and the latter returning, and all deaf and dumb and blind pupils partaking of the State's bounty, with their necessary attendants, when going and returning from their schools, shall go from and return to their homes, free of charge on said road.

Persons traveling free of charge on the road.

§ 934. The Superintendent of said road is specially charged with the due execution and faithful fulfilment of all the laws for the government and regulation of the same.

Superintendent to enforce the laws, &c.

§ 935. Said road shall transport lime for agricultural purposes, by the car load, from any depot thereof to Atlanta, from the first day of May to the first day of August of each year, or at any other time not conflicting with the interest of said road, at a rate not exceeding three cents per bushel; provided, connecting roads at Atlanta will transport lime for agricultural purposes at corresponding low rates, and give the Superintendent of the road notice thereof, with consent to be bound permanently by such rate. Any connecting road at Atlanta failing to give such notice and consent shall not be entitled to the benefits intended to be secured to the agricultural interest contiguous to such road. Before any person shall transport lime on said road, or any road in connection therewith, at said rate, he shall make oath in writing before receiving said lime and paying said freight, that it has been or is to be transported for and will be used in good faith in improvement of the soil in the State; which affidavit shall be filed in the office of the company to whom the freight is paid.

Lime—transportation of.

CHAPTER IV.

STOCKS.

SECTION.

936. Bank stock owned by State.
937. Railroad stock owned by State.

SECTION.

938. Stock in Main Trunk Railroad.

Bank stock
owned by
State.

§ 936. The State owns the following Bank Stock—
In the Bank of the State of Georgia, 1833 shares.
In the Bank of Augusta, 890 “
In the Bank of Georgia R. R. & Bank'g Co. 186 “

Railroad
stock.

§ 937. The State owns the following Railroad stock—
In the Main Trunk Road, 5000 shares.

Extension of
stock in
Main Trunk
Railroad.

§ 938. The stock in the Main Trunk may be extended to ten thousand shares, on the condition that the State shall own as she does now, five-elevenths to be taken when individuals take and pay for the balance according to the act of incorporation and acts amendatory thereof.

CHAPTER V.

OTHER PUBLIC PROPERTY.

SECTION 939. Library, furniture, arms, &c.

Library, ar-
senal con-
tents &c.,
property of
State.

§ 939. The State owns the library at the Capitol, the furniture and contents of her various public buildings, and the public arms, munitions and accoutrements of war in her arsenals and in the charge of her several volunteer companies, and of the Superintendent of the Military Institute.

TITLE X.

PUBLIC PRINTING.

CHAPTER I.

PUBLIC PRINTER—HIS DUTY AND COMPENSATION.

SECTION.

940. Election of Public Printer.
 941. He must give bond.
 942. On failure to give other bond, &c.
 943. Vacancy—how supplied.
 944. Damages for breach of bond.
 945. Place of printing, &c.
 946. Printing during Legislature.
 947. Failure vacates office.
 948. When Printer's duties begin.
 949. What he must print.
 950. Ordered matter—how printed.

SECTION.

951. Laws and Journals—how printed.
 952. Style of the printing.
 953. Manuscripts to be furnished.
 954. No. of copies Laws and Journals.
 955. If insufficient others may be printed.
 956. Printed matter—delivered to whom.
 957. Compensation of Printer.
 958. Penalty for delay.
 959. Contract and bond of new Printer.
 960. Pay of removed Printer.
 961. Work of deceased Printer.

§ 940. At every annual session of the General Assembly, a Public Printer shall be elected. Public Printer annually elected.

§ 941. Within ten days from the day of his election he shall give a bond, with good surety, in the sum of ten thousand dollars, to be approved by the Governor, filed in the Executive office, and recorded in the office of the Secretary of State. His bond.

§ 942. The Governor is authorized to require from the Public Printer additional bond and surety, as he may from a State House officer, and on his failure to comply, declare a vacancy. Legislature to supply vacancy.

§ 943. If the General Assembly is in session when such failure occurs, the Governor shall communicate the fact to them, when they shall supply the vacancy by election. Additional bond may be required, &c.

§ 944. If a Public Printer, after having been elected and given bond, commits a breach of it, on the trial the jury shall assess not less than one thousand nor more than three thousand dollars as liquidated damages, besides the actual damages sustained. Damages on breach of bond.

§ 945. Such Printer and his sureties must be citizens of this State, and the public printing must be *bona fide* performed within her limits, unless special permission otherwise is obtained from the General Assembly. Printer and sureties to be citizens.

§ 946. All printing specially ordered by the proper authority during a session of the General Assembly, shall be executed with all possible dispatch and correctness, at the seat of Government. Printing during session.

Chapter 1.—Public Printer—his Duty and Compensation.

Violation of last two sections. § 947. If the provisions of the two preceding sections are violated, the Governor may, in his discretion, declare a vacancy, and the compensation forfeited.

Beginning of duty of Printer's. § 948. The duties of the Public Printer do not begin until the first day of the next session of the General Assembly after his election.

What he must print. § 949. He shall print the Laws and Journals, and such bills, reports, and other documents, as may be ordered to be printed during his term of office, which includes the printing of all extra sessions held during that time.

How printing must be done. § 950. All papers ordered to be printed by either House shall, unless otherwise directed, be printed upon paper that can be easily written upon; the sections and lines must be numbered, having sufficient margin and intervening space to admit of interlineations, for which service the Governor shall allow extra compensation, not exceeding twenty per cent. on the established rates.

Laws and journals how printed and delivered. § 951. The Laws and Journals must be printed upon small pica type, on good paper, and delivered to the Executive within ninety days after the manuscripts are received from the compiler.

Direction as to laws and journals. § 952. The former must be printed of a uniform size, and of a style equal in mechanical execution to the Laws of 1853-4, and the latter must be on pages the size of the Laws of the United States, and have like intervals between the paragraphs.

Secs. of Senate and Clk. House to furnish MSS. § 953. The Secretary of the Senate and Clerk of the House shall furnish the manuscripts of their journals, and indexes thereto, properly prepared for the press within twenty days from the adjournment of each session of the General Assembly, under a penalty of five hundred dollars each, to be retained out of their pay.

Number of journals and laws. § 954. There shall be printed one thousand copies each of the Journal of each branch of the General Assembly, and five thousand copies of the Laws, to be bound by said Printer in durable style and equally as well as the laws of 1853-4.

Additional copies may be ordered. § 955. If such number should prove to be insufficient for the use of the State, the Governor may order such additional copies as in his opinion the public interest may require, and allow therefor reasonable compensation.

Printed matter to be delivered to Librarian. § 956. As the public printing progresses the Printer must, from time to time, with all possible dispatch, deliver the printed matter to the State Librarian, at his office, free from any expense to the State for transportation.

Chapter 1.—Public Printer—his Duty and Compensation.

§ 957. If said Printer shall legally and faithfully perform his duties, he shall be compensated as follows: Compensation of Public Printer.

For Laws and Journals—

1. For composition 60 cents per 1000 ems.
2. For press work, 50 cents per clean token.

For Job work—

1. For composition, 75 cents per 1000 ems.
2. For press work, 50 cents per clean token.

For paper, 20 per cent in addition to actual cost.

For rule and figure work, double price.

In job work any thing less than a page shall be counted as a page.

For binding laws, 30 cents per copy.

For cutting, folding, stitching, covering, title page, and trimming the journals, twenty per cent. in addition to actual cost.

For any additional compensation, at the same rate. Any charges above those enumerated must be submitted to the General Assembly.

§ 958. Should any delay occur in the prompt delivery of the Laws and Journals, as required, the Governor shall deduct, at the rate of ten per cent. per month, for the particular work delayed, until the date of delivery. Forfeiture for delay in delivery of laws and journals. If the delay shall be protracted more than six months the Governor may remove the Printer from office. If any portion of the work is not executed so as to be a substantial compliance with the requisitions of the law, the Governor shall reject it, and order it executed over, or appoint a new Printer, as his judgment shall dictate or the emergency may require.

§ 959. When a new Printer is appointed under the two preceding sections, he shall give such bond and surety, and on such conditions, as the Governor may require, who is also authorized to make a special contract for the public printing in such an event. New Printer to give bond.

§ 960. When the Printer is removed the Governor is authorized to take such portion of his work as he has executed according to law, and allow him lawful compensation therefor, but he must deduct therefrom the least penalty, and the damages sustained by his failure. A quantum meruit may be paid to a removed Printer.

§ 961. When the Printer dies before completing his work, his legal representatives are allowed to do so, it being understood that all bonds of Public Printers cover such contingency; and the Representative of deceased Printer may complete work.

Chapter 1.—Public Printer—his Duties and Compensation.

Governor is authorized in such an event to wait thirty days for an assurance of such performance.

CHAPTER II.

OTHER PRINTING.

SECTION.

962. How other printing is done.

SECTION.

963. Public Printer entitled thereto.

Directions as to printing other than public printing.

§ 962. All printing other than that performed by the Public Printer, which necessity may demand, shall be printed at the Seat of Government, or such other place as may be necessary, in the discretion of the Governor, under his direction and supervision, upon reasonable rates, to be paid for out of the contingent fund.

Public Printer preferred.

§ 963. If the Public Printer executes his work at the Seat of Government, or at the place where the printing referred to in the preceding section is required to be done, he is entitled to perform such printing, if he will do so at reasonable rates.

CHAPTER III.

THE COMPILER.

SECTION.

964. Compiler—how appointed, &c.

965. His duties specified.

966. Penalty for failure.

SECTION.

967. Another appointed—when.

968. Compiler's compensation.

Compiler of laws to be appointed.

§ 964. The Governor shall appoint some competent person to prepare and compile the several acts of each session of the General Assembly, which appointment must be made at any time in his discretion, provided it is done before such session adjourns.

Duty of Compiler.

§ 965. It is the duty of the Compiler—

1. To distinguish, in his classification, the public laws from those that are local or private, and to arrange the former under appropriate heads.

2. To prepare for publication side and head notes for reference.

3. To add notes referring back to such previous legislation as may be modified or repealed, and notes giving the decisions of the Supreme Court since the last publication of the acts upon the subject matter of each act of a public nature.

Chapter 3.—The Compiler.

4. To prepare and append a copious index.

5. To furnish the Public Printer with a fair copy of all work required of him in the preceding portion of this section within forty days from the adjournment of the session.

6. To read the proof of the same, and carefully compare them with the certified copies.

§ 966. If a Compiler fails to perform his work in the time allowed, he forfeits his compensation, unless in the opinion of the Governor he has a satisfactory excuse. Failing to perform his work.

§ 967. If he dies or becomes disabled before completing his work, and so as he cannot finish it within the time prescribed, the Governor shall appoint another Compiler to finish it, and apportion the compensation rateably between them. If he dies or becomes disabled.

§ 968. He is under the supervision of the Governor, and must enter upon, and continue upon the discharge of his duties as the Governor may order, and shall receive for his services compensation to be fixed by the Governor, not exceeding five hundred dollars. His compensation.

CHAPTER IV.

DISTRIBUTION OF THE LAWS AND JOURNALS, AND OTHER DOCUMENTS.

SECTION.

969. Laws and Journals to be distributed.

970. No. copies for each county.

971. Five copies Journals for each co.

972. Clerk shall keep 2 bound Journals.

973. Reserved copies of laws.

974. Acts of Congress for each county.

SECTION.

975. Distribution—how let out.

976. Distributors must give bond.

977. Damages for breach of bond.

978. Bonds—where filed.

979. When Gov. may appoint distributors.

980. Residence of distributors.

§ 969. After the Laws and Journals are compiled, printed, bound and delivered to the State Librarian, he shall, under the supervision of the Governor, cause them to be distributed to the several counties of this State. Laws and journals to be distributed.

§ 970. Each county is entitled to one copy of the Acts of the General Assembly for each civil officer, both judicial and ministerial, to be distributed by the Clerks of the Inferior Courts under the order of the Justices. Copies of laws for each county.

§ 971. Each county is entitled to five copies of the Journals of each branch of the General Assembly, which are to remain on deposit in the office of the Clerk of the Inferior Court, and to which the voters of the county shall have free access; also a copy Copies of journals for each county

Chapter 4.—Distribution of the Laws and Journals and other Public Documents.

of the Laws and Journals for each member of the General Assembly.

Journals to be bound.

§ 972. Two of the copies of the Journals of each branch of the General Assembly shall be as well bound as the "Acts"—one by such Clerk at the expense of the county, securely kept, and not permitted to go out of his office.

Reserved copies.

§ 973. The Librarian shall reserve five hundred copies of the acts for such further distribution as the General Assembly may order.

Acts of Congress.

§ 974. Each county is entitled to two copies of the Acts of Congress, to be kept in the office as the journals are.

Advertisement to distribute laws and journals.

§ 975. Immediately upon the adjournment of each session, he shall advertise in one paper in the cities of Augusta, Atlanta, Athens, Columbus, Macon, Milledgeville, Rome and Savannah, for proposals to distribute the laws and journals, and other books and documents required by law to be distributed, for one distributor of such for each Congressional District within sixty days from the time received.

Distributor to give bond.

§ 976. Before beginning the work, each distributor shall give a bond, with good security, in the sum of five hundred dollars, to be approved by the Governor, conditioned for the prompt and faithful delivery of the books (specifying them) to the Clerks of the Inferior Courts of the several counties therein named within thirty days from their receipt.

Damages for breach of bond.

§ 977. If not done within the time and in the manner, the whole bond is recoverable as liquidated damages, Providential causes only excepted.

Bond filed & recorded.

§ 978. Such bonds must be filed and recorded in the Executive office.

Distributor when appointed.

§ 979. If no person applies for the distribution of any district, the Governor is authorized to appoint such distributor.

Preferred distributors.

§ 980. The Librarian is required to select an applicant for a Congressional District of which he is a resident, if physically and mentally capable of the service, and gives the requisite bond and security.

TITLE XI.

PUBLIC DEFENCE.

CHAPTER I.

PERSONS SUBJECT TO MILITARY DUTY, EXEMPTIONS, &c.

SECTION.	SECTION.
981. Persons subject to military duty.	989. Commutation tax—how avoided.
982. Persons exempt.	990. Company drills—four in each year.
983. Officers of militia—when exempt.	991. Volunteers exempt from road duty.
984. Non-commissioned officers, &c.	992. Amount of commutation tax.
985. Persons employed on vessels, &c.	993. Receipt therefor.
986. Persons subject must be registered.	994. Transient persons—when subject.
987. Oath of persons, &c.	995. Free men of color—how subject.
988. May perform service or pay tax.	

§ 981. All able bodied free white male citizens between the ages of twenty-one and forty-five years, residents in this State, and not exempted by this Code, are subject to military duty.

Who are subject to military duty.

§ 982. The following exemptions shall be recognized, viz :

Who are exempt.

1. The chief officers of the several Executive Departments of State.

2. Judges of the Supreme, Superior and City Courts, Justices of the Inferior Courts and of the Peace, Sheriffs and Deputies, Clerks of Courts and Ordinaries.

3. Members of the Legislature during the term for which they shall be elected, officers of the Legislature during its session and for seven days before and after the same.

4. Persons employed on Railroad Trains, and repairers of Railroads, Operators and Messengers of Telegraph Companies, Post-Masters and persons employed in Post-Offices and the transportation of the Mails.

5. Ferrymen, Bridge and Toll-Gate Keepers and Public Millers.

6. Ministers and Preachers of the Gospel, Professors and Students, and Tutors in all Colleges.

7. Aliens and persons not qualified to vote for members of the Legislature.

8. All persons exempted by the Acts of Congress.

9. All persons on the payment of the Commutation Tax prescribed by this Code.

10. All officers and non-commissioned officers of the militia

Chapter 1.—Persons subject to Military Duty, Exemptions, &c.

who may entitle themselves to the privileges as hereinafter prescribed.

11. Active members of Volunteer Corps after a prescribed term of service.

12. Regular members of any Fire Department or organization connected therewith.

Militia officers—when exempt. §983. Company officers of the militia who shall uniform and equip themselves according to the regulations prescribed for the dress and uniform of the army of the Confederate States, and shall serve in their respective stations continuously for the term of eight years, shall not be liable to be called on for military duty thereafter, except in case of war, insurrection, rebellion or invasion.

Non-commissioned officers, musicians and privates. §984. Every non-commissioned officer, musician or private of every uniformed volunteer corps who shall uniform and equip himself and whose term of service shall amount to seven years, shall also be exempt from military duty, except in case of war, rebellion, insurrection or invasion.

Persons employed on vessels, pilots, stevedores and factory laborers exempt. §985. Every person employed by the year or season on board any vessel, or in the merchant service, or coasting trade, all pilots and stevedores, persons employed in any blooming furnace, or glass or porcelain factory, cotton or wool mill shall be exempt from militia duty, except in cases above enumerated.

§986. Receivers of Tax Returns shall at the time of receiving returns of taxable property from the citizens of this State insert in appropriate columns in their digest the following particulars, viz:

Liability of tax payer. His family & employees. 1. Whether the tax payer is himself subject to militia duty.
2. How many in his employ or members of his family are subject.

Cause of any exemption. His district. 3. The cause of exemption, if any exists.
4. The company district or beat to which the tax payer belongs.

Also amount of his commutation tax of personal service, and the amount so charged shall be collected by the Tax Collector and paid over to the Treasurer of the State with the general tax, and shall constitute the military fund of the State. 5. The amount of commutation tax chargeable to him instead of personal service, and the amount so charged shall be collected by the Tax Collector and paid over to the Treasurer of the State with the general tax, and shall constitute the military fund of the State.

Cause of exemption to be verified by oath. §987. No Receiver of Tax Returns shall enter an exemption from military duty against the name of any person without due proof of the existence of the cause on which the exemption is

claimed, and to that end the following clause shall be added to the oath, administered by the Receiver of Tax Returns: "And that I believe myself exempted from militia duty in this State for and on account of the cause set forth in this return."

§ 988. Every citizen subject to military duty may perform the same in lieu of paying the taxes herein prescribed, but the certificate of the captain or commanding officer of the company to which he belongs and in which he is actually enrolled, shall be the only evidence which the Tax Collector is authorized to receive in place of the amount charged on the Receiver's digest, and the production of which shall be noted by the Tax Collector on his return, and he shall be allowed the same in settlement.

Personal
service in
lieu of tax.

Certificate
noted by
Collector.

§ 989. The captain or commanding officer in each company district shall enroll from time to time all persons in the limits of the district subject to military duty, and shall without delay notify such persons of their enrollment, and shall give a certificate to each person performing military duty that he has faithfully performed the same, according to the requirements of the Code, for twelve months preceding the 31st day of December in each and every year, and such certificate shall be produced at the time of returning his taxable property, and on failure so to do the commutation tax for militia duty shall be charged against him on the book of the Receiver of Tax Returns.

Command-
ing officers
to enroll
those in his
district.

Notice to be
given.

Failure to
produce cer-
tificate.

§ 990. Captains of companies shall cause to be mustered for parade and drill all persons within their company districts who do not pay the commutation tax, the only proof of which payment shall be the receipt of the officer authorized to collect the same, and who are not otherwise exempt, at least four times in each year, at such times as they may direct, but there shall be an interval of at least one month between each muster, and they shall file a copy of their company roll with the Clerk of the Inferior Court immediately after the muster which succeeds the closing of the books of the Receiver of Tax Returns, for which service they shall respectively receive the sum of one dollar.

Captains to
muster com-
panies four
times each
year.

Evidence of
payment of
commuta-
tion tax.

Company
roll.

Compensa-
tion therefor.

§ 991. Members of volunteer corps actually in uniform and doing duty, and the field and staff officers of volunteer regiments and battalions, so long as they remain such, shall be exempted from road and patrol duty, and taxation upon property by any municipal corporation, except such as shall be liable to taxation by law to raise a revenue for the State.

Those who
are exempt
from road &
patrol duty.

§ 992. The commutation tax for non-performance of militia

Chapter 1.—Persons subject to Military Duty. Exemptions, &c.

Commutation tax ten per cent. on State tax.

duty shall be ten per cent. upon the State tax, provided, it shall always amount to twenty-five cents, and shall be collected and paid as other taxes are collected and paid into the Treasury; the amount thus raised shall be set apart as a separate fund chargeable with the entire military expenses of the State.

Payment to be specified in Collector's receipt.

§ 993. The Tax Collector's receipt to the tax payer shall distinctly specify the payment of the commutation tax for militia duty, whenever paid, in order that the same be made available in case of enrollment by the captains of Militia Districts or beat companies.

Non-residents doing business in the State liable to military duty.

§ 994. Transient persons having a place of business, and doing business in the State, but having no residence or home therein, are liable to militia duty, and on failure to pay the commutation tax, or perform military service, shall be liable to an additional penalty not exceeding twenty dollars, to be adjudged by any court martial, within whose jurisdiction they may happen to be for a period of ten days.

Free men of color subject as musicians.

§ 995. Free men of color above the age of sixteen years, unless belonging to the fire department, shall be subject to the call of any volunteer military organization, if there be one in the town or city of their residence, in the capacity of musician, pioneer, mechanic or servant, and if there be no such volunteer organization, then to the militia in one of the aforesaid capacities, and they shall be entitled to the usual wages for the practice of such occupations; but on failure so to attach themselves, when required so to do, they shall pay to the Clerk of the Inferior Court, for the use of the county in which they reside, the sum of five dollars.

Entitled to wages.

Falling to serve.

CHAPTER II.

MILITARY ORGANIZATION.

ARTICLE 1. Military force—how composed.

ARTICLE 2. The Volunteers.

ARTICLE 3. Cavalry Corps.

ARTICLE 4. The Militia.

ARTICLE 5. Elections.

Article 1.—Military Force—How Composed.

ARTICLE I.

MILITARY FORCE—HOW COMPOSED.

SECTION.

996. The Military force of the State.

SECTION.

997. The Engineer Corps of the State.

§ 996. The military force of the State embraces the Georgia ^{Military force.} Military Institute, the volunteers and the militia, to which may be added such military schools, when the institution is of a military character, as may avail themselves of the provisions herein embraced.

§ 997. The Georgia Military Institute constitutes the engineer ^{The engineer corps.} corps of the State, and the officers in the Institute having military rank in the Academic staff, (Cadet officers excepted,) shall be commissioned as such according to their respective grades. (See Military Institute.)

ARTICLE II.

THE VOLUNTEERS.

SECTION.

- 998. Volunteer forces of the State.
- 999. Battalions in their respective co's.
- 1000. Their rights, privileges and duties.
- 1001. Number of officers, &c., necessary.
- 1002. Companies—how organized.
- 1003. Arms, &c., supplied—when.
- 1004. Discipline and exercise prescribed.
- 1005. Must make annual returns.
- 1006. Independent companies disbanded.
- 1007. Resignation of Captain.
- 1008. Regiments and Battalions, &c.
- 1009. May adopt By-Laws.

SECTION.

- 1010. Fines—how imposed and collected.
- 1011. Elections—by whom ordered.
- 1012. When by Commander-in-Chief.
- 1013. Commissions vacated—when.
- 1014. Suits on bonds of officers.
- 1015. Disbanded companies, &c.
- 1016. Artillery Companies received, &c.
- 1017. Volunteer Companies corporate.
- 1018. Courts of Inquiry & Courts Martial.
- 1019. Volunteers exempt, &c.
- 1020. Cumulative provisions.

§ 998. The volunteers consist of such corps, uniformed and ^{The volunteer force.} equipped, as now exist, or may hereafter be formed in this State. They may organize themselves into companies, battalions, regiments and brigades at their option. But the whole volunteer force shall constitute one or more divisions conforming to the organization of the Confederate States Army, except when otherwise prescribed in this Code. As soon as such shall be organized, they shall be reported to the commander-in-chief, and shall remain permanent until changed by his approval or by special enactment.

Article 2.—The Volunteers.

Battalions,
regiments,
&c.

§ 999. Battalions and regiments shall be organized always within the limits of their respective counties, if there are companies enough in a county; if not, then to be added to from adjoining counties, unless companies in other counties are more accessible, to be judged of by the commander-in-chief.

Rights and
duties.

§ 1000. When thus organized, they have the same rights, privileges, and are subject to the same duties as such organizations in cities. If there are not companies enough in a city to form a battalion or regiment, it may be formed by the addition of other companies in the same county, if such exist, and if not, then from adjoining counties.

Volunteer
corps formed
in any part
of the State.

§ 1001. Volunteer corps may be formed anywhere within the State, and may consist of citizens of the same or adjoining counties. Such as may hereafter be formed shall number at least forty privates, nine non-commissioned officers, four commissioned officers, with such musicians as they may deem sufficient.

When en-
rolled to re-
port to com-
mander-in-
chief.

§ 1002. When the requisite number of members are enrolled, their first duty shall be to uniform themselves according to the provisions of this Code; they shall then notify the commander-in-chief of the number enrolled and uniformed, who shall order an election for captain and subaltern officers under such superintendence as he may prescribe, and the superintendents shall transmit the return of the same to the Executive Department, and the Governor shall commission the officers elected, unless the election is contested, in which case, if in the opinion of the Governor there be sufficient grounds to set the same aside, he shall order a new election.

Election of
officers.

§ 1003. Arms and accoutrements shall be supplied to the volunteer corps, whether uniformed or not, by requisition on the Governor in such manner and upon such terms as he may direct, from the quota of arms distributed to the several States under the laws of Congress, or from other arms belonging to this State.

Arms, &c.,
to be sup-
plied to all
volunteer
corps.

Discipline
and exer-
cise.

§ 1004. The system of discipline and exercise shall, as near as may be, conform to that prescribed for the army of the Confederate States, from time to time, by Congress, but the commander-in-chief may direct such text books for use as a guide in such arms as he may think proper, and no other weapons of war than such as are used by the soldiers of the army of the Confederate States, except by order of the commander-in-chief, shall be used by the volunteers.

Arms to con-
form to
those of C.
S.

Article 2.—The Volunteers.

§ 1005. All volunteer corps, except such as may be organized into regiments, shall make a full return to the Governor of the number of men in each corps actually in uniform, the number and rank of the officers, the arms and accoutrements in their possession, supplied by the State, and the number of such as may be unfit for use or expended in service, which return shall be made up to the first day of May in each year, and signed by the captain of such corps.

Independent corps to make annual returns to Governor.

§ 1006. Whenever it shall appear to the commander-in-chief that any independent volunteer corps is deficient in the number of men required by this Code to constitute a company, he shall issue an order requiring the return of such equipments as may have been furnished by the State, and disband such corps, but the provisions of this paragraph shall not apply to any volunteer corps formed previous to the adoption of this Code, or to any corps attached to and constituting a portion of a regiment of volunteers.

Independent corps disbanded—when.

Exception.

§ 1007. The resignation of a captain of an independent volunteer corps shall not take effect until accepted by the commander-in-chief, nor until a full return is made to the Governor of all the arms and accoutrements received from the State and in possession of the corps under his command, inventoried and ready to be turned over to his successor, and as often as a captain is elected he shall receipt to his predecessor for the arms and accoutrements so turned over to him.

Resignation of Captain.

§ 1008. When volunteer corps are organized into a regiment or a battalion, the company returns shall be made to the adjutant, and by him forwarded to the Executive Department.

Returns of regimental companies.

§ 1009. Volunteer corps may adopt their own by-laws and regulations, not inconsistent with the laws of the State or military laws or usage, and may adapt them in such mode as they see proper to their organization into a regiment or a battalion. The commander-in-chief shall prescribe the uniform of volunteer corps, and in all matters not provided for in this Code, such corps shall be governed by military law and usage, and the custom of the army of the Confederate States, so far as they can be made applicable.

Companies may adopt by-laws, &c.

General rule of discipline.

§ 1010. All fines for delinquencies in military duty shall be assessed by regimental, battalion or company courts martial, as the case may be, and be collected by execution under the hand and seal of the President of the Court, and directed to the Sheriff of the county in which the delinquent resides, and the Sheriff

Fines to be imposed by court martial.

Article 2.—The Volunteers.

shall be entitled to such costs and subject to be ruled in the Superior Courts, and the execution shall have like form and effect as in civil cases. The Sheriff may procure the service of such executions by a Bailiff, he being responsible therefor as though it were his own act.

Election for officers—
how ordered.

§ 1011. All elections for officers of the volunteers and to fill vacancies shall be ordered by the officer within whose immediate command the vacancy to be filled occurs. For subalterns, by captains of the companies in which the vacancy exists, unless the company be attached to a battalion or regiment; for regimental officers, by colonels; for colonels, by the brigadier general of the regiment, he being attached to a brigade; for brigadier general, by the general of division.

Elections in an independent regiment or company.

§ 1012. In case of a regiment not attached to a brigade, or of a company not attached to a regiment or a battalion, elections for colonel and captain shall be ordered by the commander-in-chief, and when an independent battalion exists, not belonging to a regiment or brigade, the election for its commander shall be ordered by the commander-in-chief.

Commissions to expire—when.

§ 1013. Whenever a volunteer corps is disbanded the commissions of its officers shall be vacated, but they shall, nevertheless, be liable to suit on the bond executed for the safe keeping and delivery of the arms entrusted to them by the State, if there should be a breach thereof.

Suits on officer's bond.

§ 1014. Suits on the bonds of officers of volunteer companies, for arms and accoutrements, shall be brought under the direction of the judge advocate general, in whose office such bonds shall be filed for safe keeping.

Corps voluntarily disbanding.

§ 1015. When any volunteer corps disbands of its own accord, the members thereof shall cause the fact to be reported to the commander-in-chief, and they shall forthwith deliver to some officer of the quartermaster general's department all the public property in their possession, and upon filing his receipt therefor with the judge advocate general, a discharge shall be entered on their bond.

\$200 to be paid to Artillery companies.

§ 1016. Whenever the commanding officer of any volunteer artillery company in this State shall certify to the Governor that there are sixty (60) active members, officers and privates, upon the muster roll of such company, (a copy of which muster roll shall accompany the certificate,) and that said company has been exercised in the field with its guns, for not less than two hours at

Article 2.—The Volunteers.

each drill, and not less than twelve drills in each year, the Governor shall draw his warrant upon the Treasurer of the State for the sum of two hundred dollars, to be paid into the fund of said company; *Provided, nevertheless*, That the provisions of this section shall not extend to more than seven (7) companies, not including such companies as may be already organized, and who may comply with the provisions of this section.

§ 1017. Volunteer companies of infantry, cavalry or artillery, which have been, or may hereafter be organized, with not less than forty members, and have their officers duly commissioned, are made a body corporate and politic, under their respective names and styles, and made capable in law to sue and be sued, to plead and be impleaded, to have a common seal, to hold property, real, personal or mixed, and to pass such by-laws, rules and regulations as may be necessary for their government, not inconsistent with the laws and Constitution of this State or the Confederate States.

§ 1018. Courts of inquiry and courts martial, for companies incorporated by the provisions of this Code, shall be constituted and regulated by the laws in force relating to volunteer companies.

§ 1019. Each member of any company incorporated by the provisions of this Code, shall be exempt from road or militia duty, except such as may be required of them as members of their respective companies, and except in times of insurrection, invasion, rebellion or war; *Provided*, The commanding officer of any company so incorporated shall have recorded in the offices of the Clerks of the Superior and Inferior Courts of their respective counties, a full and complete list of the members of their company, and that the above exemption shall continue no longer than actual membership.

§ 1020. The five preceding sections shall be held to be cumulative to any act already passed, conferring privileges upon any company now existing under the laws of this State, or which may hereafter be organized.

Article 3 —Cavalry Corps.

ARTICLE III.

CAVALRY CORPS.

SECTION.

1021. A squadron of cavalry defined.

1022. How organized.

1023. What constitutes a troop, &c.

SECTION.

1024. Parade and drill.

1025. Fines for non-attendance.

Squadron.

§ 1021. A squadron of cavalry shall consist of not less than two or more than five troops, and shall be commanded by a major, elected by the commissioned officers of the troops composing the squadron. He shall appoint his own staff, and determine his own uniform and that of his staff, with the approbation of the commander-in-chief.

Two or more troops may form a squadron.

§ 1022. Any two or more troops of cavalry, having regard to their neighborhood and facility of communication with each other, may unite to form a squadron, and whenever such formation is determined on they shall report the same to the commander-in-chief, who shall thereupon order an election for major, at such time as he may think proper, and shall issue a commission to the officer elected.

Arms.

§ 1023. Each troop of cavalry shall consist of forty men, besides the captain, uniformed and mounted; they shall be armed with cavalry sabres or broad swords, and dragoon holsters, or such other pistols as the commander-in-chief may direct, and may carry a carbine at their option.

Major to parade squadron or detachment annually.

§ 1024. The major commanding a squadron of cavalry shall parade and exercise the same, either in squadron or detachment, at least once in each year, for a period not exceeding three days at any one parade, after the arrival at the place of rendezvous. Orders for such parade may be given verbally at any parade, or by writing. Commissioned officers shall have twenty, non-commissioned officers and men ten day's notice.

Fines for delinquencies at squadron drills.

§ 1025. Fines for non-attendance or delinquency at any squad drill, or parade, or muster, shall be imposed by a court martial, to be ordered by the officer commanding the squadron, but they shall not exceed double the amount imposed by the regulations of the troops of which the delinquent is a member, for offences of like character, and shall be collected as provided in section 1010.

ARTICLE IV.

THE MILITIA.

SECTION.

1026. The militia of the State.
 1027. How organized.
 1028. Companies—how organized.
 1029. Grade of militia officers.
 1030. New divisions, &c.—how created.

SECTION.

1031. Regiments—how organized.
 1032. Non-commissioned officers.
 1033. Captains make returns to Adjutant.
 1034. Notice of drills—how given.
 1035. Register of commissioned officers.

§ 1026. The militia of the State consists of all persons, not heretofore classified, within its limits subject to military duty, and not exempted therefrom by the Acts of Congress or the laws of this State, or belonging to some volunteer organization.

§ 1027. The militia shall be organized into companies, battalions, regiments, brigades and divisions, which shall be numbered throughout the State by order of the commander-in-chief, in such manner that every corps of the same denomination shall bear a different number, by which number every company, district, regiment, brigade or division, as the case may be, shall be designated in the commissions of the officers commanding the same.

§ 1028. If, from exemptions, there are not persons enough liable to do militia duty in any district or beat, a company may be organized of those so liable from adjoining districts or beats, of not less than forty nor more than one hundred, under the direction of the colonel of the regiment, and when so done must be accurately reported.

§ 1029. The following grades of militia officers shall be recognized: Commanding each division, a major general; each brigade, a brigadier general; each regiment, a colonel, lieutenant colonel and major; a separate battalion, a major; each company, a captain, first and second lieutenants, and ensign. Whenever other grades exist, they shall continue until the same becomes vacant, when they shall respectively cease and determine.

§ 1030. New divisions and brigades shall be created by the Legislature; regimental and company districts by order of the commander-in-chief, on the report of the officers commanding the companies in the regimental district, but in all cases, when practicable, the regimental district shall be coterminous with the county in which it is situated.

§ 1031. There may be two or more regiments in the same county, and two or more counties may be united to form a regi-

Article 4.—The Militia.

Two or more
regiments
may be in
same county

ment, due regard being had to the proportion thereof, but the existing arrangement in this behalf shall not be disturbed except by the Legislature, unless upon application of those interested therein.

Captain to
divide com-
pany into
squads.

§ 1032. The captain of each company shall divide his company into four squads, as nearly equal as may be, and appoint one fit and proper person in each as sergeant, and one as corporal, and he shall also appoint a first sergeant; they shall be responsible for the proper distribution of all orders, and may be removed by a company court martial for proper cause.

Returns to
be made by
Captain to
Adjutant.

§ 1033. Each captain of a militia company shall make out and deliver to the adjutant of the regiment to which he belongs, a full return of the number and names of the men belonging to his company, on the first day of May in each year, for which he shall receive such compensation as is paid to the takers of the State's census, to be paid out of the military fund.

Summons to
drill, &c.—
by whom
given.

§ 1034. A non-commissioned officer, or any other person appointed for the duty, may warn persons subject to militia duty to appear at parades, musters or drills, and he shall be furnished with a list of persons to be warned; such warning may be given verbally to the party in person, or by leaving a written summons at his most notorious place of abode, but the party may claim his exemption at the time of such warning and produce to the warning officer the evidence thereof, which may be his own oath or such other evidence as may establish the fact, and it shall be the duty of the warning officer to enter the exemption claimed against the name of the party on his list.

Roster of
officers to be
kept by
Colonel.

§ 1035. Each colonel of the militia regiment shall by himself or his adjutant keep a roster or list of all the commissioned officers of his regiment below the rank of captain, and shall revise and correct the same as often as may be necessary, and annually, on or before the first day of June, shall forward to the adjutant general copies of the returns so delivered to the adjutant of his regiment, as well as a copy of the roster above mentioned, and for habitual failure in the premises shall be liable to be tried by a general court martial and cashiered or otherwise punished as said court may direct.

Article 5.—Elections.

ARTICLE V.

ELECTIONS.

SECTION.

1036. Election of militia officers.
 1037. Notice of—how given.
 1038. Voters failing to attend.

SECTION.

1039. A plurality of votes will elect.
 1040. Elections—by whom ordered.
 1041. Officers commissioned by Governor.

§ 1036. All elections of militia officers shall be by the people; of captains and subaltern officers by the people of the several company districts subject to do militia duty; of field officers by the citizens of the counties subject to military duty under the command of such officers; brigadier and major generals by the citizens of the respective brigades and divisions subject to military duty under such commander of the brigade or division, and may be superintended by a Justice of the Peace and a freeholder, or by two freeholders or two military officers, as the authority ordering the election may see fit to prescribe.

Militia officers to be elected by the people.

Election—how held.

§ 1037. Notices of such elections may be given as follows: By publication in one or more gazettes, by notice at the usual place of posting legal notices, or by orders published at parade or drill. Twenty days' notice shall be given of the time and place of the election of any officer below the grade of brigadier general.

Notices of election—how given.

§ 1038. In case of voters failing to attend at any election for militia officers, and no vote shall be polled, it shall be the duty of the superintendents to return the fact to the Executive Department, with a statement of the interval allowed for the reception of votes; whereupon, the commander-in-chief may in his discretion order a new election or appoint an officer to fill the vacancy and commission him accordingly.

New election ordered or officer appointed—when.

§ 1039. At all elections of militia officers the person having the highest number of votes shall be declared elected, and every officer to whom a commission shall issue shall declare to the Executive Department, within a reasonable time after its reception, his acceptance or declension of the same. After two months have elapsed he shall be deemed to decline unless he shall have uniformed and equipped himself.

Plurality of votes to elect.

§ 1040. All elections for militia officers of and above the rank of captain shall be ordered by the commander-in-chief, and below that rank by the captain or those acting as such, and on failure to elect, such captain or the commanding officer of the company may complete the same by appointment, and such ap-

Elections for officers above rank of Captain.

Article 5.—Elections.

pointees shall be commissioned as in case of elections. All officers of the military force of this State shall be commissioned by the Governor, whether of the line, field or staff. The commission of staff officers, except the chiefs of the staff department, will expire with the commissions of the officers on whose staff they may be appointed.

CHAPTER III.

ORGANIZATION OF THE STAFF OF THE MILITIA.

SECTION.

1041. Staff department of the militia.
 1042. Of the Commander-in-Chief.
 1043. Adjutant and Inspector, &c.
 1044. Term of office, salary and removal.
 1045. Staff of Division.
 1046. Battalion entitled to a staff—when.
 1047. Adjutant and Inspector General.

SECTION.

1048. Paymaster General—his duties.
 1049. Expenses of Staff Department.
 1050. Accounts for military service.
 1051. Chief of each staff—his duties.
 1052. Adjutant & Inspector chief of staff.
 1053. Governor shall appoint three aids.

Staff depart-
ments of the
militia.

§1041. The staff departments of the militia shall be as follows, viz:

1. The Adjutant and Inspector General's Department.
2. The Quartermaster General's Department.
3. The Commissary General's Department.
4. The Paymaster General's Department.
5. The Judge Advocate General's Department.
6. The Surgeon General's Department.

Chiefs of
staff depart-
ments at-
tached to
staff of Com-
mander-in-
Chief.

§1042. The chiefs of the several staff departments shall be attached to the staff of the commander-in-chief.

Appoint-
ment & rank
of Adjutant
and Inspec-
tor General
—his duties.

§1043. The commander-in-chief, with the advice and consent of two-thirds of the Senate, shall appoint an officer to be called adjutant and inspector general, with the rank of colonel. The adjutant and inspector general shall reside and keep his office at the Seat of Government. He shall obey all orders given him by the commander-in-chief in relation to the duties of his office; and keep a fair record of all orders and communications which he shall receive from time to time. He shall require annual returns from the major and brigadier generals, from which he shall make out a general return of the whole strength of the militia and forces of the State. He shall provide accurate abstracts of annual returns for divisions, brigades, regiments and companies, both of the militia and volunteers, which forms,

when made out, shall exhibit the strength of arms and accoutrements, equipments and munitions of such divisions, brigades, regiments and companies, and a description of the corps composing the same; and shall transmit these abstracts for annual returns, to all officers; who are required to fill them at such times as may be designated in general orders. All military orders and commissions shall pass through the office of the adjutant and inspector general. He shall lay before the Governor every communication he may receive on military affairs requiring Executive action. He shall attend all public reviews when the commander-in-chief shall review any portion of the forces or the whole of them. He shall, whenever required by the commander-in-chief, inspect the arsenals and armories of the State, which shall be under his charge; and all applications for the distribution of arms shall be made to him. He shall also act as inspector general of the State, and shall, whenever ordered by the commander-in-chief, inspect any portion of the military forces of the State.

§1044. The adjutant and inspector general shall hold his office during good behavior, subject to removal on the address of the Governor, by two-thirds of the Senate, and shall receive an annual salary of three thousand dollars.

Tenure of office—how removed.
Salary.

§1045. The division staff shall be constituted as follows: a division inspector, with the rank of lieutenant colonel, two aids-de-camp, one quartermaster, one judge advocate and one surgeon, each with the rank of major to be appointed by the major general. The brigade staff shall consist of a brigade inspector, with the rank of major, one aid-de-camp, or quartermaster, each with the rank of captain, to be appointed by the brigadier general. The regimental staff shall consist of an adjutant, a quartermaster, a paymaster, commissary, judge advocate and surgeon, each with the rank of lieutenant, to be appointed by the colonel of each regiment.

Division staff.

Brigade staff.

Regimental staff.

§1046. In case of a separate battalion, the commanding officer of the battalion shall be entitled to, and shall appoint a like staff with the colonel of a regiment.

Staff of independent battalion.

§1047. The adjutant and inspector general shall keep in order and control the arsenals and magazines of the State, attend to the due preservation of the ordnance, arms, accoutrements, munitions of war, and implements of every description, the property of the State and in its possession, and he shall at all times

Arsenals, magazines, ordnance, &c., under control of the adjutant general.

have the control and disposition of the same for that purpose. He shall report annually to the commander-in-chief the actual situation, condition and disposition of all the ordnance, arms and military property which in any wise appertain to, or respects the department confided to his keeping.

Paymaster general to make annual reports.

§ 1048. The paymaster general shall annually report to the commander-in-chief all such matters connected with his department as come to his knowledge, and all monies received by him shall be deposited in the Treasury to the credit of the military fund, and shall constitute a part of the same.

Chiefs of staff departments to make quarterly returns.

§ 1049. Each chief of a staff department shall keep a true account of the expenses of his department, which shall be reported quarterly to the commander-in-chief, who shall draw his warrant on the military fund for the same. An abstract of such warrants shall be laid before the Legislature.

Accounts for military services.

§ 1050. All fees for military service shall be embraced in an account made out and certified by the officer to whom the same may be due, and delivered to the officer of the pay department within the military organization where the same accrues, who shall immediately forward the same to the paymaster general.

Jurisdiction of chiefs of staff.

§ 1051. The chief of each staff department shall, under the direction of the commander-in-chief, have command over all subordinate officers in his department, and shall, from time to time, issue orders and instructions for their government and practice, together with such printed blanks and forms as may be necessary to carry all orders into execution.

Blanks and forms to be provided.

Chiefs of the staff.

§ 1052. The adjutant and inspector general shall be the chief of the staff organization. The quartermaster general, commissary general and paymaster general shall each rank as lieutenant colonels, and shall also be appointed by the Governor. The judge advocate general and surgeon general shall each rank as lieutenant colonels, but shall not be entitled to any commands (except in their own departments) as such; they shall be appointed by the Governor. The assistant adjutant general shall be appointed by the Governor.

Aids to the Governor, &c.

§ 1053. The Governor shall appoint three aids-de-camp, by warrant, with the rank of colonel, but their warrant shall expire with the Governor's term of office.

CHAPTER IV.

COURTS MARTIAL.

SECTION.	SECTION.
1054. Courts martial—fines and penalties.	1060. Pecuniary penalties—how collected.
1055. Constitution and rules of.	1061. Non-commissioned officers, &c.
1056. How convened.	1062. Cadets of the G. M. Institute.
1057. Failing to attend court or parade.	1063. <i>Et. pas.</i> For fines—proceedings.
1058. Refusing to attend court.	1064. Duty of collecting officers.
1059. Officers detailed, &c.	1065. Disposition of fines, &c., collected.

§ 1054. Military forfeitures, fines and penalties, shall be adjudged by court martial^s, in accordance with military law and the usage of the army of the Confederate States. Notices to officers charged with offences, to appear at a general court martial, shall be personally served at least twenty days before the time prescribed for holding court, and may be contained in the order appointing the court.

Courts martial to adjudge fines, &c.

§ 1055. The Constitution of all courts martial shall be in accordance with the regulations of the army of the Confederate States, except where differently prescribed in this Code, and their mode of proceeding regulated, as far as practicable, by the same rules, but no court martial shall impose sentence of death on any offender in time of peace, or imprison an offender (except for contempt) in time of peace.

Constitution and rules of courts martial.

§ 1056. General courts martial shall be convened on the order of the commander-in-chief; they shall have cognizance of all military offences, and shall not sit with less than five nor more than thirteen members, except where supernumeraries are summoned, but the acting members of the court shall never exceed thirteen. Regimental courts martial may be ordered by a commander of a regiment or battalion, to consist of three or more commissioned officers of the regiment or battalion, at least, for trial of offences committed within the battalion or regiment, and company courts martial may assemble by the order of any captain of a company for the trial and assessment of all fines for delinquencies at any parade or muster, to consist of the commissioned officers of the company.

General court—how convened.

Regimental courts—how ordered and constituted.

§ 1057. Besides the penalties usually adjudged against military offences, officers of the militia shall be subject to fine for non-attendance at parade, drill or muster, and for other non-performance of duty, but no fine for absence at company parade, drill or

Officers, besides military punishment, subject to fine.

muster, shall exceed ten dollars, exclusive of the cost of collecting the same, except as herein provided.

Officers refusing to attend court martial.

§ 1058. If any officer charged with a military offence shall refuse to attend a court martial, convened for the trial thereof, the case shall proceed as if he were present. Company courts martial may proceed and assess fines without the presence of the delinquents, provided they were duly warned to perform the duty concerning which they are delinquent.

Pay and mileage of officers on general, regimental, and company courts.

§ 1059. Officers detailed on a general court martial shall be paid the sum of four dollars per day during the time of their actual session, and four dollars for every twenty miles in going and returning therefrom, to be paid by the Governor by warrant, on the necessary production of the certificate of the president of the court. For regimental and company courts martial the pay of each member shall be one dollar per day, to be paid out of the fines collected by the commander of the regiment, battalion or company.

Court may punish for contempt.

§ 1060. Courts martial shall have power to punish contempts in the same manner as civil courts.

Fines collected by execution.

§ 1061. Pecuniary penalties assessed by any court martial, shall be collected by execution issued under the hand of the president of the court, and directed to the Sheriff of the county in which the delinquent resides, and shall have the same force and effect as civil process of the same character, according to the laws of this State.

Degraded.

§ 1062. Non-commissioned officers shall be degraded to ranks only by sentence of a company court martial.

Cadets—how tried.

§ 1063. Cadets of the Georgia Military Institute must be tried according to the rules and regulations of said Institute.

Execution to be returned in 60 days.

§ 1064. All executions for the collection of any penalty adjudged by a court martial shall be returned to the officer issuing the same, with the money collected thereon, or a return of no property to be found on which to levy the same, within sixty days from the date of its issue, and the Sheriff, on failure to make a return, shall be liable to be ruled for the amount due on such execution, in the next Superior Court after such failure, in the same manner as in civil cases.

Officers receiving monies collected.

§ 1065. All officers of the militia receiving fines or pecuniary penalties, collected by execution, shall make a return thereof to the paymaster general, or to such officer of his department as he may designate, at least once a year, or oftener if necessary. The

paymaster general shall lay an abstract of the same before the commander-in-chief annually.

CHAPTER V.

PRESERVATION OF ORDER AT PARADES.

SECTION.

1066. Disturbing officer or soldier on duty.
1067. By persons connected with military.
1068. Officer has power to arrest.

SECTION.

1069. Sutlers—duties and privileges.
1070. Intoxication on parade ground.

§ 1066. No bystander, or person not connected with the military, shall molest, interrupt or insult any officer or soldier, while on duty, at any muster or parade, and the commanding officer, where such offence may happen, shall have power to confine such person under guard until the close of such parade or muster, who is liable to indictment and conviction for a misdemeanor, to be punished in the discretion of the Court.

Interfering with officer or soldier on duty.

§ 1067. Any person connected with the military service of the State who shall be guilty of the offences mentioned in the preceding section, or shall otherwise violate military order or decorum, shall be arrested and punished at the discretion of a court martial.

Insubordination in the military.

§ 1068. The commander of companies, battalions or regiments, brigades or divisions, when on duty with their respective commands or parts thereof, shall have power, in their discretion, to arrest and confine, not exceeding the period for which they were on duty, any person who shall, upon or near any parade ground, field, public highway, or any other place occupied by any portion of the military force of Georgia, under arms, by means of ludicrous disguise, dress, arms and instruments, noise or other means, disturb the peaceable and orderly proceedings of those under arms, and such disturbance may be viewed as a misdemeanor, and the offender may be indicted, and on conviction punished by fine and imprisonment, at the discretion of the civil court before which he is convicted.

Commanders may confine persons disturbing a parade.

Offenders may be indicted for a misdemeanor.

§ 1069. When any sutlers shall attend any military muster or parade they shall be under the direction of the commanding officer with regard to the time and place of selling refreshments, and such commanding officer shall have power to grant exclusive privileges to such persons as may engage to furnish suitable spacious and convenient places of parade, and the sutler aforesaid,

Sutlers under the control of commanding officer.

when permitted, shall not be liable for retailing spirituous liquors at any of the musters aforesaid under the law for retailing spirituous liquors without license.

Treatment
of intoxica-
ted visitors.

§ 1070. Visitors found on the parade ground during the times thereof intoxicated, may by the commander be marched beyond the lines, and on returning in the same state may be put under guard.

CHAPTER VI.

PROVISIONS OF LOCAL APPLICATION.

SECTION.

1071. Cities—how organized into com's.
1072. Each beat elect a captain, &c.
1073. Removal of commissioned officer.
1074. Captain of beat, &c.
1075. Beat company—how designated.
1076. Regiments, battalions, &c.
1077. Volunteer companies of Augusta.
1078. Commanding officer—how elected.

SECTION.

1079. Members exempt from jury duty.
1080. Same privileges to other cities.
1081. Volunteer corps of Savannah.
1082. How organized.
1083. Rights of the regiment secured.
1084. By whom commanded.
1085. Honorary members—how admitted.

Cities divid-
ed into
beats.

§ 1071. Cities where the population may authorize it may be divided into beat companies by law; each district in which two Justices of the Peace are elected shall constitute two beat companies. If there be eight beat companies or more they shall constitute a regiment, four or more shall constitute a battalion to be commanded by a lieutenant colonel and major, two or more shall constitute a battalion to be commanded by a major.

Eight beat
companies
to form a
regiment,
four a bat-
talion.

Election of
officers for
beat com-
panies, bat-
talions and
regiments.

§ 1072. The citizens of the several cities or towns arranged into beat companies, resident within their respective beats, shall elect one captain and two subaltern officers for each beat company; where a battalion exists the citizens resident within the battalion limits shall elect the lieutenant colonel and major, or major, as the case may be, and where a regiment is formed the citizens within its limits shall elect a colonel, lieutenant colonel and major.

Where com-
missioned
officer may
reside.

§ 1073. In cities or towns the removal of a commissioned officer shall not vacate his commission, unless it be beyond the corporate limits of the city or town.

Captains to
appoint non-
commis-
sioned offi-
cers.

§ 1074. The captains of all beat companies in the State shall appoint four sergeants and four corporals for their respective companies; they shall hold company courts martial in like manner with captains of company districts.

Chapter 6.—Provisions of Local Application.

§ 1075. The beat companies in each regiment or battalion shall be designated by the first ten letters of the alphabet, commencing with "A" and continuing regularly to "K," omitting "J."

Beat companies of regiment—how designated.

§ 1076. Battalions under separate command by the name of the city or town in which they are located, and regiments by a number fixed by the commander-in-chief.

Battalions and regiments.

§ 1077. The volunteer companies of the city of Augusta are organized into a separate battalion called the "Independent Volunteer Battalion of Augusta," and separated from the tenth regiment. Any other companies which may be organized hereafter in the city of Augusta, may, if they desire it, be attached to the battalion, and when the number of companies amount to eight they shall constitute a regiment to be called the "Independent Volunteer Regiment of Augusta."

Volunteer companies of city of Augusta to form independent battalion.

§ 1078. The battalion shall be commanded by a lieutenant colonel, elected by the members of the companies composing the battalion, who shall have a full and complete regimental staff. No person shall be eligible as lieutenant colonel or to an appointment on the staff who has not been connected as a regular member with one of the companies of the battalion for at least six months previous to the election or appointment.

Commander of the battalion—how elected.

§ 1079. The active members of the battalion are exempted from jury duty in the Courts of the city of Augusta and in the county of Richmond, and from the performance of militia duty, except in case of war, riot, insurrection or invasion. The battalion shall be subject to the orders of the commanding officer whenever he may deem it expedient.

Battalion exempt from jury and militia duty.

§ 1080. The same privilege is granted to the volunteer companies in the city of Macon and any other city in the State which has the requisite number of volunteer companies, and if deficient they are allowed to make up such number from the county in which such city is situated, and if not in the county, elsewhere.

City volunteer companies may form a battalion with like privileges.

§ 1081. The volunteer corps of the city of Savannah are formed into a regiment entitled "The First Volunteer Regiment of the State of Georgia," embracing as many corps as may choose to conform to the regimental organization; but when the regiment numbers sixteen companies they may organize themselves into a brigade and elect the necessary officers to command the same in such manner as the members of said companies may see fit to adopt.

Volunteer corps of Savannah form a regiment.

Officers and staff. § 1082. The first volunteer regiment shall be commanded by a colonel, lieutenant colonel and major, and shall be entitled to a regimental staff. Orders for the election of a colonel, as often as a vacancy occurs, shall be issued by the commander-in-chief, and the members of the several corps constituting the regiment alone shall be entitled to vote, all other elections for officers belonging to said regiment shall be ordered by the colonel or commanding officer.

Rights of the regiment secured. § 1083. The rights and privileges accruing to said regiment shall not fail by the consolidation of two or more companies or the withdrawal or dissolution of one or more companies, but the same shall vest in and be enjoyed by the corps composing the "First Volunteer Regiment."

Commanded by its own officers and commander-in-chief. § 1084. The "First Volunteer Regiment" shall be subject exclusively to the command of its own officers and the commander-in-chief, except when on detached service either of this State or of the Confederate States, when it shall be governed by the military law and the usage and custom of the army.

Honorary members of volunteer corps. § 1085. All the volunteer corps shall each have the privilege of enrolling as honorary members of their respective corps not exceeding twenty persons, who shall be exempt from ordinary militia duty, only so long as they continue their membership in said companies, on paying into their respective treasuries the sum of twenty dollars each annually.

CHAPTER VII.

MISCELLANEOUS PROVISIONS.

SECTION.	SECTION.
1086. Insurrection, &c.—duty of Gov.	1095. Arms, &c., exempt from sale.
1087. Discipline of military.	1096. No. of votes required to elect.
1088. Entitled to pay & rations—when.	1097. Elections and returns thereof.
1089. Duty of resident commander.	1098. Commissions and effect thereof.
1090. Requisition of militia by C. S.	1099. The ratification by the State.
1091. Commanding officer, &c.	1100. Officers must report themselves.
1092. When called out of the State, &c.	1101. Substitutes may be received.
1093. Pass over ferries, &c., free—when.	1102. General provisions adopting, &c.
1094. Under arms to preserve order, &c.	1103. Incorporated comp. not affected.

In case of insurrection, invasion, &c., Gov. to call out military force. § 1086. Upon any insurrection, rebellion, invasion or probable prospect thereof, it shall be the duty of the Governor to call from that portion of the State then threatened, or other portion if necessary, such part of the military force of the State as he may

think proper, and detail such number of staff officers of the necessary grades from the several staff departments for their accommodation, equipment and support as may be necessary.

§1087. Whenever any portion of the military force of this State shall be called into actual service, either of the State or of the Confederate States, they shall be governed by the regulations of the army of the Confederate States, and the rules and articles of war so far as the same are applicable, but to the cashiering of any officer, or the infliction of capital punishment within the limits of this State, the approbation of the commander-in-chief shall be necessary.

§1088. When any portion of the military force of the State is ordered by the commander-in-chief for actual service, or for drill and instruction, they shall be allowed such pay and rations, and other compensation, as are allowed to the army of the Confederate States.

§1089. If a sudden invasion should be made, or insurrection happen, in any county or city of this State, the commanding officer, in said county or city, is empowered to take the necessary steps to repel the same, and upon the requisition of the civil authority, to proceed to quell the insurrection, reporting the condition of things at once to the commander-in-chief.

§1090. Whenever any detachment of the militia may be required of this State, by the proper authority, on the part of the Confederate States, the commander-in-chief shall cause the same to be apportioned by such staff officers as he may think proper to detail for that purpose, and a list of the persons so detached, shall be made out and forwarded to the Executive Department forthwith, and the Governor shall assign the necessary officers to said detachment from the officers of the militia then in commission.

§1091. When a division, or brigade, or companies, sufficient to constitute either, shall be called for on the part of the Confederate States, and detached from the militia of this State, the Governor shall appoint a suitable officer to command the same, and commission him accordingly, unless otherwise provided for by the Constitution and Laws of the Confederate States.

§1092. Whenever a sufficient number of the militia, to constitute a regiment or battalion, shall be detailed for service to operate beyond the limits of the State, such regiment shall be furnished, by the Governor, with two flags—one the regimental

color bearing the arms of the State; the other the national color bearing the arms of the Confederate States, both inscribed with the name of the regiment, and if a battalion, the regimental color only, conforming to flags of like description in the army of the Confederate States, and at the close of the service it shall be the duty of the officer commanding such regiment or battalion to return the same to the Governor, or report the reasons for his default therein, which shall be communicated to the next General Assembly.

Officers and militia to pass free over toll bridges—when.

§ 1093. All officers, whilst on duty, and any militia called to musters, parades or drills, or to courts martial, or courts of inquiry, having to pass over toll bridges, ferries or through turnpike gates, shall pass toll free going to or returning from the discharge of such duty.

On muster days the militia are under arms from sunrise to sunset.

§ 1094. For the purpose of preserving order on any day of parade, drill or muster, the militia shall be considered as under arms from the rising of the sun to its setting in the same day, and shall be exempted from arrest during that time.

Arms, accoutrements, &c., exempt from sale.

§ 1095. All arms, ammunition and equipments, the trooper's horse and furniture, the uniform and accoutrements of the soldier, and every horse necessary to the discharge of military duty, in every department of the State's service, with his apparel, shall be exempt from seizure and sale under civil process, nor shall any service of civil process be effectual upon any militia man while going to, continuing at, or returning from parade, drill or muster, or while in actual service of the State or of the Confederate States.

Plurality of votes to elect.

§ 1096. At all elections for officers of the militia, the person having the highest number of votes shall be declared elected.

Elections—where held.

§ 1097. All elections for militia officers shall be held at the usual place of holding elections, and the superintendents shall return the result thereof to the commander-in-chief, who shall cause commissions to issue accordingly; but upon due proof of fraud or illegality in holding such election, the commander-in-chief may supersede the same and order a new one in his discretion.

Commissions sealed with great seal.

§ 1098. All commissions shall bear the impression of the great seal of the State in print, and shall run during good behavior; but they may be vacated by removal from the command in which the officer belongs by death, resignation, sentence of a court martial, and acceptance of another inconsistent commission. Staff officers, except the chiefs of the staff departments, may be re-

Staff officers may be renewed.

Chapter 7.—Miscellaneous Provisions.

moved by the officer in whose staff they serve, and their commissions shall expire with his commission.

§ 1099. The resolution of the Senate, concurring in the nomination of any military officer, shall be certified by the President and Clerk of the Senate, and be transmitted to the Executive Department, and the Governor shall cause commissions to issue in accordance therewith.

Nomination of a military officer to be certified.

§ 1100. All officers, on reception of their commission and their subscription, and the attestation of the oath thereto annexed, shall immediately report themselves to the proper officer in command.

Officers to report themselves.

§ 1101. Any person detached to serve with any portion of the militia called into the service of the Confederate States, may offer a substitute at or before the time of rendezvous, and such substitute, if he shall be an able bodied man of the age of twenty-one years and upwards, and shall consent in writing to subject himself to all the duties, fines, forfeiture and punishments to which his principal would be subject, were he personally to serve, he shall be accepted by the commanding officer of the detachment, and ordered to be enrolled in place of his principal.

May provide a substitute when called into service of C. S.

§ 1102. All matters of detail in the various branches of the military service of the State, not specially provided for in this Code, which may occur in the execution and distribution of orders, reports and returns, proceedings of courts martial and courts of inquiry, discipline and etiquette, rank and precedence of officers, military badges and distinctions, shall be determined, as far as practicable, by military law and usage, and the custom of the army of the Confederate States.

General provision adopting military law.

§ 1103. The provisions of this Code shall not repeal or supercede any rights, privileges or liabilities, attaching to any military organization by any Act of the Legislature, creating such organization a corporate body; but in all cases where volunteer companies have been incorporated, they shall be called on by general order, published by the commander-in-chief, to report by the first day of May next ensuing the date when this Code shall go into effect, and on failure to report, they shall be deemed to have surrendered their franchise as corporations, and shall be dropped from the roll and disbanded, nor shall they supercede any militia laws now of force that may not be inconsistent with them.

Code not to repeal privileges of incorporated companies.

CHAPTER VIII.

THE PUBLIC ARMS AND ARSENALS.

SECTION.

1104. The public arms—where kept.
 1105. Persons receiving must give bond.
 1106. Delivery of arms.
 1107. Bond not required—when.
 1108. Brigade inspector—his duty.
 1109. Commissary general—his duty.

SECTION.

1110. City volunteers may use arsenal.
 1111. Deposit of gun powder.
 1112. Military store keeper, &c.
 1113. Must give bond and surety.
 1114. His duties.
 1115. Penalty for violation of duty.

Public arms
—where
kept.

§ 1104. The public arms of the State are to be deposited in the arsenals at Savannah and Milledgeville, as the public exigency may require, and at such other place as the commander-in-chief may order, or the General Assembly prescribe.

Bond and
surety to be
given.

§ 1105. Before arms and accoutrements are delivered to any volunteer corps, bonds and sureties must be executed for their careful preservation and faithful return, according to law, payable to the commander-in-chief, in such sum and under such other regulations as he may prescribe.

Delivery of
arms.

§ 1106. When such is done the commissary general shall draw his order on the keeper, who shall, without delay, deliver them.

Bonds not
required—
when.

§ 1107. In case the public necessity requires it, the commander-in-chief may permit the delivery or distribution of arms without taking such bond, and may impose such terms as he may see proper.

Brigade in-
spector to
report.

§ 1108. The brigade inspectors must examine into and report the condition of the public arms and accoutrements in their respective brigades, to the commissary general, by the first Monday in October annually.

Neglect of
arms.

§ 1109. When the commissary general is satisfied that any portion of such are being injured for want of proper care, he may prescribe such terms for their preservation as he may see fit, and may, in his discretion, have them returned to the arsenals.

City volun-
teers may
use arsenals.

§ 1110. The volunteer corps of any city of this State, where there is an arsenal, are permitted to deposit their arms there, provided such does not interfere with the proper keeping of the arms therein, and that all expense of so doing is defrayed by such corps.

Deposits of
gun powder.

§ 1111. Gun powder shall not be deposited in any arsenal contrary to any ordinance or by-law of the city where it is situated.

Military
store keep-
ers.

§ 1112. The Governor has power to appoint military store keepers for such arsenals or other places where the public arms may be kept, who hold their offices for one year.

Chapter 8.—The Public Arms and Arsenals.

§ 1113. Before entering on the discharge of their duties, all military store keepers shall give bond and surety in such sum as the Governor may order, and shall also swear faithfully to discharge the duties of their offices to the best of their skill and knowledge.

Shall give bond and surety.

§ 1114. It is their duty—

1. To take into possession, and safely and nicely keep all the State arms, accoutrements, munitions or other State property committed to their care, to deposit them in the State arsenal, if in good repair, or in such other building as they may be directed, and to keep such arsenal or building in proper order.

Duties of military store keepers.

2. To make annually, or oftener, if required by the Governor or commissary general, a report to the said latter named officer, of the number, kind and order of the arms and accoutrements; of the condition of the munitions and other property in their keeping, including the condition of their buildings.

3. To deliver to any officer or person having the order of the commissary general the arms or other property required, if in their possession.

4. To obey all lawful orders, and to perform such other duty as the law may require.

§ 1115. If such keeper shall violate any portion of his duty, for each violation he forfeits twenty-five dollars of his salary, and for unfaithful conduct or inefficiency, may be removed by the Governor.

Penalty for violation of duty.

TITLE XII.

EDUCATION.

CHAPTER I.

THE UNIVERSITY OF GEORGIA.

SECTION.

1116. The University of Georgia.
 1117. Name and style—may sue, &c.
 1118. Number of Trustees.
 1119. Board reduced below a quorum.
 1120. Powers specified.
 1121. Meeting—by whom called.
 1122. Trustee failing to attend, &c.
 1123. Disposition of stock subscribed for.
 1124. Trustees must report annually.
 1125. Visitors—number and duty, &c.

SECTION.

1126. Report laid before the Legislature.
 1127. Officers—religion of.
 1128. Not required to take certain oaths.
 1129. Chancellor may attend Legislature.
 1130. University may confer degrees.
 1131. Graduates of Lumpkin Law school.
 1132. Preparatory school connected.
 1133. Campus grounds reserved.
 1134. Permanent income, &c.
 1135. Former Acts not repealed by Code.

University of Georgia and its government.

§ 1116. The government of the University of Georgia, at Athens, is vested in a Board of Trustees, who are subject to the General Assembly.

Name and style—may sue and be sued.

§ 1117. For such purpose they are a body corporate and politic, by the name of the "Trustees of the University of Georgia," by which they shall have a perpetual succession, have and use a common seal, and be a person in law, able to plead and be impleaded, to hold and acquire real and personal estate, with power to lease and otherwise manage the same for the good of the University. All money or property granted by the State, or individuals, for the advancement of learning in general, is vested in such Trustees.

Number of Trustees.

§ 1118. Such Trustees shall consist of — citizens of this State, any — of whom shall make a quorum, with power to transact all business within their authority.

When the Board is reduced below a quorum.

§ 1119. If the Board shall be reduced to less than a quorum, the Governor shall fill the vacancies until the quorum is complete, and then the quorum shall fill the remaining vacancies.

§ 1120. They have power—

Powers specified.

1. To elect their own officers, such as President, Vice President, Secretary, Treasurer, or such of them as they may require, and also all other officers they may deem necessary for their organization.

Presiding officer.

2. To elect a presiding officer of said University, who shall be styled "the Chancellor of the University of Georgia," and in case of a vacancy in his office, unsupplied, to create such office and make such arrangement for the conduct of the institution as to them shall seem meet.

May elect professors.

3. To elect or appoint professors, tutors, stewards or any other officer necessary, to discontinue or remove them as the good of the University may require, and to fix their salaries.

Course of studies.

4. To prescribe the course of studies to be pursued by the students, the terms and manner of graduating and of conferring all the degrees.

Establish schools.

5. To establish all such schools of learning or art as may be useful to the State, and organize the same in the way most likely to attain the ends desired.

Books, Funds, &c.

6. To call on all persons who may have, or have had, any funds, property, papers or books belonging to the University, to deliver them up and make settlements.

Expenses.

7. To adjust and determine the expenses of the institution.

8. To exercise any power usually granted to such incorporations, necessary to its usefulness, and not in conflict with the Constitution and laws. Powers usually granted.

§ 1121. The President of the Board and two of its members may appoint a meeting at any time, by giving to the others at least ten day's notice, by letter or otherwise. When the President does not act the senior trustee present shall preside, and in all other respects discharge his duties; when the board is divided the presiding officer shall give the casting vote, or may vote to make a tie. A majority of the body present shall govern, if a quorum. Nothing done at a special meeting shall be binding after the rising of the next annual meeting, unless then confirmed. Meetings of Board—how called.

§ 1122. If any member of the Board, being within the State, shall fail to attend any two successive annual meetings, his seat becomes thereby vacant, unless he is specially excused by the Board for good cause shown. Trustees failing to attend.

§ 1123. Such trustees shall never dispose of the stock by them subscribed for, except with the consent of the General Assembly, but the dividends therefrom shall be drawn and used as the various demands of the University may require. Shall not dispose of stock subscribed for.

§ 1124. It is the duty of such trustees to make an annual report of their business to the Governor, which must embrace a statement of their expenditures and receipts on account of the University, the number and names of the students, their different studies, the tuition money and all information and suggestions which the Board may think conducive to the good of the University, and the cause of general education in the State. Trustees must report annually.

§ 1125. The Governor shall appoint annually ten citizens of this State as a special Board of visitors to attend the University examinations, preceding the annual commencements, and said committee, by three of their number chosen by them, shall report to the Governor with the least possible delay, the character of said examination. Such visitors shall receive for their services five dollars *per diem*, estimating from the date of their leaving their respective homes. Special Board of visitors—how appointed.

§ 1126. The Governor shall lay the reports respectively, of the Board of Trustees and the Board of Visitors, annually, before the General Assembly, in connection with his annual message, with such comments as he may see proper, and when so done the General Assembly has power to revise and approve or reject the action of the Board of Trustees. Report of Boards of Trustees and Visitors.

Officers shall be of the christian religion.

§ 1127. All officers elected or appointed for the University shall be of the christian religion, but no person of any religious denomination shall be excluded from equal advantages of education and the immunities of the University on account of their speculative sentiments in religion, or being of a different religious profession from the trustees or faculty.

Oaths required in the charter.

§ 1128. The Chancellor of the University, its Professors and Tutors shall not be required to take certain oaths prescribed in its charter.

Chancellor may appear before the Legislature.

§ 1129. The Chancellor has the authority to appear before the General Assembly once at each session, and address them in person, on the condition, interests and wants of the University.

Conferring degrees.

§ 1130. The University may confer degrees as follows:—

1. To each graduate of the University the degree of Bachelor of Arts.

2. To each graduate of the University, or of another College of three years standing, or to such graduates as have passed a year in the University schools, all being of good moral character, the degree of Master of Arts.

3. To all law students who have attended the lectures of the Professors, and are recommended by them for the same, the degree of Bachelor of Laws.

4. To the graduates of such medical school as may be established by the trustees of the University, the degree of Doctor of Medicine.

5. To students in the University schools of two years standing, and proficient in two or more of them, the degree of Doctor of Philosophy.

6. To persons distinguished for learning, ability and character, according to their respective vocations, the degree of Doctor of Laws, or of Divinity, and where appropriate, both. It may also confer such other degrees and honors as may tend to the promotion of the arts and sciences.

Law students may practice.

§ 1131. Any law student having a diploma of graduation, signed by the proper authority of the University, is entitled to plead and practice law in all the Courts of law and equity of this State, on the same terms of the graduates of the Lumpkin Law School, and all graduates of the Medical School of the University are entitled to practice their profession in all its branches.

§ 1132. By the authority of the Board of trustees there shall be established, in connection with the University, an institute

Chapter 1.—The University of Georgia.

combining the instruction usually given in academies and to the lower classes in Colleges, and by the same authority there may be a reduction of the number of years usually spent in Colleges prior to graduation. University schools for professional education, including the application of science to the industrial arts as well as to the more abstruse and recondite sciences, and especially for the promotion of medical and legal education, not omitting the application of chemistry to agriculture, and mathematics to civil engineering.

§ 1133. There is reserved and set apart for the University campus, not subject to alienation, thirty-seven acres of the tract of land donated to the University by the late Gov. John Milledge.

§ 1134. The permanent income of said University, from its bank stock shall not be less than eight thousand dollars annually, and when the dividends from the bank shall not be equal to said sum the Governor is required to make up the deficiency semi-annually, by his warrant on the State Treasurer, for its payment out of any money not otherwise appropriated.

§ 1135. The various acts of the General Assembly relative to said University, in force at the time of the adoption of this Code, if not embraced herein, and not inconsistent with what is so embraced, are still of force.

CHAPTER II.

GEORGIA MILITARY INSTITUTE.

SECTION.	SECTION.
1136. Superintendent—appointment, &c.	1148. Shall teach 2 years after graduating.
1137. His rank in the volunteer force.	1149. Quorum of Inspectors may act.
1138. Absence—how supplied.	1150. Reasonable expenses allowed.
1139. Military store keeper at Institute.	1151. Shall appoint Sec'y and Treasurer.
1140. May be allowed extra pay—when.	1152. Treasurer must report.
1141. In the distribution of arms, &c.	1153. Inspectors report to the Governor.
1142. Inspectors—appointment and duty.	1154. Officers, &c.—ineligibility of.
1143. Visitors—appointment, &c.	1155. Rules, &c.
1144. Persons disqualified to act.	1156. Suits for or against the Institute.
1145. State cadets—how appointed.	1157. Expenses of State cadets.
1146. How selected—vacancies, &c.	1158. Salary of the Superintendent.
1147. Transferred to pay list—when.	1159. Officers resigning without notice.

§ 1136. The commanding officer of said Institute is styled the Superintendent; he is chosen by the Board of Inspectors, and holds his office at their will and pleasure. He may appoint

Preparatory school in connection with college.

Campus grounds not subject to alienation.

The permanent income, not less than \$5000.

Acts in relation to University, not repealed by this Code, still in force.

The Superintendent—appointment and term of office.

all his subordinate military officers, subject to the approval of said Board.

His rank,
commission,
&c.

§ 1137. By virtue of his office he is entitled to rank in the volunteer force of the State as Major, and to command the volunteer battalion of which his cadets form a part, and shall be commissioned by the Governor accordingly.

Absence of
Superintend-
ent.

§ 1138. In the absence of the Superintendent from parade, or on other times, his junior officers of the Institute take his place according to rank.

Military
store keeper
at the Insti-
tute.

§ 1139. The Superintendent is, by virtue of his office, also military store keeper of the public arms and accoutrements at the Institute, with power to appoint a subordinate, for whose conduct he shall be responsible. His powers and duties are the same as other Military store keepers, but he receives no salary, except for the safe keeping of a quantity of arms largely more than necessary for the Institution.

May be al-
lowed extra
pay—when.

§ 1140. Should the Governor place a large quantity of the public arms in his keeping, he may allow him just compensation, not to exceed the salary of other military store keepers.

In distribu-
tion of arms
Institute
first suppli-
ed.

§ 1141. In the distribution of the public arms, or any portion of them, the Military Institute must be first supplied, according to its necessities.

Board of In-
spectors—
their ap-
pointment
and duty.

§ 1142. The affairs of the Institute shall be under the control of a board of ten Inspectors, to be appointed by the Governor, of which the Governor shall be *ex officio* President; the board may elect a President *pro tem.* to officiate in the Governor's absence. Three of the Inspectors shall be a quorum. It is the duty of said board to organize such departments for staff duty as may be necessary to establish the rank and grade of all officers of the Institute, to appoint the State cadets, to fill vacancies in the academic staff, and to make and ordain all regulations for the government of the Institute, to cause to be kept a strict account of all moneys received and paid out on account of said Institute, and report the same to his Excellency the Governor, at the end of each session, together with the proper vouchers for the same; all of which, together with the report of the Superintendent, shall be by him laid before the General Assembly, at the regular session thereof in each and every year.

Board of
Visitors, ap-
pointment,
&c.

§ 1143. A Board of Visitors to the Institute shall be annually appointed by the Governor, as many as he may deem conducive to the interest of the Institute, not exceeding seven, who shall

meet annually at the institution, on such day and for such purpose as may be designated in the regulations. They shall report to the Governor such matters as they may deem advisable touching said institution.

§ 1144. No cadet who has been dismissed or expelled, or has deserted from the Institute, shall be a member of any Board connected therewith, nor any other cadet, until after the expiration of three years from the date of his leaving the institution, except as an instructor.

Persons disqualified as members of either board.

§ 1145. The Board of Inspectors shall appoint, by warrant, one cadet from each of the Congressional districts of the State, and two from the State at large. They shall not be under fourteen or over twenty-five years of age, and must be of insufficient pecuniary means to maintain and educate themselves at the institution.

State cadets—how appointed.

§ 1146. They shall be taken in turn, from each county in the district, until every county has furnished one, before any county shall send another; vacancies shall be supplied from a different county than that from which the regular appointment came. If any of the districts shall fail to offer one applicant, or from reasonable objections there shall be no appointment from a district, the board, after giving due notice of such deficiency, shall fill the vacancy from applicants already before them. The Board of Education in each county may select and recommend one applicant from their several counties.

How selected—vacancies—how filled.

§ 1147. If it should be ascertained, or should happen, that a State cadet, after his appointment, has sufficient pecuniary ability to defray his expenses, he shall be transferred to the list of pay cadets, and the vacancy shall be filled by another appointment.

State cadets may be transferred to the list of pay cadets—when.

§ 1148. Every State cadet shall sign a written pledge of honor to act in the capacity of teacher in one of the schools of this State, after leaving the Institute, for a term of two years, unless excused for sufficient cause, by the Board of Inspectors, receiving such compensation therefor as may be agreed on between himself and the authority of the school.

Must teach 2 years after graduating, if not excused.

§ 1149. A quorum of said Board of Inspectors are competent to the transaction of all business, except making or changing the rules and regulations, when a majority must be present. Their meetings shall be held at the Institute as often as may be necessary. Vacancies in the Board of Inspectors must be reported to the Governor, who shall fill the same.

A quorum of said board may act—meetings when held—vacancies how filled.

Expenses—
how paid.

§ 1150. All reasonable expenses incurred by the members of both of said boards, in the discharge of their duties, shall be allowed them by the Governor, and paid by his warrant on the Treasury, out of any money not otherwise appropriated, but there shall be no salary, or *per diem* compensation.

Secretary
and Treasurer—
appointment, &c.

§ 1151. The Board of Inspectors, shall appoint a Secretary and Treasurer of said Institute, and fix his compensation. He must give a bond and security, in the sum of five thousand dollars, to be approved by said board, a copy of which shall be sent to the Governor and filed in the Executive office.

Treasurer
must report
quarterly.

§ 1152. Such officers shall quarterly render to the Superintendent, and oftener if he requires it, a full statement of his receipts and disbursements, which shall be reported to the Board of Inspectors annually, or oftener, if required by them.

Inspectors
must report
to Governor.

§ 1153. Said board shall annually, and up to the first day in October, make to the Governor a written report of all the affairs of the institution, sending therewith the annual report of the Superintendent, and shall propose such alterations or improvements, as they may desire, which, together with the report of the Board of Visitors, shall be by the Governor laid before the General Assembly, in connection with his annual message.

Ineligibility
of officers.

§ 1154. An officer or professor of the Institute is ineligible as one of the Board of Inspectors or Visitors; neither can either one of said Board be chosen to either one of said positions.

Rules, &c.,
of the board.

§ 1155. The rules and regulations of the Board are subject to the call of the General Assembly.

Suits for or
against the
Institute.

§ 1156. Suits for or against the Institute must be in the name of the Board of Inspectors; service on the Superintendent shall be sufficient.

Expenses of
State Cadets
—how paid.

§ 1157. The sum of two thousand dollars is annually appropriated to said Institute, to be used by the Board of Inspectors, in consideration of which ten State Cadets must be furnished, board, tuition, washing, fuel, light and medical treatment, free of charge, they providing their own room, furniture, clothing, &c., which sum is payable quarterly on the warrant of the Governor for that purpose.

Salary of Su-
perintenden-
dent—how
paid.

§ 1158. The salary of the Superintendent shall be paid by the State out of any money in the Treasury not otherwise appropriated, at the close of each session, by the warrant of the Governor, drawn on the Treasurer for that purpose.

§ 1159. No professor, assistant professor or the Superintendent

of said Institute, shall resign his office therein without giving the Board of Inspectors thirty days' notice of his intention so to do, and for a violation of the provisions of this section, such officer so violating shall forfeit to said Institute one fourth of his annual salary, to be retained on settlement.

CHAPTER III.

ACADEMY FOR THE BLIND.

SECTION.

1160. Location and organization.
 1161. A body corporate.
 1162. Power and duty of trustees.
 1163. Pupils—who entitled. &c.
 1164. How appointed.
 1165. Number—how regulated.
 1166. Pay pupils—how received.
 1167. Treasurer must give bond.

SECTION.

1168. Trustees must report to Governor.
 1169. Visitors—appointment and duty.
 1170. Powers of—must report.
 1171. Vacancies—how filled.
 1172. Statistics—how obtained.
 1173. List of indigent—by whom kept.
 1174. Former acts continued in force.

§ 1160. An institution for the education of the blind is located at Macon under the control of seven trustees already appointed.

Location,
&c., of Academy for Blind.

§ 1161. They are a body corporate, and have all the powers and duties appertaining to similar institutions of this State in their corporate capacity as trustees of the Academy for the Blind.

Trustees a body corporate.

§ 1162. The trustees have the power—

Powers of trustees.

1. To appoint such officers, teachers and matrons as may be necessary—to prescribe their duties, fix their salaries, and to remove or discontinue them at pleasure.

2. To prescribe the course of studies, establish the rates of tuition, and adjust the expenditures of the institution.

3. To adopt such rules and regulations, not in conflict with law, as the interest of the academy may require.

§ 1163. All indigent blind persons, residents of this State, between the ages of seven and twenty-five years, shall be selected by the trustees from the different counties of this State, received into the academy, and supported and educated gratuitously to the extent the funds will permit.

What pupils educated, and how selected.

§ 1164. When there are more applicants than can be accommodated, they shall be apportioned among the several counties, according to representative population.

Applicants—how apportioned.

§ 1165. Unless the funds will otherwise permit, there shall hereafter be but one indigent pupil from the counties applying,

Number of pupils regulated by funds on hand.

Chapter 3.—Academy for the Blind.

and in case there are not means enough to receive one from every county applying, those shall be received first who first make application. A beneficiary shall not remain at the charge of the institution longer than four years.

Pay pupils
—how re-
ceived.

§ 1166. All others than the indigent are to be received upon such terms as the trustees may impose.

Treasurer
must give
bond.

§ 1167. The Treasurer of the Board shall give bond and security in the sum of three thousand dollars.

Trustees
must report
to Governor.

§ 1168. The trustees must make annual reports to the Governor, as is required of the Board of Inspectors of the Military Institute, so far as applicable to the affairs of the Academy for the Blind, and the Governor must make a like disposition of them.

Board of
Visitors.

§ 1169. The Governor shall appoint a Board of ten Visitors for said academy, who shall meet the Board of Trustees at the academy annually, at such time as the latter may designate.

Powers and
duty of vis-
itors.

§ 1170. The powers and duties of said visitors are the same as those appointed for the Military Institute, and the same disposition is to be made of their report.

Vacancy in
Board of
Trustees—
how sup-
plied.

§ 1171. The trustees fill vacancies in their own body, as do the trustees of the Georgia University. When a vacancy occurs and is filled, it must be reported to the Governor. Their ineligibility is likewise the same as of those last mentioned.

Statistics of
blind—how
obtained.

§ 1172. The Tax Receiver of each county must keep a column for, and receive the numbers of the blind between the ages of seven and twenty-five; a statement of which shall be obtained annually, by said Board of Trustees, from the Comptroller General's office. Before the digest is sent by the Tax Receiver to the Comptroller, the Ordinary of each county shall examine with such Receiver, his list of the blind, and correct by memoranda thereto attached any mistake.

List of indi-
gent blind.

§ 1173. The Ordinary shall also take down the names of such as are indigent, and procure their admission into the Asylum, if possible, and if from any cause they are not received, he shall report to the Board of Trustees the names, ages and sex of such, who shall keep a record of all such reports.

§ 1174. Section 1135 (as to laws kept in force,) applies to the Asylum for the Blind.

CHAPTER IV.

ACADEMY FOR THE DEAF AND DUMB.

SECTION.

1175. Located at Cave Spring.
 1176. Trustees—how appointed, &c.
 1177. The Principal—how appointed.
 1178. Other officers—how appointed, &c.
 1179. Exclusive power, &c. of Principal.

SECTION.

1180. Visitors may be appointed.
 1181. Contracts—how made.
 1182. Vacancy—how filled.
 1183. Chapter 3. of this title apply—when.

§ 1175. The academy for the education of the deaf and dumb is located at Cave Spring, and is under the management of three trustees. Academy for deaf and dumb.

§ 1176. The trustees need not reside in the county where the institution is located, but the Principal shall be required to reside in the institution. Residence of Officers.

§ 1177. The Principal of said Institution is elected by said Board of Trustees. He is responsible to them, and his acts subject to their veto. Principal—how elected, and to whom responsible.

§ 1178. Said Principal has authority to nominate all his subordinate officers and employees, subject to the approval of the Board. He shall make all regulations of internal police; shall authorize all purchases of ordinary supplies, and examine and certify to the correctness of bills of such supplies before paid by the Treasurer. Subordinate officers, regulations, &c.

§ 1179. He shall be the sole medium of communication between the Board and the subordinate officers and employees of the institution, and shall have the exclusive direction and control of the system of religious and intellectual instruction. Exclusive powers and duties of Principal.

§ 1180. The Governor may, in his discretion, appoint a Board of Visitors, to consist of such a number as he thinks best, and when appointed, their rights and duties are the same as those of the visitors of the Academy of the Blind. Board of Visitors.

§ 1181. No contract of said Board of Trustees shall be valid unless it is first recorded by the Secretary in a book kept for that purpose, signed by the President and countersigned by said Secretary. Contracts—how made valid.

§ 1182. When a vacancy occurs in said Board, the Secretary or any member, shall notify the Governor within twenty days, and the vacancy must be filled within thirty days from said notice. Vacancy in Board of Trustees—how filled.

§ 1183. All the provisions of the preceding chapter, not in conflict with the preceding sections of this chapter, apply to the Academy for the Deaf and Dumb—to its Board of Trustees and Visi- Provisions of previous chapter applicable.

Chapter 4.—Academy for the Deaf and Dumb.

tors—its officers, and other officers of the State or county upon whom any duty is enjoined; the words deaf and dumb being substituted wherever the words “the blind,” occur.

CHAPTER V.

COUNTY ACADEMIES.

SECTION.

1184. Trustees of County Academy.

1185. Vacancies—how filled.

1186. Authority of Trustees.

SECTION.

1187. School—how incorporated.

1188. Liability of holder of funds.

Trustees of
County Aca-
demies—
how ap-
pointed.

§ 1184. When it is not otherwise provided for, the Justices of the Inferior Court of the several counties have the power to appoint trustees for any county Academy, whether incorporated or not, and to any number they may deem expedient.

Vacancies—
how filled.

§ 1185. When vacancies occur, and provision is not made as to the manner in which said vacancies are to be filled, such Justices have power to fill the same in their respective counties.

Authority of
trustees.

§ 1186. The authority of said Trustees, unless specially restricted, is to elect their teachers, fix their salaries and terms of office, prescribe the course of studies, manage the finances, adopt all such rules and regulations for the government of their respective institutions, as they may think prudent, if not in conflict with the laws.

Schools—
how incor-
porated.

§ 1187. Any body of citizens, not less than three, nor more than thirteen, may by application in writing to the Justices of the Inferior Court of their respective counties in term time, obtain the power to act as a corporate body in the conduct of any Academy, Institute or School by having all the powers of the same distinctly set forth, recorded under order of the Court and published three times in any public gazette within this State.

Liability of
holders of
Academy
funds.

§ 1188. Any person holding Academy funds and failing to pay over when bound, are liable to twenty per cent. interest from time of demand, and to be proceeded against by the Justices of the Inferior Court as against holders of county funds.

CHAPTER VI.

COMMON SCHOOLS AND EDUCATION OF THE POOR.

- ARTICLE 1. Educational Fund of the State—how made up.
 ARTICLE 2. Educational Fund—how paid out by the State.
 ARTICLE 3. Educational Fund of the counties—how made up.
 ARTICLE 4. Educational Fund of counties—by whom managed.
 ARTICLE 5. The Beneficiaries of the Educational Fund.

ARTICLE I.

THE EDUCATIONAL FUND OF THE STATE—HOW MADE UP.

SECTION.

1189. From dividends on Bank Stock.
 1190. Proceeds of W. & A. R. R.
 1191. Balances in the Treasury.

SECTION.

1192. From donations.
 1193. Such donations—how managed.
 1194. Earnings of W. & A. R. R., &c.

§ 1189. The Educational Fund of the State is made up—

1. Of the dividends upon the capital stock of the State in the Bank of the State of Georgia, the Bank of Augusta, and the Georgia Railroad and Banking Company. Educational Fund from dividends on stock.

§ 1190. From the net earnings of the Western & Atlantic Railroad, to be managed and disposed of as follows: From the net earnings of W. & A. Railroad.

1. One hundred thousand dollars of said net earnings stand annually appropriated for such purpose, and all to remain with the State Treasurer until the Governor draws his warrant for the same, or any part thereof.

2. In addition to said sum of money the whole of the net earning of said road is set apart as an Educational Fund to take effect in the following manner:

As any portion of the present public debt is paid under the existing law from said earnings, the Treasurer shall issue script or Education Bonds certifying the amount, and that it is entitled to draw interest thereon from the treasury at the rate of six per cent. per annum.

3. For any balance of said one hundred thousand dollars, that may not be drawn from the treasury at the close of each educational year, the Treasurer shall issue a like certificate for said amount.

4. Said script shall be in favor of the Secretary of State, as trustee of the Educational Fund, which together with the script

Article 1.—Educational Fund of the State—how made up.

for Bank stock shall remain on deposit in the treasury to the credit of the Educational Fund. The Treasurer shall issue to said Secretary, from time to time, certificates of said deposits.

5. Any amount of money that may at the time this Code goes into effect be loaned out, or on deposit under the act of December 11th, 1858, shall be returned to the treasury, and appropriated to taking up that amount of the public debt under the provisions of this section.

6. The Educational Fund thus raised shall be subject to appropriation by the General Assembly to any educational purpose in this State.

Balances in
the Treasury.

§ 1191. From any balance that may be in the State Treasury at the time of distributing the Educational Fund, over and above the expenses, ordinary and extraordinary, of the State Government for the then political year. If said balance is not drawn out, scrip for it is to be issued and used as set forth in preceding paragraph.

Donations.

§ 1192. From any money donated by will, deed or otherwise for such purpose.

Donations
for Education—how
managed.

§ 1193. In the case named in the preceding section, it is the duty of the Governor—

1. Upon a tender of the sum so given or bequeathed in cash, to have the same deposited in the State Treasury, and the State shall thereby become pledged for the payment of said sum according to the terms of the donation, and if thereby the interest alone is to be used, said interest shall be paid at the rate of six per cent. per annum.

2. To issue scrip, or educational bonds therefor, to the person named as trustee, and if none is named, then to the State's trustee of the Educational Fund.

3. The interest to be payable in the same manner, and the fund to be managed as said Educational Fund, unless a different mode is prescribed by the donor, then according to said mode, if possible to be done. In no case, under the above provision, shall the State be liable to refund the principal thus paid into the Treasury.

Earnings of
W. & A. R. R.
may be di-
verted.

§ 1194. The appropriations of the net earnings of the State Road, and of the balances in the Treasury, may be discontinued by the State, in whole or in part, by act of the General Assembly.

ARTICLE II.

THE EDUCATIONAL FUND—HOW PAID OUT BY THE STATE.

SECTION.

1195. A list of children, &c.
1196. Funds—how appropriated.
1197. Warrant for School Fund.

SECTION.

1198. County failing to make returns.
1199. Penalty for false return.

§ 1195. The Ordinary of each county shall annually, by the third Monday in November, report to the Governor, under his hand and seal, the whole number of children in his county, as ascertained from the Tax Receiver's digest, his own knowledge and the knowledge of the Grand Jury, as hereinafter set forth.

List of children—how organized.

§ 1196. As soon as that is done, the Governor shall, on that day, make an estimate of the amount of the Educational Fund in the Treasury, and of the number of children in each county, and make a *pro rata* division of the same among the different counties, according to the number reported from each.

Funds—how apportioned.

§ 1197. For the amount each county is entitled to, he shall draw his warrant on the Treasury in favor of the several Ordinaries for their respective amounts. The Treasurer shall pay the same to each Ordinary, or his order, taking a receipt for the same. If the Ordinary is not Treasurer of the Board of Education, the warrant must be in favor of said Treasurer, and the Ordinary, in his report, must certify who is such Treasurer.

Warrant for School Fund.

§ 1198. If any county neglects to present a proper return to the Governor by the time prescribed, it loses its share in the fund.

Fund lost by failure to make return.

§ 1199. If any Ordinary certifies to the Governor a greater number of children than he is authorized to, he is guilty of malpractice in office, and may be indicted, and, if found guilty, may be fined and imprisoned in the discretion of the court.

Penalty for excessive return.

ARTICLE III.

THE EDUCATIONAL FUND OF THE COUNTIES—HOW MADE UP.

SECTION.

1200. School Fund of the county.
1201. Tax for education—how levied.
1202. When Grand Jury fail, &c.

SECTION.

1203. Wants of county to be regarded.
1204. School Fund—to whom paid.

Article 3.—Educational Fund of the Counties—how made up.

School Fund of counties—how made up.

§ 1200. The Educational Fund of the respective counties of this State is made up of—

1. The share of the State Fund which may be distributed to each.
2. The amount raised by taxation for such purpose.
3. The money arising from the sale of any escheated property.
4. The money arising from fines and forfeitures over and above the charges upon it, and from the result of *qui tam* actions, where the whole or one-half goes to the State or county, and is, by special enactment, directed to be paid to the Educational Fund.

Tax for Education—how levied.

§ 1201. The Justices of the Inferior Court of the several counties have authority, upon the recommendation of the Grand Jury, to levy a tax upon the State tax, for educational purposes, of such per cent. as said Jury may recommend.

Tax—how levied when Grand Jury fails to recommend.

§ 1202. If the Grand Jury, at the time they must recommend the general county tax, fail to take any action in reference to such tax, or if different Grand Juries of the same term, differently recommend, said Justices may, in their discretion, levy a tax for such purpose, not to exceed twenty-five per cent. upon the State tax. If such Grand Juries recommend a different per cent., said Justices may levy the medium between the two extremes.

Wants of county regarded in levying tax.

§ 1203. When the levy of said tax is entirely in the discretion of said Justices, they shall consult the other members of the Board of Education, to ascertain the wants of the county before doing so.

School Fund to whom paid.

§ 1204. All moneys from all said sources are to be paid, when collected by the proper officers, to the Ordinary, if Treasurer of the School Fund of the county; if not, to said Treasurer.

ARTICLE IV.

HOW THE EDUCATIONAL FUND OF EACH COUNTY IS MANAGED.

SECTION.

1205. For each county, &c.
1206. Board of Education—their duty.
1207. Course of study prescribed.
1208. Teachers must be examined.
1209. How paid.
1210. Previous accounts may be paid.
1211. Teachers' accounts—how made out.

SECTION.

1212. Com. schools may be established.
1213. Board failing to devise a plan.
1214. Ordinary must give bond as Treas.
1215. Additional bond may be required.
1216. Treasurer failing to pay, &c.
1217. Secretary of Board—who shall be.
1218. Ordinary must report to Governor.

Article 4.—The Educational Fund of the Counties—by whom managed.

§1205. The Educational Fund of each county is under the management of a Board of Education, which board is to consist of the Justices of the Inferior Court, the Ordinary and some other qualified citizen, to be selected by the Judge of the Superior Court, presiding in said county. The person so selected holds the position for the term of four years, unless a vacancy occurs from any cause. The appointment and the filling of any vacancy by the said Judge, shall be entered on the minutes of the Superior Court. The person appointed to fill a vacancy shall hold for a full term.

Board of Education—
how organized.

§1206. It is the duty of said board—

Duty of Board of Education.

1. To disburse the School Fund, for their respective counties, in the manner that in their judgment will best promote the cause of general education under the law.

2. To act by themselves, or a committee as a Board of Examiners, and examine all teachers, who participate in the School Funds, upon the elementary branches, and also upon English grammar and geography, if the teacher applying shall desire, and to give said teachers the proper certificates of their qualification.

3. To publish, annually, the school system they may adopt, including the rates of tuition, in the public gazette, where their respective Sheriffs publish their sales, together with their receipts from different sources, and the items of expenditure.

4. To meet once a month at the court-house, on the day the Court of Ordinary is held, and as often as may be necessary when called by either member of the board.

§1207. By the term elementary branches is meant spelling, reading, writing and arithmetic, but children entitled to the benefit of the School Fund may study English grammar and geography, or any other study, provided the tuition does not then, nor in any other contingency, exceed the rates of sixteen dollars per annum. Under said permission, such children, who may be well educated in said branches mentioned, may, by special permission of the board, study exclusively at the same rates of tuition higher branches of utility, with any teacher competent to instruct them.

What branches beneficiary may study.

§1208. A teacher claiming pay out of the school fund shall not be entitled thereto for any teaching done prior to his examination before the Board of Education. When a majority of the board know of the competency of a teacher, they may give him

Certificate to teachers

Article 4.—The Educational Fund of the Counties—by whom managed.

the certificate without examination. Teachers shall be examined or receive the certificate whenever they apply.

Teachers—
how paid.

§ 1209. Teachers must be paid quarterly by the Treasurer, when their accounts are passed by the board, provided there are funds; if insufficient funds, then all of equal dignity are to be paid *pro rata*. If, at the close of the year, the school fund is not sufficient to pay all the teachers' accounts, duly passed, said accounts must be first paid, out of the funds raised for the next year. The rates of tuition should be so fixed by the Board of Education as to give all the children the benefit of the fund annually, who have the right of participation. Teachers who do not have their accounts passed on by the first of January, annually, are postponed in their payment until the next year, unless there is a surplus fund. All teachers accounts for the year, and passed in the year, are of equal dignity, without regard to the time when the teaching was done.

Accounts for
previous
years may
be paid—
when.

§ 1210. Whenever the state of the funds will warrant it, persons who have, in good faith, taught poor children, prior to twenty-first December, 1859, and have not been paid, shall have their accounts passed by the Board of Education, and shall rank as of the year when so passed, but in no other case shall a teacher be paid, who has not the proper certificate. Two-thirds of the Board of Education may, however, order an account paid when the neglect to return is satisfactorily explained. The Legislature shall not interfere in such cases. Children who reside in one county, and go to school in another are to be paid for out of the fund of the county of their residence; *Provided*, the teacher claiming the pay has a certificate from the Board of Education of the county where he teaches.

Tuition to
be paid by
county in
which child
resides.

Teachers ac-
counts—how
made out.

§ 1211. All teachers' accounts shall state the number of days each child was taught, the studies pursued, and the rate of tuition claimed, which shall be sworn to.

Common
schools may
be establish-
ed—when.

§ 1212. When the Educational Fund of a county, and the state of the population, will warrant it, the Board of Education of each county have authority to establish a common school, or schools, to name and limit the number of scholars, and fix the salary of teachers; *Provided*, all the children of the county entitled to share the Educational Fund are provided for, or there are means reserved for that purpose.

§ 1213. If the Board of Education fail to devise any plan of

Article 4.—The Educational Fund of the Counties—by whom managed.

education, the laws of force prior to December 13th, 1859, are continued in force. What laws govern in absence of plan.

§ 1214. If the Ordinary of each county shall fail to give the bond required of him as Treasurer of the Board of Education, said board has power to select some other responsible person to act as such, who shall give the requisite bond and security. Ordinary must give bond as school Treasurer.

§ 1215. The board may require of the Treasurer of the School Fund an additional bond, on the terms required by the Justices of the Inferior Courts of other officers. Additional bond may be required.

§ 1216. If such Treasurer shall fail to pay out any School Fund, as required by law, on knowledge of such failure coming to the board they shall issue a rule *nisi* against him, requiring him to appear before them within ten days, to show cause for such failure, and upon failing to show good cause, the board shall order the Clerk of the Inferior Court to issue execution against him and his sureties; said execution shall be directed to all and singular the Sheriffs of the State, and shall have the form and effect of a tax *pro. fa.* issued by the Justices of the Inferior Court, and said *pro. fa.* shall claim twenty per cent. per annum interest from time of default. Proceeding against Treasurer for failure to pay.

§ 1217. The Clerk of the Inferior Court shall be Secretary of the Board of Education, in the absence of the Ordinary or his clerk, or when either is interested. Secretary of Board of Education

§ 1218. The Ordinary shall furnish the Governor any information he may desire, touching the plan of education in the county, and the number of children pursuing different studies, and shall annually, at the close of the educational year, report to the Governor what balance, if any, there is of the Educational Fund, and what amount was raised by the county from other sources than the State. Ordinary must report to Governor.

ARTICLE V.

THE BENEFICIARIES OF THE EDUCATIONAL FUND.

SECTION.

- 1219. Persons entitled to School Fund.
- 1220. How ascertained and by whom.

SECTION.

- 1221. List may be corrected.

§ 1219. All children between the ages of six and eighteen years, within their respective counties, are entitled to the benefits of said fund, under the system that may be adopted by the respec- Who entitled to school fund.

Article 5.—The Beneficiaries of the Educational Fund.

tive Boards of Education, but children of parents who are unable to educate them, children discarded by their parents, and indigent orphan children, must first be provided for.

Poor children—how ascertained.

§1220. Such last mentioned children must be ascertained as follows—

1. The Receiver of tax returns of each county shall require of each tax payer, when giving his tax returns, to state, under oath, the number of his children and children under his care, between the ages of six and eighteen years.

2. As soon as the digest is compiled, the Ordinary shall select from the whole number the names of those who, from the poverty of their parents, or otherwise, have not the means of being educated, and shall add thereto such as are in the same condition within his knowledge, who have not been returned.

3. The list returned by the Tax Receiver, together with the Ordinary's selection therefrom, shall be reported to any panel of Grand Jurors at the first Court held thereafter, and said Grand Jury shall examine said list, and ratify the Ordinary's selection in whole, or correct it according to their best judgment, and may also add to the lists such as they know have not been returned to them.

4. If the Grand Jury at said Term fail to take definite action, the list of the Ordinary shall stand.

5. When the list is finally made up, it shall be returned to the Board of Education, and be entered in the proper book by the Ordinary.

6. Any person may, from time to time, report to said board the names of any poor children, not already reported, which, by order thereof, shall be added to the list.

List may be corrected.

§1221. If the board is satisfied by proof that any children are on the list who are not entitled to be there, they have power to have them erased at any time, and to inform any teacher, or other person interested in their action; *Provided*, the system of education they may have adopted renders it necessary.

Chapter 1.—Qualification of Voters.

TITLE XIII.

ELECTIONS BY THE PEOPLE.

CHAPTER I.

QUALIFICATION OF VOTERS.

SECTION.

1222. Who may vote for Legislators.

1223. Voters for other officers.

1224. When one may vote out of county.

SECTION.

1225. Oath of voter out of his county.

1226. Additional oath may be required.

1227. Transferred voters.

§ 1222. The qualification of voters for members of the General Assembly, is contained in the following oath, which must be taken when any qualified voter of the State, or the managers of an election, require it:—

Qualification
of voters for
members of
Legislature.

“I swear that I have attained to the age of twenty-one years, that I am a citizen of the Confederate States, and have usually resided in this county for the last six months, have considered and claimed it as my home, and have paid all legal taxes which have been required of me, and which I have had an opportunity of paying, according to law. So help me God.”

Voters oath.

§ 1223. Persons qualified to vote for members of the General Assembly, and none others, are qualified to vote for any other officers, civil or military, unless said privilege be enlarged or restricted by the constitution, or some special enactment.

Such elec-
tors may
vote for all
other offi-
cers.

§ 1224. Any qualified voter for members of the General Assembly may vote for any candidate, or upon any question which is submitted to all the voters of the State, in any county of the State, and for any candidate or question which is submitted to all the voters of any district or circuit, in any county of the circuit, or district, in which is embraced the county of the voter's residence.

When elec-
tors may
vote in any
part of the
State, circuit
or district.

§ 1225. A voter, coming under the preceding section, may be required to take the same oath as voters for members of the General Assembly, except, that instead of swearing to a residence in the county where voting for the last six months, he shall swear in lieu thereof, that he has usually resided for the last six months in the State, circuit or district as the case may be.

Oath of voter
under last
section.

§ 1226. The superintendents may in their discretion, or if demanded by a qualified voter, compel a person offering to vote, to also take this oath:

Superin-
tendents
may require
an additional
oath denying
having voted
before.

“ I swear, that I have not this day voted at any election held at any place in this State for any of the candidates, nor for any other person for any of the offices to be filled. So help me God.”

Voters transferred from one district, county or circuit to another to vote in latter district, &c.

§ 1227. When any county, or portion of a county, is changed from one county, or one district, or one circuit to another, the persons who would have been qualified to vote for members of the General Assembly in the county, district or circuit, from which taken, at the time of any election, shall vote in the county, district or circuit to which they are removed, and if required to swear, the oath may be so qualified as to contain this fact. This provision when applicable, appertains also to military elections.

CHAPTER II.

ELECTION FOR MEMBERS OF THE GENERAL ASSEMBLY.

SECTION.

- 1128. Holders of elections for Legislators.
- 1229. Oath of Superintendents.
- 1230. Before whom taken.
- 1231. Election Precincts.
- 1232. Time of holding elections.
- 1233. When freeholders may superintend.
- 1234. Elections—how conducted.

SECTION.

- 1235. Penalty against Superintendents.
- 1236. Grand Jury to examine lists.
- 1237. Election blanks—how furnished.
- 1238. Misconduct of managers.
- 1239. Voters exempt from civil process.
- 1240. Vacancies for Legislature.
- 1241. Special elections—how conducted.

Superintendents of elections for members of the Legislature.

§ 1228. The persons qualified to hold such elections are Justices of the Inferior Court, Justices of the Peace and Freeholders. There must be three superintendents, and one must either be a Justice of the Inferior Court, or a Justice of the Peace, except in a certain contingency hereinafter to be set forth.

Superintendents to take oath.

§ 1229. Before proceeding with the election, each superintendent must take and subscribe the following oath :

“ All, and each of us do swear, that we will faithfully superintend this day’s election ; that we are Justices of the Inferior Court, Justices of the Peace, or Freeholders, (as the case may be,) of this county ; that we will make a just and true return thereof, and not knowingly permit any one to vote unless we believe he is entitled to do so according to the laws of this State, nor knowingly prohibit any one from voting who is so entitled by law, and will not divulge for whom any vote was cast, unless called on under the law to do so. So help me God.” Said affidavit shall be signed by the superintendents in the capacity, each acts in full, both as to name and station, and not by abbreviation.

§ 1230. Said oath shall be taken before some officer qualified to administer an oath if present, and if none such are on the spot, and acting at the time required, then said superintendents may swear each other, and the oath shall be of the same effect as if taken before a qualified officer.

Oath of superintendent—before whom taken.

§ 1231. Such election shall be held at the court houses of the respective counties, and if no court house, at some place within the limits of the county site, and at the several election precincts thereof (if any) established, or to be established. Said precincts must not exceed one in each militia district. Such precincts are established, changed or abolished by the Justices of the Inferior Court at a regular Term of the Court; descriptions of which must be entered on their minutes at the time.

Places of holding election.

But one precinct in any militia district.

Precincts changed, &c.

§ 1232. The day of holding the same, is the first Wednesday in October, 1861, and biennially thereafter, and the time of day for keeping open the elections is from seven o'clock, A. M., to six o'clock, P. M., at the court house, and from eight o'clock, A. M., to five o'clock, P. M., at the precincts.

Elections biennial—on what days, during what hours to be held.

§ 1233. If by ten o'clock, A. M., on the day of the election, there is no proper officer present to hold the election, or there is one, and he refuses, three Freeholders may superintend the election, and shall administer the oath required to each other, which shall be of the same effect as if taken by a qualified officer.

Three Freeholders may superintend election.

§ 1234. All superintendents shall have elections conducted in the following manner:

Manner of conducting elections.

1. The vote shall be given by ballot.

Vote by ballot.

2. There shall be kept by the superintendents, or by three clerks under their appointment, three lists of the names of voters, which shall be numbered in the order of their voting, and also three tally sheets.

List of voters and tally sheets to be kept.

3. As each ballot is received, the number of the voter on the list shall be marked on his ballot before being deposited in the box.

Number of voter.

4. When any voter is challenged and sworn, it shall be so written opposite his name on the list, and also on his ballot.

Voter challenged.

5. The superintendents may begin to count the votes at any time in their discretion, but they shall not do so until the polls are closed if a candidate in person or by written authority objects.

Votes not to be counted if candidate objects.

6. When the votes are all counted out, there must be a certificate signed by all of the superintendents, stating the number of

Certificate of superintendents.

votes each person voted for received, and each list of voters, and tally sheet, must have placed thereon the signature of the superintendents.

Certificates, &c., to be carried to the county site.

7. The superintendents of the precincts must send their certificates, and all the other papers of the election, including the ballots, under the seal, to the county site for consolidation, in charge of one of their number, which must be delivered there by twelve o'clock, M., of the next day. Such person is allowed two dollars to be paid out of the County Treasury for such service.

Who are to consolidate the vote—their duty.

8. The superintendents to consolidate the vote of the county must consist of all those who officiated at the county site, or a majority of them, at least one from each precinct. They shall make and subscribe two certificates, stating the whole number of votes each person received in the county; one of them, together with one list of voters and one tally sheet from each place of holding the election, shall be sealed up, and without delay mailed to the Governor; the other with like accompaniments, shall be directed to the Clerk of the Superior Court of the county, and by him deposited in his office. Each of said returns must contain copies of the original oaths taken by the superintendents at the court house and precincts.

Ballots not examined.

To be delivered to Clerk.

How kept by him.

When destroyed.

Penalty of violation.

Clerk to deliver lists to Grand Jury—penalty for failing.

Penalty where superintendents fail.

9. The ballots shall not be examined by the superintendents or the bystanders, but shall be carefully sealed in a strong envelope (the superintendents writing their names across the seal,) and delivered to the Clerk of the Superior Court, by whom they shall be kept unopened and unaltered for sixty days, if the next Superior Court sits in that time, if not, until after said term; after which time, if there is not a contest begun about said election, the said ballots shall be destroyed without opening or examining the same, or permitting others to do so. And if the Clerk shall violate, or permit others to violate this section, he and the person violating, shall be subject to be indicted, and fined not less than one hundred, nor more than five hundred dollars. Such clerks shall deliver said list of voters to their respective Grand Juries on the first day of the next term of the Superior Court, and on failure to do so, are liable to a fine of not less than one hundred dollars on being indicted and convicted thereof.

§ 1235. If said superintendents do not deliver said lists and accompaniments to said clerks within three days from the day of the election, they are liable to indictment, and on conviction, shall be fined not less than fifty, nor more than five hundred dol-

Chapter 2.—Elections for Members of the General Assembly.

lars. Any superintendent of an election, failing to discharge any duty required of him by law, is liable to a like proceeding and penalty.

Where superintendent fails in any duty.

§ 1236. The Grand Juries shall examine said lists, and if any voter is found thereon, who was not entitled to vote, they shall present said illegal voter. If any person is suspected of voting for members of the General Assembly who was not entitled, but was entitled to vote for some other candidate at the same election. The Foreman of the Grand Jury may examine the ballot, and that one alone, and lay it before the Grand Jury and return it. If the superintendents fail to return as required, the lists and the ballots, they must be presented.

Grand Jury to examine lists.

Foreman may examine ballot.

Presentment against superintendents.

§ 1237. The Governor shall furnish the several clerks of the Inferior Court all blank forms necessary for said elections, which they shall furnish the Justices of the Peace of their counties at least ten days before election day, and on failure to do so, shall be liable to a fine by their Courts not exceeding one hundred dollars.

Blanks to be furnished by Governor to Clerk.

Penalty for neglect by Clerk.

§ 1238. If the superintendents or officers of such election shall make a fraudulent return thereof, or they, or either of them, while so officiating, shall influence, or attempt to influence or persuade any voter not to vote as he designed, or shall take any undue means to obtain a vote, they shall forfeit for the offence one hundred dollars, to be recovered by information, and if the person be a Justice he forfeits his office on proceedings for removal.

Penalty and forfeiture in case superintendents make fraudulent returns or interfere with voter.

§ 1239. No civil officer shall execute any writ, or civil process, upon the body of any person qualified to vote at such elections while going to, or returning from, or during his stay there, on the day, under a penalty of five hundred dollars, to be recovered by action. A reasonable and full time shall be allowed for the journey to and from the polls.

Voter free from arrest while going to, returning from, or during his stay at an election. Penalty on officer for arrest.

§ 1240. Elections to fill vacancies for members of the General Assembly, take place under the authority of a writ of election, issued by the Governor to the Justices of the Inferior Court of the county where the vacancy occurs, who must order and publish a day for holding the same, by giving at least twenty days' notice.

Twenty days notice of election to fill vacancy for members of Legislature.

§ 1241. All the provisions of this chapter apply equally to elections to fill such vacancies and any other special election.

Elections to fill vacancies, &c.

Article 1.—Provisions applicable to all.

CHAPTER III.

ELECTION FOR GOVERNOR, MEMBERS OF CONGRESS, ELECTORS FOR PRESIDENT AND VICE PRESIDENT, JUDGES OF THE SUPERIOR COURTS AND SOLICITORS GENERAL.

ARTICLE 1. Provisions applicable to all.

ARTICLE 2. For Governor.

ARTICLE 3. For members of Congress.

ARTICLE 4. Electors for President and Vice President.

ARTICLE 5. Judges of Superior Courts and Solicitors General.

ARTICLE I.

PROVISIONS APPLICABLE TO ALL.

SECTION 1242. Such elections—how conducted.

Particulars in which elections for Governor, members of Congress, and for electors for President and Vice President are governed by same rules as elections for members of the Legislature.

§ 1242. The election for the officers heading this chapter are governed by the same rule as elections for members of the General Assembly in the following particulars :

1. In the oaths to be taken by the voters.
2. In the class of persons to hold the elections and the oath to be taken by them.
3. In the places and the time of the day to hold them.
4. In the manner of conducting and returning them including all special elections, and in the duty of the Clerks of the Superior Courts and the Grand Juries.
5. In the several penalties attached to the superintendent or other persons.
6. In the furnishing of blanks by the Governor.
7. In all other respects where applicable, and there is not a contrary provision by law.

ARTICLE II.

FOR GOVERNOR.

SECTION.

1243. Governor's election, &c.

SECTION.

1244. Return of vote for Governor.

Governor to be elected biennially. Vacancy how filled.

§ 1243. The Governor is elected biennially, at the same time when members of the General Assembly are regularly elected, and a vacancy in the office is to be filled as required by the con-

Article 2.—For Governor.

stitution and the regulations of this Code elsewhere in conformity thereto.

Separate package with certificate of vote for Governor to be sent by mail, &c.

§ 1244. At the election for Governor a third package must be made up containing a certificate of the Governor's vote alone, together with the other papers of the election, as in the case of members of the General Assembly, which shall be directed by mail to "the President of the Senate of Georgia."

ARTICLE III.

FOR MEMBERS OF CONGRESS.

SECTION.

- 1245. Congressmen—when elected.
- 1246. Elections for extra sessions.
- 1247. Qualification of voters.

SECTION.

- 1248. Proclamation of result.
- 1249. Election in case of a tie.
- 1250. Commission—when applied for.

§ 1245. Members of the House of Representatives of the Confederate States Congress are elected at the same time that the Governor and members of the General Assembly are regularly elected, by the voters of their respective Congressional districts.

Elections for members of Congress.

§ 1246. If an extra session of Congress should be called after the expiration of the Congressional term, and before the next regular time for holding such elections, the Governor must issue his proclamation ordering an election of such representatives for such extra session.

Governor must order an election when.

§ 1247. Besides the qualifications required by the constitution, a residence of one year next preceding the day of election in the district where the candidate offers, is necessary to make him eligible to election.

Candidate must reside one year in district to be eligible.

§ 1248. Within twenty days after the election the Governor shall count up the votes, and immediately thereafter issue his proclamation declaring the person having the highest number of votes, and otherwise qualified, to be duly elected to represent this State in the House of Representatives of the Confederate States, and for what period.

Governor to count up votes, &c.

§ 1249. If two or more persons, equally qualified, should have the same number of votes, the Governor shall issue his proclamation, ordering a new election, in not less than thirty days.

In case of a tie new election ordered.

§ 1250. If any person duly elected as aforesaid shall not within thirty days after the Governor's proclamation apply for his commission, the Governor shall order a new election as prescribed

Members elect to apply for commission in thirty days.

Article 3.—For Members of Congress.

in the preceding section, and vacancies for any cause are filled in like manner.

ARTICLE IV.

ELECTORS FOR PRESIDENT AND VICE PRESIDENT.

SECTION.

1251. Presidential electors—when chosen
1252. When and where to cast vote.
1253. Vacancies—how filled.
1254. Majority failing to meet.

SECTION.

1255. Electoral college—how organized.
1256. Messenger to be chosen.
1257. Pay of Electors and Secretary.

Day of election for electors of President and Vice President.

§ 1251. On the Tuesday after the first Monday in November, 1861, and every sixth year thereafter, until altered by act of Congress, there shall be an election for electors of President and Vice President of the Confederate States.

Governor to consolidate returns and notify the persons.

§ 1252. On the twentieth day after said election shall have taken place, it is the duty of the Governor to consolidate the several returns and immediately notify those persons of their election, who have received a vote amounting to a majority, and to require their attendance at the capitol on the first Monday in December thereafter to cast the vote of the State on the Wednesday following at twelve o'clock, M.

All, or a majority of Electors failing to receive a majority of votes cast, &c.

§ 1253. In the event all, or a majority of said Electors may not have received a majority, the Governor shall communicate the fact to the General Assembly, if in session, and if not, he shall issue his proclamation convening them in time to secure the vote of the State in the Electoral College. The General Assembly shall, by joint ballot, elect as many Electors as have not received said majority. If a majority of Electors have been chosen by the people, they may fill the remaining vacancies themselves by ballot, which election shall be communicated to the Governor. If, when the Electors elected by the people, or by the General Assembly, or some by each, convene at the Capitol, any of their number may not be present at the time specified for counting the vote, a majority of the elected may fill all vacancies, which shall be duly communicated to the Governor.

Electoral College may fill vacancies, &c.

On failure of majority of Electors to attend, &c.

§ 1254. If a majority fail to attend by said Wednesday at noon, from providential cause, those who do attend may adjourn from day to day for ten days, and if a majority is not present at the expiration of that time, the Governor shall convene the General Assembly on ten days' notice, who shall fill the vacancies by election.

Article 4.—Electors for President and Vice President.

§ 1255. The Electors, when assembled to cast the vote, shall choose a President of their body from their number, and a Secretary not of their number; said Secretary shall make a record of their proceedings in a book from the Executive Department kept for that purpose.

Electoral College to choose a President, &c.

§ 1256. Such Electors shall elect, by a majority vote, a Messenger to convey the vote of Georgia, and shall, in regard to that and all other matters, proceed, according to the acts of Congress, in such cases made and provided.

Electoral College to choose a Messenger.

§ 1257. The pay of Electors shall be eight dollars per day for every day required in remaining at the Capitol on their mission, and eight dollars for every twenty miles in going to and returning therefrom, said mileage to be computed as that of members of the General Assembly. The pay of the Secretary shall be one hundred dollars, all of which is to be paid either out of the contingent fund or out of any money in the Treasury not otherwise appropriated in the discretion of the Governor.

Pay and mileage of Electors,

and of their Secretary.

ARTICLE V.

JUDGES OF THE SUPERIOR COURTS AND SOLICITORS GENERAL.

SECTION.

- 1258. Judges—when elected.
- 1259. Proclamation of result.
- 1260. Oath of Judges—how taken, &c.

SECTION.

- 1261. New election—when ordered.
- 1262. Solicitors General—when elected.
- 1263. Must give bond.

§ 1258. The election for Judges of the Superior Court takes place on the first Wednesday in January next preceding the expiration of their commissions.

Time of election for Judges Superior Court.

§ 1259. The Governor, together with the Secretary of State, shall, within twenty days after the election, count the votes, and shall, immediately thereafter, issue his proclamation declaring the person receiving the highest number of votes for Judge in each circuit to be elected, and also requiring said person elect to appear before him, or two or more Justices of the Inferior Court of the county of his residence, to take and subscribe the oaths of office, unless otherwise specially permitted.

Governor and Secretary of State to count the votes, &c.

§ 1260. When said oaths are taken before the Justices aforesaid, they shall be entered, by the Clerk of the Inferior Court of such county, on their minutes, and they shall transmit, under their hands and seals, to the Governor, copies of the same, without delay, when the commissions shall be issued.

Duty of Clerk of Inferior Court, &c.

Article 5.—Election for Judges of Superior Court and Solicitors General.

Office declared vacant, &c.

§ 1261. If the person elect shall fail to appear and take the oath within thirty days from the date of said proclamation, unless providentially prevented, the Governor shall declare said office vacant, proceed to fill the vacancy, and, by proclamation, order another election to take place within thirty days from the date of his proclamation for said purpose.

Election for Solicitors General.

§ 1262. Solicitors General are elected on the first Wednesday in January next preceding the expiration of their commissions.

Governor to declare who is elected.

§ 1263. The Governor shall proclaim the election of Solicitors General in the same manner that he does that of Judges, with the difference that he shall require them to execute, before such Justices, to be approved by them, their official bonds, which shall be, by said Clerk, transmitted to the Governor, together with a certified copy of the oaths from his minutes.

Solicitors to give bond.

CHAPTER IV.

FOR JUSTICES OF THE INFERIOR COURT, ORDINARY AND COUNTY OFFICERS.

SECTION.

- 1264. Election of county officers, &c.
- 1265. Ordinaries and J. I. C's., &c.
- 1266. Other officers—when elected.

SECTION.

- 1267. County Treasurer—when elected.
- 1268. Election of other county officers.
- 1269. Notice of election—how given.

Elections for Justices Inferior Court, &c.
Time of election, &c.

§ 1264. Article I of Chapter III, Section 1242, applies to the officers whose elections are provided for in this chapter.

§ 1265. Justices of the Inferior Court, and Ordinaries, are elected on the first Wednesday in January next preceding the expiration of their commissions.

Time of electing other county officers.

§ 1266. Clerks of the Superior and Inferior Courts, and Sheriffs, Tax Collectors, Tax Receivers, County Surveyors and Coroners, are elected on the same day and month mentioned next preceding the expiration of their commissions.

County Treasurers, &c.

§ 1267. County Treasurers, where elected by the voters, are elected at the same time, annually.

General provision as to time of election, &c.

§ 1268. The election of any officer not mentioned, whose duties are entirely of a county nature, shall be elected at the same time, unless otherwise provided for.

Clerk of Inferior Court to give notice of elections.

§ 1269. When either of the officers mentioned are to be elected, the Justices of the Inferior Court shall cause their Clerk to give thirty days' notice of the officers to be elected, and the time of the election, which shall be advertised at the door of the court-

house, and also in some public gazette printed in the county, if any.

CHAPTER V.

FOR JUSTICES OF THE PEACE AND CONSTABLES.

SECTION.

1270. Election of Justices of the Peace.

1271. How superintended.

1272. Returns—how made.

SECTION.

1273. Election—how regulated.

1274. Election of Constables.

1275. Constable's election. &c.

§ 1270. Justices of the Peace are elected on the first Saturday in January next preceding the expiration of their commissions, by the voters of their respective districts, provided they have resided in the district as much as thirty days, immediately preceding the election, and are otherwise qualified. The election must be held at the place of holding Justices' Court for the district; if none, then at the election precinct; if no election precinct, then at some place in the district named by the Justices of the Inferior Court, of which ten days' written notice must be given in the district.

Time of election of Justices of the Peace, &c.

Place of election.

§ 1271. Such elections shall be superintended by three freeholders of the district, who shall take the oath required in chapter second of this title, section 1229.

Who shall superintend elections.

§ 1272. Said superintendents shall transmit one return of said elections to the Governor, and another to the Clerk of the Superior Court of the county, who shall keep the same on file. The ballots shall be likewise sealed up, and the number of the district marked thereon and delivered to such Clerk.

Returns—to whom made.

Ballots to be sealed, &c.

§ 1273. The laws governing the elections for members of the General Assembly, govern in the elections of Justices of the Peace, whenever they may be applied, and are not inconsistent with those of this chapter.

Elections—how governed.

§ 1274. Constables are elected on the same day, month and place that Justices of the Peace are, and by the same class of voters, once in two years.

Time of constables election; voters; term of office.

§ 1275. Their elections are to be conducted in the same manner as those of Justices of the Peace, with the exceptions that—

Justice of the Peace to preside at constables election if not a candidate.

1. A Justice of the Peace must be one of the persons presiding at a constables election, if there is one in commission to be had, and he is not a candidate at the same election.

Returns to
be made to
Clerk Infer-
rior Court.

2. The returns must be made to Clerk of the Inferior Court of the county.

CHAPTER VI.

CONTESTED ELECTIONS.

SECTION.

1276. Elections—how contested.

1277. In case of Legislators.

1278. Ballots may be examined.

SECTION.

1279. Set off of illegal votes.

1280. Contests of Bailiffs' elections.

1281. What defeats election.

Proceedings
in cases of
contested
elections.

§ 1276. When the election of a person by the people to any office requiring a commission from the Governor is contested the proceedings are—

1. The adverse party shall have five days' notice in writing of the intention to contest, and the grounds of the contest.

2. The notice shall state the time and place where the contestant intends to take testimony, and the names of the witnesses, if any.

3. The elect shall give like notice of the time and place where he intends to take testimony, and the names of witnesses, if any.

4. Either party may appear by himself, or attorney, or both, and cross-examine the witnesses.

5. At the time of taking testimony any judicial officer of the county where the testimony is taken may preside to preserve order, to swear the witnesses, and to see that the testimony is fairly and impartially taken down, but all the testimony offered must be written down. Said officer has the power to subpoena witnesses and compel their attendance, if in the State, and to issue commissions to take testimony of persons out of the State, and to adjourn from day to day.

6. All the papers and proceedings, or copies of them, must be transmitted to the Governor, certified to by the presiding officer, or agreed to by the parties.

7. When the Governor has notice of an intention to contest he shall not issue the commission until the contest is decided, or the time has elapsed for it to begin.

8. Both parties may appear by themselves, and counsel, and be heard before the Governor, who shall have both notified of the day when he will hear the contest.

Chapter 6.—Contested Elections.

9. Testimony going to prove the illegality of a vote, and the want of qualification in a voter, must be taken within thirty days from the day of the election.

10. No proceedings can be begun to contest an election after the Governor has issued the commission.

§ 1277. The proceedings to contest the seat of a member of the General Assembly are the same, and may be transmitted to the Governor, who shall send the same immediately after the organization to the presiding officer of the House, where the contest lies, or may be sent direct to such presiding officer.

Proceedings when seat of a member of Legislature is contested.

§ 1278. When an election is contested, on the ground of illegal votes, any of whom it is claimed on affidavit can probably be proven by resort to the ballots, specifying what ballots, it is the duty of the Clerk of the Superior Court to deliver the same, together with the list of voters, to the person who presides at the taking of testimony, who shall examine said suspected ballots, and none other, and have put down as part of the testimony their contents, and all other testimony attacking and defending their legality.

When suspected ballots may be examined.

§ 1279. Illegal votes by the method aforesaid, and otherwise, may be proven by both parties, and if such are proven on both sides one shall stand against another, and he is elected who has the greatest number of legal votes. All are considered legal, not proven to be illegal.

Illegal votes sets off each other and highest number of legal votes elects, &c.

§ 1280. In all elections for constables, corporation officers, or other officers not provided for above, contests as to elections shall be heard before and decided by the Court or persons who by law issue the certificates of election. For each day an officer presides in hearing such contest he shall receive two dollars to be paid by the losing party, and for which such Justice may issue a *fi. fa.*

Who decides contest in constables' election.

Compensation of presiding officer.

§ 1281. No election shall be defeated for non-compliance with the requirements of the law, if held at the proper time and place by persons qualified to hold them, if it is not shown that by that non-compliance the result is different from what it would have been had there been a proper compliance.

Election not void by reason of formal defects.

Chapter 1.—For Confederate States Senators.

TITLE XIV.

ELECTIONS BY THE GENERAL ASSEMBLY.

CHAPTER I.

FOR CONFEDERATE STATES SENATORS.

SECTION 1282. Election of Senators to Congress.

Senators in
Congress;
when elect-
ed.

§ 1282. The elections for Senators in the Confederate States Congress from this State, shall be held by the General Assembly during the sitting or session which immediately precedes the beginning of the term which they are to fill.

CHAPTER II.

FOR OTHER OFFICERS.

SECTION.

1283. Judges of the Supreme Court, &c.

SECTION.

1284. All elections by Legislature—when

Time of
electing
Judges Su-
preme Court
&c.

§ 1283. The Judges of the Supreme Court, the Secretary of State, the Comptroller General, Surveyor General, the State Treasurer, Printer, and Bank Directors are elected by the same rule as to time.

Legislature
to elect all
officers, &c.

§ 1284. All officers created for the service of the State, the election of which is not given to the people, or some other tribunal, are elected by the General Assembly in the same manner and time as the officers elected by them.

Article 1.—The Trustees.

TITLE XV.

POLICE AND SANITARY REGULATIONS.

CHAPTER I.

LUNATIC ASYLUM.

ARTICLE 1.—The Trustees.

ARTICLE 2.—The Superintendent.

ARTICLE 3.—Admission and disposition of Patients.

ARTICLE 1.

THE TRUSTEES.

SECTION.

1285. Management of Asylum.

1286. Trustees—how appointed.

1287. Authority of Trustees.

SECTION.

1288. Officers—how appointed.

1289. Bond of Treasurer.

1290. Annual Report of Trustees.

§ 1285. The State Lunatic Asylum at Midway, near Milledgeville, is solely the property of the State, and is under the management of three trustees. Lunatic Asylum

§ 1286. Said trustees are biennially appointed, by the Governor, on the first Monday in December, and in such manner that one of the trustees shall be continued in office for a second term, that there may be always one member of the board who has experience in the affairs of the Asylum. Appointment of trustees.

§ 1287. They have authority—

1. To prescribe all the rules and regulations for the management of the institution, not conflicting with the law. Authority of trustees.

2. To appoint all the officers, point out their duties, and fix their salaries.

3. To create such other offices, and select the incumbents, if in their judgment such is necessary to an efficient administration.

4. To remove from office, when the incumbents fail to discharge well their duties, or are guilty of any immoral or unfaithful conduct, and cause to be prosecuted any officer, or other person, who shall assault any inmate of said institution, or use towards such any other or greater violence than the occasion may require.

5. To hold in trust, for said Asylum, any grant or devise of

Article 1.—The Trustees.

land, or bequest or donation of money, or other property, for the general use of the institution, or the particular use defined.

6. To visit the institution monthly by at least one of the board, semi-annually by a majority, and annually by all of them, at such time as they may agree upon.

7. To purchase servants for the Asylum, when, from long employment, or otherwise, they are known to possess such qualities as render them peculiarly valuable to the institution; *Provided*, there is sufficient of the States's appropriation, after paying the necessary expenses out of the general appropriation, for such purpose.

8. To bring suit, in their names, for any claim the institution might have, whether arising upon contract or tort.

Other officers appointed by the trustees.

§ 1288. The officers of the Asylum, appointed by the trustees, are a Superintendent, an Assistant Physician, a Treasurer, a Steward, Assistant Steward, and Matron, whose salaries are paid quarterly out of the annual appropriations.

Bond of Treasurer.

§ 1289. The Treasurer must give bond and security in the sum of five thousand dollars.

Annual report of trustees.

§ 1290. At the close of each fiscal year, which terminates on the first day of October, the trustees shall make to the Governor, to be by him laid before the General Assembly, in connection with his annual message, a full report of the condition of the Asylum, in all its departments, including its receipts and disbursements, with such suggestions as they may think proper to make.)

ARTICLE II.

THE SUPERINTENDENT.

SECTION.

1291. Must be a Physician.

SECTION.

1292. Duty of Superintendent.

Superintendent of Asylum.

§ 1291. The principal officer of said Asylum is the Superintendent, who shall be a skillful physician.

Superintendent's duties.

§ 1292. It is his duty—

1. To reside constantly on the premises, and devote his professional services exclusively to the use of the Asylum, for which purpose he must be furnished with a suitable residence.

2. To take charge of, and exercise control, subject to the trustees, over every department of the institution, and have control

over all resident officers, attendants, and servants employed therein.

3. To discharge all duties any way connected with the restoration to health, or sanity of the inmates.

4. To make an annual report to the trustees, on the first day of October, of all the affairs of the institution under his supervision.

5. To perform any other duty necessarily connected with his position under the law.

ARTICLE III.

THE ADMISSION MANAGEMENT AND DISCHARGE OF PATIENTS.

SECTION.

SECTION.

1293. Who may be inmates.	1304. Inmates may be tried.
1294. Inmates—how classified.	1305. Trial—how demanded.
1295. Apartments of Asylum.	1306. Admission of inebriates.
1296. Georgians preferred.	1307. Inebriates—how kept.
1297. Georgia pay-patients.	1308. Insane slaves, &c.
1298. Non-resident pay-patients.	1309. Insane convicts.
1299. Pay-patients classified.	1310. Convicts—how supported.
1300. Certification of pauper patients.	1311. Cured convicts—how disposed of.
1301. Support of pauper-patients.	1312. Uncertified patients.
1302. Paupers to pay—when.	1313. Re-commitment of inmates.
1303. Clothing, &c. of discharged paupers.	1314. Insane criminals.

§ 1293. Persons who may become inmates of said Asylum, are either lunatics, idiots, epileptics or demented inebriates. Who may be inmates of Asylum.

§ 1294. The inmates are divided into the following classes :

1. Pay or pauper-patients residents of this State.
 2. Pay-patients being non-residents.
 3. Insane Penitentiary convicts.
 4. Insane negroes, in certain cases.
- Classification of inmates.

§ 1295. The Trustees of the Asylum shall see that proper and distinct apartments are arranged for said patients, so that in no case shall the negro and the white person be together, nor the Penitentiary convicts with either, and males and females shall be kept separately. Asylum to be divided into apartments.

§ 1296. Citizens of our own State shall have preference to non-residents when at the time of the application all cannot be accommodated, and if such a contingency should happen, it must be reported to the Governor without delay, who shall communicate the fact to the General Assembly. Georgia inmates preferred.

Article 3.—The Admission, Management and Discharge of Patients.

Resident pay patients—how admitted.

§ 1297. A pay-patient resident of this State shall not be admitted unless accompanied by authentic evidence of lunacy, according to law, or there is produced the certificate of three respectable practicing physicians, well acquainted with the condition of the patient, or one from such physicians, and two respectable citizens, stating the cause of the application.

Non-resident pay patients—how admitted.

§ 1298. A pay-patient not a resident of this State shall not be admitted unless accompanied by an authentic record of a conviction of a malady, which by the law of this State, is a ground of admission, from a Court having jurisdiction, or shall produce a certificate like that required in this State, together with the certificate of the Judge, having jurisdiction, who shall state officially, that the certificate of said physicians and other persons, are genuine and entitled to full credit. And shall then not be received until the payment of expenses are secured.

Pay patients may be classified.

§ 1299. Pay-patients may be divided into different classes, according to the accommodations desired, and their means of paying.

Pauper patients, and how they are certified.

§ 1300. When a person has been convicted of a malady requiring him to be committed to said Asylum, it is the duty of the Court presiding at the trial, to certify if said person be a pauper. He shall not be certified a pauper, unless in whole, or in part supported by the county, or the county is bound for his support under the law. If there are persons who by law are bound, and able to support him, the names of such persons must be given. If the person has means enough to support himself in part, the amount of such means must be stated, and must be paid toward his support.

Pauper patients supported by the State.

§ 1301. A certificate of pauperism, entitles the person to be supported at the expense of the State. Those for whose support others are bound, must be furnished with suitable support by the State, and the expense collected out of such other persons by the trustees.

Pauperism ceasing, patient must defray expenses.

§ 1302. If a patient committed as a pauper, or as of limited means, becomes entitled to an estate, said estate is bound for his support according to its value, and whoever holds it, may be compelled to secure to the Asylum its proper charges, or to turn over to the trustees the property to be held for such purpose.

Discharged pauper patient, must be clad, &c.

§ 1303. A pauper patient shall not be discharged from the Asylum without proper clothing, and a sum of money necessary to

Article 3.—The Admission, Management and Discharge of Patients.

carry him to his residence or the county from whence he was sent.

§ 1304. If before or after admission of a pay-patient, resident or non-resident by certificate, the person alleged to be a lunatic, or his friend, or relative, may make a demand of the superintendent for a trial of the question of lunacy by Jury, which shall be had without delay, according to law, in the county of Baldwin.

Trial of lunacy may be demanded, &c.

§ 1305. The like demand and trial may be had by all patients who have been convicted of lunacy, if the person demanding it, being relative or friend, will make an affidavit that he believes the alleged cause of commitment did not, and does not exist, and that the conviction was obtained by fraud, collusion or mistake. The same right exists when there is an affidavit that the cause of commitment has ceased to exist, and there is a refusal by the superintendent to discharge after demand made.

How trial of lunacy may be demanded.

§ 1306. When by a provision of this Code section () a person is declared to be an inebriate and incapable of managing his property, such person by his own consent, if capable, and if incapable, by the consent of his nearest relative, or when a person is not so declared, but has the certificate of three physicians, and is himself willing, such person may be received into said Asylum; allowed the use of apartments devoted to him, or such as are suitable, and be treated as a patient thereof.

Inebriates may be admitted.

§ 1307. Such patients shall never be placed in company with any other class of patients without their consent, nor placed in confinement, unless they are dangerous to themselves or others, nor detained against their consent in the institution. When consent is necessary, they must be capable of consenting; they must pay for their support as pay patients.

Inebriates—how kept.

§ 1308. Apartments must be provided for insane slaves belonging to citizens of this State, who are able or unable to support, and take care of them, and also of free negroes residents of this State, who are able or unable to support and take care of themselves. Those masters or free negroes who are able must pay for their support. Those unable must be supported as other pauper patients. The certificate of the Justices of the Inferior Court of the county where the owner, or slave, or free negro resides, of his condition, mentally and pecuniarily, shall be sufficient to grant him admittance.

Insane slaves and free negroes, &c.

§ 1309. If a Penitentiary convict becomes afflicted so as the affliction would entitle another person to a place in said Asylum,

Insane convicts—how admitted.

Article 3.—The Admission, Management and Discharge of Patients.

he shall be received therein if accompanied by the certificate of the physician to the Penitentiary, and the principal keeper thereof, of said fact. The certificate shall also show the name of the convict, the offence for which sentenced, the county from whence sentenced, and his term of service, which shall be filed away.

How supported.

§ 1310. If said convict has the necessary means, he shall pay for his support as long as he remains at the Asylum.

Cured convicts—how disposed of.

§ 1311. If such convict shall recover before his term of service has expired, the fact shall at once be certified by the Superintendent, to the principal keeper of the Penitentiary, who shall forthwith have said convict taken back into the Penitentiary.

Temporary disposition of uncertified patients.

§ 1312. Whenever there shall be an application for admission, unattended by the requisite evidences, the Superintendent has authority to receive and provide for the person for a reasonable time, provided a sufficient sum shall be advanced for his maintenance in the meantime.

Inmate absent for 3 months must be re-committed in form.

§ 1313. When a person has been properly received as a patient, but is absent for as long as three months, either from discharge, elopement or removal by friends, he cannot be received at the Asylum without going through the process required in this chapter, according to the class of patients of which he may be.

Criminals acquitted on plea of insanity, or whose sentence is suspended, &c.—how dealt with.

§ 1314. When a person has been acquitted of a capital crime on the ground of insanity, and such person is committed to the Asylum, he shall not be discharged thence, except by special act of the Legislature. If the crime is not capital he shall be discharged by warrant or order from the Governor. If sentence is suspended on the ground of insanity, upon restoration to sanity the Superintendent shall certify the fact to the presiding Judge of the Court where he was convicted.

CHAPTER II.

HEALTH, HOSPITALS, INFECTION AND QUARANTINE.

SECTION.

- 1315. Who may establish hospitals.
- 1316. Regulation of quarantine.
- 1317. Quarantine grounds.
- 1318. Removal of vessels thither.
- 1319. Escaping quarantine.
- 1320. Bills of health, &c.
- 1321. Inland travelers.
- 1322. Duty of Pilots.

SECTION.

- 1323. Persons on board of vessels.
- 1324. Proclamation as to contagions.
- 1325. Violation of quarantine.
- 1326. Concealment of small-pox, &c.
- 1327. Fines, &c.—how disposed of.
- 1328. Quarantine—how certified.
- 1329. Fees of health officer—how paid.

Chapter 2.—Health, Hospitals, Infection and Quarantine.

§ 1315. The corporate authorities of any city or town may establish in them, respectively, or in the vicinity thereof, hospitals or pest houses, to be subject to such regulations, not contrary to law, as such corporate authorities may make, to prevent the spread of infectious or contagious diseases, but in all cases, where such authorities of a town may establish hospitals or pest houses out of their own jurisdictional limits, such establishments shall be only on land acquired by such corporation for protection against the spread of disease within its own limits; in all other cases the Justices of the Inferior Court of each county, respectively, are vested with the power to establish such hospitals and make such regulations.

City corporation, &c., may establish hospitals.

§ 1316. The corporate authorities of such town may, from time to time, prescribe the quarantine, to be observed by all vessels arriving within the harbor or vicinity of such town, and regulations therefor, not contrary to law, and such regulations may extend to all persons, goods and effects, arriving in such vessels, and to all persons going on board of the same. Any person violating such regulations, or any of them, after personal notice, or after other notice thereof, given for five days, in such manner as may be prescribed by such corporate authorities, or in the absence of any mode so prescribed, by notice of such regulation, for five days, in some newspaper in such town, or, where there is no newspaper, by notice posted up at some public place in such town, for the same length of time, shall be guilty of a misdemeanor, and on conviction thereof, shall be liable to fine of not more than five hundred dollars; *Provided*, nothing herein contained shall prevent the infliction by the corporate authorities having power to pass ordinances or by-laws, of such other penalty, not exceeding one hundred dollars fine, in lieu of the penalty first above named, as may be prescribed in any such ordinance or by-law.

Quarantine—how prescribed and regulated.

§ 1317. Any town may establish a quarantine ground therefor at any place within the harbor, if a seaport town, but in such manner as not to interfere with the rights of private property; and the jurisdiction of the corporation of Savannah shall, in cases of quarantine, extend to all ships and vessels which shall enter at any port or inlet from Ossabaw sound to Tybee, including all inlets, rivers, and creeks within those limits.

Quarantine ground—how established.

§ 1318. The health officer, or visiting physician of such town may, under the direction of the corporate authorities, cause any

Vessels may be removed to quarantine ground.

Chapter 2.—Health, Hospitals, Infection and Quarantine.

vessel arriving therein, or in the vicinity, if the vessel or cargo is, in his opinion, so foul or infected as to endanger the public health, to be removed to the quarantine ground, or other proper place, to be inspected, and any master seaman, or passenger, belonging to any vessel supposed to have any infection on board, or from a port where any dangerous infectious disease prevails, refusing to answer, on oath, such inquiries as may be made by any health officer, relating to any infection or disease, shall be guilty of a misdemeanor, and, on conviction, shall be liable to pay a fine of one hundred dollars.

Persons escaping, or attempting to escape quarantine—how dealt with.

§ 1319. If any person, ordered to perform quarantine, shall escape, any Justice, on complaint thereof on oath, may issue his warrant to the Sheriff, Constable or town marshal, to arrest and deliver such person to the custody of the officers of the quarantine, and any person attempting to escape may be forcibly detained at the place of quarantine by such officers.

Master of vessels must deliver bill of health, &c.

§ 1320. The master of any vessel, ordered to perform quarantine, shall deliver to the officer appointed to see it performed, his bill of health, and manifest, log-book and journal; if he fails to do so, or to repair, in proper time after notice to the quarantine ground, or shall depart thence without authority, he shall be guilty of a misdemeanor, and, on conviction, shall be fined in a sum not less than two hundred dollars.

Penalty for default.

Inland travelers compelled to perform quarantine.

§ 1321. Any person coming into town, by land, from a place infected with a contagious disease, may be compelled to perform quarantine by the health officer, under the direction of the corporate authorities, and restrained from traveling until discharged, and any person thus restrained, traveling before he is discharged, shall be guilty of a misdemeanor, and, on conviction, may be fined in a sum not exceeding one hundred dollars.

Penalty for violation of quarantine.

Duty of pilots before entering on board of vessels.

§ 1322. It shall be the duty of any pilot, before entering on board of any vessel, to make strict inquiry of every master or commander of the same, as to the state of health in such vessel, and in case it be found that any malignant, contagious or infectious disease is on board such vessel, such pilot shall not enter therein, under the penalty of one hundred dollars, and removal from office, and any such master or commander refusing to answer any such reasonable inquiry, or giving false information in answer, may be fined in a sum not exceeding five hundred dollars.

§ 1323. No person being on board such ship or vessel, in which such disease shall exist, or whilst such ship or vessel is perform-

ing quarantine, shall come, or be permitted to come on shore, or land from such vessel, without permission from the proper authority, under the penalty of fine and imprisonment, at the discretion of the court, and any person going on board such vessel, (except the health officer or visiting physician,) and returning without such permission, shall be liable to the same penalty.

Persons on board of vessels shall observe quarantine.

§ 1324. The Governor of this State may, by proclamation, whenever he shall deem it necessary, give such orders to prevent the spread of contagious or infectious diseases within the State, and make such appointments and regulations concerning the same, as shall by him be deemed proper, and be stated in such proclamation, and any person violating such orders or regulations, may be fined or imprisoned at the discretion of any court having jurisdiction.

Proclamation of Governor as to contagious diseases.

§ 1325. Any person coming into this State, by land or water, from any place infected with contagious diseases, and in violation of quarantine regulations, may be indicted in any county in which he may be found, and, on conviction, be fined in a sum not exceeding five hundred dollars, and be imprisoned in the common jail at the discretion of the court.

Violators of quarantine may be indicted.

§ 1326. Any physician, or other person, who shall conceal a case of small-pox, or varioloid, or any modification of the same, within any incorporated city, town, or in any county in this State, by not giving immediate notice thereof to the Mayor, Intendant or health officer, or Justices of the Inferior Court, may be indicted and fined in a sum not exceeding five hundred dollars, or imprisoned at the discretion of the court.

Persons concealing small-pox indictable.

§ 1327. All fines and forfeitures arising out of the violation of any quarantine, or other sanitary regulation, shall be paid, after deducting the proper expense of collection, into treasury of the city or county, and may be expended in aid of the quarantine and other sanitary laws, and towards the support of the poor thereof.

Fines for violating quarantine—how disposed of.

§ 1328. It shall be the duty of the health officer of any port, or the authorized visiting physician thereof, after a vessel shall have duly performed quarantine, to give a certificate thereof to the master or commander, under a penalty, for every refusal, of one hundred dollars, and in case of such refusal, or of there being no such health officer or attending physician of the port or place, such certificate shall be granted by constituted authorities of such port or place, the fee for such certificate shall be two dollars for

Performance of quarantine—how certified.

Fees for certificate.

every vessel of more than two hundred tons, and one dollar for every vessel of not more than two hundred tons.

Fees of health officer—by whom paid.

§ 1329. For visiting any vessel, when required, and granting a certificate of the health of the crew and passengers on board, the fee of the health officer, or visiting physician, to be paid by the master of such vessel before she shall be permitted to enter, shall be two dollars, coasting vessels coming from one inlet in the State to another inlet in the same, excepted.

CHAPTER III.

FREE NEGROES LANDING FROM VESSELS AND HEREIN OF FREE NEGRO SEAMEN.

SECTION.

- 1330. Penalty for landing free negroes.
- 1331. Forfeiture—how enforced.
- 1332. "Free negroes" defined.
- 1333. Leave to land colored seamen.

SECTION.

- 1334. Penalty for landing without leave.
- 1335. Colored seamen leave with vessel.
- 1336. Failing—must leave the State.
- 1337. Power of City Councils, &c.

Penalty against vessels landing with free negroes.

§ 1330. All vessels coming into any port of this State, or over the bar thereof, having on board a free person of color, not a seaman, nor in good faith otherwise employed on board in some way necessary to navigation, the masters thereof forfeit the sum of two thousand dollars for each free negro so brought.

Forfeiture—how enforced.

§ 1331. Said forfeiture is recoverable by libel or by the attachment writ of this State (such being here made a ground for its issuing upon a compliance with its other requisitions) on the offending vessel and every thing appertaining thereto, (for which said property is bound before any other lien) or by suit against the master, or by both proceedings at once in the name of the corporation or county; upon information one-half of the forfeiture goes to the informer the other to the Educational Fund of the county. The white person so offending is also subject to indictment, and on conviction to be imprisoned not longer than six months.

Who are free negroes in the meaning of this chapter.

§ 1332. Negroes once slaves who have with their owners' consent left this State to reside in a State or county where slavery is not tolerated, to become free, and free negroes who have changed their residence to any State are within the provisions of this chapter and cannot return hither. Persons who bring such interdicted negroes into the State by any other means, are liable to such suits, indictments and forfeitures.

(Cont. 25)

§ 1333. The master or owner of every vessel of any description arriving in this State from any ports whatever (except from ports in South Carolina and Florida) shall immediately upon the arrival of such vessels report to the Mayor, or other authority, at the place of arrival, the name, age, description and capacity of every free person of color, descended from negroes and mulattoes, employed on board such vessel, and to obtain a passport from such authority to permit such person of color to land, it being within the discretion of such Mayor or other authority to grant or refuse said passport.

Masters of vessels to report all free negroes employed on board and obtain passports.

§ 1334. In case such a free person of color shall be found on shore without such passport, or in contravention of any law of this State, he shall be imprisoned until the departure of said vessel, and the master and owners of such vessel shall be jointly and severally liable, in a sum of not more than one thousand dollars for each person of color so permitted to land, to be recovered in any Court of this State having jurisdiction, at the instance of such Mayor or other authority, to be paid into the treasury of the city or town where such landing occurs.

Penalty against masters for all free negroes on shore without passports.

§ 1335. When any vessel is ready to depart, the captain of said vessel shall be bound to carry away said free person of color, and to pay his expenses, and in case of refusal to do either he shall forfeit and pay the sum of five hundred dollars, to be recovered by indictment in the Superior Court of the county where such offence may be committed, and shall, moreover, suffer imprisonment in the common jail for any term not exceeding three months: *Provided*, nothing herein contained shall extend to any negro or person of color employed on board any national vessel of war.

Master must carry free negroes away with the vessel. His detention.

§ 1336. Every person of color as aforesaid who shall not depart the State, in case of the captain failing to carry him away, within ten days after the vessel in which he came shall have departed, shall be disposed of as hereinafter set forth, but the provisions aforesaid shall not apply to any such free negro or person of color arriving within the limits of this State by shipwreck, stress of weather, or other unavoidable accidents, until one month after such accident, but such authorities shall take proper measures to prevent communication by said person with colored persons in this State.

Free negroes left by captains must depart the State.

Power of City Councils, &c., over the subject matter of this chapter.

§ 1337. The City Councils or corporate authorities of the cities or towns of this State, or Justices of the Inferior Court, in the absence of such, are authorized by ordinance, or otherwise, to make such other rules and regulations as may be necessary for carrying the foregoing provisions in their true intent into full effect, so that the same be not contrary to law.

CHAPTER IV.

PHYSICIANS AND DRUGGISTS.

SECTION.

- 1338. Who may practice medicine.
- 1339. Allopathic Medical Board.
- 1340. Duty of the Board.
- 1341. Temporary license.
- 1342. Record of Board evidence.
- 1343. Quorum of the Board.
- 1344. Reformed Medical Board.
- 1345. Present Boards continued.

SECTION.

- 1346. Penalty for illegal practice.
- 1347. Defendant must show authority.
- 1348. Board confined to its school.
- 1349. License fee.
- 1350. What physicians exempt.
- 1351. Druggist must obtain license.
- 1352. Must show his authority.
- 1353. Who are exempt.

Who may practice medicine.

§ 1338. Any white person who has received a diploma from any Medical College of the Confederate States, without regard to the school, are authorized to practice to the extent of the powers given in said diploma, subject to the provisions hereinafter set forth.

§ 1339. There is established in this State a Board of Physicians of the Allopathic School, who have the authority—

Authority of Board of Physicians.

1. To meet annually, or oftener, at the call of any three of their number at such place in this State as a majority may select. Thirty days' notice must be given of annual meetings.

2. To elect all officers and to fill all vacancies.

3. To be a body corporate, with the right to exercise all the powers usual in such associations that are necessary to their organization, if in conformity to the constitution and laws.

4. To grant licenses to all applicants who under the law are entitled thereto, and to fix the fee therefor when not fixed by law.

5. To prescribe a course of reading to those who study medicine under private instruction, which shall be obligatory upon all who may apply to the board for examination.

§ 1340. It is their duty—

Duty of the Board of Physicians.

1. To grant licenses to practice to all physicians (who present their diplomas without examination..

Stricken out - Words as given inserted, "of their Schools who present their Diplomas from Incorporated Medical Colleges of Georgia -"

Chapter 4.—Physicians and Druggists.

2. To grant such licenses to all other persons who undergo a satisfactory examination.

3. To grant license to practice in any particular branch of medicine, or to treat any particular form of disease, if satisfied upon the examination that the applicant is thus competent.

4. To grant licenses to apothecaries upon their standing a satisfactory examination as to their knowledge of drugs and pharmacy.

5. To keep a book in which shall be entered the names of every person licensed to practice or vend drugs, and the extent of the license.

§ 1341. One member of said board may grant a license to an applicant (who has a diploma) to practice until the next regular meeting of the board, when he shall report the fact, at which time the temporary license is at an end, but such a license shall not be granted by a member after the board has refused one.

Temporary license may be granted.

§ 1342. The book so ordered to be kept, is a book of record, and a transcript from it, certified to by the officer who has it in keeping, under the common seal, shall be evidence in any Court of this State.

Transcript of record—made evidence.

§ 1343. Seven members of said board constitute a quorum for the transaction of business, and should a quorum not be present on a day appointed for its meeting, those present may adjourn from day to day until a quorum is present.

Quorum of the board.

§ 1344. There is also established a Board of Physicians of the Reformed Practice of Medicine, who have the same authority, and must perform the same duties herein before set forth.

Authority and duty of Board of Physicians, &c.

§ 1345. The persons and number of persons constituting both of said boards at the adoption of this Code, continue, and all the provisions of their respective charters are likewise preserved, if not lawfully altered herein.

Present boards continued.

§ 1346. Any person who shall practice surgery, or in any manner prescribe for the cure of diseases for fee or reward, in violation of the provisions of this chapter, shall be liable to indictment, and on conviction, shall be fined not exceeding five hundred dollars for the first offence, and for the second, imprisoned, not more than two months; one-half of the fine to inure to the informer, the other to the Educational Fund of the county.

Penalty for violating the provisions of this chapter.

§ 1347. On the trial of such indictment, it is incumbent on the defendant to show that he has authority under the law to practice physic and surgery, to exempt himself from such penalty.

Burden of proof on the party indicted.

Chapter 4.—Physicians and Druggists.

Power of each board confined to their respective schools.

§ 1348. Neither board can license persons to practice in a School of Medicine different from their own. Physicians belonging to a School of Medicine not represented by a Board of Physicians, may practice under their diplomas alone, and if they have none, are liable as though they had no license, and were required to have them.

License fee.

§ 1349. The fee for licences obtained on diplomas shall not exceed five dollars, and on examination shall not exceed twenty-five dollars.

Physicians exempt.

§ 1350. Physicians who were in practice prior to the twenty-fourth of December, 1847, are exempt from all the provisions of this chapter.

Druggists must obtain license.

§ 1351. No person in this State (except a licensed physician, shall vend, or expose to sale, any drugs or medicines,) without first obtaining a license therefor from one of said boards.

Druggist indicted must show his authority.

§ 1352. Any person violating the preceding section is liable to indictment, and, on conviction, to be fined not less than one thousand nor more than five thousand dollars, and for a continuation after said conviction, to the like fine, and imprisonment not exceeding six months. The onus of proof is upon the defendant to show his authority.

What druggists are exempt.

§ 1353. Druggists are exempt from obtaining said license, who were engaged in said business prior to twenty-fourth December, 1847, and who continue so, at the adoption of this Code, and merchants or shop keepers may deal in medicines already prepared, if patented, or if not patented, are legally warranted by a licensed druggist.

CHAPTER V.

THE GOVERNMENT OF SLAVES AND FREE NEGROES.

ARTICLE 1.—Patrol laws.

ARTICLE 2.—Other police regulations.

ARTICLE I.

PATROL LAWS.

SECTION.

- 1354. Patrol Commissioners.
- 1355. Their oath.
- 1356. Must organize companies.
- 1357. Must appoint captains.
- 1358. Default of officers—how punished.
- 1359. Defaulters to be reported.
- 1360. Penalty for opposing patrols.
- 1361. Who are subject to patrol duty.

SECTION.

- 1362. Patrol must keep arms, &c.
- 1363. Duty of patrols.
- 1364. Requisites of slave's permit.
- 1365. Power of patrol as to searches.
- 1366. May seize weapons on slaves, &c.
- 1367. When master may arm slave.
- 1368. Free negroes subject to patrol.

§ 1354. The Justices of the Inferior Courts, in the month of November, annually, and before the tenth day thereof, shall appoint three citizens in each militia district to act as commissioners of patrol; they are to be notified of their appointments, and to be deemed as accepting, and vacancies are to be supplied, as in the case of road commissioners.

Commissioners of patrol—how appointed.

§ 1355. Such commissioners, within fifteen days after notice of appointment, shall appear at the court house, and before the Clerk of the Inferior Court, take an oath, faithfully to discharge their duties, which fact said Clerk shall enter on his minutes.

Oath of commissioners.

§ 1356. They shall also, within five days from their qualification, make out a list of all persons in their several districts liable to do patrol duty, and organize from said lists two or more companies, not having more than ten in each company, and shall lay off said districts into as many divisions as they shall organize companies, assigning to each company its division, making a record of all such in a book kept for that purpose. No company shall be compelled to perform patrol duty out of its division, unless called on to aid another company, when needing it.

Shall make out lists and organize patrol companies.

§ 1357. They must select some discreet person as captain, from and for each company, who shall be of good moral character, and not less than twenty-five years old, who must be notified of his appointment in writing, within ten days after it takes place;

Appointment of captains of patrol, and notice to companies.

Article 1.—Patrol Laws.

such notice must be accompanied with a list of the persons belonging to his company. A notice of one day to a member of a company, verbally or in writing, of the time and place he is required, is sufficient, but in cases of emergency he shall go in a shorter time, and immediately, if so required.

Penalty for
default of
commission-
ers, &c.

§ 1358. If any commissioner fails to discharge the duties required of him, without good excuse, to be judged of by such Justices, he shall be fined not exceeding one hundred dollars, for such failure. If the captain of a company thus fails, he shall be fined by the commissioners not exceeding twenty-five dollars for every such failure. If any member of a company fails to attend, after notice, at the time and place designated, armed and equipped as directed, or evades his duty, or is insubordinate, or departs himself insolently to the captain, while on duty, or otherwise violates the patrol law, he shall be fined not more than ten dollars for every such failure or offence.

Captains
must report
defaulters.

§ 1359. The captains shall report all delinquencies to the commissioners, within twenty days after they occur, which shall be heard and determined by them in the same manner as road commissioners do in case of defaulters. All fines collected, after paying expenses, if any, shall be paid to the Educational Fund of the county.

Fines—how
disposed of.

Penalty for
opposing
patrol com-
panies in
discharge of
duty.

§ 1360. If any person shall, by force, or otherwise, oppose any patrol company, or any member of one, while engaged in lawful duty, or prevent, or endeavor to prevent, any search or examination being made of any house or place, where it may be reasonably suspected that any negro liable to be punished, or apprehended, may be concealed, or shall annoy or menace such company, or its members, while in the performance of patrol duty, he is subject to indictment, and, on conviction, shall be fined not exceeding one hundred dollars; for a second offence may be imprisoned not exceeding sixty days, as well as fined.

Who are
subject to
patrol duty.

§ 1361. All male white persons between the ages of sixteen and sixty are subject to patrol duty, (unless specially exempted,) and shall, by themselves or by substitute, perform patrol duty. Persons exempt from road-working are exempt from patrol duty, except in cases of emergency, when all persons are subject to the call of the captain or commissioners.

Patrol must
keep arms
and ammu-
nition.

§ 1362. A person so subject shall keep always in readiness, and carry with him, on service, one good gun or pistol in order, together with at least six rounds of ball-cartridges.

Article 1 —Patrol Laws.

§ 1363. The patrols shall examine the plantations in their divisions at such times as their discretion may dictate, but at least one day or night in fifteen; shall take up all slaves they see off their master's premises, if they know them, and when they do not know them, or they are not on such premises; all slaves without the fences, or outside the limits of an incorporated town, who have not some permission in writing to be absent, or some other writing or evidence showing the reasonableness of the absence, or who have not some white person in company, or who can give no good account of themselves. They shall correct such slaves by whipping with a switch, whip or cow-skin, not exceeding twenty lashes, and in such a manner as not to injure or permanently mark his body. If the slave is insolent or unruly after such chastisement, the patrol shall carry him to his master or employer, and all further whipping shall be in his presence. If he refuses to allow him whipped, he shall be carried to a Justice of the Peace, and all further whipping shall be under his direction.

Duty of patrols.

§ 1364. A permit to a slave should specify the place or places where he is allowed to visit, and the length of time he is permitted to be absent. No permit shall extend over a greater length of time than one month. A slave at the house of his wife, by permission of her master, needs no permit. A free person of color needs no permit in the day time.

Requisites of a slave's permit.

§ 1365. The patrols have the power to search and examine all negro houses for offensive weapons and ammunition, and, on finding such, shall proceed according to law. They may pursue any fugitive slave who avoids them by hiding or running into any dwelling, or if they shall hear of any such being harbored in any dwelling of any white person, they shall first ask leave to search of the person in charge, if any, or to deliver up said slave, and if said person shall refuse to grant either, they, if they have seen such slave enter, or know that he is there, may enter therein and take him. The person refusing such permission, if the slave is found, is subject to indictment, and, on conviction, may be fined not exceeding one hundred dollars.

Power of patrols.

§ 1366. On finding any weapons, or accoutrements, or ammunition, in any negro-house, or on the person, or in the possession of any slave or free persons of color, contrary to law, such patrol may seize and take away the same; but before the property shall

Penalty for refusing search for slaves.

Patrol may seize weapons, &c.

Article 1.—Patrol Laws.

be vested in the person seizing, he shall cause the same to be forfeited, as is elsewhere provided in this Code.

When master may arm his slave.

§ 1367. Nothing in this Code shall be construed to deny to any master the right, in time of invasion or insurrection, in good faith, to arm his trusty slave for the defence of himself or his property.

Free persons of color subject to patrol laws.

§ 1368. All the provisions of the patrol law, in this Code, shall apply to free persons of color, unless specially excepted. The permission of the guardian is substituted for that of the master.

ARTICLE II.

OTHER POLICE REGULATIONS.

SECTION.

1369. Unlawful assemblies of slaves.

1370. How dispersed.

1371. Certain officers have patrol powers.

1372. Defaulting officers—how punished.

SECTION.

1373. Property on slave—how claimed.

1374. Any one may chastise slave, &c.

1375. Penalty against masters, &c.

1376. Slaves, &c., may not preach.

Assemblies of slaves, &c., accompanied by white persons.

§ 1369. No congregation or company of slaves, exceeding seven males in number, shall, under any pretence, except for Divine worship, assemble themselves outside of any incorporated town, and then they must be under the control and presence of as many as five citizens of the neighborhood, except slaves who may assemble on their masters' premises when he or his overseer is present. Other slaves, by their masters' permission in writing, may also join in such assemblies.

Unlawful assemblies of slaves—how dispersed.

§ 1370. Every Justice of the Peace, upon his knowledge or information from others, may go in person, or by warrant, directed to any officer or private person, or both, and command the assistance of other persons to disperse any assembly of negroes which may disturb, endanger the safety, or excite the apprehension of the community. Every negro taken at such assemblages may, by special order of said Justices, be corrected, without trial, by receiving, on the bare back, not more than twenty lashes, with the instrument allowed to be used by the patrols, and in the same manner.

Certain officers invested with patrol powers.

§ 1371. Such officers or persons may be also specially empowered, by a Justice of the Peace of the district, under warrant, to do whatever the patrol may do, and to bring offenders to a speedy trial.

Article 2.—Other Police Regulations.

§ 1372. If any officer refuses to execute such warrant, or other person refuses to assist said officer when required, such officer or person shall forfeit and pay for each offence twenty-five dollars, to be recovered as in other actions of debt at the instance of the informer.

Officers or others refusing to obey summons subject to suit.

§ 1373. If such property or any goods shall be so seized which is the property of another, they shall be restored on the claimant making this oath:

How property of another found on slave may be restored.

“I swear that I have just right to certain property or goods (describing them) seized by a certain person, naming him, out of the possession of a slave named (naming him) and that I did not directly, nor indirectly, permit said slave, nor any other slave, to keep or employ the same in violation of the law, but that they came to the possession of said slave (stating the manner.)”

§ 1374. Any person may take up any negroes that shall be found out of the plantation or place where they belong, or incorporated town where they reside, acting unlawfully, or under suspicious circumstances, and if found with an offensive weapon shall take the same away, and if the negro is insolent, or refuses to answer, may whip said negro as the patrol may.

Any person may take up and chastise slave--when.

§ 1375. If any master, overseer, or employer shall permit his slave to carry arms contrary to law, or shall suffer any illegal public meeting, or unlawful feasting of slaves, not his own, without the permission of their owners, or under his charge, on his plantation, or other home, he shall forfeit for each offence five hundred dollars, one half to the informer the other half to the Educational Fund of the county.

Penalty against master allowing slaves illegal liberties, &c.

§ 1376. It shall be unlawful for any church, society, or other body, or any persons to grant any license or other authority to any slave or free person of color to preach, or exhort, or otherwise officiate in church matters.

Slaves and free negroes shall not be licensed to preach, &c.

CHAPTER VI.

TAVERN AND RETAIL LICENSES.

SECTION.

- 1377. Retail license—how obtained.
- 1378. Oath of other venders.
- 1379. Retailing—confined to one place.

SECTION.

- 1380. License by corporate towns.
- 1381. Furnishing liquor to one drunk.
- 1382. “Retailer” defined.

§ 1377. Persons before obtaining license to retail spirituous liquors, must apply to the Justices of the Inferior Court of the

License to retail liquors—how obtained.

Chapter 6.—Tavern and Retail Licenses.

county in which they desire to retail, who have power to grant or refuse such application. When such application is granted and entered on the minutes, the applicant shall execute a bond, with sufficient security, in the sum of five hundred dollars, payable to such Justices, conditioned to keep an orderly house, and to abide faithfully by the oath to be taken by him, which bond shall be taken and approved by the Clerk of the Inferior Court, filed in his office, and recorded in the book kept for that purpose. Any person aggrieved may bring suit on such bond. Licenses granted in any other way are void. They shall, also, at the same time, before said Clerk, take and subscribe the following oath :

“I swear that I will not, during the next succeeding twelve months, sell, barter, give, or furnish to any slave, or free person of color, any quantity of spirituous or intoxicating liquors without the consent of the owner, overseer, or employers of such slave, nor without the like consent of the guardian of such free person of color, nor to any minor without the consent of his or her parent, or guardian, or employer, and that I will not allow any other person to do so for me with my knowledge or consent. So help me God.”

Oath of venders of liquors less than one gallon.

§ 1378. By the first day in June in each year, and annually thereafter, venders of any quantity of spirituous liquors less than one gallon, shall take and subscribe the foregoing oath, and upon neglecting to do so they are subject to all the penalties of retailers without license.

Sale of liquors confined to one place.

§ 1379. Such licenses do not authorize the persons to whom issued to retail at more than one place in the county, which place must be stated in the license. Different licenses are necessary for different places.

Corporate towns may grant license—when.

§ 1380. Said provisions do not not apply to any corporation, town or city, which by charter have power to grant licenses, provided, the fees for licenses are at least as much in said city as are required by law in the county.

Retailer shall not sell to one who is drunk.

§ 1381. A retailer of spirituous liquors shall not sell or furnish liquors, in any quantity, to any person who is at the time intoxicated or drunk ; and for violating this provision, he shall not only be liable to all the penalties for retailing without a license, but he shall not recover by law for any spirituous liquors furnished to such person during the current year.

§ 1382. The sale of such liquors in quantities less than one quart, makes the seller a retailer. Who is a retailer.

CHAPTER VII.

ESTRAYS.

SECTION.	SECTION.
1383. Who may take up estrays.	1389. Estrays—how reclaimed.
1384. Estrays—how disposed of.	1390. Trial of conflicting claims.
1385. Advertisement of estrays.	1391. Expense of estrays.
1386. Sale of estrays.	1392. Default of taker up—how punished.
1387. May be sold on freehold—when.	1393. Stone horses may be gelded.
1388. Proceeds of sale—how disposed of.	

§ 1383. Any person may, upon his own freehold or the highway thereto, or being in charge of one, and not elsewhere, take up all estrays of animals of a domestic or useful nature either for their labor or flesh. Who may take up estrays.

§ 1384. The taker-up shall, within five days, exhibit said animal to two freeholders of the militia district where taken up, who shall take down in writing a particular description of its marks, natural and artificial, brands, stature, age and color, and annex thereto their appraisement of its value, which description and appraisement shall be by the taker-up, within five days more, handed to the Clerk of the Inferior Court of the county. He shall at the time of handing the same to said clerk, make an affidavit before him that the marks and brands of said estray are correct, and have not been altered or disfigured, to his knowledge, since he took it up. Estrays—how disposed of.

§ 1385. Such clerk shall then copy said appraisement, description and affidavit in the estray book, and advertise substantial copies of the two first named at the door of the court house for sixty days at the place of holding Justices' Court of the district, where taken up, and in the public gazette where the sheriff of the county advertises his sales. Clerk shall copy and advertise appraisements of estrays.

§ 1386. If by the end of that time, property is not proven and taken away, the Sheriff of the county shall advertise and sell said estray as he does property under execution, stating it to be an estray and its appraised value. Estrays—when to be sold.

§ 1387. If the property is not of sufficient value to pay the expenses of said proceedings, said Clerk may order it sold by the Sheriff after ten days' notice on the freehold where taken up, but When an estray may be sold on the freehold.

he shall make the advertisement in writing and have one insertion made in such public gazette.

Proceeds of sale—how disposed of.

§ 1388. The purchase money, after deducting all lawful expenses, shall be paid to the treasurer of the Educational Fund of the county, to be paid to the owner of the estray, if property is proven therein within twelve months.

How an estray may be reclaimed by the owner.

§ 1389. Property may be proven by an affidavit of ownership before the clerk of said Court, and the filing with him bond and security in double the appraised value, payable to the Justices of the Inferior Court, conditioned to answer any demand thereon that may be proven against the obligor within two years.

Conflicting claims—how tried.

§ 1390. If more than one person claims said estray before delivery is made, or a counter affidavit to a claim is filed by any person, an issue shall be made thereon and tried by a jury in the Inferior Court, with privilege of appeal.

Expense of taking up and keeping estrays.

§ 1391. There shall be no expense for keeping estrays, but the taker-up must be paid five per cent. upon their appraised value if not sold, or if sold, the same per cent. upon the sale, and shall have the use thereof free of charge. If the owner disputes the appraised value, he may sell the estray after five days' written notice at the court house, and the taker up shall have it there for that purpose. He shall always deliver the estray on the order of the Clerk of the Inferior Court, upon the payment of his fees.

Penalty against taker-up, for default in appraising, &c.

§ 1392. The taker-up is liable to the county or the owner, as the case may be, in five times the value of the estray; if after taking it up he fails to have it appraised and returned, or forthcoming, according to law, providential causes only excepted, and if he appropriates it to his own use, and fails to pay said forfeiture after demand in writing by the Clerk of the Inferior Court, he is guilty of a misdemeanor. Suit may also be brought either by the owner or county for the same. He is liable in like manner for any damage caused by wilful abuse or neglect of the animal.

Stone horses running at large may be gelded.

§ 1393. If any stone horse above eighteen months old shall be found running at large, it is lawful for any person to take him up and take him before the nearest Justice of the Peace, and by permission of said Justice, may geld the same, taking care that it is done by a person competent to do so, and that the horse is properly cared for afterwards; the expenses of which shall be paid by the owner.

Chapter 5.—Marks and Brands.

CHAPTER VIII.

MARKS AND BRANDS.

SECTION.

1394. Record of marks and brands.
 1395. Recorded mark preferred.
 1396. Oldest record preferred.

SECTION.

1397. Marking to be done—by whom.
 1398. Change of recorded mark.

§ 1394. All persons having marks and brands on cattle, or other property, in this State, shall have them recorded by the Clerk of the Inferior Court of the county where the owner resides, or, if a non-resident, where the property uses, in a book kept by him for that purpose.

Marks and brands must be recorded.

§ 1395. If property shall be in dispute between one whose marks and brands are recorded, and one whose are not, both having the same mark and brand, and such property is found in the possession of him whose marks and brands are recorded, the party claiming cannot get possession of the same, but must sue, and prove property and damage.

Preference in favor of one having marks and brands recorded.

§ 1396. When two or more persons have the same marks and brands, and both are recorded, the *prima facie* right is with the older record.

Oldest record has preference.

§ 1397. Marking and branding shall not take place, except by or under the supervision of some competent white person, on pain of forfeiting fifty dollars for each violation, to be recovered at the suit of the informer, who shall have one-half the recovery; the other half goes to the Educational Fund.

Marking, &c. to be done by white person.

Penalty for violation.

§ 1398. Marks and brands once recorded shall not be changed, so as to be of any avail to the owner, without leave is first granted by the Justices of the Inferior Court, and a minute made thereof.

Marks, &c., not to be changed without leave.

CHAPTER IX.

ENCLOSURES AND FENCES.

SECTION.

1399. Requisites of a fence.
 1400. Of other enclosures.
 1401. Owners of stock—when liable.

SECTION.

1402. Stock may be killed—when.
 1403. Poisoning crops.
 1404. Water courses deemed fences.

§ 1399. All fences or enclosures, commonly called worm fences, shall be five feet high, with or without being staked and ridged, and from the ground to the height of three feet, the rails shall

What is a lawful fence.

Chapter 9.—Enclosures and Fences.

not be more than four inches apart. All paling fences shall be five feet, from the ground, and the pales not more than two inches apart.

Enclosures by ditches, &c.

§ 1400. Any enclosure, made by means of a ditch or trench, shall be three feet wide and two feet deep, and if made of both fence and ditch, the latter shall be four feet wide, and the fence five feet high from the bottom of the ditch.

When owner is liable for trespass, &c.

§ 1401. If any trespass or damage shall be committed in any enclosure, not being protected as aforesaid, by the breaking in of any animal, the owner of such animal shall not be liable to answer for the trespass, and if the owner of the enclosure shall kill or injure such, in any manner, he is liable in three times the damage.

When owners of enclosures may kill stock breaking in.

§ 1402. When fences are made, pursuant to law, and any animal breaks in, the owner of the enclosure shall not kill or injure him for the first breaking, and not until after notice is given to the owner or agent, if possible, but said last mentioned owner shall be liable for double the damage done by his stock.

Poisoning crops.

§ 1403. If stock is killed or injured from poisoning crops, or other poisoning upon the premises, the presumption is, that it was done by the person in possession and charge of the same.

When water courses are deemed fences.

§ 1404. All water courses that are, or have been, navigable, as far as navigation has ever extended up said streams, shall be deemed and considered fences, whenever, by reason of freshets or otherwise, fences cannot be kept on said streams, and shall be subject to the rules applicable to other fences.

CHAPTER X.

FIRING THE WOODS.

SECTION.

- 1405. Woods may be fired—when, &c.
- 1406. Notice must be given.

SECTION.

- 1407. Penalty for firing without notice.
- 1408. Woods catching fire by negligence.

When, and by whom woods may be fired.

§ 1405. No person but a resident of the county where the firing is done, owning lands therein, or domiciled thereon, outside of any town incorporation, shall set on fire any woods, lands or marshes; nor shall such persons, except between the twentieth of February and the first of April, annually.

One firing woods must give notice.

§ 1406. When such person shall desire to set fire within said time, he shall notify all persons, who occupy lands adjoining him

Chapter 10.—Firing the Woods.

by residence thereon, or cultivation, or enclosure of any portion of the tract or settlement, of the day and hour of the firing at least one day prior thereto; such notice need not be given if, on a sudden emergency, due caution should require firing to render one's premises safe.

§ 1407. Any person setting fire in violation of the two preceding sections, forfeits five hundred dollars, upon the suit of any informer—the one-half to him, the other to the Educational Fund of the county, and is also liable for the actual damages any person may have sustained. Penalty for setting fire without notice.

§ 1408. Persons, either by themselves, slaves or agents, who permit fire to get into the woods, lands or marshes through neglect, are within the meaning of said sections. Penalty for letting woods catch, &c.

CHAPTER XI.

MILLS AND MILLERS.

SECTION.

1409. Grain—in what order ground.

1410. Penalty for failure.

SECTION.

1411. "Public Mills" defined.

§ 1409. All owners or occupants of mills shall well grind all clean and dry grain, and in due turn, as far as ten bushels in the turn, as the same may be brought, and may take for toll one-eighth part thereof. Grain to be ground in turn.

§ 1410. Every such person who shall not so grind, except in time of drought, or for other sufficient cause, or not in due turn, or take or exact more toll, shall forfeit and pay, for each offence, to the party injured, twenty dollars; *provided*, such miller may do his own grinding first. Penalty for not grinding according to turn.

§ 1411. All grist mills, which grind for toll for any person, are public mills within the meaning of this chapter. What are public mills.

CHAPTER XII.

GUNPOWDER.

SECTION.

1412. Transported gunpowder, &c.

1413. Penalty for not marking.

SECTION.

1414. Keeping gunpowder, &c.

§ 1412. All owners, agents, or others who have any gunpowder, more than five pounds, transported upon water, railroad or Gunpowder must be marked.

Chapter 12.—Gunpowder.

otherwise, shall have the word *gunpowder* marked upon each package so transported in large letters.

Penalty for transporting gunpowder contrary to law.

§ 1413. Gunpowder transported in violation of said provision, shall be liable to seizure and forfeiture by any officer who may execute a criminal warrant under warrant for that purpose, issued by any officer who may issue such first named warrants—one-half of the same to go to the informer, the other half to go to the Military Fund of the State, after public sale, by order of the officer issuing the warrant, or one of like power.

Regulations for keeping gunpowder &c.

§ 1414. The several incorporated towns or cities of this State, within their corporate limits, and the Justices of the Inferior Court within their respective counties, out of said corporate limits, have authority to make and enforce all needful rules and regulations touching the keeping of gunpowder so as not to endanger the lives and property of the citizens.

TITLE XVI.

REGULATIONS OF AGRICULTURE, TRADE AND COMMERCE.

CHAPTER I.

BANKS AND BANKING.

ARTICLE 1. Bank Returns.

ARTICLE 2. Obligations and Penalties.

ARTICLE 3. Forfeiture of Charters and Liability of Stockholders.

ARTICLE I.

BANK RETURNS.

SECTION.

- 1415. Bank returns—how made.
- 1416. Contents of returns.
- 1417. Oath of officers shall be annexed.

SECTION.

- 1418. Expense of advertising.
- 1419. Bank refusing to make returns.
- 1420. False affidavit perjury.

Call for bank returns, to be advertised by Governor.

§ 1415. It is the duty of the Governor, twice in each year, to advertise for at least two weeks, in a public gazette at the seat of government, a call upon every banking institution of this State, and branch the reof, to make returns to him, under the oaths of their several Presidents and Cashiers, of their respective con-

Article 1.—Bank Returns.

ditions, at a time to be specified in such advertisement, and to transmit the same to him within thirty days from said dates.

§ 1416. Such returns shall embrace—

Contents of
the returns.

1. The names of the Presidents and Directors, and a list of the stockholders on the day of the regular weekly meeting, of the President and Directors next preceding the date of his requisition. The list of stockholders may be given but once a year.

2. The amount of stock owned by each individual or company, and the amount of money actually paid in on each share.

3. The amount of bills on other banks of this State, of gold, silver and bullion, in their vaults.

4. The amount of debts due them, within and without the State, so designating them, which may be denominated specie funds.

5. The active or running paper, the amounts in suit under protest, and not in suit, clearly stating what amount of all such debts is good, what doubtful, what bad, and what lost.

6. The amount of bills in circulation, the amount on deposit, and the highest amount due and owing by each bank.

§ 1417. The original oaths aforesaid shall be annexed to said returns, stating them to be just and true, and moreover, that since the last return, their respective banks, to the best of affiants' knowledge and belief, have not violated nor evaded any obligation imposed by law, either by itself, its officer, or agents.

Oath of officers
to be
annexed to
returns.

§ 1418. The banks are required to publish their several reports in some public gazette of this State, at their expense, and on failing to do so, within thirty days, it is the duty of the Governor to make public advertisement of the fact, and to order all collectors of the public money to refuse to receive their bills. The Governor shall also publish the reports, the cost of which the defaulting banks shall be bound for, as a tax levied, which shall be collected by execution issued by the Comptroller General.

Expense of
advertising
—by whom
paid.

§ 1419. Any bank refusing to make out and return said reports, as required by law, forfeits and pays to the State a tax of two per cent, per month, upon their capital stock, from the time of such refusal, to be levied and collected by execution, at the end of each month, by the Comptroller General; the bills of said banks shall likewise not be received, as prescribed in preceding section.

Penalty for
not making
return.

§ 1420. Perjury may be assigned on such affidavits, and the name of a person signed thereto, authorized to administer an oath, shall be evidence of the swearing.

False affidavit
is perjury.

ARTICLE II.

OBLIGATIONS AND PENALTIES.

SECTION.	SECTION.
1421. Prohibitions imposed on banks.	1428. Violating No. 7 of section 1421.
1422. Qualification of section	1429. Obligations imposed on banks.
1423. Certain contracts void.	1430. Violating No. 1 of section 1429.
1424. Violation of No. 3, section 1421.	1431. Proceedings for such violations.
1425. Violation of No. 4 & 5, sec. 1421.	1432. Violating No. 2 & 3 of sec. 1429.
1426. Proof prescribed.	1433. The term bank—what it includes.
1427. Violating No. 6, section 1421.	

Prohibitions imposed on banks.

§ 1421. The banks of this State shall not—

1. Loan money, directly nor indirectly, on any note, bill, draft, or contract of any sort, at a greater rate of interest than seven per cent. per annum.

2. Discount or purchase any paper or debt at a greater discount than said rate.

3. Sell any kind of exchange, except sight checks, or demand or receive for exchange, in or out of this State, of any citizen thereof, a greater premium than one per cent. upon the amount of exchange sold, when the bills of the bank from which the exchange is sought are presented at its counter in payment thereof.

4. Issue paper or promises to pay, intended to be used as money, redeemable otherwise than with gold or silver coin, at the standard value thereof.

5. Issue such paper, or pay, or tender in payment, any paper, payable at a greater length of time than three days from the date thereof.

6. Issue, pay away, or circulate any bank bill, note, ticket, or paper, of the nature or appearance of a bank note, meant for circulation, of a denomination less than five dollars, with the exception that all solvent and specie paying banks may issue small bills of the denominations one, two, three and four dollars, to an amount not exceeding twenty per cent. of their capital stock, to be computed as part of their circulation.

7. Issue bills beyond the amount specified in their charter.

Qualification of preceding section.

§ 1422. Nothing in the foregoing shall be so construed as to restrict the bank to said rate, in the discount or purchase of foreign bills, either of which may be done at their true market value, provided, the rate of discount is not greater than seven per cent. per annum, with the rate added of the cost of transporting specie from the point at which the bill of exchange may be pay-

Article 2.—Obligations and Penalties.

able, to that at which it was discounted or purchased, and that the said foreign bill is a *bona fide* commercial bill, and not a loan or accommodation by the bank; and that the exchange is legitimate commercial exchange, and the transaction not in fact a loan or accommodation in which the law is attempted to be evaded by resorting to the form of a bill of exchange, foreign bill or draft.

§ 1423. Every contract, note, bill, draft or paper, made in violation of the provisions of numbers 1 and 2 of section 1421, and of the next succeeding section, are declared null and void. Certain contracts, &c. void.

§ 1424. For a violation of number 3 of the same section, the person paying the premium may recover three times the amount of the excess by a summary proceeding before any court having jurisdiction, on which judgment may be rendered at the first term. The suit may be either against the bank, its officer or agent; in either case, the property and effects of the bank are subject to the judgment. Penalty for violating the 3d item of section 1421.

§ 1425. For a violation of numbers 4 and 5 of section 1421, the bank forfeits one thousand dollars for each bill or paper so issued, to be recovered by action at the suit of the informer, one-half to go to him, the other half to the Educational Fund of the county where the recovery is had. Penalty for violating 4th and 5th items of section 1421.

§ 1426. The officer or agent who received the premium shall appear without any process than the service of the writ, and bring his book having the original entry of the transaction, and give evidence in the case. If he fails to appear, the affidavit or testimony of the plaintiff shall be received. Mode of proof prescribed.

§ 1427. For the violation of number 6 of section 1421, the bank forfeits five hundred dollars for each small bill so issued beyond the twenty per cent., or amount allowed by charter, to be recovered, as in cases of number 4 and 5, unless a different penalty is prescribed by charter. Penalty for violating 6th item of section 1421.

§ 1428. For the violation of number 7 of section 1421, the bank so violating, forfeits its charter. Penalty for violating 7th item of section 1421.

§ 1429. The banks of this State shall—

1. Pay specie for any of their bills, notes, drafts or other obligations when due and demanded by the holder.
 2. Receive their own bills, notes, certificates of deposit, or other evidence of debt, in payment of debts due them.
 3. Receive their own bills at par, whether issued or made payable at the parent bank, or any of its branches, in settlement of
- Obligations imposed on banks.

Article 2.—Obligations and Penalties.

debts or balances due either, and when notes or other obligations are discounted by any bank, and become transferred to another bank, they continue payable in the bills of the bank where discounted.

Penalty for violating 1st item of section 1429.

§ 1430. For the violation of number 1 of section 1429, the bank shall pay, besides the legal interest, twenty-five per cent. damages, each of which must be specified in the verdict and judgment, and the execution issued thereon shall be collected in specie.

Proceeding for such violation.

§ 1431. The Governor shall also cause judicial proceedings to be instituted against such bank for the forfeiture of its charter, but the defaulting bank may, within five days after such demand and refusal, produce satisfactory evidence that there was an indebtedness then due to said bank by the person demanding specie equal to the amount demanded, and the Governor may, in his discretion, forbear or postpone the proceeding.

Penalty for violating 2d and 3d items of section 1429.

§ 1432. For the violation of numbers 2 and 3 of section 1429, the bank shall forfeit to the debtor twenty per cent. upon the amount to be recovered by special suit in his favor, or in any other form of litigation between them. The special deposit of the proper amount in another bank, or in the hands of a solvent stakeholder, with notice to the bank, is a payment.

The term bank includes what.

§ 1433. The term bank, includes the parent bank, its branches, if any, and agencies, its officers of every description, and agents, in construing the violation of an obligation or the imposing a penalty for the acts of whom the bank or branches, as the case may be, is bound.

ARTICLE III.

FORFEITURE OF BANK CHARTERS AND LIABILITY OF STOCKHOLDERS.

SECTION.	SECTION.
1434. Bank charter forfeited—for what.	1440. Stockholders may be sued—when.
1435. Proceedings—how instituted.	1441. Abatement of suit.
1436. Duty of receiver.	1442. Assignment by bank.
1437. Compensation of receiver, &c.	1443. How set aside.
1438. Order of paying debts, &c.	1444. Want of assignee—how supplied.
1439. Debts due insolvent banks.	1445. Stockholder may transfer stock.

For what bank charter may be forfeited.

§ 1434. Bank charters are subject to forfeiture for the same general grounds as those of other corporations, and also—

1. For the violation of any of the provisions of their charters.

Article 3.—Forfeiture of Bank Charters and Liability of Stockholders.

2. For the violation of any obligation imposed by law, unless contrary to the contracts of their charters.

3. Whenever it is demanded by special enactment.

§ 1435. When the Governor is informed that a bank incurs the penalty of a forfeiture, he shall cause the Attorney General to institute proceedings therefor in the county where the bank or parent bank is located, and in his discretion, may employ assistant counsel to aid therein, and pay him out of any money not otherwise appropriated. If there is a verdict of forfeiture rendered on the trial, the Judge shall pronounce the judgment for all purposes whatever, saving the use of its corporate name in collecting and paying its debts, and in conveying its real and personal estate, which power shall be exercised by a receiver appointed by the Court for that purpose at that time, or any time, upon the application of the prosecuting officer showing good cause.

§ 1436. It is the duty of such receiver—

1. To promptly collect the debts due said bank, and to convert the property into cash or available assets as soon as practicable.

2. To pay the creditors *pro rata* semi-annually, according to the dignity of their claims, unless there is sufficient to pay all.

3. To pay the holders of the bills before other creditors, if they give notice of their claims within six months.

4. To give notice to said bill holders, and other creditors, by a three months' publication in some public gazette of the State.

5. To make annual returns of his receipts and disbursements, to the Judge of the Superior Court of the county at the first term held every year; to produce vouchers and swear to the return, which shall be passed upon by said Judge, and entered on the minutes by the Clerk.

6. To distribute the assets after paying all the debts of the corporation among the stockholders in proportion to their stock.

§ 1437. On failure to comply substantially with any of the above requirements, he forfeits his compensation. His compensation shall be the same as that allowed administrators; but upon special application, the court may allow, for good cause shown, additional compensation.

§ 1438. If the bank is insolvent, the order of paying off the debts shall be the same as is prescribed in cases of administration of insolvent banks.

Article 3.—Forfeiture of Bank Charters and Liability of Stockholders.

tion, to the extent applicable, except where special preference or postponement is given by law.

In what
funds debts
due are to be
paid.

§ 1439. Debtors are not, in such a case, allowed to pay their debts to the receiver in bills of the bank at their par value, unless accompanied by an affidavit that they are the identical bills received from the bank by which the debt was created.

When
stockholders
are sueable.

§ 1440. If the assets of the bank are insufficient to pay all its liabilities, the receiver shall bring suit against the stockholders in his own name for their unpaid stock to an amount which will be their proportion for the liquidation of all the debts, and on his failure to do so, any creditor may use his name for that purpose.

Abatement
of suits.

§ 1441. Suits do not abate by reason of a vacancy in the receivership, but proceed on motion, and without any *scire facias* in the name of the new receiver.

Assignment
by banks.

§ 1442. When a bank surrenders its charter, or the use thereof, it may make, in good faith, an assignment of all its effects for the payment of its debts, as natural persons may, but it cannot thereby prevent such preference among its creditors as the law gives.

How it may
be set aside.

§ 1443. A creditor or stockholder may move, in six months, to set aside such assignment, by petition addressed to the Superior Court of the county where the bank is located, setting forth the grounds of complaint which shall stand for trial before a special jury at the first term of the court. If the assignee resides in the county, he must be served as in other cases; if not, the leaving a copy at the banking-house shall be sufficient service; the service shall operate as an injunction, until the judgment of the court. If the assignment is set aside, a receiver must be appointed.

How want
of assignee
may be re-
lieved.

§ 1444. A good assignment shall not fail for the want of an assignee, but the court, in vacation or term time, may appoint a receiver who shall execute the assignment.

How stock-
holder in
bank, &c.,
may trans-
fer his
stock.

§ 1445. When a stockholder in any bank or other corporation is individually liable under the charter, and shall transfer his stock, he shall be exempt from such liability, unless he receives a written notice from a creditor within six months after such transfer, of his intention to hold him liable; *Provided*, he shall give notice once a month for six months of such transfer, immediately thereafter in two newspapers in or nearest the place where such institution shall keep its principal office.

CHAPTER II.

NOTARIES PUBLIC.

SECTION.

1446. By whom appointed.
 1447. Their oath of office.
 1448. Their term of office.
 1449. Their qualification.

SECTION.

1450. Their jurisdiction.
 1451. Their authority.
 1452. Must have a seal, &c.

§ 1446. The power to appoint Notaries Public is vested in the Justices of the Inferior Court, exclusively.

§ 1447. Before entering on the duties of their office, they shall take and subscribe, before the Clerk of the Inferior Court, the following oath, which shall be entered on his minutes :

“ I swear that I will promptly, faithfully and impartially discharge all the duties the law requires of me as a Notary Public in this county, whenever requested, to the best of my skill and knowledge. So help me God.”

§ 1448. They hold their offices for four years, revocable at any time by said Justices, at the end of which time, if continued, they must be renewed on the minutes. The Clerk must issue to them certificates of their appointment and qualification, and keep a register of their names.

§ 1449. A Notary must be twenty-one years old, or an attorney at law, and of good moral character.

§ 1450. Their notarial acts can only be exercised in the county of their residence and appointment. Removal from the county vacates the office.

§ 1451. They have authority—

1. To take the acknowledgements of all writings relating to commerce or navigation, and to witness such deeds and papers as they are permitted to by law.

2. To demand acceptance and payment of all commercial paper, or paper entitled to days of grace, and to note and protest the same for non-acceptance or non-payment.

3. To certify to all official acts when required.

4. To administer oaths in all matters incident to them as commercial officers, and in all other matters when specially permitted.

5. To exercise all other powers incumbent upon them by commercial usage or the laws of this State.

§ 1452. For the authentication of their notarial acts, each Notary must provide a seal of office, which shall have for its impres-

Notaries
Public—by
whom ap-
pointed.
Oath of No-
taries Pub-
lic.

Their term
of office.

Age and
character of
Notary.

Where their
office may
be exer-
cised.

Authority of
Notaries

No-Notarial
seal and
register.

sion his name, officially, and the name of the State and county for which he was appointed. After the first of January, 1862, a scrawl shall not be a sufficient notarial seal. He must keep a fair register of all his notarial acts signed by him, together with the date of the transaction.

CHAPTER IV.

SHIPS AND SEAMEN.

ARTICLE 1. Pilotage.

ARTICLE 2. Seamen.

ARTICLE 1.

PILOTAGE.

SECTION.	SECTION.
1453. Commissioners—how appointed.	1473. Record of rules must be kept.
1454. Their powers.	1474. Subject to inspection.
1455. Pilot's oath and license.	1475. Commissioners office—where kept.
1456. His bond.	1476. Compel attendance of witnesses.
1457. Forfeiture of license.	1477. May punish defaulting witnesses.
1458. Commissioners powers and duty.	1478. Witnesses may be cited.
1459. License—non-user of	1479. Subpoenas and interrogatories.
1460. Pilot's duty.	1480. Fees for serving and executing.
1461. Master rejecting pilot.	1481. Appeal—when allowed.
1462. Pilot bringing in vessel.	1482. Testimony after appeal.
1463. Pilot may have a substitute.	1483. Fees, &c.—how disposed of.
1464. Notice to pilots.	1484. Pilots receive certificates—when.
1465. Pilot must moor vessel.	1485. Branch pilots—how appointed.
1466. His fees—payment of	1486. Penalty for discharging ballast, &c.
1467. Carrying off or detaining pilots.	1487. Proceedings against master.
1468. Fees of pilot boat in certain cases.	1488. Pilot failing to give notice.
1469. Letters—delivery of	1489. Incorporated towns—powers of.
1470. Pilot's fees in special cases.	1490. Suits—by whom brought.
1471. Pilots in default—penalty.	1491. Present commissioners continue.
1472. Damages to—by whom settled.	

Commissioners of Pilotage—how appointed.

§ 1453. The corporate authorities of Savannah, Darien, Brunswick and Saint Marys, shall have power respectively to appoint Commissioners of Pilotage, not exceeding seven in number, for each place, of whom a majority shall be a quorum as follows, that is to say: the authorities of Savannah for the Bar of Tybee, and River Savannah, and the several bars and inlets north of Sapelo Bar; the authorities of Darien for Sapelo Bar, and River

Article 1.—Pilotage.

Altamaha, and for the several bars and inlets south of Sapelo Bar as far as St. Simon's Bar; the authorities of Brunswick for the Bar of St. Simons and Turtle River, and the several bars and inlets north of the Great Satilla River, and the authorities of St. Marys for the bar of the Great Satilla River, the Bar of St. Marys, and all bars and inlets between the two. All vacancies shall be filled by such corporate authorities respectively in the Board of Commissioners in which a vacancy shall occur, but no owner or part owner of a pilot boat shall be allowed to act as Commissioner of Pilotage.

§ 1454. The said Commissioners are empowered to license such persons being citizens of the Confederate States, of good character, as they shall think most fit to act as pilots for the conducting of vessels inward to, and outward from, the several ports for which they shall be licensed during their good behavior. Pilots already licensed for any of said ports shall continue to act until removed for cause. No person other than a duly licensed pilot shall be entitled to receive any fee, gratuity or reward for conducting or piloting any vessel inward to, or outward from, any of the ports or harbors for which a pilot shall be licensed; any person so acting without authority, or interfering with or disturbing a licensed pilot in the way of his duty, may on conviction be fined and imprisoned at the discretion of any court having jurisdiction, but any person may assist a vessel in distress without a pilot on board, if such person shall deliver up the vessel to the first pilot who comes on board and offers to conduct it.

§ 1455. The license to a pilot must be in the form of a certificate of his appointment, which must be signed by a majority of the commissioners, or by their chairman, by their direction, and each pilot on receiving his license shall take and subscribe an oath in the following form:

"I, A B, appointed pilot for the port and harbor of ———, do swear that I will faithfully and according to the best of my ability perform the duties of a pilot in and for the said port and harbor of ———, and will at all times, wind, weather and health permitting, use my best endeavors to repair on board every vessel I shall see, and conceive to be bound for, coming into, or going out of the said port and harbor, unless I am well assured there is some other licensed pilot on board the same; that I will from time to time make the best dispatch in my power to con-

Powers of
Commissioners of
Pilotage.

Pilot's li-
cense and
oath.

Article 1.—Pilotage.

vey any vessel committed to my charge coming into or going out of said port and harbor, and will at all times well and truly observe, fulfill and follow to the best of my skill and judgment all such orders and directions as I may receive from the Commissioners of Pilotage in all matters and things relating to the duty of a pilot.”

Pilot's bond. § 1456. Before receiving his license the pilot must make and deliver to the commissioners a bond payable to the chairman of the board, and his successor in office, in the penal sum of two thousand dollars, with security, to be approved by the commissioners, and with condition faithfully to perform his duties as pilot, which bond shall be renewable at the discretion of the Commissioners, with such security or additional security as they may require.

License of pilot—how forfeited. § 1457. The commissioners may deprive any pilot of his license for want of skillfulness, for a wilfull violation of his duties, or the orders, or regulations of the commissioners; for negligently, or carelessly losing, or injuring any vessel in his charge, or when laboring under mental derangement, or when so addicted to habits of intoxication as to unfit him in their judgment to be entrusted with the charge of a vessel, but in every such case an appeal may be had as is hereinafter provided.

Power and duty of commissioners as to pilotage. § 1458. The commissioners shall have power, and it is their duty to prescribe rules and regulations for the government of pilots, and to prescribe the fees for their services, and they may also impose such penalties for neglect of duty, not inconsistent with this law, as they may think proper, but until altered by competent authority the fees of pilots shall remain as now fixed by law.

License forfeited by non-user and absence, § 1459. Any pilot who fails to act as pilot for three months, or absents himself for ten days at any one time without leave of the commissioners may be deprived of his license; and any pilot who shall, with knowledge of the arrest of any vessel under civil process from any court of record of this State, conduct or pilot such vessel out of the port or harbor where such arrest is made, and whilst such vessel is in charge of a civil officer, shall forfeit his license, and be forever disqualified from acting as pilot, besides forfeiting such sum as a jury may assess for damages.

And for piloting vessel under arrest. § 1460. Every pilot boat cruising, or standing out to sea, must offer the services of a pilot to the vessel nearest the bar, unless a

Duty of pilots.

Article 1.—Pilotage.

vessel more distant be in distress, under penalty of fifty dollars for each and every neglect or refusal, either to approach the nearest vessel, or to aid her if required, or to aid any vessel in sight showing signals of distress; and the commissioners, or a majority of them, may for such neglect or refusal deprive the pilot of his license.

§ 1461. Any person, master or commander of a ship or vessel bearing towards any of the ports or harbors of this State, except coasters in this State, and between the ports of this State and those of South Carolina, and between the ports of this State and those of Florida, and who refuses to receive a pilot on board shall be liable, on his arrival in such port of this State, to pay the first pilot who may have offered his services outside the bar, and exhibited his license as a pilot, if demanded by the master, the full rates of pilotage established by law for such vessel.

Master rejecting pilot, to pay his expenses.

§ 1462. The pilot who brings a vessel into port shall have the exclusive right to take her out, unless the master of such vessel shall prove to the satisfaction of the commissioners that such pilot misbehaved himself whilst in charge of the vessel, or was, in the mean time, deprived of his license, or that such pilot had obtained the inward pilotage against the right of some other pilot, first offering his services, and, in any of these cases, another pilot may be employed.

Pilot bringing in vessel has a right to lead it out

§ 1463. Any pilot having the right to take a vessel out of port may attend in person, or procure another person out of the pilot-boat to which he is attached, to attend for him; and if any master or owner of any vessel in port, employ any other pilot to carry his vessel down the river, or to sea, but the pilot who brought her in, or one belonging to the same boat, unless good and sufficient cause shall appear therefor, on due proof thereof before the commissioners, he shall be liable to a fine, not exceeding one hundred dollars, one-half to the pilot lawfully claiming the pilotage of the vessel; but should such pilot neglect or refuse to attend, and carry down such vessel when ready for sea (wind, weather and tide permitting) when thereunto required by the master, owner or consignee, such pilot shall, on conviction thereof, before the Board of Commissioners, forfeit the upper pilotage of such vessel, and be liable to a fine, not exceeding one hundred dollars, and any pilot acting on board such vessel, when he has no right, shall be liable to the same penalty; *Provided*, the commissioners have not sufficient evidence of the necessity of his acting, and

Pilot may offer substitute.

Penalty against master for employing another pilot.

Penalty against pilot for not going out with vessel.

Article 1.—Pilotage.

Penalty for piloting without right.

Pilot to be notified of vessel's departure.

Pilot must moor vessel.

Pilot's fees to be paid before vessel leaves.

Penalty for carrying off or detaining pilot.

Fees of pilot-boat for taking pilot from vessel.

Pilot's fees for delivering letters, &c.

shall, moreover, be liable to the pilot having the right for carrying the same vessel out.

§ 1464. The master of a vessel in readiness to leave must, if practicable, give notice to the pilot entitled to conduct the vessel out, of his intention to leave, or to some other pilot belonging to the same boat; *Provided*, such pilot be at the place of departure of such vessel, or near thereto.

§ 1465. Every pilot, in any of the harbors aforesaid, bringing any vessel to anchor in any of said harbors, shall moor such vessel, or give proper directions for the mooring of the same, and the safe riding thereof, subject only to the legal harbor regulations of each port.

§ 1466. A pilot bringing a vessel into port shall be entitled to his fees before her departure from port, to be paid in advance, or security given for the payment, and on failure thereof, he may refuse to carry the vessel out, and all fees for pilotage may be demanded and recovered, in any court having jurisdiction, from the owner, master, or consignee of the vessel, and if any licensed pilot shall ask or demand more fees for his services than are specified in the rates of pilotage, on due proof thereof before the commissioners, he shall forfeit double the amount of such vessel's pilotage.

§ 1467. The owner, master, or consignee of any vessel carrying off any pilot of such vessel, and against his consent, to any port, either foreign or on the coast, shall be liable to such pilot, in an action on the case, for the payment of all reasonable expenses, and for the further sum of not exceeding three dollars a day, during the necessary absence of the pilot; *Provided*, the carrying away of such pilot be not owing to any default, misconduct, or negligence on his part, and the master of a vessel detaining a pilot on board his vessel, the wind and weather permitting him to go to sea, shall be liable to pay such pilot three dollars a day for every day he is so detained.

§ 1468. When any pilot boat, belonging to a different pilot than the one who may have conducted a vessel out to sea, takes such pilot off from such vessel, such pilot boat shall be entitled to one-third of the pilotage.

§ 1469. Whenever a vessel shall touch off the bar of Tybee, for instructions, any pilot delivering on board such vessel any letters or orders, shall be allowed full bar or Cockspur pilotage in and out.

Article 1.—Pilotage.

§ 1470. Any pilot belonging to any port in this State, meeting at sea with any vessel bound to another port within the same, shall, if capable, and thereunto required, take charge of, and pilot such vessel into such port, and shall be paid two dollars per day for every day such pilot may be on board such vessel at sea, without the bars, over and above the usual rate of pilotage, and no other pilot shall interfere while the former is willing to continue his services.

Pilot's fees for carrying vessel to another port.

§ 1471. If any vessel whatsoever, or the cargo or freight thereof, shall receive any damage or miscarriage, or be lost, through the negligence or default of any pilot, after such pilot takes charge of the same, and the claim exceeds one hundred dollars, the said pilot shall, in such case, on conviction thereof before any court of record in this State, be obliged to answer and make good to the sufferers, or the master of said vessel, all and every the damages which he shall sustain thereby.

Default of pilot—how punished.

§ 1472. All other cases of damage or difference that may arise or be made against any master or pilot, for or concerning the pilotage of any vessel, or any other matter relative to the business or care of a pilot, in any of said harbors, shall be heard and determined by the commissioners, or a majority of them, appointed for the care of the pilotage where such damage or dispute shall arise, who by their decree or order shall lawfully decide and regulate every such damage or difference, and who shall have power to enforce such decree or order by execution or warrant of distress under their hands and seals, or the hands and seals of any three of them, directed to any Sheriff or Constable of the county where such execution issues, commanding the sale of the offender's goods, or so much thereof as shall be sufficient to satisfy such execution or warrant, and all sales thereunder shall be conformable to the laws of the State in other cases of sale; and such Sheriff or Constable shall be liable to be ruled before the Judge of the Superior Court as in other cases, in term time or vacation, for any default in duly executing such process, but in case of a sentence or judgment for more than twenty dollars, an appeal may be had, as is hereinafter provided.

Other cases of damages to be settled by com'rs

§ 1473. The commissioners shall preserve, in a neatly bound book, a record of all their acts, and of the rules and regulations adopted by them for the direction and government of the pilots; but in the city of Savannah, such rules and regulations shall not be operative until approved by the city council. They must

Commissioners must keep a record of rules, &c.

Article 1.—Pilotage.

designate one of their number as chairman, and cause a record thereof to be made, and prescribe such fees for the service of the pilots, and impose such fines and penalties, not inconsistent with the provisions of this chapter, as they may deem expedient. They must also preserve upon record, a list of all persons appointed pilots by them, as well as those by them suspended.

Fees of secretary.

§ 1474. All persons interested shall have access to, and be permitted to have copies of the records, and copies thereof certified by the chairman or secretary shall be presumptive evidence of the facts therein stated. The secretary of the commissioners shall have such salary or fees as the commissioners may determine, and such salary or fees shall be paid out of fines and forfeitures, or such other fund as shall be under the control of the commissioners.

Office and records of commissioners, &c.

§ 1475. The office of the commissioners must be kept in some suitable place, of which the public shall have notice, and their books, papers and records may be kept in such office, or in the office of any court of record in the county.

Commissioners may compel attendance of witnesses.

§ 1476. When the attendance of any person shall be required as a witness before the commissioners of pilotage in any matter, or claim of which they shall have jurisdiction, it shall be the duty of their secretary, on application, to issue summonses in the nature of writs of subpoena, to be signed by him and directed to the persons whose attendance shall be required, when such persons reside in the county where such matter or claim may be depending. The summons shall express the cause, and the party at whose suit it shall be issued, and shall be served on such witnesses at least twenty-four hours before the meeting of the commissioners, to which it shall be returnable, and it shall be served by the messenger of such commissioners, or a Constable, and the return of such officer, shall be evidence of the service of the subpoena.

May punish defaulting witnesses.

§ 1477. Any witness thus summoned, whose testimony shall appear to be material, and who shall fail to appear, may be attached by the commissioners, and the attachment shall be directed to a Sheriff or Constable, and made returnable to the next Superior or Inferior Court of the county, and such court may fine such witness in a sum not exceeding one hundred dollars, unless a good excuse be made to the Judge of said court, but such witness shall nevertheless be liable to action at the suit of the party injured by such non-attendance.

Article 1 —Pilotage.

§ 1478. When any witness may be a seaman or transient person, the commissioners may issue subpoena to such witness by their Secretary, requiring such witness to appear at a time and place therein stated, before any Justice of the Peace, or of the Inferior Court of the county, to answer written interrogatories to be propounded to him.

May cite witnesses to answer interrogatories.

§ 1479. The subpoena must be served twenty-four hours before it is returnable, and notice, for the same length of time, must be given to the adverse party, or attorney, agent or consignee of the time and place of putting such interrogatories. The officer taking the depositions shall seal up and properly endorse and return such depositions, which may be offered by consent or by order of the commissioners, and shall stand in the place of the oral examination of such witness, when his personal attendance cannot be procured.

Service of subpoenas, &c.

§ 1480. The Secretary's fees, for each subpoena, shall be twenty-five cents; for each attachment, fifty cents; for examining a witness, the Justice of the Peace shall receive one dollar; the Sheriff or Constable, for serving any subpoena, shall receive twenty-five cents, and for executing and returning an attachment to court, fifty cents.

Fees for serving subpoenas, &c.

§ 1481. In any case where a pilot shall be suspended, or where a fine exceeding the sum of twenty dollars shall be imposed by any judgment or decision of the Board of Commissioners, or where the license or warrant of a pilot shall be revoked, then the person so fined, or the pilot so suspended, or whose license or warrant shall be revoked, may petition the Judge of the Superior Court of the county where such judgment or sentence may be made, setting forth, on oath, the circumstances of the case, a copy of which petition shall be served on the acting chairman or secretary of such board at least three days before the return of any rule thereon, and if, on reading such petition, the Judge shall think there is sufficient ground for the allowance of an appeal, he shall therein direct an issue to be made up between such commissioners and the appellant, which issue shall be tried by a special jury, as in other appeal cases, at the next term of the Superior Court, unless good cause be shown for a continuance; and if, upon such trial, a verdict shall be rendered in favor of the appellant, the said Judge shall make a rule remitting such fine or restoring the suspended pilot, or the pilot whose warrant or license may have been revoked as aforesaid.

Appeal from judgment of commissioners, &c.

Article 1.—Pilotage.

Commiss-
sioners to
take testi-
mony, &c.

§1482. In the case of an appeal, as aforesaid, commissions may issue to take the depositions of any person not a resident of the county, or whose oral testimony cannot be conveniently had, as in other cases, before such Superior Court, but no such commissions shall issue but upon three days' notice to the opposite party, by service of a copy of the interrogatories to be exhibited as in other cases.

Fines and
forfeitures—
how dis-
posed of.

§1483. All fines and forfeitures collected by the commissioners, shall be applied towards payment of the ordinary expenses of the board, and the residue shall be expended by the commissioners towards improving the navigation of the port or harbor where such fines and forfeitures are inflicted.

Pilots—
when to re-
ceive certifi-
cate.

§1484. No person shall receive a certificate to act as pilot until he shall have served two full years in a decked boat, and have given satisfactory evidence of character and skill, and every certified pilot shall serve eighteen months before he shall be entitled to an increased authority, but, in case of emergency, such additional pilots may be appointed, as the Mayor or other chief officer of the port may determine, the foregoing restrictions to the contrary notwithstanding.

Branch pi-
lots—how
appointed.

§1485. All branch pilots must be appointed by the commissioners, and whenever a vacancy occurs in a branch, the person who has served the longest time as an apprentice must, if deemed competent by the commissioners, be appointed to the vacancy; but no person can hold a branch who is not engaged in pilotage.

Penalty for
discharging
ballast in
harbor.

§1486. If any master of a vessel, or water-craft of any description, shall throw, or permit to be thrown from on board such vessel or water-craft, into any of the waters of any bay or harbor of this State, or within three miles of the outside bar of any such bay or harbor, any stone, gravel or other ballast, he shall forfeit a sum not less than five hundred, nor more than two thousand dollars for any such offence, and may be imprisoned not exceeding three months, at the discretion of the court, one-half the forfeiture to be paid to any one first giving information of the offence to the commissioners, and the other half to the use of the commissioners of said harbors, respectively, for improvement of navigation.

Proceeding
for violation
of preceding
section.

§1487. Upon the commissioners receiving satisfactory evidence of the offence specified in the preceding section, it shall be their duty to proceed to recover such forfeiture, by process of attachment, in the name of the State, which may be issued, as other at-

Article 1.—Pilotage.

tachments, on the oath of the informer, or of one of the commissioners, and be levied on the vessel from which the offence was committed. The vessel may be replevied by the master, owner or consignee, by giving bond, payable to the State, in double the amount of the penalty, with condition to have the vessel forthcoming to satisfy such judgment as may be rendered in the suit.

§ 1488. It shall be the duty of every pilot, having knowledge of the commission of the offence specified in the two preceding sections, to give, as soon as practicable thereafter, information thereof to the commissioners, and, failing to do so, such pilot shall be deprived of his license, and be thereafter forever disqualified for the office of pilot. Penalty against pilot for concealing such offence.

§ 1489. The City Council of Savannah shall have authority to prohibit, under proper penalties, the throwing or depositing in the Savannah river, and within the jurisdictional limits of said city, of any substance of any nature or kind which might, in any degree, lessen the depth of the water in said river, or any part thereof within said limits, and the same authority is hereby vested in the corporate authorities of the other towns, respectively, as to navigable waters within their respective jurisdictions. Incorporated towns may prohibit the discharge of ballast in navigable waters.

§ 1490. The same Boards of Commissioners are hereby authorized, in their own names, or in that of their chairman, respectively, as such, to sue for and recover, to their own use and the improvement of navigation, any forfeiture which may accrue under this chapter, which is not otherwise specifically appropriated. Suits in the name of commissioners.

§ 1491. All existing appointments of Commissioners of Pilotage, and of officers under the same, as well as their rules and regulations, not contrary to law at the time of the adoption of this Code, shall continue good and valid in law, according to their nature and terms, until superseded by authority of this Code. Present commissioners, &c., stand good.

ARTICLE II.

SEAMEN.

SECTION.	SECTION.
1492. Defaulting seamen—how punished.	1498. Penalty for such shipping, &c.
1493. Proceedings against deserters.	1499. Boarding vessel to abduct seaman.
1494. Seamen not to be credited.	1500. Abducting seaman.
1495. Sale of liquors to seamen.	1501. Harboring deserted seamen.
1496. Certificate of discharge.	1502. Illegal arrest of seamen.
1497. Shipping an article seaman.	

Article 2.—Seamen.

Penalty
against sea-
men absent-
ing them-
selves.

§ 1492. Any seaman having entered or shipped himself on board any vessel within this State, or which shall come to the same, and having signed a contract with the master or commander thereof to proceed upon any voyage therein mentioned, who shall absent himself from any such ship or vessel for twenty-four hours without leave of said master or commander, or other chief officer having command of such vessel, or who shall neglect or refuse to perform his duty on board the same, or refuse to proceed on the voyage mentioned in such contract, may be apprehended on warrant from any Justice of the Peace within his jurisdiction upon application being made to him by such master or commander under oath, and upon proof of such absence without leave, or of such neglect or refusal as aforesaid he may be committed to jail, or other secure place, for any time not exceeding thirty days, or until the sailing of such vessel, and the charge of apprehending, committing and maintaining such seaman during his confinement as aforesaid shall be paid by the complainant, and by him be deducted out of the wages due, or to be due, such seaman, but no seaman shall be received by the jailer until security shall have been given for the maintenance and jail fees of such seamen.

Proceedings
against sea-
men and ap-
prentices.

§ 1493. The Judge of the Superior Court, or Judge of any City Court, or a Justice of the Inferior Court, or Justice of the Peace of the County, or any similar officer of any seaport or county, on oath made before him that an articleed seaman or apprentice has deserted or absconded from a vessel, describing said seaman and vessel, and that he is harbored or secreted by some person, (describing him,) in a certain place (describing it,) may issue his warrant, directed to any lawful officer of the county, authorizing a search for and seizure of such person in the place designated, and to fully execute such warrant. Any person resisting such search or seizure may be fined and imprisoned at the discretion of any court having jurisdiction.

Credit not to
be given to
seamen.

§ 1494. It shall not be lawful for any person to give credit to any seaman belonging to any vessel within this State, having signed any contract to proceed therein, for any sum exceeding one dollar, except by leave of the master or commander of such vessel, on pain of forfeiture of the moneys or goods so credited.

§ 1495. It shall not be lawful for any keeper of a tavern or tippling house, or any other person selling intoxicating or spirituous liquors, to sell any such liquor to any seaman belonging to

Article 2.—Seamen.

any vessel, and who may have signed any contract, to the amount of more than thirty cents in any one day, or to entertain or suffer any such seamen to drink in such tavern or tippling house, or furnish such seamen with liquor after the hour of nine o'clock at night, unless with the consent of the master or commander of such vessel, and any person offending against any of these provisions may, on conviction, be fined in a sum not exceeding fifty dollars, or be imprisoned in the common jail for not more than thirty days.

Entertain-
ing or fur-
nishing sea-
men with
spirituous
liquors pro-
hibited.

§ 1496. Any seaman whose contract with any master or commander of any vessel, within the State, for the performance of any voyage therein specified shall be determined, may demand from him a certificate thereof, and of his discharge, and on refusal to give such certificate, without just cause, any two Justices of the Peace, upon due application, and proof thereof, may give the same, which shall be of equal force as if given by such master or commander, who shall be liable, civilly, to pay one dollar for such certificate so given by such Justices, and shall, moreover, on conviction before any court of competent jurisdiction, be liable to a fine of fifty dollars for such refusal.

Seamen may
demand cer-
tificates of
discharge.

§ 1497. No master or commander of any vessel, or other person, within this State, shall hire, receive, entertain or ship any seaman belonging to and pretending to be discharged from any vessel, without a certificate of discharge being in possession of such seaman, under the penalty of fifty dollars for every such offence, and the same penalty may be inflicted on any person keeping or attending any ferry within this State, who shall willingly transport, or suffer to be transported over such ferry any fugitive seaman not having a certificate of discharge as afore-
said.

Hiring, re-
ceiving, en-
tertaining,
or shipping
seamen pro-
hibited.

§ 1498. If any sailor boarding house keeper, a runner, or shipping master, or other person shall hire, receive, or entertain, or ship any seaman belonging to or pretending to be discharged from any vessel without a certificate of discharge being in possession of said seaman, or shall aid or be concerned in any manner in the shipping, or offering to ship such seaman, the person thus offending shall be fined and imprisoned at the discretion of the court. Any order given by such seaman for advance wages shall be void.

Penalty for
hiring, re-
ceiving, or
entertaining
seamen con-
trary to law.

§ 1499. If any person shall board any vessel in any port or harbor, or on any of the waters of this State, with intent to in-

Article 2.—Seamen.

Boarding vessel for the purpose of abduction—how punished. veigle, entice, convey away, abduct, with or without violence, or secretly carry off any articed seaman or apprentice from such vessel, or shall afford any conveyance or facility to such seaman or apprentice to leave such vessel, such person so offending shall be liable to indictment, and on conviction shall be fined, or imprisoned, or both, at the discretion of the court.

Aiding seamen or apprentices to escape—how punished. § 1500. If any person shall aid any articed seaman or apprentice to desert from his vessel, while within the waters of this State, or shall inveigle, entice, convey away, abduct or carry, with or without violence, or secretly carry off any articed seaman or apprentice from any such vessel, such person so offending shall be liable to indictment, and on conviction shall be liable to fine, or imprisonment, or both, at the discretion of the court.

Harboring seamen or apprentices. § 1501. If any person shall harbor, secrete, entertain, lodge or keep, or shall directly or indireectly suffer to be harbored, secreted, entertained, lodged or kept in or about his house or premises, any articed seaman or apprentice, knowing such seaman or apprentice to have deserted from his vessel, such person shall be liable to indictment, and on conviction, be fined in a sum of not more than five hundred dollars, or imprisoned, or both fined and imprisoned at the discretion of the court.

Vexatious arrest and detention of seaman. Code. § 1502. The law in respect to the vexatious arrest and detention of seamen, and to summary trials of causes, civil and criminal, in which seamen and the captains and consignees of vessels may be concerned, shall be as is provided in this Code, but if any provision in this Code contained shall conflict with the Code of the City of Savannah, appended hereunto, the said Code of Savannah shall prevail within the corporate limits of said City.

CHAPTER V.

INSPECTION.

ARTICLE 1. Flour, corn meal and grain.

ARTICLE 2. Wood, turpentine, timber, etc.

ARTICLE I.

SECTION.

1503. Inspectors—by whom appointed.
 1504. Bolted flour shall be merchantable.
 1505. Flour barrels—dimensions, &c.
 1506. Flour shall be inspected—when.
 1507. Fraudulently packing flour.

SECTION.

1508. Inspector cannot purchase.
 1509. Selling without inspection.
 1510. Inspector's oath.
 1511. Corn meal, corn and other grain.

§ 1503. The Inferior Courts in the several counties of this State shall have power to appoint annually, one person of good repute, to be inspector of flour in their respective counties, but the same power may be exercised exclusively in any corporate towns within their corporate limits; vacancies in such office of inspector may be filled by the appointing power as soon as may be after the happening of any vacancy.

Inspectors—
by whom
appointed.

§ 1504. All bolted wheat flour, and every cask thereof, brought to the places aforesaid for sale, shall be made by the miller or manufacturer thereof, merchantable and of due fineness, and without mixture of coarse flour, or the flour of any other grain than wheat.

Bolted flour
shall be mer-
chantable.

§ 1505. All flour barrels packed for sale shall be well made, and of good material, twenty-seven inches in length, tightend with at least ten hoops, and sufficiently nailed, with the tare plainly marked on the head thereof, and every miller or bolter shall put into a barrel the full quantity of 196 pounds of flour, and shall put into every half barrel, the quantity of 98 pounds of flour, and on failure thereof, shall forfeit and pay the sum of five dollars for each barrel or bag, to be recovered by any informer before any Justice having jurisdiction thereof, one-half thereof to go to the informer, and the other half to the county or corporation having the appointment of inspector.

Flour bar-
rels—how
made and
what they
must con-
tain.

§ 1506. All barrels, half barrels, and bags of flour brought to any place of inspection for sale, shall be submitted to the view and examination of the inspector, who shall expeditiously inspect the same by boring into the barrel, half barrel or bag, from head

Flour shall
be submit-
ted for in-
spection—
when.

Article 1.—Flour, Corn Meal and Grain.

to head or end to end, with an instrument of not more than three-fourths of an inch in diameter, to be by him provided for that purpose, and if he shall judge the same well packed and merchantable, he shall plug the hole and brand the barrel, half barrel or bag with the name of the place at which he shall be inspector, with a public brand, or mark to be by him provided for that purpose, and approved by the Inferior Court, city council or corporation, as the case may be, and shall also mark the degree of fineness which he shall determine the flour to be on inspection, which degrees shall be distinguished as follows: "extra family," "superfine," "fine," "middling," "first" or "second," for which trouble the inspector shall receive from the owner or consignee at the rate of five cents per barrel.

Fees for inspection.

Fraudulently packing flour.

§ 1507. If any person shall pack flour in an old barrel which may have been marked and branded as aforesaid, and which shall still have the brand of the inspector thereon, or shall otherwise fraudulently pack flour for sale, such person or persons, shall forfeit and pay the sum of twenty dollars for every barrel so packed, to be recovered by any informer before any Justice of the Peace or other court having jurisdiction thereof, one-half of such penalty to go to the informer, and the other half to the miller or manufacturer injured by such false packing.

Inspector cannot purchase except for his own use.

§ 1508. No inspector shall be permitted, directly or indirectly, to purchase any flour by him condemned as unmerchantable, or any other flour whatever, other than for his own or family use and consumption, under the penalty of thirty dollars for every barrel by him purchased, to be recovered by any informer before any Justice of the Peace or other court having jurisdiction, one-half of which shall belong to the informer, and the other half to the county or corporation having the appointment of the inspector.

Penalty for selling without inspection.

§ 1509. Any person who shall sell flour in or from any of the places where there is an inspector, without an inspection as aforesaid, shall forfeit and pay the sum of ten dollars for each barrel, half barrel or bag so sold, to be recovered by any informer before any Justice of the Peace or other court having jurisdiction, one-half to go to the informer, and the other half to the inspector.

Inspector's oath.

§ 1510. Every inspector, before entering on the duties of his office shall take and subscribe an oath or affirmation before the Clerk of the Council or Clerk of the Inferior Court, of which a minute shall be made, that he will faithfully perform the duties of his office, inspect all flour offered to him for inspection, and faithful-

Article 1.—Flour, Corn Meal and Grain.

ly brand and mark the barrels or bags, as by law directed. Inspectors shall be liable to indictment for any neglect of duty, and, upon conviction thereof, shall forfeit and pay a sum of not less than thirty dollars.

§ 1511. It shall be the duty of every inspector of flour to inspect Indian corn, and corn meal, wheat, and other grain in bags or in barrels, when requested by the owner or consignee to do so, and he shall brand only such as he may deem to be sound and merchantable, for which his compensation shall be three cents per bag or barrel, to be paid by the owner or consignee, as aforesaid.

Corn meal, corn, and other grain, to be inspected.

ARTICLE II.

WOOD, TIMBER, TURPENTINE, TOBACCO, GUANO, &c.

SECTION.

SECTION.

- | | |
|---|--|
| 1512. Inspectors and rules of inspection. | 1516. Turpentine barrels—dimensions of |
| 1513. Drifted timber—selling of. | 1517. How marked. |
| 1514. Penalty for buying the same. | 1518. Corporate authorities—powers of. |
| 1515. Pitch, tar, &c., to be inspected. | |

§ 1512. Inspectors may be appointed, their duties prescribed, their fees fixed, and inspection and marking regulations adopted, by the corporate authorities of any city, for the inspection of guano, and other fertilizers, tobacco, salt, pitch, tar, turpentine, rosin, fish, oil, staves, shingles, timber, wood, lumber, and liquor, and such other articles and things as are usually the subjects of inspection and measurements, and for measuring and gauging the said articles, or any of them, within the limits of said cities; and the same power may be exercised by the Inferior Court of every county, outside the limits of such town, and within the limits of such county: *Provided*, such regulations be not inconsistent with the following provisions:—

Inspectors may be appointed for any article usually inspected.

1. No person shall be permitted to inspect, measure, or gauge, except such as may be regularly appointed, under a penalty of five hundred dollars for every offence, one-half to go to the informer, and the other half to the incorporation or court having the appointment of inspectors. Every person so appointed shall be required to take an oath or affirmation faithfully to perform the duties of the office, to the best of his skill and ability, and shall, moreover, give bond and security for the faithful discharge of the

Appointees only, shall inspect.

Oath and bond of inspectors.

duties thereof. All vacancies may be filled by the appointing power.

Inspection and measurement of lumber.

2. In all seaport towns, where timber or lumber is brought for exportation, or otherwise, the same shall be inspected and measured, and bills for such measurement shall be made out in superficial measurement.

Inspector shall not be clerk, &c. of lumber mill or buyer.

3. No lumber or timber inspector, or measurer, shall, during his term of office, be or become the clerk or agent of any lumber or timber buyer, or the clerk or agent of lumber mill, on pain of forfeiture of his office, on conviction, and fine or imprisonment, at the discretion of any court having jurisdiction.

Square lumber—how measured.

4. All square timber shall be measured as follows: the length shall be counted from pin-holes, and the size from the middle of the stick, taking the smallest side and the face, throwing off fractions, and allowing one-half of the wainedge on the size and face, and other flatted timber, usually known as saw or mill logs, shall be measured one-third from the smallest end.

Refuse lumber.

5. All sticks which are rotten, hollow, split, or broken, shall be declared refuse by the inspector, and the seller shall only be allowed one-half the measurement, but if the defect be at or near the end only so much as is defective shall be declared refuse.

Length of hook to dip-rod.

6. The hook, to the dip-rod, shall not be less than one inch and three-quarters long.

Ranging timber, &c.,—when merchantable.

7. Ranging timber, scantlings and boards, shall be deemed merchantable only when they shall have square edges, and be sound, and without decay; nevertheless, if any scantling or board, to be measured and inspected, shall be split, decayed, or fractured, more than two feet and less than six feet, from the end thereof, such split, decayed, or fractured part, shall be left out and not counted in the measurement.

Length and quality of heading and shingles.

8. Heading shall be two and a half feet long, six inches broad, one inch thick on one edge, and not less than three-quarters of an inch on the other edge, sound, and free from decay, worm or knot holes; shingles to be twenty-two inches long, not less than three and a half inches wide, a half inch thick at the thick end, not decayed, and free from worm or knot holes.

Pipe, hogshead, and barrel staves—when merchantable.

9. Pipe, hogshead, and barrel staves shall be considered merchantable only when conditioned as follows: pipe staves to be at least fifty-four inches in length, three inches in breadth, and one inch thick on the thin edge, sound and free from worm or knot holes; hogshead staves to be forty-two inches long, three inches

broad, and not less than three-quarters of an inch thick on the edges, sound, and free from worm or knot holes; barrel staves to be two and a half feet long, three inches wide, and not less than three-quarters of an inch on their edges, sound, and free from worm or knot holes.

10. Any measurement or inspection, contrary to law, shall, on conviction of the offender, subject him to a fine of not more than five hundred dollars, before any court having jurisdiction, and also a forfeiture of his office.

Penalty for illegal inspection and measurement.

11. Every cord of fire wood shall measure eight feet in length, four in breadth, and four in height. Any person to whom such wood is offered for sale, who may suspect any deficiency, shall have the right to have the same measured and corded by any sworn inspector, or measurer of the place, and in case of any deficiency appearing, the seller shall, besides paying the fees of the inspector, make good the deficiency, without delay, or forfeit, before any court having jurisdiction, the sum of two dollars for every cord so deficient; in case of no deficiency appearing, the fees of the inspector or measurer shall be paid by the buyer. The corporate authorities of any town or city may make such further regulations on this subject as to them shall appear proper, to insure the objects of this section.

What is a cord of fire-wood, &c.

Fees of inspector—by whom paid.

Power of corporate authorities, &c.

§ 1513. No raft-man, or other person, shall dispose, or attempt to dispose, of any drifted timber or lumber taken up by him within this State, on pain of paying not exceeding five hundred dollars for every such offence, to be recovered in any court having jurisdiction of the same, one-half of the penalty to go to the informer, and the other to the use of the county wherein such offence may be committed, or the offender may be imprisoned not more than six months; but nothing herein contained shall prevent the finder of drifted timber or lumber from requiring and receiving from the owner reasonable compensation for delivering to the owner such drifted timber or lumber.

Penalty for disposing of drifted timber.

§ 1514. Any person detected in purchasing drifted timber or lumber, as aforesaid, except from factors or timber cutters, shall be liable, on conviction, to pay a fine of fifty dollars for every offence, or to be imprisoned for a term not exceeding six months.

Illegal purchase of drifted timber.

§ 1515. No person shall ship or put on board any vessel, for exportation, from this State, any pitch, tar, rosin or turpentine, before the same is inspected and marked; *Provided*, there be at the port of exportation a sworn inspector of such articles, on

Pitch, tar, &c., to be inspected before it is shipped.

Article 2.—Wood, Timber, Turpentine, Tobacco, Guano, &c.

pain of forfeiting one dollar for every barrel so shipped, one-half to go to the informer and the other half to the use of the town or place of exportation; the true contents and quality of every barrel of such articles must be branded on the barrel.

Quality, &c., of turpentine barrels. § 1516. Every barrel of soft turpentine shall be formed of good and sufficient staves, three-quarters of an inch thick, not exceeding five inches wide, not less than thirty, nor more than thirty-two inches long; the head not less than one, nor more than one and a half inch thick, and the barrel secured with twelve good hoops. If the turpentine be fraudulently mixed it shall be condemned by the inspector and delivered to the owner.

Barrels of turpentine—how marked. § 1517. Each barrel of soft turpentine, after inspection, if found in conformity to the foregoing provisions shall be branded or marked by the inspector as follows: the pure or virgin turpentine with the letter "V," the yellow dip "S," the hard "H."

Powers of corporate authorities. § 1518. The corporate authorities of any seaport town may make such further regulations for inspection of rosin, pitch, tar and turpentine, and for the discovery of fraud in making and vending said articles as to said authorities, respectively, shall seem proper.

ARTICLE III.

INSPECTION OF LIQUORS.

SECTION.	SECTION.
1519. Inspectors of &c.—how appointed.	1523. Fees of inspector.
1520. Duties of such inspectors.	1524. Manufacturing drugged liquors.
1521. Damaged liquors.	1525. Monthly inspections required.
1522. Evading inspection of liquors.	1526. Selling liquors without inspection.

Inspectors of liquors, &c.—how appointed. § 1519. It shall be lawful for the several city and incorporated town authorities in this State to elect or appoint an inspector of liquors, spirits and wines, and vinegar, within their respective jurisdictions, and the Inferior Court of the several counties shall have the same authority of appointment within the several counties out of the jurisdiction of the city authorities.

Oath and duty of such inspector. § 1520. Such inspector, after being duly appointed as aforesaid, and sworn by the Clerk of the Council, or Clerk of the Inferior Court, faithfully to discharge the duties of inspector, shall examine and inspect all liquors, spirits and wines, or vinegar, kept by any person within the jurisdiction of such inspector, for sale in any quantities, and if, upon such inspection, any such shall be

Article 3.—Inspection of Liquors.

found to contain any strychnine or other poisonous drug or drugs, or offensive matter injurious to health by drinking or other use, such inspector shall immediately give notice thereof to the owner, who shall immediately destroy the same in the presence of the inspector, or give bond and security to return the same to the person from whom he purchased without the limits of this State.

§ 1521. Any person who shall sell, or offer to sell, any liquor, wine or spirits, or vinegar, knowing the same to be so drugged, or after notice as aforesaid shall be given, shall be indicted in the Superior Court of the county where such offence may be committed, and on conviction thereof, shall be fined for the first offence, one hundred dollars; for the second offence, two hundred dollars; for the third offence, four hundred dollars; and for the fourth offence, one thousand dollars, and in each case be imprisoned until such fine be paid.

Penalty for
selling drugged
liquors.

§ 1522. If any person shall refuse, or in any way prevent such inspector from making such examination and inspection after a second demand made by such inspector, such person shall, upon indictment and conviction thereof, be fined and punished as in the immediate preceeding section; *Provided*, the inspector shall make the second demand in the presence of a competent witness and prove the same by said witness on the trial.

Penalty for
evading in-
spection of
liquors.

§ 1523. Such inspector shall receive, unless other rates are prescribed by the authorities appointing him, from the owner of said liquor, wine or spirits, or vinegar, for every ten gallons so inspected, five cents; for twenty gallons, ten cents; for forty gallons, fifteen cents; for eighty gallons, twenty cents; for one hundred and sixty gallons, twenty-five cents; and at the same rates and proportions upwards for any number of gallons so inspected, and he shall, if required, give a receipt and certificate therefor, and shall brand the barrels, kegs or pipes when the means are provided by the owners therefor, and he shall also receive one-half of all fine moneys arising under conviction, which shall by no means disqualify him from being a witness for the State in cases of prosecution under any of the foregoing sections.

Fees of li-
quor inspec-
tor.

§ 1524. If any person shall manufacture any drugged, poisonous or other deleterious and offensive liquors, wine or spirits, or vinegar, or adulterate any liquor, wine or spirits, or vinegar, with poisonous material, such person so offending shall be indicted in the Superior Court of the county where the offence may be committed for a misdemeanor, and on conviction therefor, shall be

Penalty for
manufacturing
drugged
liquors.

Article 3.—Inspection of Liquors.

fined and imprisoned in the common jail at the discretion of the court.

Inspection, to be monthly.

§ 1525. Such inspection shall be performed once a month, or whenever called on so to do by seller or buyer; when by the latter, he pays the fees.

Penalty for selling liquors without inspection.

§ 1526. When an inspector is appointed in any city or town, and due notice given of such appointment, any vender of liquors, in any quantity, who shall offer the same for sale before or without inspection, or a *bona fide* effort to have the same inspected, shall be guilty of a misdemeanor, and on conviction, shall be fined or imprisoned, or both, at the discretion of the court.

CHAPTER VI.

WEIGHTS AND MEASURES.

SECTION.

- 1527. Seal or stamp for weights, &c.
- 1528. Weights, &c., must be marked.
- 1529. Selling by deficient weights, &c.

SECTION.

- 1530. Standard of weights, &c.
- 1531. Clerk of I. C. to give notice.

Seal or stamp for marking weights and measures.

§ 1527. The Justices of the Inferior Court must procure, for their respective counties, a marking instrument, seal or stamp for the purpose of marking all weights and measures which the Clerk of the Inferior Court may find not to weigh or measure less than the standards established by the Congress of the Confederate States, which is the standard of this State.

Venders must have weights and measures marked.

§ 1528. All persons engaged in selling by weights and measures, shall apply to the Clerk of the Inferior Court of their respective county, and have their weights and measures so marked, and in default thereof, shall not collect any account, note or other writings, the consideration of which is any commodity sold by their weights or measures.

Selling by deficient weights or measures—how punished.

§ 1529. Any citizen may complain to the Clerk of the Inferior Court of the deficiency of any weights and measures, whether marked or not, and when done, it is the duty of said Clerk to notify the person complained of, and give him the name of the complainant, and specify a day, not more than ten days distant, when he shall submit his weights and measures to the test of the Justices of the Inferior Court, and if the complaint is found to be true, within the seller's knowledge, he shall be deemed a person selling by false weights and measures, and shall be presented by the Grand Jury as such, if no person appears and indicts.

Chapter 6.—Weights and Measures.

§1530. The Governor shall procure standards of weights and measures for each county which does not have them, and they, together with the marks provided by the Inferior Court, shall be kept in the office of their Clerk for the inspection of the citizens. Standards of weights and measures to be procured.

§1531. When such standards are obtained, it is the duty of such Clerk to give sixty days' written notice thereof at the door of the court-house, and in the public gazette where the Sheriff of the county advertises his sales. Clerk to give notice.

CHAPTER VII.

REGULATIONS FOR PARTICULAR BRANCHES OF TRADE AND AGRICULTURE.

ARTICLE 1. Cotton, Rice, etc.

ARTICLE 2. Cultivation of Rice.

ARTICLE 3. Oysters, Turtles.

ARTICLE 4. Fishing.

ARTICLE 5. Boats and Crews.

ARTICLE 6. Peddlers.

ARTICLE I.

COTTON, RICE, ETC.

SECTION.

1532. Sale of cotton and other produce.

1533. Purchaser failing to pay.

1534. Oath, &c.

1535. Weighing without oath, &c.

SECTION.

1536. Tare on rice.

1537. Tare on other articles.

1538. No deduction to be made.

1539. Weighing—how regulated.

§1532. Cotton, corn, rice, or other products sold by planters and commission merchants on cash sale, shall not be considered as the property of the buyer, or the ownership given up, until the same shall be fully paid for, although it may have been delivered into the possession of the buyer. Ownership of cotton, &c., not changed until paid for.

§1533. Any person engaged in the business of buying such commodities, either on his own account or for others, who shall buy such on sale from a planter or commission merchant 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 Penalty for failing to pay for cotton, &c.

Article 1.—Cotton, Rice, &c.

term not less than one year, nor more than five years, at the discretion of the court.

Oath of one weighing cotton and rice.

§ 1534. It shall not be lawful for any salesman, or other person in any of the cities, towns or villages of this State, or at any railroad station or depot, to weigh any bale, bag or package of cotton, tierce or half tierce of rice, or any other article of produce disposed of by weight, without first taking and subscribing an oath before some person authorized by law to administer it, that he will justly, impartially and without deduction weigh all such produce, and all other articles of produce disposed of by weight that may be shown to him for that purpose, and tender a true account thereof to the party or parties concerned, if so required. The weigher may nevertheless make such deductions for wet or other cause, which may be reasonable, when the seller or his agent shall thereto consent, and for such tare as may by law be allowed, but no tare shall ever be allowed on bales of unmanufactured cotton, except the usual deduction of two pounds from the weight of every bag of cotton having knobs or tugs thereon.

Oath to be recorded and penalty for weighing without oath.

§ 1535. Such oath, when taken, must be filed in the clerk's office of the Inferior Court of the county, and a minute made thereof, and if any person weighs such produce without having taken and filed such oath, he and the factor, or person who may employ him, are liable each twenty dollars for every bag of cotton, five dollars for every tierce of rice, twenty-five cents for every bushel of corn, and one-third the value of any other product so weighed; one-half to go to the informer, the other half to the Educational Fund of the county.

Tare on rice.

§ 1536. The tare to be allowed on rice shall be the actual tare, as nearly as can be determined, except in cases of the sale of a single tierce, half tierce, or barrel, where a tare of ten per centum shall be allowed, unless otherwise agreed on, between the buyer and seller.

Tare on other articles.

§ 1537. In other cases where tare is usually allowed, the actual tare, as nearly as the same can be ascertained, shall be allowed, except where the seller and purchaser may expressly agree upon a different rule.

No deduction to be made for turn of scales, &c.

§ 1538. It shall not be lawful for any purchaser or weigher to make any deduction from the weight of any article, for, or on account of the draft or turn of the scales or steelyard, under a penalty, for every such offence, of five hundred dollars, to be re-

Article 1.—Cotton, Rice, &c.

covered in any court having jurisdiction, one half to go to the informer, by whom the suit may be brought, and the other half to the use of the county where the offence may be committed.

§ 1539. The corporate authorities of all cities and towns may make such further regulations for the weighing of produce, of all descriptions, including fees for weighing, as in their judgment may tend to effect the objects of the foregoing provisions, and the Interior Courts of the respective counties shall have the same power, to be exercised outside the jurisdictions of said incorporated cities or towns, but, until altered by such authorities or courts, the fees for weighing shall be such as are now fixed by law.

Corporate authorities, &c., may regulate weighing.

ARTICLE II.

CULTIVATION OF RICE.

SECTION.

- 1540. Water shall not be diverted.
- 1541. Rice dams—when to be opened.
- 1542. Violating the 2 preceding sections.
- 1543. Persons injured—how redressed.
- 1544. Proceedings for redress.
- 1545. Award of freeholders.

SECTION.

- 1546. Person may drain his own land.
- 1547. Proceedings in case of obstruction.
- 1548. Dam not to be stopped—when.
- 1549. Inadequate dams.
- 1550. Compensation of freeholders.

§ 1540. No person shall be permitted to make or keep up any dam to stop the natural course of any water, so as to overflow the lands of any other person, without his consent, nor shall any person stop or prevent any water from running off of any person's field, whereby such person may be prevented from planting in season, or receive any other injury thereby, nor so as to turn the natural course of any water from one channel or swamp to another, to the prejudice of any person.

Water not to be diverted.

§ 1541. Every person who shall keep water, during the winter, upon grounds where rice will be planted the ensuing spring, shall, annually, by the fifth day of March, open the dams which keeps up the water, and let off the same.

Rice dams—when to be opened.

§ 1542. Upon the violation of the provisions of either of the preceding sections, the person offending forfeits five hundred dollars, upon the complaint of any person interested; one-half of the recovery goes to the informer, the other to the Educational Fund of the county.

Penalty for violating the two preceding sections.

§ 1543. When any person has thus offended in the manner aforesaid, a person affected thereby may apply to a magistrate

Person injured may apply for warrant of survey.

who has jurisdiction in the district, for a warrant of survey, and shall also, thereupon, notify the defendant of the complaint, of the time and place of meeting.

Proceedings
under the
warrant.

§ 1544. The magistrate shall have summoned three disinterested freeholders, of the neighborhood or district where the cause of complaint exists, one of whom must be chosen by each of the parties, and the other by the magistrate, but if the defendant neglects, before the day of meeting, to make a choice, the magistrate may choose for him; they must be sworn before such magistrate, to determine the matter in dispute justly and impartially; shall proceed to view the obstruction, and are empowered to do so without the attendance of either party, unless such are providentially prevented, and must report their proceedings to the magistrate without delay.

Award of
freeholders.

§ 1545. If, on view thereof, a majority of said freeholders decide that said obstructions do or may prevent the party complaining from planting his crop of rice in due time, or otherwise injures him, they shall furnish an immediate remedy, in any way they think necessary, to give the most effectual relief; the losing party paying the costs of the proceeding.

Drainage not
herein pro-
hibited.

§ 1546. Such proceeding does not apply to any person who shall have made through his own land sufficient drainage, of which said freeholder shall be the judge, to carry off the waters passing through the same, in as expeditious a manner as they could have passed through the natural course or channels if no such banks had been erected.

Proceedings
in case of
any obstruc-
tions.

§ 1547. Any person between said fifth of March and the first day of September, of each year, may apply in like manner for a warrant of survey on any obstructions which may impede the conveying of any surplus water on his rice grounds, and which by remaining thereon may prove injurious, or shall keep up any dam which shall stop the water so as to overflow his lands to his injury. In such cases the proceedings are the same as heretofore set forth.

Penalty for
stopping up
dam when
opened by
authority.

§ 1548. If any person shall by himself, or through his orders, or by his agent, stop up any dam or replace any obstruction which has been opened or removed, or which has been thus done by himself on the said fifth of March until the first day of July next thereafter, or shall obstruct or hinder the opening of any dam or removing of obstructions decided to be opened or removed, he forfeits, as aforesaid in this chapter, one thousand

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dollars for each offence to the person aggrieved, besides his liability for the actual damages.

§ 1549. When any dam has been made to form reservoirs of water, without sufficient waste-way, and is inadequate to sustain the weight of water, the owner of such dam shall immediately cause the same to be enlarged, strengthened, or erected in a substantial manner, with a sufficient waste-way. If on a survey by freeholders he neglects to make the improvements they require, within the time they may designate, he shall forfeit to any person injured, or liable to be injured, as last aforesaid.

§ 1550. The freeholders are entitled each to three dollars per day, and if duly summoned, and they fail attend, without providential cause or necessary absence from the district, they forfeit to either party one hundred dollars. The magistrate and witnesses, if any, receive the costs allowed in the trial of forcible entries and detainers.

ARTICLE III.

OYSTERS, TURTLES, &c.

SECTION.

1551. Oysters—manner of taking.
1552. Violating preceding section.
1553. Planted oyster beds protected.

SECTION.

1554. Exclusive right of land owner.
1555. Turtles—when to be taken.
1556. Violating three preceding sections.

§ 1551. It shall not be lawful to take or catch any oysters in any of the waters of this State with or by a scoop, rake, drag or dredge, or by the use of any other instrument than the oyster tongs heretofore in general use for taking oysters, and every person taking oysters, in violation of law, shall forfeit such sum for every offence as the court having jurisdiction may determine, and shall forfeit to the State the boat or vessel, employed in such unlawful business, her tackle, apparel and furniture.

§ 1552. On complaint made upon oath before any Judge or Justice of this State, in any county where the offence may be committed, of the violation of the provisions of the foregoing section, such officer shall issue his warrant for the arrest of the offender, and shall commit, or let to bail, according to law, and in such warrant authority shall be given for the arrest of every such boat, and such boat, her tackle, apparel and furniture shall not be released, except upon bond, with good security, for the forthcoming of such vessel and appurtenances to answer any

Article 3.—Oysters, Turtles, &c.

judgment of forfeiture. In case such boat and appurtenances be not replevied within one month after arrest the same may be sold by order of such Judge or Justice and the proceeds shall be paid into the office of the Superior Court of the county, there to await the order of said court.

Planted oyster beds protected

§ 1553. Where any person having taxable lands upon the banks or shores of any of the rivers or creeks of this State shall plant beds of oysters upon them, it shall not be lawful for any other person to take from such beds of oysters; *Provided*, the same shall be distinctly staked or otherwise marked.

Exclusive right of certain land owners to oyster beds.

§ 1554. When oyster banks, or beds of oysters, or natural formation, be within rivers or creeks of this State, not exceeding one hundred and twenty feet in width, and not used for purposes of navigation, the persons having the ownership of the lands upon both sides of such creeks or rivers shall have the exclusive right to the usufruct of such banks or beds of oysters as aforesaid.

Turtles—when to be taken.

§ 1555. It shall not be lawful to take terrapins and turtles within tide water, at any time, other than from the first day of May to the first day of September.

Violation of the three preceding sections—now punished.

§ 1556. For any violation of the three preceding sections the offender shall be subject to a penalty of not less than fifty nor more than five hundred dollars.

ARTICLE IV.

FISHING.

SECTION.

1557. Fishing regulated.

1558. Violating preceeding section.

SECTION.

1559. Vessels engaged in fishing.

Fishing regulated.

§ 1557. It shall not be lawful for any person to inhabit, occupy or reside in any vessel, ark or flat on any river of this State which shall not be engaged in the lawful commerce of the same, in the carriage or transportation of goods or produce to or from market, unless owned by the proprietors of the shores, or their lessees; *Provided*, nothing contained in this and the previous section shall be construed to prevent the owners of the land, on said rivers or their lessees, from taking fish in the river opposite their banks; but no seine shall be permitted to be used in said rivers, either by such owners or their lessees, from sunset on Sat-

Article 4.—Fishing.

urday to sunrise on Monday; *And provided, also,* that every lease or license to fish shall be recorded within ten days after the granting thereof in the clerk's office of the Superior Court of the county where the land lies.

§ 1558. Every offence against any of the foregoing provisions shall, if committed by a white person, be punished by a fine not exceeding two hundred dollars, to be applied to educational purposes; if committed by a slave or free person of color, by whipping, not less than thirty lashes. Penalty for violating the preceding section.

§ 1559. It shall be lawful for all patrols, and all civil officers, at all times, to visit and search all vessels, covered flats, or arks, and boats engaged in fishing, or trading illegally with slaves, or disseminating incendiary publications on any river of this State, and to cause offenders therein found against any of the laws of this State to be committed or bound over to answer for offences against such laws. Patrols may visit and search vessels, &c.

ARTICLE V.

BOATS AND CREWS.

SECTION.

- 1560. Bills of lading must be granted.
- 1561. Penalty for refusing such bills.

SECTION.

- 1562. Traffic with hands, &c., prohibited.
- 1563. Shipping of articles prohibited.

§ 1560. It shall be the duty of all owners or agents of boats employed in the navigation of the navigable waters of this State, to grant to each and every boat, respectively, previously to its departure from the wharf or landing, a certificate or bill of lading, showing its destination, contents, and the name of its captain or patroon, and consignee, which certificate or bill of lading shall at all times be subject to the examination of any free white person requiring the same, and no person of color shall be captain or patroon of such boat. Owners of boats may grant bill of lading, &c.

§ 1561. Any such owner or agent neglecting or refusing to furnish certificate or bill of lading, and any such captain or patroon refusing to exhibit the same on demand as aforesaid, may be severally indicted, and for every offence, be fined in a sum not exceeding fifty dollars, and any owner or agent as aforesaid, employing any person of color as captain or patroon as aforesaid, shall on conviction, be fined at the discretion of the court, one-half the penalty in any such case to go to the informer, and the Penalty for not granting and exhibiting bill of lading.

Article 5.—Boats and Crews.

other half to the use of the county where such conviction takes place.

Owner of boat not to allow illegal traffic with hands or negroes.

§ 1562. It shall not be lawful for any owner, captain or patroon of a boat, navigating any of the navigable rivers of this State, to suffer or permit any boat hand or negro to put on board such boat, any corn, cotton, rice, stock, poultry or other articles that may by law be prohibited, as an article of traffic to such boat hand, as the property of such boat hand, nor shall such owner or patroon suffer the boat hands or other negroes on board such boat to barter or trade the one with the other, in any such article or articles of produce under any pretext whatever, under penalty of fine and imprisonment at the discretion of the court, on conviction of the party for violating any of the foregoing provisions.

Owner not to allow articles shipped, unless in bill of lading.

§ 1563. No owner, captain or patroon of such boat, shall permit any such boat hand to take with him any such articles, unless the same shall be stated in such certificate or bill of lading, and be intended for such negro's own use, and such articles shall be immediately under the direction of such owner, captain or patroon, or the agent of the owner, under penalty of fine and imprisonment, at the discretion of the court for every offence against any of said provisions.

ARTICLE VI.

PEDDLERS.

SECTION.

- 1564. License to peddle—how obtained.
- 1565. License—when unnecessary.
- 1566. Goods not to be sold by sample.
- 1567. Qualification, &c., of peddler.

SECTION.

- 1568. Each vehicle must be licensed.
- 1569. License—power of J. I. C. to grant.
- 1570. Citizens only can obtain a license.
- 1571. Indictment and trial.

License to peddle.

§ 1564. Every peddler or itinerant trader, by sample or otherwise, in any article not manufactured in this State, must apply to the Clerk of the Inferior Court of each county where he may desire to trade, for a license, which shall be granted to him on the terms the Justices of the Inferior Court have or may impose. If they have made no rule, such Clerk shall immediately inform such Justices. They are authorized to impose such tax as they may deem advisable; *Provided*, it is not less than fifty dollars, to be used for county purposes. The license extends only to the limits of the county.

Article 6.—Peddlers.

§ 1565. None of the provisions of this article shall extend to Exceptions. persons selling the agricultural products of any slaveholding State, nor to persons selling agricultural implements.

§ 1566. A person, not a citizen of this State, shall not sell any article, not manufactured in this State, by sample. Goods not to be sold by sample.

§ 1567. The peddler shall furnish said Clerk with evidence of his good character, and shall take and subscribe before him this oath: "I swear that I will use this license in no other county than the one for which it is granted, nor suffer any person to use it in my name, and that I am a citizen of this State. So help me God." Said oath and license must be entered in the book kept for that purpose, and the license must contain a description of the person of the peddler. Qualifications and oath of peddler.

§ 1568. There shall be separate licenses for every wagon, cart, or other vehicle (or each horse, if the peddling is done on horseback) employed or used in vending such goods, wares or merchandise, which shall be shown to any officer, civil or military, demanding it, and, on failure or refusal so to exhibit, the peddler forfeits five hundred dollars to be recovered on suit of the informer—one-half to go to the informer, the other to the Educational Fund of the county. Must be a license for each vehicle.

§ 1569. The Justices are authorized to grant licenses to peddle to indigent and infirm persons upon such terms as they, in their discretion, may impose. Authority of J. I. C.

§ 1570. A foreigner, not a citizen, shall not be granted license to peddle, unless he shall have declared his intention to become a citizen, and he shall swear to such fact, instead of that he is a citizen. Foreigners may not be licensed.

§ 1571. On the trial of a foreigner for illegal peddling, whether with or without license, the State is only required to prove the peddling, and the foreigner must show, in defence, his eligibility. In indictments the onus is on defendant, &c.

TITLE XVII.

SALARIES AND FEES OF OFFICERS.

CHAPTER I.

OFFICERS CONNECTED WITH THE EXECUTIVE DEPARTMENT.

SECTION.

1572. Salaries of Executive officers.

SECTION.

1573. Pay of those without fixed salaries.

Salaries of Executive officers.

§ 1572. The salaries per annum of such officers, respectively, are as follows:

The Governor,.....	\$ 4000 00
The Governor's Secretaries, each,.....	1250 00
The Governor's Messenger,.....	500 00
The Comptroller General,.....	2000 00
The State Treasurer,.....	2000 00
The Secretary of State,.....	1600 00
The Surveyor General,.....	1600 00
The State Librarian,.....	800 00

Pay of officers whose salaries are not fixed.

§ 1573. All persons employed by the Governor, for whom no compensation is prescribed, are paid, according to his discretion, out of the money appropriated therefor. If no money is thus appropriated, and the employment is indispensable, he has the privilege to pay them out of the contingent fund.

CHAPTER II.

OTHER OFFICERS APPOINTED BY THE GOVERNOR.

SECTION.

1574. Pay of officers appointed, &c.

SECTION.

1575. Governor may fix pay, &c.

Pay of officers appointed by Governor.

§ 1574. The salaries per annum of such officers, respectively, are as follows:

The Trustees of the Lunatic Asylum, each,.....	\$ 100 00
The Principal Keeper of the Penitentiary,.....	1600 00
The Assistant Keeper of the Penitentiary,.....	800 00
The Book-Keeper of the Penitentiary,.....	1000 00
The Physician of the Penitentiary,.....	500 00
The Chaplain of the Penitentiary,.....	150 00
The Military Store-Keeper at Savannah,.....	300 00
The Military Store-Keeper at Milledgeville,.....	150 00

Chapter 2.—Other Officers appointed by the Governor.

§ 1575. If the Governor establishes other places of keeping the military stores of the State, he may regulate the salaries of all the keepers thereof, so as the compensation will be in proportion to their respective duties and responsibilities, which, when done, shall be reported to the General Assembly.

Governor may fix the pay of certain officers.

CHAPTER III.

OFFICERS APPOINTED BY THE TRUSTEES OF CERTAIN INSTITUTIONS, WHO ARE PAID IN WHOLE, OR IN PART, FROM THE STATE TREASURY, OR OUT OF STATE APPROPRIATIONS.

SECTION 1576. Salary of officers of Asylum, &c.

§ 1576. The salaries per annum of such officers, respectively, are as follows:

The Superintendent and Principal Physician of the Lunatic Asylum,.....	§ 2500 00
The Assistant Physician,.....	1250 00
The Superintendent of the Georgia Military Institute,.....	2500 00

Salary of officers of Asylum, &c.

CHAPTER IV.

OFFICERS CONNECTED WITH THE LEGISLATIVE DEPARTMENT.

SECTION 1577. Salary and fees of Legislative officers.

§ 1577. The salaries, per session, of the officers connected with said department, who receive such, and which are embraced in the appropriation for the pay of officers and members of the General Assembly are—

The Secretary of the Senate,.....	\$500 00
The Clerk of the House of Representatives,.....	500 00
The fees of said officers are—	
For every extract of a private nature, per copy sheet,...	15
“ Certifying an extract of a private nature,.....	50
“ Certifying an act for the benefit of an individual, or corporation, or society,.....	3 00

Salaries and fees of Legislative officers.

CHAPTER V.

OFFICERS CONNECTED WITH THE JUDICIAL DEPARTMENT.

SECTION.	SECTION.
1578. Salaries of Judges & Sol's. Genl.	1580. Fees of Attorney General.
1579. Certificate of service.	1581. Fees of Sol. Gen. Supreme Court.
<p>§ 1578. The salaries, per annum, of such officers, are as follows:—</p>	
The Judges of the Supreme Court, each,.....	\$3500 00
The Reporter of the Supreme Court,.....	1000 00
The Judges of the Superior Courts, each,.....	2500 00
The Solicitors General of the several Circuits, each,..	225 00
<p>The fees of such officers are as follows:—</p>	
1. Solicitor General—	
For each person prosecuted to conviction for a capital offence,.....	50 00
For each person prosecuted to conviction for any other felony, and for any violation of the laws against gambling,.....	25 00
For prosecution to conviction for furnishing liquor to slaves,.....	15 00
For each person indicted or presented, except in cases of conviction, as provided above,.....	5 00
For each proceeding to enforce a recognizance,.....	5 00
For every amount collected on such proceedings, five per cent.	
For every proceeding instituted to forfeit a charter,..	100 00
For services in the Supreme Court—	
<i>First</i> , In capital cases,.....	50 00
<i>Second</i> , Other felonies,.....	30 00
<i>Third</i> , All other cases,.....	15 00
<i>Fourth</i> , For litigated recognizance, double fees and commissions.	
For drawing a <i>capias</i> against a person indicted or presented and not bound over,.....	50
For drawing a <i>capias</i> against each defaulting juror,..	50
For entering a <i>nolle prosequi</i> ,.....	25
For attending at Judge's Chamber to take the affidavit of any person in criminal cases,.....	1 00
For drawing an affidavit, or any instrument of writing, per copy sheet,.....	10

Salaries of Judges and Solicitors General.

Fees of Solicitor General.

Article 5.—Officers connected with the Judicial Department.

For plain collections for the State, five per cent.

For litigated collections for the State, 10 per cent.

For services in cases not mentioned, where the State is an interested party, at the discretion of the Governor, not exceeding 50 00

Certificate of services.

§ 1579. They shall not be paid fees for litigation, without the certificate of the presiding Judge that they are properly and faithfully claimed as such, nor shall they be entitled to fees on any bill ignored by the Grand Jury, nor on any bill for any species of gaming, or furnishing liquor to negroes, where the same is entered *vol. pros.*

Cases in which no fee is allowed.

§ 1580. The Solicitor General, who, by virtue of his office, is Attorney General, has the following fees:—

Fees of Attorney General.

For every written opinion he is legally required to make, \$25 00

For prosecuting a Solicitor General, the payment of his necessary expenses, and 50 00

For services in any case where the State has an interest, and his services are required, the payment of his necessary expenses, and 50 00

For suits for and collection of money, on account of the State, out of his circuit, when litigated, ten per cent. upon amount collected, and five per cent. if not collected—if not litigated, fees of Solicitor General.

For any service performed, for which a fee is not prescribed, the Governor may pay him what he deems reasonable and just, and report the same to the General Assembly.

§ 1581. The fees of the Solicitors, for services rendered in the Supreme Court, shall be paid by the State, on the warrant of the Governor, in all cases when the Solicitor shall present the certificate of the Clerk of the Supreme Court, as to the services, and of the Clerk of the Superior Court to the fact that the defendant was acquitted, or was unable to pay the costs.

Fees of Solicitor in Supreme Court.

PART II.
CIVIL CODE.

TITLE I.

OF PERSONS.

CHAPTER 1. Different kinds of persons, their rights and status.

CHAPTER 2. Of domicile, and the manner of changing the same.

CHAPTER I.

OF THE DIFFERENT KIND OF PERSONS, THEIR RIGHTS AND STATUS.

ARTICLE 1. Of citizens.

ARTICLE 2. Of residents and aliens.

ARTICLE 3. Of slaves and free persons of color.

ARTICLE 4. Of corporations.

ARTICLE I.

OF CITIZENS.

SECTION.

1582. Natural and artificial persons.

1583. Division of natural persons.

1584. Citizens.

1585. Rights of citizens.

1586. Exercise thereof.

SECTION.

1587. Females.

1588. Minors.

1589. Disqualification from crime.

1590. Insane persons.

Natural and
artificial per-
sons.

§ 1582. Persons are either natural or artificial—the latter are the creatures of the law, and except so far as the law *forbids* it, subject to be changed, modified or destroyed at the will of their creator—they are called corporations.

Division of
natural per-
sons.

§ 1583. Natural persons are distinguished according to their rights and status into 1, citizens; 2, residents not citizens; 3, aliens; 4, slaves; 5, free persons of color.

Citizens.

§ 1584. The persons to whom belong the rights of citizenship and the mode of acquiring and losing the same, have been specified in a former article.

Rights of.

§ 1585. Among the rights of citizens are the enjoyment of personal security, of personal liberty, and private property, and

Article 1.—Of Citizens.

the disposition thereof, the elective franchise, the right to hold office, to appeal to the courts, to testify as a witness, to perform any civil function, and to keep and bear arms.

§ 1586. All citizens are entitled to exercise all their rights as such, unless specially prohibited by law. Exercise thereof.

§ 1587. Females are not entitled to the privilege of the elective franchise, nor can they hold any civil office or perform any civil functions, unless specially authorized by law, nor are they required to discharge any military, jury, police, patrol or road duty. Females.

§ 1588. The law prescribes certain ages at which persons shall be considered of sufficient maturity to discharge certain civil functions, to make contracts, and to dispose of property. Prior to those ages they are minors, and are for that disability unable to exercise these rights of citizens. Minors.

§ 1589. Citizens under conviction by a court of this State for a felony are incapable of exercising the elective franchise pending the execution of their sentence. And all persons, citizens or otherwise, convicted of perjury, false swearing or forgery shall be incapable of testifying as a witness pending the execution of their sentence. Disqualification from crime.

§ 1590. All persons *non compos mentis*, either from birth or from subsequent causes, constantly or periodically, or from age, infirmity, drunkenness, or otherwise incapable of managing their affairs, have their persons and estates, or either of them, placed in the control of guardians. Such persons retain all the rights of citizens, which they have the capacity to enjoy, and which are compatible with their situation. Insane persons.

ARTICLE II.

OF RESIDENTS AND ALIENS.

SECTION.

- 1591. Rights of citizens of C. S.
- 1592. Aliens.
- 1593. Rights of Aliens.
- 1594. As to realty.

SECTION.

- 1595. Rights to sue and testify.
- 1596. Liens.
- 1597. Privileges of certain Frenchmen.
- 1598. Militia duty.

§ 1591. Such citizens of the other States of this Confederacy as are recognized as citizens of the Confederate States by the Constitution thereof, shall be entitled while residents of this State to all the rights of citizens thereof, except the elective franchise and Rights of citizens of C. S.

Article 2.—Of Residents and Aliens.

the right to hold office, and to perform such civil functions as are confined by law to citizens of this State.

Aliens. § 1592. Aliens are the subjects of foreign governments not naturalized under the laws of the Confederate States.

Rights of aliens. § 1593. Aliens the subjects of governments at peace with the Confederate States, and this State, so long as their governments remain at peace, shall be entitled to all the rights of citizens of other States resident in this State, except to hold and own real estate for a longer period than a lease from year to year.

As to realty. § 1594. Adult female aliens, minor aliens, and aliens who have filed their petition to become citizens under the laws of the Confederate States, shall have the privilege of purchasing, holding and conveying real estate in this State.

Rights to sue and testify. § 1595. The free white citizens of other States of the Confederacy, or of foreign States at peace with this State, and friendly Indians, shall by comity be allowed the privilege of suing in our courts or testifying as witnesses therein, so long as the same comity is extended in their courts to the citizens of this State.

Liens. § 1596. Aliens may receive and enforce liens by mortgage or otherwise on real estate in this State.

Privileges of certain Frenchmen. § 1597. In accordance with the recommendation of the Congress of the United States expressed in the resolution passed on 14th January, A. D., 1780, the citizens of the French Government shall continue to have the privilege of disposing of and settling their estates within this State, as provided in the act of this State, approved February 22d, A. D., 1785.

Militia duty. § 1598. Residents, not citizens, and resident aliens, shall not be liable to militia duty, except so far as in repelling local invasions or suppressing insurrections.

ARTICLE III.

OF SLAVES AND FREE PERSONS OF COLOR.

SECTION 1. Of slaves.

SECTION 2. Of free persons of color.

SECTION I.

OF SLAVES.

SECTION.

1599. Definition of slave.
 1600. Presumption of slavery.
 1601. Mulatto.
 1602. Chattels.
 1603. Natural rights.
 1604. Dominion of third persons.

SECTION.

1605. Acquisition of slave.
 1606. Property of slaves.
 1607. Children follow their mother.
 1608. Free person may sell himself, &c.
 1609. Importation of slaves.
 1610. American Colonization Society.

§ 1599. A slave is one over whose person, liberty, labor and property another has legal control. Definition of slaves.

§ 1600. All negroes and mulattoes are deemed, and are hereby declared to be "*prima facie*" slaves, and it rests upon those alleging freedom to prove it. Presumption of slavery.

§ 1601. A mulatto is one in whose veins there is at least one-eighth of negro blood. Mulatto.

§ 1602. All slaves are chattels personal, and to be governed by the same laws, except in cases expressly provided by statute, or where the nature of the property requires a modification of the ordinary rule. Chattels.

1603. The laws of nature guarantee to every man the right to his life and his limbs, unless forfeited for crime. The state of slavery debars no one of this right. Natural rights.

§ 1604. While the slave is under the dominion of his master, third persons have no right of dominion over him, farther than the laws give such right for police purposes. Dominion of third persons.

§ 1605. A slave cannot acquire or hold property. All his acquisitions belong to his master. Gifts to him accompanied by delivery, accrue to the benefit of the master; without delivery they cannot be enforced by law. Acquisition of slaves.

§ 1606. All property held by a slave, with the consent of the master, is subject to the will of the master at any time. Property of slave.

Section 1.—Of Slaves.

Children follow the mother.

§ 1607. The children of all female slaves shall follow the condition of their mother, and shall belong to the person holding title to the mother at the time of their birth. If there be several estates in the mother, the same shall attach to the offspring.

Free person may sell himself into slavery.

§ 1608. A free person of color, over twenty years of age, may voluntarily sell him or herself into slavery. In all such cases the sale must be made openly at a regular term of the Inferior Court of the county, when the Justices of said court shall privately examine such free persons of color to satisfy themselves of his or her free consent. A record shall be made of such sale in the minutes of said term, and also in the book of registry of free persons of color in said county.

Importation of slaves.

§ 1609. Slaves may be brought into this State from any other slaveholding State of this Confederacy; but no negroes, or other slaves, shall be imported into this State either as slaves or apprentices, from their native land, or any foreign country; and all such negroes, so illegally imported into this State and placed under the control of the Executive of this State, shall be sold by his order under such regulations as he may prescribe; one-fourth of the proceeds of such sale shall be given to the person or persons instrumental in causing the said negroes to be seized under the Acts of Congress, and the remainder shall be paid into the treasury of this State.

American Colonization Society.

§ 1610. If prior to said sale the American Colonization Society shall voluntarily propose to take possession of such negroes, and at their own expense colonize the same in Africa, the Governor is authorized to deliver the same to them.

SECTION II.

OF FREE PERSONS OF COLOR.

SECTION.

- 1611. Who are.
- 1612. Rights of free person.
- 1613. Included in slave laws.
- 1614. Immigration prohibited.
- 1615. Residence in free State.
- 1616. Colored seamen.

SECTION.

- 1617. Registry proceedings.
- 1618. Objections.
- 1619. Registry—what it shall contain.
- 1620. Proceeding for failure.
- 1621. Absence of six months.
- 1622. Discretion of Inferior Court.

Who are.

§ 1611. Free persons of color are either emancipated slaves, or their descendants, or such persons as shall have at least one-eighth of negro blood in their veins.

Section 2.—Of Free Persons of Color.

§ 1612. The free person of color is entitled to no right of citizenship, except such as are specially given by law. His status differs from that of the slave in this: No master having dominion over him he is entitled to the free use of his liberty, labor and property, except so far as he is restrained by law. Rights of free persons.

§ 1613. All laws enacted in reference to slaves, and in their nature applicable to free persons of color, shall be construed to include them, unless specially excepted. Included in slave laws.

§ 1614. No free person of color, non-resident of this State, shall be allowed at any time to come within the limits of this State, regularly articleed seamen or apprentices arriving in any ship or vessel excepted. The exception above, in favor of articleed seamen and apprentices, shall not apply if found within this State twenty days after the departure of the vessel upon which they arrived, or after his or their discharge from such vessel. Immigration prohibited.

§ 1615. No free person of color, resident in this State, who shall sojourn for a period longer than six months in a non-slaveholding State, shall be permitted to return to this State, and such person so returning shall be treated and dealt with as a non-resident free person of color as provided in the foregoing section. Residence in free State.

§ 1616. Colored seamen arriving in this State, from any non-slaveholding State, shall be subject to the municipal regulations of the port, or city, or town near or in which the vessel may be with which they are connected; and such municipal authorities are authorized, in addition to such regulations, to require such bond of the captain, or other officer of such vessel, as may be necessary for the due execution of their ordinances. Colored seamen.

§ 1617. Every free person of color, over the age of sixteen years, resident in this State, shall on or by the first day of July next after the adoption of this Code, and all those under that age within one year after his or her arrival at said age, apply to the Ordinary of the county of his or her residence and demand to be registered as a free person of color; and upon a change of the residence of such free person of color into another county such demand shall be made in such county within one year after such change of residence. If such free person of color has been heretofore adjudged or recognized by the court of the county as free, and a guardian appointed for him or her, the Ordinary may immediately enter his or her name on the registry and grant a certificate of such registry to the applicant. If such free person has not thus been adjudged and recognized, the said Ordinary Registry proceedings.

Section 2.—Of Free Persons of Color.

shall enter his application on the docket of said court, and give notice of the same at the court house door, and also written notice to the person with whom such applicant is then residing. At the next term of said court, if no objection is filed and no claim of ownership is made to said applicant, the said court shall hear evidence *ex parte* as to the fact of such applicant being a free person of color, of which fact evidence of five years' uninterrupted enjoyment of liberty within this State shall be sufficient *prima facie* proof, and if satisfactory evidence be produced the court shall register such applicant as a free person of color, and shall immediately take steps to have some proper person appointed guardian of such applicant. If the evidence be not satisfactory the court shall refuse the application and leave the applicant to the penalty hereinafter proscribed.

Objections,
Proceedings
thereon.

§ 1618. If objection be filed to such registry, or a claim of ownership be interposed, an issue shall be made and a guardian *ad litem* appointed by the court for such applicant, which issue shall be tried by the Ordinary as other cases pending in said court, and an appeal allowed to either party to the Superior Court of said county.

Registry—
what it shall
contain.

§ 1619. The Ordinary in registering each free person of color, shall state his name, age, parentage, place of nativity and residence, his occupation or pursuit, together with as accurate a description of his personal appearance as possible. And the registry so kept shall be always open to the inspection of all persons. The registry heretofore kept by the Clerks of the Inferior Court shall be turned over to the Ordinaries.

Prosecution
for failure.

§ 1620. Every free person of color failing to comply with the provisions of section 1617, may be proceeded against in the same manner, and subject to the same penalties as are hereinafter proscribed in cases of non-resident free persons of color coming into this State, which prosecution may be repeated until such free person shall cause his name to be registered as aforesaid.

Absence of
six months.

§ 1621. A free person of color, registered as aforesaid, by an absence of more than six months from this State, shall lose all the benefits of such registration, and shall not be permitted again to have the benefit of this law.

Discretion
of Ordinary.

§ 1622. The Ordinary shall inquire into the character of applicants for registration, and shall have power and discretion to refuse the right to any such as have a bad character.

Section 1.—Nature and kind of Corporations.

ARTICLE IV.

OF CORPORATIONS.

SECTION 1. Their nature and kinds.

SECTION 2. Their creation.

SECTION 3. Their powers and liabilities.

SECTION 4. Their dissolution.

SECTION I.

THEIR NATURE AND KINDS.

SECTION.

1623. Definition.

1624. Public and private.

SECTION.

1625. Public.

1626. Private.

§ 1623. A corporation is an artificial person created by law for specific purposes, the limit of whose existence, powers and liabilities is fixed by the act of incorporation, usually called its charter. Definition.

§ 1624. Corporations are either public or private. Public or private.

§ 1625. A public corporation is one having for its object the administration of a portion of the powers of government, delegated to it for that purpose—such are municipal corporations. Public.

§ 1626. All others are private, whether the object of incorporation be for public convenience or individual profit, and whether the purpose be, in its nature, civil, religious or educational. Private.

SECTION II.

THEIR CREATION.

SECTION.

1627. By whom created.

1628. Foreign corporations.

1629. Organization under order of court.

SECTION.

1630. Manufacturing corporation.

1631. Companies for direct trade.

§ 1627. The power to create corporations in this State vests only in the General Assembly, by whom all charters, either directly or indirectly, must be granted. By whom created.

§ 1628. Corporations created by other States or foreign governments, are recognized in our courts only by comity, and so Foreign corporations.

Section 2.—Creation of Corporations.

long as the same comity is extended in their courts to corporations created by this State.

Organization
under order
of court.

§ 1629. A private corporation, for any purpose whatever, except banking or insurance, may be created in this State by complying with the following provisions:

Petition.

1. A petition by the persons desiring a charter to either the Superior or Inferior Court of the county where a majority of the incorporators reside, or in which they may desire to transact business, setting forth the object of their association, and the privileges they desire to exercise, together with the name and style by which they desire to be incorporated, which petition, by order of said court, shall be entered in full upon its minutes.

Order.

2. If, upon hearing such petition, the court shall be satisfied that the application is legitimately within the purview and intention of this Code, it shall pass an order declaring the said application granted, and the petitioners and their successors incorporated for and during a term not exceeding (fourteen) years, with the privilege of renewal at the expiration of that time, according to the provisions above set forth. A certified copy of this petition and order under the seal of the court, shall be evidence of such incorporation in any court in this State.

Individual
liability.

3. The individual members of such corporations, whenever the object of the association is for the purpose of trading or transacting business for profit, shall be jointly and severally bound for the ultimate payment of all the contracts of said companies, incurred while they are members of the same.

Fees.

4. The Clerk of the court, for his services, shall receive the usual fees allowed for similar services in other cases.

Powers.

5. Corporations thus created may exercise all corporate powers necessary to the purpose of their organization, but shall make no contract or purchase, or hold any property of any kind, except such as is necessary in legitimately carrying into effect such purpose, or for securing debts due to the company.

Manufacturing
corporations.

§ 1630. A private corporation, for the purpose of manufacturing, may be created without the stockholders incurring an individual liability for its indebtedness by complying with the following provisions:

Petition.

1. A declaration by the applicants, specifying the objects of their association, and the particular business they propose to carry on, together with their corporate name, and the amount of capital to be employed by them, and the time, not exceeding thirty

Section 2.—Creation of Corporations.

years, for which they desire to be incorporated, which declaration shall be signed by all the stockholders, and accompanied by the affidavit of the President, taken before some person authorized to administer oaths, of the amount of capital in gold and silver, or notes of solvent banks, or property, at its sworn valuation, actually paid in and employed by such corporation.

Affidavit

2. Such declaration and affidavit shall be filed in the office of the Clerk of the Superior Court of the county where the business is proposed to be transacted, to be by him recorded, and shall also be published once a week for two months in two public gazettes nearest to the point where such business is located. At the expiration of the said time, the Clerk of said court shall issue a certified copy of said declaration and affidavit, adding the time and manner of publication, which shall be held and received as evidence of the charter of said corporation in any court in this State.

Publication.

3. If such corporation shall, at any time, desire to increase their capital stock, an affidavit, like to the above, shall be made, recorded and published as above, and a new certificate issued.

Increasing stock.

4. If the affidavit taken by the President be false as to the amount of capital, *bona fide* paid in, each and every corporator shall be jointly and severally liable for all debts and contracts made at any time by said corporation.

Effect of false affidavit.

5. The whole amount of the indebtedness of such corporation, not counting its capital stock, shall not, at any time exceed the capital stock actually paid in. And in case of a violation of this provision, the officers and agents by whom such excess shall be created, shall be jointly and severally liable to the extent of such excess, for all the debts of the company then existing, and also for all debts contracted while they are in office, until the debts shall be reduced to the amount of the capital stock actually paid in.

Extent of indebtedness.

6. Such corporation may exercise all corporate powers necessary for the purpose of their organization, and may hold such real estate, and other property as may be necessary for such purpose, or such as they may take in settlement of any debts due to them, and may dispose of the same.

Powers.

7. The regular fees shall be paid to the clerk for the services performed by him.

Fees.

§ 1631. For the encouragement of direct trade with foreign countries, private corporations, having such trade for their object,

Companies for direct trade.

Section 2.—Creation of Corporations.

Repealed
 may be formed by any number of the citizens of this State, by complying with the provisions of the foregoing section, incorporating manufacturing companies, with this modification, that only ten per cent. of the capital stock shall be required to be paid in before the affidavit of the President is made, and that the capital stock shall, in every case, be at least two hundred and fifty thousand dollars.

SECTION III.

THE POWERS AND LIABILITIES OF CORPORATIONS.

SECTION.

1632. Continuance.

1633. Common powers.

SECTION.

1634. Responsibility for acts of officers.

Continuance.

§ 1632. Corporations have continuous succession during the time limited by their charter, notwithstanding the death of their members. Should any charter granted in future by the General Assembly to a private corporation be silent as to its continuance, such charter shall expire at the end of thirty years from the date of its grant.

Common powers.

§ 1633. All corporations have the right to sue and be sued, to have and use a common seal, to make by-laws, binding on their own members, not inconsistent with the laws of this State and of the Confederate States, to receive donations by gift or will, to purchase and hold such property, real or personal, as is necessary to the purpose of their organization, and to do all such acts as are necessary for the legitimate execution of this purpose.

Responsibility for acts of officers.

§ 1634. Every corporation acts through its officers, and is responsible for the acts of such officers in the sphere of their appropriate duties; and no corporation shall be relieved of its liability to third persons for the acts of its officers, by reason of any by-law or other limitation upon the power of the officer, not known to such third person.

Section 4.—Dissolution of Corporations.

SECTION IV.

OF THE DISSOLUTION OF CORPORATIONS.

SECTION.

1635. Of public corporations.

1636. In private charters.

1637. Heretofore granted.

1638. How dissolved.

1639. How forfeited.

SECTION.

1640. Surrender.

1641. Death of members.

1642. Disposition of assets.

1643. Collateral liabilities.

§ 1635. Public corporations being established for public purposes, are always subject to dissolution by the act of the General Assembly. Public corporations.

§ 1636. In all cases of private charters hereafter granted the State reserves the right to withdraw the franchise, unless such right is expressly negatived in the charter. Private charters.

§ 1637. Private corporations heretofore created, without the reservation of the right of dissolution, and where individual rights have become vested, are not subject to dissolution at the will of the State. Heretofore granted.

§ 1638. Every corporation is dissolved—1, by expiration of its charter; 2, by forfeiture of its charter; 3, by a surrender of its franchises; 4, by the death of all its members without provision for a succession. How dissolved.

§ 1639. A corporation may forfeit its charter—1, by a wilful violation of any of the essential conditions on which it is granted; 2, by a misuser or non-user of its franchises; this dissolution dates from the judgment of a court of competent jurisdiction declaring the forfeiture. How forfeited.

§ 1640. A corporation may be dissolved by a voluntary surrender of its franchises to the State; in such case such surrender does not relieve its officers or members from any liability for the debts of the corporation. Surrender.

§ 1641. The death of all the members of a corporation, or of so many of them as to render it impossible under the charter to provide a succession, is a dissolution thereof. Death of members.

§ 1642. Upon the dissolution of a corporation, for any cause, all of the property and assets of every description, belonging to the corporation, shall constitute a fund, first, for the payment of its debts, and then for equal distribution among its members; to this end the Superior Court of the county where such corporation was located, shall have power to appoint a receiver, under Disposition of assets.

Section 4.—Dissolution of Corporations.

proper restrictions, properly to administer such assets under its direction.

Collateral
liability.

§ 1643. The dissolution of a corporation, from any cause, shall not, in any manner, affect any collateral or ultimate, or other liability, legally incurred by any of its officers or members.

CHAPTER II.

OF DOMICIL AND THE MANNER OF CHANGING THE SAME.

SECTION.

1644. General rule.

1645. Persons residing at two or more, &c.

1646. *Feme Covert*.

1647. Of minor.

SECTION.

1648. Lunatics, &c.

1649. Of slave or free person of color.

1650. Change of domicil.

1651. Of persons not "*sui juris*."

Domicil.

§ 1644. The domicil of every person of full age, and laboring under no disability, is the place where the family of such person shall permanently reside, if in this State. If he has no family, or they do not reside in this State, then the place where such person shall generally lodge shall be considered his domicil.

Election of
one of two.

§ 1645. If a person shall reside indifferently at two or more places in this State, such person shall have the privilege of electing which shall be his domicil, and if such election be made notorious, the place of his choice shall be his domicil. If no such election be made, or if made is not generally known among those with whom he transacts business in this State, third persons may treat either one of such places as his domicil, and it shall be so held. And in all cases a person who habitually resides a portion of the year in one county and another portion in another, shall be deemed a resident of both, so far as to subject him to suits in either for contracts made or torts committed in such county. Transient persons whose business or pleasure causes a frequent change of residence, and having no family permanently residing at one place in this State, shall be held and deemed as to third person to be domiciled at such place as they at the time temporarily occupy.

Transient
persons.

*Feme co-
vert*.

§ 1646. The domicil of a married woman shall be that of her husband, except in two cases: 1, of voluntary separation and living apart; 2, of a pending application for divorce. In which case her domicil shall be determined as if she were a *feme sole*.

Of minor.

§ 1647. The domicil of every minor shall be that of his father, if alive, unless such father has voluntary relinquished his pa-

rental authority to some other person. In such event the domicil of the minor shall be that of his master, if an apprentice, or his employer; if neither master or employer, then the place of his own choice; if the father be dead, then the domicil of the minor shall be that of his guardian, if he has one in this State; if no guardian, then of his mother, if alive; if no mother, then of his employer; if no employer, then of his own choice. The domicil of a bastard shall be that of his mother.

§ 1648. Persons of full age, who for any cause are placed under the power of a guardian, have the same domicil with the guardian. Lunatics.

§ 1649. The domicil of a slave is generally that of his master; by the master's assent he may acquire a different domicil. The domicil of a free person of color is that of his guardian. Of slave or free person of color.

§ 1650. The domicil of a person "*sui juris*," may be changed by an actual change of residence with the avowed intention of remaining. A declaration of an intention to change the domicil is ineffectual for that purpose until some act done in execution of the intention. Change of domicil.

§ 1651. A person, whose domicil for any reason is dependent upon that of another, can by no act or volition of his, effect a change of his own domicil, nor can a guardian change the domicil of his ward by a change of his own or otherwise, so as to interfere with the rules of inheritance or succession, or otherwise affect the rights or interests of third persons. Of persons not "*sui juris*."

TITLE II.

OF THE DOMESTIC RELATIONS.

- CHAPTER 1. Of husband and wife.
- CHAPTER 2. Of parent and child.
- CHAPTER 3. Of guardian and ward.
- CHAPTER 4. Of master and servant.
- CHAPTER 5. Of master and slave.

CHAPTER I.

OF HUSBAND AND WIFE.

- ARTICLE 1. Of marriage and divorce.
- ARTICLE 2. Of the rights and liabilities of husband and wife, &c.
- ARTICLE 3. Of marriage contracts and settlements.

ARTICLE I.

OF MARRIAGE AND DIVORCE.

- SECTION 1. Marriage—how and by whom contracted.
- SECTION 2. Divorces—and how obtained.
- SECTION 3. Of Alimony.

SECTION I.

MARRIAGE—HOW AND BY WHOM CONTRACTED.

- | SECTION. | SECTION. |
|-----------------------------------|--|
| 1652. Restraint of marriage. | 1661. Consent of parents. |
| 1653. Essentials of marriage. | 1662. Penalty on person officiating. |
| 1654. Who is able to contract. | 1663. Jewish marriages. |
| 1655. Prohibited degrees. | 1664. Amalgamation prohibited. |
| 1656. Consent. | 1665. Free persons of color. |
| 1657. Void marriages. | 1666. Of Slaves. |
| 1658. License or bans. | 1667. Want of authority in Minister, &c. |
| 1659. Licenses—how granted. | 1668. Marriage in another State. |
| 1660. Return of marriage by bans. | |

Restraints of marriage.

§ 1652. Marriage is encouraged by the law, and every effort to restrain or discourage marriage by contract, condition, limitation or otherwise, is invalid and void. Prohibiting marriage to a par-

Section 1.—Marriage—how and by whom Contracted.

ticular person or persons, or before a certain reasonable age, or other prudential provision looking only to the interest of the person to be benefited, and not in general restraint of marriage, will be allowed and held valid.

§ 1653. To constitute a valid marriage in this State, there must be— Essentials of marriage.

1. Parties able to contract.
2. An actual contract.
3. Consummation according to law.

§ 1654. To be able to contract marriage, a person must be of sound mind; if a male, at least seventeen years of age, and if a female, at least fourteen years of age, and laboring under neither of the following disabilities, viz: Who is able to contract.

1. Previous marriage undissolved.
2. Nearness of relationship by blood or marriage as hereinafter explained.
3. Impotency.

§ 1655. Persons related by consanguinity within the fourth degree of the civil law, are prohibited from intermarrying. Prohibited degrees. Marriages between persons related by affinity in the following manner are prohibited, viz: A man shall not marry his step-mother, or mother-in-law, or widow of his uncle, or daughter-in-law, or step-daughter or grand-daughter of his wife. A woman shall not marry her corresponding relatives. Marriages within the degrees prohibited by this section are incestuous.

§ 1656. To constitute an actual contract of marriage, the parties must be consenting thereto voluntarily, and without any fraud practised upon either. Consent. Drunkenness at the time of marriage, brought about by art or contrivance to induce consent, shall be held a fraud.

§ 1657. Marriages of persons unable to contract, or unwilling to contract, or fraudulently induced to contract, are void. Void marriages. The issue of such marriages, before they are annulled and declared void by a competent court, are legitimate. Issue. In the latter two cases, however, a subsequent consent and ratification of the marriage freely and voluntarily made, accompanied by cohabitation as husband and wife, shall render valid the marriage. Effect of ratification.

§ 1658. To render valid a marriage in this State, there must be either a license previously granted by the proper officer authorizing such marriage, or a publication of the bans of marriage in a License or bans.

Section 1 —Marriage—how and by whom Contracted.

neighboring church, in the presence of the congregation, for at least three Sabbath days prior to its solemnization.

Licenses—
how grant-
ed.

§ 1659. Marriage licenses shall be granted by the Ordinaries, or their deputies, of the several counties where the female to be married resides, if resident in this State, directed to any Judge, Justice of the Inferior Court, Justice of the Peace or Minister of the Gospel, authorizing the marriage of the persons therein named, and requiring such Judge, Justice or Minister to return the said license to the Ordinary, with his certificate thereon as to the fact and date of the marriage, which license, with the return thereon, shall be recorded, by the Ordinary, in a book to be kept by him for that purpose.

Return and
record.

Return of
marriage by
bans.

§ 1660. If any Judge, Justice or Minister shall connect, in marriage, persons whose bans have been published, such Judge, Justice or Minister shall certify the fact to the Ordinary of the county where such bans were published, who shall record the same in the same book with marriage licenses.

Consent of
parents.

§ 1661. It shall be the duty of the Ordinary, and his deputy, to inquire as to the ages of all persons for whom marriage licenses are asked, and if there be any ground of suspicion that the female is a minor under the age of eighteen years, such Ordinary and his deputy shall refuse to grant the license until the written consent of the parent or guardian, if any controlling such minor, shall be produced and filed in his office; and any Ordinary who, by himself or deputy, shall knowingly grant such license without such consent, or without proper precaution in inquiring as to the fact of minority, or for the marriage of a female, to his knowledge, domiciled in another county, shall forfeit the sum of five hundred dollars for every such act, to be recovered at the suit of the Clerk of the Superior Court, and added to the Educational Fund of the county.

Penalty on
Ordinary.

Penalty on
person offi-
ciating.

§ 1662. Any Judge, Justice or Minister who shall join in marriage any couple without such license, or the publication of bans as aforesaid, shall forfeit the sum of five hundred dollars, to be recovered and appropriated as set forth in the foregoing paragraph.

Jewish
marriages.

§ 1663. Upon request, the Ordinary may direct the marriage license to any Jewish Minister, or other person of any religious society or sect, authorized by the rules of such society, to perform the marriage ceremony, who shall make return thereon as before required.

Section 1.—Marriage—how and by whom Contracted.

§ 1664. Marriages between white persons and negroes, or mulattoes, as defined in this Code, are prohibited. Amalgamation prohibited.

§ 1665. Marriages between free persons of color may be made without license, or publication of bans. Free persons of color.

§ 1666. The contubernial relation among slaves shall be recognized in public sales whenever possible, and in criminal trials where it becomes important to the advancement of justice. Of slaves.

§ 1667. A marriage valid in other respects, and supposed by the parties to be valid, shall not be affected by a want of authority in the Minister or Justice to solemnize the same; nor shall such objection be heard from one party who has fraudulently induced the other to believe that the marriage was legal. Want of authority in Minister or J. P.

§ 1668. All marriages solemnized in another State by parties intending at the time to reside in this State, shall have the same legal consequences and effect as if solemnized in this State. Parties resident in this State cannot evade any of the provisions of its laws, as to marriage, by going into another State for the solemnization of the marriage ceremony. Marriage in another State.

SECTION II.

OF DIVORCES AND HOW OBTAINED.

SECTION.

- 1669. Total and partial.
- 1670. Grounds for total divorce.
- 1671. Discretionary grounds.
- 1672. Grounds for partial divorce.
- 1673. Condonation, collusion, &c.
- 1674. Confessions of party.
- 1675. Proceedings.
- 1676. Schedule.
- 1677. Transfer pending suit.
- 1678. Verdict of Jury.

SECTION.

- 1679. New trials.
- 1680. Judgment or decree.
- 1681. Conscientious scruples.
- 1682. Effect of total divorce.
- 1683. Second marriage.
- 1684. Effect of partial divorce.
- 1685. Custody of children.
- 1686. Renewal—cohabitation.
- 1687. *Ex parte* cases.

§ 1669. Divorces may be granted by the Superior Court, and shall be of two kinds—total, or from bed and board. The concurrent verdicts of two special juries, at the same term or otherwise, shall be necessary to a total divorce. A divorce from bed and board may be granted on the verdict of one special jury. Total and partial. Two verdicts.

§ 1670. The following grounds shall be sufficient to authorize the granting of a total divorce: Grounds for total divorce.

1. Intermarriage by persons within the prohibited degrees of consanguinity and affinity.

Section 2.—Of Divorces, and how obtained.

2. Mental incapacity at the time of the marriage.
3. Impotency at the time of the marriage.
4. Force, menaces, duress or fraud in obtaining the marriage.
5. Pregnancy of the wife, at the time of marriage, unknown to the husband.
6. Adultery in either of the parties after the marriage.
7. Wilful and continued desertion by either of the parties for the term of three years.
8. The conviction of either party for an offence involving moral turpitude, and under which he or she is sentenced to imprisonment in the Penitentiary for the term of two years or longer.

Discretionary grounds.

§ 1671. In cases of cruel treatment or habitual intoxication by either party, the jury, in their discretion, may grant either a total or partial divorce.

Grounds for partial divorce.

§ 1672. Divorces from bed and board may be granted on any ground which was held sufficient in the English courts prior to 4th May, 1784.

Condonation, collusion, &c.

§ 1673. If the adultery, desertion, cruel treatment, or intoxication complained of shall have been occasioned by the collusion of the parties, and with the intention of causing a divorce, or if the party complaining was consenting thereto, or if both parties have been guilty of like conduct, or if there has been a voluntary condonation and cohabitation subsequent to the acts complained of, and with notice thereof, then no divorce shall be granted; and in all cases, the party sued may plead in defence the conduct of the party suing, and the jury may, on an examination of the whole case, refuse a divorce.

Discretion of jury.

§ 1674. The confessions of a party to acts of adultery or cruel treatment, should be received with great caution, and if unsupported by corroborating circumstances, and made with a view to be evidence in the cause, should not be deemed sufficient to grant a divorce.

Confessions of party.

Proceedings.

§ 1675. The action for divorce shall be by petition and process, as in ordinary suits, filed and served as in other cases, unless the defendant be non-resident of this State, when service shall be perfected as prescribed in this Code in causes in equity. The same rules of pleading shall obtain as in other causes at law.

Schedule.

§ 1676. In all suits for divorce, the party applying shall render a schedule, on oath, of the property owned or possessed by the parties at the time of the application—or at the time of separa-

Section 2.—Of Divorces, and how obtained.

- tion, if the parties have separated—distinguishing the separate estate of the wife, if there be any, which shall be filed with the petition, or pending the suit, under the order of the court. The jury rendering the final verdict in the cause may provide permanent alimony for the wife, either from the *corpus* of the estate or otherwise, according to the condition of the husband and the source from which the property came into the coverture.
- Disposition of property.** § 1677. After a separation, no transfer by the husband of any of the property, except *bona fide*, in payment of pre-existing debts, shall pass the title so as to avoid the vesting thereof, according to the final verdict of the jury in the cause.
- Transfer pending suit.**
- Verdict of jury.** § 1678. The verdict of the jury shall specify the kind of divorce granted, and the disposition to be made of the scheduled property.
- New trials.** § 1679. New trials may be granted from verdicts on applications for divorce, as in other cases.
- Judgment or decree.** § 1680. The verdicts of juries disposing of the property in divorce cases shall be carried into effect by the courts, by entering up such judgment or decree, or taking such other steps usual in Chancery Courts as will effectually and fully execute the same.
- Conscientious scruples.** § 1681. A juror having conscientious scruples as to granting divorces, is incompetent to serve on such applications. At the request of the complainant the court may inquire of the panel touching such scruples.
- Effect of total divorce.** § 1682. A total divorce annuls the marriage from the time of its rendition, except it be for a cause rendering the marriage void originally, but in no case of divorce shall the issue be rendered bastards, except in case of pregnancy of the wife at the time of the marriage.
- Second marriage.** § 1683. Unless the marriage was void originally, the offending party shall not be allowed to marry again during the life of the other party, though a total divorce is granted; and in case of such second marriage, the offending party shall be held guilty of bigamy.
- Effect of partial divorce.** § 1684. A divorce from bed and board authorizes neither party to marry; and if a sufficient provision for the maintenance of the wife has been made by the verdict of the jury, the husband shall not be liable for her future support. The wife shall be a *feme sole* as to her earnings and property, as well as liberty, after a divorce from bed and board.
- § 1685. In all cases of divorce granted, the party not in default

Section 2.—Of Divorces, and how obtained.

Custody of children.

shall be entitled to the custody of the minor children of the marriage; the court, however, in the exercise of a sound discretion, may look into all the circumstances, and, after hearing both parties, make a different disposition of the children, withdrawing them from the custody of either or both parties, and placing them, if necessary, in the possession of guardians appointed by the ordinary. The court may exercise a similar discretion pending the libel for divorce.

Renewed cohabitation.

§ 1686. Parties divorced from bed and board, on subsequent reconciliation, may live together again as husband and wife, by first filing in the office of the Ordinary of the county where the divorce was granted, their written agreement to that effect, attested by the Ordinary.

Ex parte cases.

§ 1687. In divorce cases proceeding *ex parte*, it is the duty of the Judge to see that the grounds are legal, and sustained by proof, or to appoint the Solicitor General, or some other attorney of the court, to discharge that duty for him.

SECTION III.

OF ALIMONY.

SECTION.

- 1688. Permanent and temporary.
- 1689. Proceedings to obtain.
- 1690. Discretion of Judge.
- 1691. Revision and enforcement.
- 1692. Merits not in issue.
- 1693. Permanent alimony—when granted.

SECTION.

- 1694. Husband's voluntary deed.
- 1695. Decree in equity.
- 1696. Liability to third persons, &c.
- 1697. After alimony granted.
- 1698. Subsequent cohabitation.
- 1699. Interest of wife in husband's estate.

Permanent and temporary.

§ 1688. Alimony is an allowance out of the husband's estate, made for the support of the wife, when living separate from him. It is either temporary or permanent.

Proceedings to obtain.

§ 1689. Whenever an action for divorce, at the instance of either party, is pending, or a suit by the wife for permanent alimony, the wife may, at any regular term of the court in which the same is pending, apply to the presiding Judge, by petition, for an order granting to her temporary alimony pending the cause; and, after hearing both parties, and evidence as to all the circumstances of the parties, and as to the fact of the marriage, the court shall grant an order allowing such temporary alimony, including expenses of litigation, as the condition of the husband and the facts of the case may justify.

Section 3.—Of Alimony.

§1690. In arriving at the proper provision the Judge shall consider the peculiar necessities of the wife, growing out of the pending litigation; he may also consider any evidence of a separate estate owned by the wife, and if such estate is ample, as compared with the husband's, temporary alimony may be refused.

Discretion of Judge.

§1691. The order allowing alimony shall be subject to revision by the court at any time, and may be enforced either by writ of *fiery facias* or by attachment for contempt against the person of the husband. A failure to comply with the order shall not deprive the husband of his right either to prosecute or defend his cause.

Revision and enforcement

§1692. On applications for temporary alimony, the merits of the cause are not in issue, though the Judge, in fixing the amount of alimony, may inquire into the cause and circumstances of the separation rendering the alimony necessary, and in his discretion may refuse it altogether.

Merits not in issue.

§1693. Permanent alimony is granted in the following cases: 1, of divorce as considered in the former section; 2, in cases of voluntary separation; 3, where the wife, against her will, is either abandoned or driven off by her husband.

Permanent alimony—when granted

§1694. In either of the two latter cases the husband may voluntarily, by deed, make an adequate provision for the support and maintenance of his wife, consistent with his means and her former circumstances, which shall be a bar to her right to permanent alimony.

Husband's voluntary deed.

§1695. In the absence of such provision, on the application of the wife, a court of equity may, by decree, compel the husband to such provision for the support of the wife and such minor children as may be in her custody, as indicated in the foregoing paragraph.

Decree in equity.

§1696. Until such provision is made, voluntarily or by decree or order of the court, the husband shall be liable to third persons for the board and support of the wife, and for all necessaries furnished to her, or for the benefit of his children in her custody.

Liability to third person before, &c.

§1697. When permanent alimony is granted the husband ceases to be liable for any debt or contract of the wife; on the other hand he ceases to have any power to control her acquisitions by purchase, or descent, or gift, or otherwise; and the property of the husband set apart for the support of the wife is not subject to his debts or contracts so long as she lives.

After alimony granted.

§1698. The subsequent voluntary cohabitation of the husband

Section 3.—Of Alimony.

Subsequent
cohabita-
tions.

and wife shall annul and set aside all provision made, either by deed or decree, for permanent alimony. The rights of children under any deed of separation or voluntary provision for alimony shall not be affected thereby.

Interest of
wife in hus-
band's es-
tate.

§ 1699. After permanent alimony granted, upon the death of the husband the wife is not entitled to any farther interest in his estate in her right as wife, but such permanent provision shall be continued to her, or a portion of the estate equivalent thereto shall be set apart to her.

ARTICLE II.

OF THE RIGHTS AND LIABILITIES OF HUSBAND AND WIFE AND
HEREIN OF DOWER.

SECTION.

- 1700. Husband is head of family.
- 1701. Marital rights.
- 1702. Property given to wife, &c.
- 1703. Torts to wife.
- 1704. Acquisitions of wife.
- 1705. Agency of wife.
- 1706. Liability of husband for necessaries
- 1707. General agency of wife.
- 1708. Free trader.
- 1709. Survivorship.
- 1710. Wife's equity.
- 1711. Husband sole heir.

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- 1712. Wife—when sole heir.
- 1713. Dower.
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- 1715. Election in case of bequest, &c.
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- 1717. Dower in several tracts.
- 1718. Dwelling-house.
- 1719. Lien no bar.
- 1720. Life estate in proceeds of sale.
- 1721. Or absolute estate in specified sum.
- 1722. Paraphernalia.
- 1723. Wife may appear against husband.

Husband is
head of
family.

§ 1700. In this State the husband is the head of the family, and the wife is subject to him; her legal civil existence is merged in the husband, except so far as the law recognizes her separately, either for her own protection, or for her benefit, or for the preservation of public order.

Marital
rights.

§ 1701. Upon marriage, all the real estate of the wife, and all the personalty in possession, or which may be reduced to possession by the husband during his lifetime, shall vest in and belong absolutely to the husband, except that such property shall not be liable for the payment of any debt, default or contract of the husband existing at the time of the marriage. The husband shall be bound for the payment of the debts of the wife existing at the time of the marriage, to the extent of the property received by her only, and the property received through the wife shall be liable for the payment thereof.

Exception.

Wife's debts.

Property
given to or
acquired by
wife.

§ 1702. All property given to the wife during the coverture, or acquired by her, shall vest in the husband, but any words in the

Article 2.—Of the Rights and Liabilities of Husband and Wife, &c.

gift or bequest indicating a wish for the personal enjoyment thereof by the wife, such as a gift to the wife by name, shall create a separate estate therein for her, and in no case shall the personal acquisitions of the wife be subject to the debts of the husband. Property inherited by the wife during the coverture and reduced into possession by the husband, shall vest in him as property owned by the wife at the marriage, but in like manner not subject to the then existing debts or contracts of the husband.

§ 1703. If a tort be committed upon the person or reputation of the wife, the husband may recover therefor; if, however, the wife is living separate from the husband she may sue for such torts, and also torts to her children, and recover the same to her use. In like manner, when separated from the husband, she may enforce contracts made in reference to her own acquisitions.

Torts to wife

Of living separate from husband

§ 1704. When living separate from her husband the acquisitions of a wife and of her children living with her, shall be vested in the wife for her separate use, free from the debts, contracts or control of her husband, and at her death, intestate, the same shall descend to her children, and if none, to her next of kin.

Acquisitions of wife living separate from her husband.

§ 1705. The husband is bound to support and maintain his wife, and his consent shall be presumed to her agency in all purchases of necessaries, suitable to her condition and habits of life, made for the use of herself and the family. This presumption may be rebutted by proof.

Agency of wife in respect to necessaries.

§ 1706. The husband is bound for necessaries furnished to the wife, when separated from him, subject to the limitations hereinbefore provided. If the wife be living in adultery with another man the husband is not liable; but notice by the husband shall not relieve him from liability, if his wife is separated from him by reason of his own misconduct; if she voluntarily abandons him without sufficient provocation, notice by the husband shall relieve him of all liability for necessaries furnished to her.

Liability of husband for necessaries.

§ 1707. The wife may act as attorney and agent for the husband, but except in cases before mentioned proof of such authority must be made as in other cases.

General agency of wife.

§ 1708. The wife, by consent of her husband, evidenced by notice in a public gazette for one month, may become a public or free trader; in which event she is liable as a *feme sole* for all her contracts, and may enforce the same in her own name. In such cases the acquisitions of the wife becomes her separate estate.

Free trader.

Article 2.—Of the Rights and Liabilities of Husband and Wife, &c.

Survivor-
ship.

§ 1709. Upon the death of the husband all the property of the wife, not reduced to actual possession by the husband, survives to the wife. An assignment by the husband without her assent shall not bar her rights.

Wife's
equity.

§ 1710. The wife's equity is her right to a reasonable provision for the support of herself and her children out of such of her property as has not been reduced into possession by the husband, and upon her application through a next friend, the Superior Court, upon a full consideration of all the facts, and of any former settlement made, may settle such property upon her with such limitations as the jury may decree. The husband may voluntarily, by deed, make the same settlement. He cannot by an assignment for value defeat the equity.

Husband
sole heir.

§ 1711. Upon the death of the wife the husband is her sole heir, and upon payment of her individual debts, if any, may take possession thereof without administration. If the husband be insolvent the wife's equity shall survive to her children, if any.

Wife—when
sole heir.

§ 1712. Upon the death of the husband, without lineal descendants, the wife is his sole heir.

Dower .

§ 1713. Dower is the right of a wife to an estate for life in one-third of the lands, according to valuation, including the dwelling-house (which is not to be valued unless in a town or city) of which the husband was seized and possessed at the time of his death, or to which the husband obtained title in right of his wife.

How barred.

§ 1714. Dower may be barred—

1. By provision made prior to the marriage and accepted by the wife in lieu of dower.

2. By a provision made by deed or will, and accepted by the wife after the husband's death, expressly in lieu of dower, or where the intention of the husband is plain and manifest that it shall be in lieu of dower.

3. By the election of the widow within twelve months from the grant of letters testamentary, or of administration on the husband's estate, to take a child's part of the real estate in lieu of dower.

4. By a failure to apply for the dower for seven years from the death of the husband.

5. By the wife's deed with her husband to lands to which the title came through her.

6. By the adultery of the wife unpardoned by the husband.

Article 2.—Of the Rights and Liabilities of Husband and Wife, &c.

§ 1715. If the husband by will gives to his wife an interest in his lands, her election of dower bars her of that devise, but does not deprive her of any interest in the personalty bequeathed to her in the will, unless it is expressed to be in lieu of dower.

Election in cases of bequest in lieu of dower.

§ 1716. An election by the widow to take a child's part of the realty in ignorance of the condition of the estate, or of any fact material to her interest, shall not bar her right to dower; *Provided*, the rights of third persons acting *bona fide* upon her election shall not be disturbed or prejudiced.

Election in ignorance.

§ 1717. Where the husband dies seized of several distinct tracts of land lying in the same county, the widow may elect to take her entire dower in one body, and may select the tract or tracts out of which her dower shall be laid. If a tract or body of land is divided by county lines, the entire dower may be laid off in either county; if several tracts lie in different counties, the dower must be applied for and laid out in each county.

Dower in several tracts.

If divided by county lines.

§ 1718. The widow is entitled to the possession of the dwelling-house from the death of her husband, and before dower is assigned, and also, of the furniture therein, until her portion thereof is set apart by the appraisers as provided by this Code.

Dwelling-house.

§ 1719. No lien created by the husband in his life time, though assented to by the wife, shall in any manner interfere with her right to dower.

Lien no bar.

§ 1720. With the assent of the executor or administrator of the estate, the widow may elect a life estate in one-third part of the proceeds of the sales of the land, or any distinct tract or tracts of land in lieu of the dower in such land. In which event, such third part of the proceeds of the sale shall be invested by the executor or administrator under the direction of the Ordinary where his returns are made, and the annual income thereof paid to the widow during her life.

Life estate in proceeds of sale.

§ 1721. With the assent of the executor or administrator of the estate, and the approval of the Ordinary, the widow may elect in lieu of her dower an amount in money to belong absolutely to her, to be estimated and determined by the commissioners appointed to assign dower, and whose report shall be subject to the same objections as are admeasurements of dower in land. Both before the Ordinary and on the return of the report of the commissioners, any person interested in the question shall be allowed to become a party and be heard. The amount so awarded shall be paid in

Absolute estate in specified sum.

How contested.

Article 2.—Of the Rights and Liabilities of Husband and Wife, &c.

preference to all other claims out of the proceeds of the sale of the land.

Paraphernalia.

§ 1722. The wife's paraphernalia shall not be subject to the debts or contracts of the husband, and shall consist of the apparel of herself and her children, her watch and ornaments suitable to her condition in life, and all such articles of personalty as have been given to her for her own use and comfort.

When the wife may appear against husband.

§ 1723. In all cases where the rights of the wife come in conflict with the interest of the husband she may appear in court by her next friend. In all other civil cases, except as to her separate estate, she must appear by and with her husband, if living together.

ARTICLE III.

OF MARRIAGE CONTRACTS AND SETTLEMENTS.

SECTION.

- 1724. Marriage article or parol, &c.
- 1725. Voluntary execution, &c.
- 1726. Construction of contract.
- 1727. Record of marriage contracts.
- 1728. Wife may force a record.
- 1729. Appointing and removing trustees.

SECTION.

- 1730. Executed in favor of volunteers.
- 1731. Valuable consideration.
- 1732. Wife *feme sole*, &c.
- 1733. When sue and be sued.
- 1734. Minority of party to contract.
- 1735. Sale to husband or trustee.

Marriage article or parol agreement.

§ 1724. Any agreement between the parties to a marriage contemplating a future settlement upon the wife, whether by parol or in writing, may be executed and enforced by a court of equity at the instance of the wife at any time during the life of the husband; *Provided, always*, that the rights of third persons, purchasers or creditors in good faith, and without notice are not affected thereby. An agreement perfect in itself, and which needs no future conveyance to effect its purposes, is an executed contract, and does not come under the definition of marriage articles.

Voluntary execution and trust deeds.

§ 1725. The husband may voluntarily execute such agreement, or he may at any time during the coverture, either through trustees or directly to his wife, convey any property to which he has title subject to the rights of prior purchasers or creditors without notice.

Construction of contract.

§ 1726. Every marriage contract in writing, made in contemplation of marriage, shall be liberally construed to carry into effect the intention of the parties, and no want of form or technical

Article 3.—Of Marriage Contracts and Settlements.

expression shall invalidate the same. Such contract must be attested by at least two witnesses.

§ 1727. Every marriage contract, and every voluntary settlement made by the husband on the wife, whether in execution of marriage articles or not, must be recorded in the office of the Clerk of the Superior Court of the county of the residence of the husband within three months after the execution thereof; on failure to comply with this provision, such contract or settlement shall not be of any force or effect against a purchaser or creditor or surety who, *bona fide* and without notice, may become such before the actual recording of the same. If such contract or settlement is made in another State, and the parties subsequently remove into this State, the record must be made within three months from such removal. If the settled property be in this State, and the parties reside in another, then the record must be made in the county where the property is, and within the time specified above.

Record of marriage contracts.

§ 1728. If the trustee or husband, having possession of such contract or settlement, fails or refuses to have the same recorded, the wife, or any friend of hers, may apply to the Judge of the Superior Court, at any time, for an order compelling such record; and the trustee thus refusing, after demand, shall be personally responsible to his *cestui que trust* for all damage sustained by reason of the failure to record; and such application of the wife or her friend, when entered on the minutes of the Superior Court, shall be a notice equivalent to the record of the marriage contract or trust deed.

Wife may force a record.

§ 1729. The Judge of the Superior Court of the county of the wife's domicile, may, at any time, upon petition, exercise the powers of a chancellor in appointing, or removing, or substituting trustees or granting any order for the protection of the trust estate, exercising a wise discretion as to the terms on which such appointment shall be made, or such order granted. The proceeding in each case shall be transmitted to the Clerk of the Superior Court, to be recorded in the book of the minutes of such court, next to the minutes of the last term thereof.

Appointing and removing trustees.

§ 1730. Marriage contracts and post nuptial settlements will be enforced at the instance of all persons in whose favor there are limitations of the estate. Marriage articles will be executed only at the instance of persons coming within the scope of the marriage consideration; but when executed at their instance, the

When executed in favor of volunteers.

Article 3.—Of Marriage Contracts and Settlements.

court may execute also in favor of volunteers; all persons are volunteers, except the parties to the contract, and the offspring of the wife.

Valuable consideration.

§ 1731. Marriage is a valuable consideration, and the wife stands, as to property of the husband settled upon her by marriage contract, as other purchasers for value; *Provided*, that by such contract the husband does not incapacitate himself from paying his existing just debts.

Wife, *feme sole* as to her separate estate.

§ 1732. The wife is a *feme sole* as to her separate estate, unless controlled by the settlement. Every restriction upon her power in it must be complied with; but while the wife may contract, she cannot bind her separate estate by any contract of suretyship, nor by any assumption of the debts of her husband, and any sale of her separate estate, made to a creditor of her husband in extinguishment of his debts, shall be absolutely void.

When sue and be sued.

§ 1733. If there is no trustee, the wife may sue and be sued, as to her separate estate, as a *feme sole*; and in all such cases, the separate estate shall be responsible for all costs incurred.

Minority of party to contract.

§ 1734. The minority of either party to marriage articles, or a marriage contract, shall not invalidate it; *Provided*, such party is of lawful age to contract marriage.

Sale to husband or trustee.

§ 1735. No contract of sale of a wife as to her separate estate with her husband or her trustee, shall be valid, unless the same is allowed by order of the Superior Court of the county of her domicile.

CHAPTER II.

OF PARENT AND CHILD.

ARTICLE 1. Legitimate children.

ARTICLE 2. Illegitimate children or bastards.

ARTICLE I.

LEGITIMATE CHILDREN.

SECTION.

- 1736. Legitimate children.
- 1737. Subsequent marriage.
- 1738. Legitimizing by order of court.
- 1739. Adopting a child.
- 1740. Objections by relative.
- 1741. Adoption of adult persons.

SECTION.

- 1742. Age of majority.
- 1743. Parents' obligation.
- 1744. Parents' power—how lost.
- 1745. Mothers' rights.
- 1746. Cruel treatment by parent.
- 1747. Mutual protection.

Article 1.—Legitimate Children.

§ 1736. All children born in wedlock, or within the usual pe- ^{Legitimate} _{children.}riod of ge-
 station thereafter, are legitimate. The legitimacy of a
 child thus born may be disputed. Where possibility of access
 exists, except in cases of divorce from bed and board, the strong
 presumption is in favor of legitimacy, and the proof should be clear
 to establish the contrary. If pregnancy existed at the time of
 the marriage, and a divorce is sought and obtained on that
 ground, the child, though born in wedlock, is not legitimate.

§ 1737. The marriage of the mother and reputed father of an ^{Subsequent} _{marriage.}
 illegitimate child, and the recognition of such child as his, shall
 render the child legitimate; and in such case, the child shall im-
 mediately take the surname of his father.

§ 1738. A father of an illegitimate child may render the same ^{Legitimacy} _{by order of court.}
 legitimate by petitioning the Superior or Inferior Court of the
 county of his residence, setting forth the name, age and sex, of
 such child, and also the name of the mother; and if he desires
 the name changed, stating the new name and praying the legiti-
 mating of such child. Of this application the mother, if alive,
 shall have notice. Upon such application, presented and filed,
 the court may pass an order declaring said child to be legitimate,
 and capable of inheriting of the father in the same manner as if
 born in lawful wedlock, and the name by which he or she shall
 be known.

§ 1739. Any person desirous of adopting a child, so as to ren- ^{Adopting a} _{child.}
 der it capable of inheriting his estate, may present a like petition
 to the said court, setting forth, as an additional fact, the name of
 the father, or if he be dead, or has abandoned his family, the
 mother, and the consent of such father or mother to this act of
 adoption; and if the child has neither father or mother, then the
 consent of no person shall be necessary to said adoption. It
 shall be the duty of the court, upon being satisfied of the truth
 of the facts stated in the petition, and of the fact that such father
 or mother has notice of such application, and being further satis-
 fied that such adoption will be to the interest of the child, to
 pass an order declaring said child to be the adopted child of such
 person, and capable of inheriting his estate, and also what shall
 be the name of such child; and thenceforward the relation be-
 tween such person and the adopted child shall be, as to their le-
 gal rights and liabilities, the same as if the relation of parent ^{Effect there-} _{of.}
 and child existed between them, except that the adopted father
 shall never inherit from the child; but to all other persons the

Article 1.—Legitimate Children.

adopted child shall stand related as if no such act of adoption had been taken.

Objections
by relations.

§ 1740. It shall be the privilege of any person related by blood to such child, if there be no father or mother, to file objections to such application, and the court, after hearing the same, shall determine, in its discretion, whether or not the same constitute a good reason for refusing the application.

Adopting of
adult per-
sons.

§ 1741. Adult persons may be adopted in like manner, and have their names changed, on giving consent to such adoption.

Age of ma-
jority.

§ 1742. The age of legal majority in this State is twenty-one years; until that age all persons are minors.

Parent's ob-
ligation.

§ 1743. Until majority, it is the duty of the father to provide for the maintenance, protection, and education of his child.

Parental
power—how
lost.

§ 1744. Until majority, the child remains under control of the father, who is entitled to his services and the proceeds of his labor. This paternal power is lost—

1. By voluntary contract, releasing the right to a third person.
2. By consenting to the adoption of the child by a third person.
3. By the failure of the father to provide necessaries for his child, or his abandonment of his family.
4. By his consent to the child's receiving the proceeds of his own labor, which consent shall be revocable at any time.
5. By his consent to the marriage of the child, who thus assumes inconsistent responsibilities.
6. By cruel treatment of the child.

Mother's
rights.

§ 1745. Upon the death of the father, the mother is entitled to the possession of the child until his arrival at such an age that his education requires the guardian to take possession of him. In cases of separation of the parents, or the subsequent marriage of the survivor, the court, upon writ of *habeas corpus*, may exercise a discretion as to the possession of the child, looking solely to his interest and welfare.

Cruel treat-
ment by pa-
rent.

§ 1746. Any person may apply to the Ordinary of the county, alleging the cruel treatment of a child by his father, who shall cite the father to answer the allegation; and such Ordinary may, at any time, hear evidence, and, in his discretion, appoint a guardian of the person of such child, who shall be entitled to the possession of him.

Mutual pro-
tection.

§ 1747. Parents and children may mutually protect each other, and justify the defence of the person or reputation of each other.

ARTICLE II.

ILLEGITIMATE CHILDREN OR BASTARDS.

SECTION.

1748. Bastards.

1749. Father's obligations.

1750. Mother's right.

SECTION.

1751. Inheritance by bastard.

1752. By legitimates from bastard.

§ 1748. A bastard is a child born out of wedlock, and whose parents do not subsequently intermarry, or a child the issue of adulterous intercourse of the wife during wedlock. ^{Bastard.}

§ 1749. The father of a bastard is bound to maintain him. This obligation shall be good consideration to support a contract by him. He may voluntarily discharge this duty; if he fails or refuses to do it the law will compel him. ^{Father's obligation.}

§ 1750. The mother of a bastard is entitled to the possession of the child, unless the father shall legitimate him as before provided. Being the only recognized parent, she may exercise all the paternal power. ^{Mother's rights.}

§ 1751. Bastards have no inheritable blood except that given to them by express law; they may inherit from their mother and from each other, children of the same mother in the same manner as if legitimate. If a mother have both legitimate and illegitimate children, they shall inherit alike the estate of the mother. If a bastard dies leaving no issue or widow, his mother, brothers and sisters shall inherit his estate equally. In distributions under this law the children of a deceased bastard shall represent the deceased parent. ^{Inheritance by bastard.}

§ 1752. If a bastard dies intestate, leaving no widow or lineal descendant, or illegitimate brother or sister, or descendant of a brother or sister or mother, but shall leave a brother or sister of legitimate blood, such brother or sister, or descendant of such brother or sister, may inherit the estate of such intestate. ^{By legitimates from illegitimates}

Section 1.—Guardians—how and by whom Appointed.

CHAPTER III.

OF GUARDIAN AND WARD.

ARTICLE 1. Guardians of minors.

ARTICLE 2. Guardians of lunatics and idiots.

ARTICLE 3. Guardians of free persons of color.

ARTICLE 4. Foreign guardians.

ARTICLE I.

SECTION 1. How and by whom appointed.

SECTION 2. Their powers, duties and liabilities.

SECTION 3. Settlements, resignation and letters of dismissal.

SECTION I.

HOW AND BY WHOM APPOINTED.

SECTION.

1753. Kinds of guardians.
 1754. Natural guardian.
 1755. Testamentary guardian.
 1756. Appointed by widows.
 1757. General guardian.
 1758. Of property of non-resident ward.
 1759. Mother-guardian.
 1760. Appointment of clerk or stranger.
 1761. Guardian of bastard.
 1762. Notice of application.

SECTION.

1763. Bond and oath.
 1764. Taken in vacation.
 1765. Additional bond.
 1766. New sureties.
 1767. Proceedings in case of misconduct.
 1768. Motion by surety.
 1769. Revocation does not abate suit.
 1770. Suit on bond.
 1771. Removing proceedings, &c.
 1772. Guardian *ad litem*.

Kinds of guardians.

§ 1753. Guardians of minors may be either—1, natural guardians; 2, testamentary guardians; 3, guardians of person and property, or either.

Natural guardian.

§ 1754. The father, if alive, is the natural guardian; if dead, the mother is the natural guardian. The natural guardian cannot demand or receive the property of the child until a guardian's bond is filed and accepted by the Ordinary of the county. If such natural guardian fail or refuse to give bond and security the Ordinary may appoint another guardian to receive such property.

Testamentary guardian.

§ 1755. Every father may by will appoint guardians for the persons, or property, or both, of his children, and such guardians shall not be required to give bond and security, except in case of waste committed or apprehended, or of property coming to the

Section 1.—Guardians—how and by whom Appointed.

ward from sources other than the father's will, when the Ordinary shall require the same. If a testamentary guardian fails to give bond as required, the Ordinary may dismiss him as guardian and appoint another, or may appoint another guardian for the property thus accruing. In all other respects a testamentary guardian shall stand on the same footing with other guardians appointed by the Ordinary.

§ 1756. The mother, if a widow, shall have the power by will to appoint testamentary guardians for such children as have none, as to their persons, and as to such property as they may inherit from her. Appointed by widows.

§ 1757. The Ordinary of the county of the domicile of a minor having no guardian shall have the power of appointing a guardian of the person and property, or either, of such child. If the ward be above the age of fourteen years before a guardian is appointed, he shall have the privilege of selecting a guardian, and if such selection be judicious the Ordinary shall appoint him. The ward having once exercised this privilege cannot do so again, except upon cause shown for the removal of the first selection. General guardian.

§ 1758. If a minor is non-resident, but has property in this State, the Ordinary of the county where the property is may appoint a guardian, who shall have control only over such property. Of property of non-resident ward.

§ 1759. In the appointment of guardians the widowed mother shall have the preference upon complying with the law. Upon her marrying again the letters are revoked, though her husband shall be responsible to the ward as guardian, if no other guardian be appointed. Among collaterals applying for the guardianship, the nearest of kin by blood, if otherwise unobjectionable, shall be preferred—males being preferred to females. The Ordinary, however, in every case may exercise his discretion according to its circumstances, and if necessary grant the letters to a stranger in blood. Mother-guardian.

§ 1760. If there be no application for letters of guardianship, and a necessity for a guardian exists, the Ordinary, after giving notice for thirty days, may vest such guardianship in the Clerk of the Superior or Inferior Court of the county, or in any other person or persons residing in said county, whom he shall deem fit and proper, in his discretion, requiring bond and security as in other cases. Appointment of clerk or stranger.

Section 1.—Guardians—how and by whom Appointed.

Guardian of bastards. § 1761. The Ordinary may appoint a guardian for the person and property of an illegitimate child in all cases where he may deem it necessary.

Notice of application. § 1762. Every application to be appointed guardian of a minor under the age of fourteen years, other than the child of the applicant, shall be made to the Ordinary, and notice thereof given by him in some public gazette of this State at least thirty days before such letters shall be granted. At the regular term next after the expiration of the notice the letters may be granted, either to the applicant or some other person, in the discretion of the court. In the meantime a temporary guardian may be appointed under the same rules as apply to the appointment of temporary administrators.

Bond and oath. § 1763. Every guardian, appointed by the Ordinary, before entering on the duties of his appointment, shall take before the Ordinary an oath, or affirmation, well and truly to perform the duties required of him as guardian, and faithfully to account with his ward for his estate; and shall also give bond with good and sufficient security, to be approved by the Ordinary, in double the amount of the supposed value of the property of the ward, for the faithful discharge of his duty as guardian, such bond shall be payable to the Ordinary and his successors. A substantial compliance as to all matter of form shall be sufficient.

Taken in vacation. § 1764. The taking of the oath and giving the bond may be done at any time in vacation, the appointment being made at a regular term. The bond when taken shall be recorded by the Ordinary in a book to be kept by him for that purpose, and the original kept of file in his office.

Bond recorded. Additional bond. § 1765. If at any time after appointment other property shall descend, or come, or be given, or otherwise accrue to the ward, the Ordinary may require the guardian to give an additional bond with security in double the amount of such property, and on his failure to comply, the Ordinary may appoint a special guardian for such property.

New sureties. § 1766. If one or more of the sureties on the guardian's bond shall die, or become insolvent, or remove from this State, or from other cause the security become insufficient, the Ordinary may of his own motion, or at the instance of any relative of the ward, require the guardian to give other and sufficient security, and on his failure so to do in compliance with such order, the Court

Section 1.—Guardians—how and by whom appointed.

shall revoke his letters of guardianship, and appoint some other person in his place.

§ 1767. If the Ordinary knows, or is informed, that any guardian wastes, or in any manner mismanages the property, or does not take due care of the maintenance and education of his ward according to his circumstances, or refuses to make returns as required by law, or for any cause is unfit for the trust, the Ordinary shall cite such guardian to answer to such charge at some regular term of the court, when upon investigation of his actions, the Ordinary may, in his discretion, revoke his letters or pass such other order as in his judgment is expedient under the circumstances of each case.

§ 1768. The surety of any guardian on his bond, or if dead, his representative, may at any time make complaint to the Ordinary of any misconduct of his principal in the discharge of his trust, or for any other reason show his desire to be relieved as surety, thereupon the Ordinary shall cite the guardian to appear at a regular term of the court, and show cause why such surety shall not be discharged; and upon hearing the parties and their evidence, the Ordinary may, at his discretion, pass an order discharging such surety from all future liability, and requiring such guardian to give new and sufficient security or be discharged from his trust; such new sureties shall be liable for past as well as future waste or misconduct of the guardian. And such discharged surety shall be relieved only from the time the new security shall be given. If new security is not given, and the guardian's trust is revoked, the discharged surety shall be bound for a true accounting of such guardian with the new guardian, or his ward if no other guardian is appointed. The death of a surety shall be a sufficient ground for his discharge from future liability on application of his representative and the granting the order. In all cases where letters of guardianship are revoked, the sureties on the bond are liable for all the acts of the guardian in relation to his trust up to the time of his settlement with the new guardian or his ward.

§ 1769. The revocation of letters of guardianship shall not abate any suit pending for or against the guardian, but the new guardian shall be made a party by *sci. fa.* as in case of the death of a party.

§ 1770. Suit may be instituted against the guardian and his sureties on his bond in the same action at the instance of the ward, or a new guardian, or any other person interested, without

Proceedings
in case of
misconduct.Motion by
surety.

Proceedings.

Liability of
new sureties.Of old sure-
ties.Revocation
does not
abate suit.Suit on
bond.

Section 1.—Guardians—how and by whom appointed.

first suing the guardian. And if the guardian is beyond the jurisdiction of the court, or places himself in the position of a debtor, liable to attachment, or is dead, and his estate unrepresented, suit may be commenced against the sureties alone; *Provided*, that the *fi. fa.* issued upon a judgment obtained against the guardian and his sureties shall not be levied on the property of the sureties until a return of *nulla bona* as to the guardian, unless the property of the sureties is being removed from the county. If the failure to sue the guardian arose from his voluntary act, the judgment against the sureties shall be conclusive in any suit against him.

Provido.

Effect of judgment.

Removing proceedings to another county.

§ 1771. A guardian whose residence is, or by removal or otherwise becomes, in a different county from that of his appointment, may have the privilege of removing the trust to the jurisdiction of the Ordinary of his own county, by first giving bond and good security to such Ordinary, as if first appointed by him, and filing a certificate of such fact with the Ordinary by whom he was appointed. He shall also obtain from such Ordinary an exemplification of all the records concerning his guardianship, and of the order passed transferring the same to the county of his residence, which exemplification shall be filed with, and recorded by the Ordinary of said county, who shall then have the same jurisdiction over such guardian, as if first appointed by him. The sureties upon such guardian's first bond shall be liable only for past misconduct. The sureties upon the new bond shall be liable for both past and future misconduct.

Liability of sureties.

Guardian *ad litem*.

§ 1772. Whenever a minor is interested in any litigation pending in any court in this State, and has no guardian, or his interest is adverse to that of his guardian, such court shall have power to appoint a guardian *ad litem* for such minor, which guardian shall be responsible to such minor for his conduct in connection with such litigation in the same manner as if he were a regularly qualified guardian.

SECTION II.

THE POWERS, DUTIES AND LIABILITIES OF GUARDIANS.

SECTION.

- 1773. Power of guardian.
- 1774. Returns.
- 1775. Amount of expenditure.
- 1776. Binding out indigent persons.
- 1777. Ill-treatment.
- 1778. Failing to make returns.
- 1779. Sales.
- 1780. Renting of lands.
- 1781. Hiring of slaves.

SECTION.

- 1782. Working them together.
- 1783. Cultivating plantations, &c.
- 1784. Investment in stocks.
- 1785. Commissions.
- 1786. If there be two guardians.
- 1787. Sureties bound, &c.
- 1788. Contracts by guardian.
- 1789. May appoint attorney in fact.

§ 1773. The power of the guardian over the person of his ward is the same with the father over his child, the guardian standing in his place; and in like manner it is the duty of the guardian to protect and maintain, and, according to the circumstances of the ward, to educate him.

Power of guardian.

His duty.

§ 1774. Every guardian, within twelve months after his appointment, and by the first Monday in July in every year thereafter, shall make a return to the Ordinary under oath, making an accurate exhibit of all the property of his ward received by him up to that time and since his last return, together with an account current of his receipts and expenditures, accompanied with the vouchers for the same, and any other matter connected with the said property, which said return shall be examined by the Ordinary, and, if found correct, shall be allowed by him and entered of record with the vouchers; and the judgment thus rendered by the Ordinary shall be *prima facie* evidence of the correctness of said return in favor of said guardian. If the guardian shall have removed beyond the limits of this State, the oath of his surety shall be sufficient to verify the return.

Returns.

§ 1775. Every guardian shall be allowed all reasonable disbursements and expenses suitable to the circumstances of the orphan committed to his care. But the expenses of maintenance and education must not exceed the annual profits of the estate, except by the approval of the Ordinary previously granted. The Ordinary may, in his discretion, allow the corpus of the estate, in whole or in part, to be used for the education of the ward.

Amount of expenditure.

§ 1776. If the annual profits of the estate of any orphan, with or without a guardian, is not sufficient for his education and maintenance, it shall be the duty of the Ordinary forthwith to

Binding out indigent orphans.

Section 2.—Powers, Duties and Liabilities of Guardians.

bind out such orphan for the whole, or such part of the time of his minority as to him shall seem best, and on such conditions as will most promote the interest of such orphan, in all cases requiring that such orphan shall be allowed to attend the nearest school, where education is free to him, at least three months in the year.

Ill-treatment.

§ 1777. It shall be the duty of the Ordinary, and of the guardian of such orphan, to be informed as to his treatment, and on complaint of ill-usage or any condition broken, the Ordinary shall bind such orphan to some other person.

Failling to make returns.

§ 1778. The Ordinary shall keep a docket of all the guardians liable to make returns to him, and upon the failure of any one to do so by the time required by law, he shall cite the said guardian to appear and show the reason for his delay; and every guardian who shall fail or refuse to make his return before the end of the year, shall receive no commission or compensation for any service done during that year, unless by special order of the Court of Ordinary exonerating him from all blame.

Sales.

§ 1779. All sales of any portion of the property of the ward, shall be made under the direction of the Ordinary, and under the same rules and restrictions as are prescribed for sales by administrators of estates.

Renting of lands.

§ 1780. Every renting of lands of an orphan, unless by special order of the Ordinary, shall be in public to the highest bidder, and under the same rules as Sheriff sales, except that credit may be given on good security.

Hiring of slaves.

§ 1781. Guardians, under an order from the Ordinary, may exercise a sound discretion in hiring the slaves of their wards, either publicly or privately, as may be most conducive to the safety and comfort of the slaves and the permanent interest of the ward.

Working them together.

§ 1782. Guardians, under a like order, may keep such slaves, or a portion of them, together, and have them employed in such agricultural or other operations as such guardians may deem manifestly expedient.

Cultivation and purchasing plantation.

§ 1783. When it is manifestly expedient, guardians may cause plantations of their wards to be managed and cultivated for their benefit, and when not possessed of lands, under a like order of the court, guardians may invest a portion of the funds of their wards in lands for the purpose of cultivation as hereinbefore provided.

Section 2.—Powers, Duties and Liabilities of Guardians.

§ 1784. Any guardian, in his discretion, may invest any funds of his ward in his hands in stocks, bonds or other securities issued by this State. In every such case his return shall set forth the time of such purchase, the price paid and the name of the person from whom purchased. All such investments shall be free from taxation during the minority of the ward for whom they are held.

§ 1785. Guardians shall be allowed the same commissions for receiving and paying out the estate of their wards as are allowed to administrators. Extra compensation and traveling expenses shall be allowed to them upon the same principles as to administrators. When the guardian keeps together and works the slaves of a ward, the court shall allow him a reasonable compensation for such services, taking into consideration the commissions he may receive.

§ 1786. If the guardian resigns or dies, or is removed under any circumstances, no commissions shall be allowed for turning over the estate to a new guardian, or to the new guardian for receiving the same; and where a guardian is removed for waste or gross mismanagement, no commissions shall be allowed for any of his services.

§ 1787. If the appointment of a guardian for any cause is declared void, his sureties shall nevertheless be responsible on the bond for any property which may have been received by him by virtue or reason of his appointment.

§ 1788. The guardian cannot borrow money and bind his ward therefor, nor can he, by any contract other than those specially allowed by law, bind his ward's property, or create any lien thereon.

§ 1789. The guardian may appoint an attorney in fact to act for him where he is unable to act himself, and he and his sureties are bound for the acts of such attorney as if it were his personal deed.

SECTION III.

SETTLEMENTS OF GUARDIANS, RESIGNATION AND LETTERS DISMISSORY.

SECTION.

1790. Settlements before the Ordinary.
 1791. At the instance of the guardian.
 1792. Duty of the court.
 1793. Continuance.
 1794. Proceedings.
 1795. Power of the Ordinary.
 1796. Enforcement of decision.

SECTION.

1797. Final receipts.
 1798. Right of ward to re-open, &c.
 1799. Resignation of guardian.
 1800. Letters of dismission.
 1801. Disposition of money, &c., in land.
 1802. Ward dying, &c.

Settle-
ments before
the Ordina-
ry.

§ 1790. A ward, on arriving at majority, or marrying a man of full age, or a new guardian legally appointed, may apply to the Ordinary for an order requiring the guardian to appear and submit to a settlement of his accounts; such citation shall be served as other citations, and shall be returnable to a regular term of the court. If the guardian fails or refuses to appear as cited, the court may proceed *ex parte*.

At instance
of the guar-
dian.

§ 1791. The guardian shall, in like manner, be allowed to cite his ward, or a new guardian to appear and be present at a settlement of his account.

Duty of the
court.

§ 1792. Upon the return of such citation, the court shall proceed to examine all the returns and accounts of such guardian; to hear all evidence which may be produced by either party; and to make a full, fair and final settlement between such guardian and his ward, making a full record of such final settlement.

Continuance

§ 1793. The court may allow such continuances as the principles of justice require.

Proceedings.

§ 1794. Such other proceedings may be had in the case as are usual in other causes in said court.

Power of Or-
dinary.

§ 1795. It shall be in the power of the Ordinary to order any property in the hands of the guardian to be delivered to the ward or the new guardian, and also to issue an execution for any balance of money found due by the guardian to the ward. If the ward does not appear, the court may pass an order stating the balance found due from the guardian, which balance shall not bear interest from that date until demanded by the ward or new guardian.

Enforce-
ment of de-
cision.

§ 1796. If the guardian shall fail or refuse to deliver to the ward the property in his hands, ordered to be delivered by the court, the Ordinary shall have power to attach him for contempt.

and imprison him in the common jail until he shall comply with such order, such proceedings to be had in the issuing of such attachment as are usual in courts of equity.

§ 1797. Any guardian, by having his final receipt from his ward attested by a Judge, Justice of the Peace, or Notary Public, may cause the same to be recorded by the Clerk of the Superior Court of the county of his residence, and the original, or a copy thereof, shall be admitted in evidence, on the same terms as registered deeds. Final receipts.

§ 1798. No final settlement made between the guardian and ward shall bar the ward, at any time within four years thereafter, from calling the guardian to a settlement of his accounts, unless it is made to appear that the same was made after a full exhibit of all the guardian's accounts, and with a full knowledge by the ward of his legal rights. Right of ward to re-open settlement.

§ 1799. Any guardian who, from age, infirmity, removal from the county, or for any other cause, desires to resign his trust as such, may apply to the Ordinary having jurisdiction of the trust, setting forth the reasons therefor, and also the name of some suitable person willing to accept the trust, whereupon the Ordinary shall cite such person, and also the nearest of kin of such ward, to appear at the next term of said court, and if the Ordinary shall be satisfied that such change of guardians will not be detrimental to the interest of the ward, and no good cause is shown against it, he shall grant the prayer of the applicant, discharging him from his trust on the following condition, viz: that he shall, forthwith, deliver all property and pay all money held by him as such guardian, upon a fair settlement of his accounts, to his successor; and upon the filing of the evidence of such settlement, and the receipt in full of his successor, the guardian shall be discharged from his said trust. The ward shall have the privilege, within five years after he comes of age, to re-open such settlement and call for an account. Resignation of guardian.

§ 1800. Letters of dismissal may be granted by the Ordinary to any guardian, upon his compliance with the following provisions:— Condition.

1. An application in writing, setting forth his full discharge of the duties of his trust.

2. An examination of his accounts and vouchers by the Ordinary, to verify the truth of the petition.

3. The publication of such application for forty days, in the Letters of dismissal.

Section 3.—Settlement of Guardians, &c.

public gazette where the legal notices of the Ordinary's office are usually published.

4. The examination of any objections filed, and the proof to the Ordinary that the ward is of age.

Disposition
of money,
&c., in hand.

§ 1801. If it shall appear that such guardian has in his hands any money, property, or effects of his ward, the Ordinary may cause the same, if money, to be deposited in some solvent bank, and if other property, to be delivered to some proper person to be appointed by the Ordinary, under such restrictions as he may deem best for the preservation of the property, and then grant the letters dismissory; or the Ordinary may, if he sees proper, pass an order requiring the guardian to retain the funds in his own hands at an interest not exceeding four per cent. per annum, his sureties being still responsible therefor.

Ward dying,
guardian
shall act as
administra-
tor.

§ 1802. When a ward shall die intestate, pending his minority, the guardian shall proceed to distribute his estate in the same manner as if he had been appointed administrator upon such estate, and the sureties on his bond shall be responsible for his faithful administration and distribution of such estate.

ARTICLE II.

GUARDIANS OF LUNATICS AND IDIOTS AND PERSONS NON COMPOSITIS.

SECTION.	SECTION.
1803. Guardian—for whom appointed.	1812. Issue—how made and tried.
1804. Oath and bond. Powers, &c.	1813. Other provisions as gen'l guardian.
1805. Wife may be guardian.	1814. Confining ward.
1806. Proceeding to obtain commission.	1815. Proceedings to confine him, &c.
1807. Return and appointment.	1816. Insane slave or free person of color.
1808. Appeal.	1817. Proceedings by third person, &c.
1809. Second application.	1818. Duty and power of the court.
1810. Witnesses.	1819. Jail fees—how collected.
1811. Proceedings to end a commission.	1820. Costs.

For whom
guardians
may be ap-
pointed.

§ 1803. The Ordinaries of the several counties of this State may appoint guardians for the following persons, viz: Idiots, lunatics and insane persons, and deaf and dumb persons when incapable of managing their estates, habitual drunkards, and persons imbecile from old age or other cause, and incapable of managing their estates.

§ 1804. Guardians so appointed shall take the same oath and give a like bond with guardians of minors, and their powers,

Article 2.—Guardians of Lunatics, Idiots, &c.

duties, and liabilities, shall be the same and be exercised under the same rules and regulations.

§ 1805. The wife shall, in all cases, be entitled to the preference to the appointment as guardian, and her bond and all acts as guardian shall be held and construed as if she were a *fieme sole*.

§ 1806. Upon the petition of any person on oath, setting forth that another is liable to have a guardian appointed under the provisions of this Article, the Ordinary, upon proof that ten days' notice of such application has been given to the three nearest adult relatives of such person, or that there is no such relative within this State, shall issue a commission directed to any eighteen discreet and proper persons, one of whom shall be a physician, requiring any twelve of them, including the physician, to examine by inspection the person for whom guardianship is sought, and to hear and examine witnesses, on oath if necessary, as to his condition and capacity to manage his estate, and to make return of such examination and inquiry to the said Ordinary, specifying in such return under which of said classes they find the said person to come. Such commissioners shall first be sworn by a Justice of the Peace "well and truly to execute the said commission to the best of their skill and ability," which oath shall be returned with their verdict.

§ 1807. Upon such return finding the person to be as alleged in the petition, or within either of said classes, the Ordinary shall appoint a guardian for him.

§ 1808. The applicants for a commission, or the person for whom the guardianship is sought, or any friend or relative for him dissatisfied with the return of the committee, may upon paying all costs and giving bond and security for all future costs and damages, within four days after the report has been acted on by the Ordinary enter an appeal to the Superior Court of the county where the issue shall be submitted to a special jury, selected as in other cases; but the guardian appointed by the Ordinary shall act as such pending the litigation.

§ 1809. When one application for guardianship under this article has failed upon the merits, the Ordinary shall not issue a second commission, unless the petition is verified by at least three respectable disinterested neighbors, in addition to the oath of the applicant.

§ 1810. The Ordinary may issue subpoenas for witnesses to

Oath and
bond, Pow-
ers and Du-
ties.

Wife may be
guardian.

Proceedings
to obtain
commission.

Return and
appointment

Appeal.

Guardian *ad
litem*.

Second ap-
plication.

Article 2.—Guardians of Lunatics, Idiots, &c.

Witnesses. appear before the commission thus appointed, and on their failure to appear the Ordinary may take the same steps to compel attendance as if the proceeding was before his court.

Proceedings to end a commission. § 1811. Any person, for whom a guardian is appointed under this article, upon restoration to sanity and capacity, may personally, or by attorney, petition the Ordinary, setting forth the fact and praying the revocation of such guardianship. Upon such petition the Ordinary may examine into the truth thereof, and if satisfied of its truth, and the guardian consenting thereto, the Ordinary shall grant the prayer and order the guardian forthwith to deliver over to such person his property, money and effects.

Issue—how made and tried. § 1812. If the Ordinary is not satisfied as to the truth of the petition, or the guardian, or any relative of the applicant objects to the revocation of the letters, the Ordinary shall require the Sheriff to summon eighteen men, competent to serve as jurors, to appear before said Ordinary on a day specified, any twelve of whom being duly sworn, shall constitute a jury before whom shall be tried the issue as to the truth of the application, upon a verdict affirming its truth the Ordinary shall grant the prayer and order above specified.

Other provisions same as general guardians. § 1813. All the provisions made in this Code as to the settlements of guardians of minors, their resignation, letters of dismission, and distribution of the estate of deceased wards, shall apply to guardians appointed under this article.

Confining ward. § 1814. Guardians of insane persons are authorized to confine them, or place them in the asylum, if such a course is necessary either for their own protection or the safety of others; and a guardian wilfully failing to take such precaution with his ward shall be responsible for injuries inflicted on others by such ward.

Proceedings to confine him at instance of third persons. § 1815. Where there is no guardian for an insane person, or the guardian on notice refuses or fails to confine his ward, and any person apprehends an injury to himself or his property from such insane person, on complaint on oath to any one of the Justices of the Inferior Court of the county, a warrant shall issue, as in criminal cases, for the arrest of such insane person, to bring him before the Inferior Court on a day specified; and said court upon an investigation of the facts may either commit such person to the lunatic asylum under the regulations specified therefor, or commit him to the common jail or accept of a bond from his friends for his good behavior, according to their discretion. In all such cases the expenses of such confinement shall be paid by

the estate of such insane person, if any, and if not, out of the county funds. Costs.

§ 1816. If a slave or free person of color be insane, it shall be the duty of the owner, or guardian, to take care of and confine him, if necessary; and such owner, or guardian, shall be responsible for any injury accruing to third persons from such insane slave or free person of color, in all cases where the owner or guardian has wilfully neglected or failed to take the proper steps for confining him. Insane slave or free person of color.

§ 1817. Upon complaint on oath of any person to a Justice of the Inferior Court that such slave or free person of color is running at large, and is a public nuisance, or dangerous to the public, he shall issue a warrant returnable before the Justices of said court on a day specified, for the arrest of such slave or free person of color, and at the same time require the officer arresting to give at least five days' notice of the time for the investigation of the matter to the master or guardian, if he resides in the county. Proceedings by third persons for arrest.

§ 1818. At the time specified the Justices of the Inferior Court shall examine into the facts, and in their discretion may commit the alleged insane person to the common jail of the county, or take bond from the owner or guardian, with security, in the sum of five hundred dollars, conditioned for the keeping of such insane person in close and safe custody. On breach of such bond it shall be forfeited, and recovery had by *scire facias* and judgment in the Inferior Court. Duty and power of the court.

§ 1819. If committed to jail the sum of ten dollars per month shall be allowed to the jailor for keeping such insane person, and at the end of each month the said court, on the application of the jailor, under oath, may issue a *fi. fa.* against the owner or guardian for all arrearages for said dieting. Jail fees—how collected.

§ 1820. The costs of the entire proceeding, if sustained, shall be paid by the owner or guardian, if the free person of color has property and the court may order a *fi. fa.* to issue for the same. *Fi. fas.* against the guardian under this law shall be levied only on the property of the free person of color, and on the return of no property on any *fi. fa.*, either for costs or dieting, against the owner or guardian, the amount of the same shall be paid out of the funds of the county. Costs. Collection.

ARTICLE III.

GUARDIANS OF FREE PERSONS OF COLOR.

SECTION.

1821. How appointed.
 1822. Choice of ward over fourteen.
 1823. Guardians of those under fourteen.
 1824. Binding out wards.
 1825. Revoked by ill-treatment.
 1826. Powers and duties.
 1827. Credit to ward.

SECTION.

1828. Judgments *vs.* guardians.
 1829. May hold any property but slaves
 1830. Lands—how sold.
 1831. May make a will.
 1832. Removal of guardian
 1833. Commissions.

How appointed.

§ 1821. Guardians of free persons of color shall be appointed by the Ordinary at any regular term of his court, upon the written application of any such person of color residing in the county.

Choice of ward over fourteen.

§ 1822. The choice of the applicant, if over fourteen years of age, shall control the appointment; *Provided*, the written consent of such person to such appointment be filed, and the court is satisfied that such appointment is judicious for the ward and the public.

Guardians of those under fourteen.

§ 1823. Free persons of color under fourteen years of age shall be held and considered the wards of the guardian of their mother, until for good cause shown by any person, the Ordinary shall see proper to appoint another guardian for them, and such guardianship shall continue after their arrival at that age, until another is appointed for them.

Binding out wards.

§ 1824. The Ordinary shall have power in his discretion to bind out to some fit and proper person, all free persons of color between the ages of five and twenty-one years, if it shall appear to him upon investigation, and after notice to the guardian, if any, that such persons are not being raised in a proper manner. In all such cases the court shall require bond with ample security from the person to whom such person of color is bound, conditioned for the maintenance and protection and good treatment of such person, and that he will not remove him to reside out of the county, and to discharge him from his service at the age of twenty-one years.

Revoked for ill-treatment.

§ 1825. Upon complaint made by such indented servant, or any one in his behalf, the court may at any time, for a breach of said

As to registry of free persons of color, see Part 2, Title 1, Chapter 1, Art. 3.

As to insane free persons of color, see Part 2, Title 2, Chapter 3, Art. 2.

Article 3.—Guardians of Free Persons of Color.

bond, revoke the order, and contract and bind the said person of color to some other person.

§ 1826. Guardians of free persons of color, as to the manage-^{Power and}ment of their persons or estates, are vested with all the powers ^{duties.} and authority, and are subject to the same liabilities with guardians of minors. They shall make returns as other guardians, ^{Contracts.} and be subject to the same regulations. Through his guardian the free person of color must contract and be contracted with, sue and be sued.

§ 1827. Credit shall not be given to any free person of color, ^{Credit to}except upon the written order of the guardian, or unless subse- ^{ward.}quently ratified by him.

§ 1828. Judgments against guardians of free persons of color, ^{Judgments}as such, shall bind only the property of the ward, and upon a re- ^{vs. guardian.}turn of "no property," the Ordinary may bind out such ward on ^{Insolvent}such terms as he may think proper to pay the said debt. ^{ward hired.}

§ 1829. Free persons of color, through their guardians, may ac- ^{May hold}quire and hold real estate and personalty (except slaves,) in this ^{any property}State. Any attempt directly or indirectly by trust or otherwise ^{but slaves.}to secure the legal, equitable or any beneficial interest in slaves to a free person of color, shall be void, and the whole title to such slave shall be forfeited to the State, to be recovered by the es- ^{Escheat of}cheator of the county, one-half to the informer, and the other to ^{slaves.}the Educational Fund of the county.

§ 1830. Guardians of free persons of color shall convey the ^{Lands—how}real estate of their wards only under an order of the Ordinary of ^{sold.}the county, to be granted under the same regulations as for the sale of real estate of minors, and the proceeds to be invested under the order of said court.

§ 1831. Free persons of color shall have the privilege of dis- ^{May make a}posing by will, written or parol, of such property as they may ^{will.}have at their death. If they die intestate, the guardian shall distribute the same to their lineal descendants, giving the reput- ^{Distribution}ed wife a child's part. If no wife or lineal descendant, then to ^{of estate.}the brothers and sisters of the intestate. If no brothers and sis- ^{ters,} then to be escheated and paid to the county for educational purposes.

§ 1832. The Ordinary may, at his discretion, at any time, re- ^{Removal of}move a guardian of a free person of color at the request of such ^{guardian.}free person of color, and may demand a bond and security for ^{Bond.}

Article 3.—Guardians of Free Persons of Color.

fideliy in the trust, either on appointment or at any subsequent time.

Commissions.

§ 1833. Such guardians shall receive for their services the same compensation as guardians of minors.

ARTICLE IV.

FOREIGN GUARDIANS.

SECTION.

1834. Foreign guardian may recover, &c.

1835. Order of Ordinary.

1836. Discretion of Ordinary.

SECTION.

1837. Receipt.

1838. Enforcing order.

1839. Removal of guardian and ward, &c.

Foreign guardian may recover property, &c.

§ 1834. When a minor, idiot, lunatic or insane person resides in another State and by any reason is entitled to property in the hands of any executor, administrator, trustee or guardian within this State, and there is no sufficient reason why such property should not be transferred to a guardian appointed under the laws of such other State, the same may be done in the following manner:

Bond.

1. The foreign guardian shall give bond with good security to the proper authority in his own State for the faithful execution of such guardianship, in double the amount of the value of the property in this State, over and above the sum in which he may be bound for the guardianship of property then in that State.

Exemplification.

2. He shall produce to the Ordinary, to whose court such executor, administrator, trustee or guardian is bound to make returns, an exemplification, authenticated as required by the Act of Congress, showing that he has complied with the above condition, and having also the certificate of the proper officer as to the sufficiency of the security to his bond.

Notice.

3. He shall give twenty days' notice to such executor, administrator, trustee or guardian of such intended application.

Order of Ordinary.

§ 1835. Upon compliance with these conditions, the Ordinary may order the transfer of all of such ward's estate to the foreign guardian, and may order the sale of any real estate if necessary for settlement with such foreign guardian. If there exists any reason why such estate or any portion of it should not be removed from this State, the Ordinary may hear any one interested in the question and refuse the order in his discretion.

Objections.

Discretion of Ordinary.

§ 1836. The exemplification and certificate produced by the foreign guardian shall not be conclusive, but the court may hear

Article 4.—Foreign Guardians.

evidence as to the fitness and competency of the guardian for his trust or the sufficiency of his security, or any other matter or thing going to show the impropriety of granting the order asked for, and in his discretion the Ordinary may refuse such order.

§ 1837. The receipt of the foreign guardian under such order Receipt. shall be a sufficient voucher for the trustee in Georgia.

§ 1838. The court may enforce such order in the same manner Enforcing order. as provided in cases of settlements made with guardians, and the foreign guardian, after such order, may sue for the property of his ward in the possession of any person in any court of law or equity in this State.

§ 1839. If any guardian appointed in this State shall desire to remove to another State and carry his ward with him, before removing the person or property of his ward, he shall, in the proper court of his intended domicil, first comply with all the conditions required in the preceding sections of a foreign guardian, and obtain the order of the Ordinary consenting to such removal. Removal of guardian and ward, &c.

CHAPTER IV.

MASTER AND SERVANT.

ARTICLE 1. Indented servants and apprentices.

ARTICLE 2. Laborers in factories.

ARTICLE I.

INDENTED SERVANTS AND APPRENTICES.

SECTION.

- 1840. Indenture of service.
- 1841. Right of master.
- 1842. Right of servant.
- 1843. Binding apprentice.

SECTION.

- 1844. Power of master.
- 1845. Proceedings against master.
- 1846. Action by master.

§ 1840. Any person of full age may bind himself for a valuable consideration to any citizen of this State for a limited number of years, not exceeding five; *Provided*, the contract is in writing, acknowledged before the Inferior Court of the county in open court, and by them ordered to be recorded. Indenture service.

§ 1841. The master shall be entitled to his reasonable labor under his direction, and shall have a right of action against any other person who with notice shall employ such servant. If the Right of master.

Article 1.—Indented Servants and Apprentices.

- Damages.** indented servant shall have been imported by the master, he shall recover damages at least equal to double the amount per month for which such indented person contracted to serve.
- Rights of servants.** § 1842. Such indented person is entitled to maintenance, protection and humane treatment, and upon proof to the court before whom the contract was acknowledged that he is denied either of them, or the consideration of his indenture, the court shall pass an order declaring the indenture revoked and annulled.
- Binding apprentice.** § 1843. Any father, or mother if the father be dead, or the child be illegitimate, may, by written contract, bind his or her minor child to a citizen of this State as an apprentice for a limited number of years, or until arrival at twenty-one years of age, which contract shall be witnessed as deeds to land, and shall be recorded in the same office in the county of the residence of the master.
- Power of master.** § 1844. The master of an apprentice may use the same amount of force to compel the obedience of his apprentice, which a father may use with his child, and shall be bound to furnish to him maintenance, protection and education in the art or trade for which he is bound, and at all times to extend to him humane treatment, and not to remove him beyond the limits of this State without his consent.
- Proceedings against master.** § 1845. Upon complaint of an apprentice, or any one for him, to a Justice of the Inferior Court of the county, of cruel treatment, or criminal neglect by the master, the Justice shall cause the master to be cited to appear at the next regular term of the said court, when the same shall be investigated by the court, and if a majority of the Justices present are satisfied of the truth of the charge, they shall discharge the apprentice from all obligations to the master.
- Action by master.** § 1846. The master shall have a right of action against any person who shall employ such apprentice with notice of the fact, and the damages recovered in such action shall in no case be less than twenty-five dollars.

ARTICLE II.

LABORERS IN FACTORIES.

SECTION.

1847. Hours of labor.

SECTION.

1848. Corporal punishment.

Hours of labor.

§ 1847. The hours for labor by all white persons under twenty-one years of age, in all cotton, woollen or other manufacturing

Article 2.—Laborers in Factories.

establishments or machine shops in this State, shall be from sunrise until sunset, the usual and customary time for meals being allowed from the same; and any contract made with such persons or their parents, guardians or others, whereby a longer time for labor is agreed upon or provided for, shall be null and void, so far as relates to the enforcement of said contracts against such laborers. Contract for more void

§ 1848. No boss or other superior in such establishments shall inflict corporal punishment upon such minor laborers; and the owner of such factory or machine shop shall be directly liable for all such conduct on the part of their employees; such minor may sue in his own name for damages for such conduct, and the recovery shall be his own property, and not belong to his parents. Corporal punishment.

CHAPTER V.

OF MASTER AND SLAVE.

ARTICLE 1. Of the relative duties of master and slave.

ARTICLE 2. Of the rights and liabilities of the master, &c.

ARTICLE 3. Of manumission.

ARTICLE 4. Of fugitive or runaway slaves.

ARTICLE I.

OF THE RELATIVE DUTIES OF MASTER AND SLAVE.

SECTION.

- 1849. Right and power of master.
- 1850. Cruel treatment.
- 1851. Duty of master.
- 1852. Slaves neglected by owners.
- 1853. Proceedings against overseer.
- 1854. Rest of Sabbath day.

SECTION.

- 1855. Unlawful privileges to slaves.
- 1856. Unlawful traffic.
- 1857. Employment in drug store.
- 1858. Mutual protection.
- 1859. Disqualification of the master, &c.

§ 1849. The master is entitled to the time, labor and services of the slave, and to a prompt obedience to all his lawful commands. The master may enforce his rights by corporal punishment, not extending to life or limb or cruel treatment. Right and power of master.

§ 1850. Cruel treatment may consist of withholding necessary food or clothing from the slave, inflicting cruel punishment or doing any act, the necessary consequence of which is to impair the health or endanger the life or limb of the slave. Cruel treatment.

Article 1.—The Relative Duties of Master and Slave.

Duty of
Master.

§ 1851. The master is bound to treat his slave with humanity, to furnish him a sufficiency of nutritious and healthy food and proper clothing, to provide him lodging and fuel, to furnish him medical attendance and nursing during sickness, and to provide for all his necessary wants when infirmity or old age renders him incapable of service.

Slaves neg-
lected by
owners.

§ 1852. It is the duty of the Inferior Court in every county on receiving information, on oath, that any infirm slave is suffering from the neglect of the owner, to investigate as to the fact, and render such relief to such slave as his condition may require.

Proceedings
against own-
er.

§ 1853. The said court shall cite the owner or overseer of such slave, if resident in the county, to show cause why a *n. f. a.* should not issue against him for the amount so expended by the court from the county funds, and if no sufficient cause is shown, may cause the same to be issued. If the owner or overseer does not reside in the county, the said court may sue for and recover the amount so expended in any court having jurisdiction.

Rest of Sab-
bath.

§ 1854. The Lord's day—called Sunday—is a day of rest of Divine appointment. No master or hirer shall employ any slave in any work or labor on that day—work of absolute necessity and the necessary occasions of the family only excepted. Any master, overseer, or employer, violating this provision of this Code, shall forfeit for each violation the sum of one hundred dollars, to be recovered in the name of the Inferior Court—one half to be paid to the informer, and the other half to the Educational Fund of the county.

Unlawful
privileges to
slaves.

§ 1855. The owner should keep his slave on his own premises, or within his control. He must not permit him to labor or transact business for himself, except during holidays, or upon his own premises. Nor shall any slave be permitted to hire or rent any house, room, store or land, on his own account or that of another slave.

Unlawful
Traffic.

§ 1856. Slaves shall not be permitted to traffic on their own account, except in articles of their own manufacture, or agricultural products of their own raising, or poultry raised by their master's permission, or articles of the like character usually permitted to slaves. And even in these articles a traffic by and with.

For patrol and police regulations, see Part 1, Title 15, Chapter 5, Article 1. As to who are slaves, see Part 2, Title 1, Chapter 1, Article 3. As to hiring of slave, see Bailments.

Article I.—The Relative Duties of Master and Slave.

the slave is prohibited, except by the written permission of the master specifying the particular articles to be sold.

§ 1857. Slaves shall not be employed in any apothecary shop or drug store in putting up or dispensing, purchasing or selling medicines of any description, nor where they can, by reason of their employment, have access unaccompanied by a white person, to poisonous drugs. For every violation of this clause, the master allowing it, and the employer consenting to it, shall forfeit the sum of one hundred dollars, to be recovered and paid— one half to the informer and the other half to the Educational Fund of the county.

Employment in drug store.

Penalty.

§ 1858. The relation of master and slave, in an especial manner and to the fullest extent, authorizes and justifies the mutual protection of each other.

Mutual protection.

§ 1859. A master convicted twice, criminally, of cruel treatment to his slave, shall on the second conviction be declared by the Superior Court incapable of holding title to slave property within this State. And the same court shall appoint a receiver to take possession of, and sell under its order, all the slaves then belonging to such master, for his benefit. Any conveyance of slave property thereafter to such person shall be null and void, except so far as to convey the title to the informer, who may sue for and recover the same.

Disqualification of master on account of cruel treatment.

ARTICLE II.

OF THE RIGHTS AND LIABILITIES OF THE MASTER AS TO THIRD PERSONS.

SECTION.

- 1860. Liability for act of slave.
- 1861. Slave—when his agent.
- 1862. Presumption of command.
- 1863. Liability for trespass & negligence.
- 1864. Interference of third persons.
- 1865. Harboring a runaway.
- 1866. Necessaries, &c.

SECTION.

- 1867. White persons on plantation.
- 1868. Druggist selling poison to slaves.
- 1869. Selling liquor to slave.
- 1870. Master furnishing poison, &c.
- 1871. Keeping fire-arms.
- 1872. Master concealing, &c.
- 1873. Furnishing free pass to slave.

§ 1860. Masters are bound by all the acts of their slaves done by their command, and also by their transactions and dealings in respect to the business in which they are employed, and also by all transactions which by receiving the profits the master has tacitly ratified.

Liability for acts of slave.

Article 2.—Rights and Liabilities of Master as to third Persons.

- Slave—
when his
agent. § 1861. The master may constitute his slave his agent, and in such case is bound by his acts, as of any other agent. A presumption of agency arises in all matters where the slave has acted without complaint by the master.
- Presump-
tion of com-
mand. § 1862. During the usual hours of labor the master or employer is presumed to be cognizant of the business of the slave, and in such business he is presumed to be acting under the master's or employer's command. On Sabbaths, holidays, or during the hours of rest, no such presumption arises.
- Liability for
trespass, &c. § 1863. The master is responsible for all damages arising from the negligence of his slave while engaged in his business.
- Interference
of third per-
sons. § 1864. Except so far as authorized by the patrol and police regulations of this State, and is necessary for the preservation of public order, third persons have no right to interfere with, control, coerce or correct a slave, and for all such acts the master may recover damages.
- Harboring a
runaway. § 1865. Any person harboring or concealing a runaway or fugitive slave, shall be liable to the master in damages, and the jury in every such case shall give exemplary damages, according to the circumstances of each case. If the person harboring or concealing is a free person of color the owner shall have his remedy against the guardian, and for the payment of the recovery such free person of color shall be hired out as prescribed for other debts.
- Necessaries
and profes-
sional ser-
vices. § 1866. The master is liable to any person for necessaries furnished to his slave, unless he be a fugitive, or for medical attendance, rendered either when the slave is abandoned or neglected by him, or in cases of emergency, when the master cannot be consulted. In all such cases the burden is on the plaintiff to show the existing necessity, and the failure or inability of the master to supply the wants.
- White per-
son on plan-
tation. § 1867. Every master or employer having on a plantation more than ten slaves, over the age of sixteen years, shall have a white man as overseer, manager or superintendent, residing on or near said plantation. For a violation of this clause such master or employer shall forfeit the sum of one hundred dollars, one-half to be paid to the informer.
- Druggist
selling poi-
son to slave. § 1868. Any druggist or other person who by himself or his clerk shall sell or give any drug or medicines of a poisonous character to a slave, except upon the written order of the master, shall be liable to the master or any other person for all

Article 2.—Rights and Liabilities of Master as to third Persons.

damages arising from the use of such poison, and the additional sum of one hundred dollars to the master for every such offence.

§ 1869. Any person who shall sell or give any spirituous liquors to a slave without the written order of his master, shall be liable to the master for all damages direct and consequential accruing to the master or his property from such act.

Selling liquor to slave.

§ 1870. The master shall not furnish to his slave any poisonous drug or medicine, or spirituous liquors, except as administered medicinally or used in his presence. And any person whose slave or other property has been injured by such poison or liquors received from the slave of another having possession of the same by his master's consent, shall recover from such master the full amount of the damage so sustained and the reasonable expense of his litigation.

Master furnishing poison or liquor to his slave.

§ 1871. No slave shall keep any fire-arms in his own possession, nor carry or make use of them or any weapon of offence, except upon the plantation of the master or employer, or accompanied by a white person at least sixteen years of age; and any white person finding a slave violating this section may seize such weapons, and having notified the owner or employer of the slave of the fact, and the time of his application, he may apply to a Justice of the Peace of the district to hear the facts upon his own affidavit and the testimony of others, and to grant a certificate of forfeiture declaring the said weapons to belong to such informer.

Keeping fire-arms.

§ 1872. The master or controller of a slave charged with any offence shall not conceal or convey away such slave, or otherwise seek to evade a fair trial of the charge. Any person violating this clause shall, if the charge be of a capital offence, forfeit the sum of one thousand dollars, and if not capital, one hundred dollars, one-half of which shall go to the person injured by such offence of the slave, if any, if not, then to the informer, the remaining half to the Educational Fund of the county.

Master concealing offender.

§ 1873. Any person writing, or furnishing, or concerned in any way in furnishing to a slave a free pass, or permit, or any other permit calculated to injure or harass the master, shall be liable to the master in the sum of one hundred dollars for every such act in addition to the full damages which the jury may assess for any loss, or injury, or vexation which the master has suffered by reason of such act.

Furnishing free pass to slave.

Article 3.—Manumission.

ARTICLE III.

OF MANUMISSION.

SECTION.

1874. Manumission prohibited.
 1875. Every attempt void.
 1876. Penalty for violation.

SECTION.

1877. Papers shall not be recorded.
 1878. Foreign manumission, &c.

Manumission prohibited.

Every attempt void.

Penalty for violation.

Papers shall not be recorded.

Foreign manumission, &c.

§ 1874. No slave shall be manumitted in Georgia, except by act of the General Assembly.

§ 1875. All and every will and testament, deed, whether by way of trust or otherwise, contract, agreement or stipulation, or other instrument in writing, or by parol, made and executed for the purpose of effecting, or endeavoring to effect the manumission of any slave, either directly by conferring, or attempting to confer freedom on such slave, or indirectly or virtually by allowing and securing, or attempting to allow and secure to such slave the right or privilege of working for himself free from the control of a master, or of enjoying the profits of his labor and skill, shall be utterly null and void in every part and clause of the same seeking to carry such object into effect, and the title to such slave shall be just as if such attempt had not been made.

§ 1876. Any person violating, or attempting to give effect to any instrument violating the above provisions, shall be liable to a forfeiture of one thousand dollars for every such offence, to be recovered in an action of debt, one-half to go to the informer, and the other to the Educational Fund of the county.

§ 1877. No Ordinary or Clerk, or other officer, shall record such portions of such instruments as are violative of the above provisions.

§ 1878. Every master has the right of sending his slave to another State, there to be manumitted. He cannot direct this to be done by his executor or others after his death, and every such provision, by will, deed or otherwise, shall be void.

ARTICLE IV.

OF FUGITIVE OR RUNAWAY SLAVES.

SECTION.

1879. Right of re-capture.
 1880. Possessory warrant.
 1881. Retaliation on other States, &c.
 1882. Arrest of fugitives.
 1883. Must be delivered up in four days.

SECTION.

1884. Duty of jailor.
 1885. Sale.
 1886. Claim of owner after sale.
 1887. Before sale.
 1888. Notice of reward and claim.

Article 4.—Fugitive or Runaway Slaves.

§ 1879. The master has the right of re-capturing his fugitive slave wherever and whenever he may find him: for this purpose the master may pursue the slave upon the land or within the curtelage of another, if in so doing he commits no breach of the peace. Right of re-caption.

§ 1880. If the fugitive be found in the possession of a person who claims him as a *bona fide* purchaser from another, the master must resort to a possessory warrant as hereinafter provided, when the question to be tried before the court shall be confined to the fact of the slave being a fugitive from the claimant. Possessory warrant.

§ 1881. If the fugitive slave escapes to another State, and the master is denied his rights of re-caption according to the laws of the Confederate States, by reason of the local legislation of such State, the Governor of this State, upon being satisfied of the fact from information under oath, shall issue his proclamation requiring all the courts of this State to deny to the citizens of such State every privilege now allowed to them upon the principles of comity among States. Retaliation of other States, &c.

§ 1882. Every citizen of this State has the right of interrogating every negro or mulatto found in the highway or away from his master's premises and business without a permit, or under any other suspicious circumstances, with a view of ascertaining whether he is a fugitive or not, and, upon reasonable grounds of suspicion, to arrest such negro or mulatto and carry him before the nearest Justice of the Peace for further examination into the fact. If the master of such slave is known, and is within a convenient distance, the said Justice, if satisfied that he is a fugitive, shall direct the person arresting, or a Constable, to deliver such slave to the master. If the master is unknown, or not within a convenient distance, the Justice, if satisfied as above, shall direct the person arresting, or a Constable, to deliver the said slave to the jailor of the county. Arrest of fugitives.

§ 1883. Every person taking up a fugitive slave shall deliver him to his master, or carry him before a Justice, as above, within four days from the time of such arrest. Must be delivered up in four days.

§ 1884. When a fugitive slave is delivered to the jailor, it shall be his duty to prepare a notice giving the name, age, height, complexion, marks or other descriptive traits, together with the time of commitment and name of the owner as reported by the slave, and cause the same to be published for at least three months in two public gazettes, one near the residence of the reported owner, Duty of jailor. Advertisement.

Article 4.—Fugitive or Runaway Slaves.

and the other the gazette in which the Sheriff's sales of the county are published. He shall also send a letter by post to the person to whom the slave says he belongs.

Sale.

§ 1885. At the expiration of said notice, if no person appears and claims the slave, the jailor shall notify the Justices of the Inferior Court of the fact, who shall cause the said slave to be advertised for sale, by the Sheriff of the county, as a runaway slave, and after publication of said advertisement, as notices of other Sheriff's sales, and, no claimant appearing, the Sheriff shall sell the slave in the same manner as property levied on under execution, to the highest bidder, and after paying jail fees, and all other expenses legally incurred on account of said slave, shall pay over the balance to the Clerk of the Inferior Court of said county.

Disposition of funds.

Claim of owner after sale.

§ 1886. If the former owner of the slave appears at any time within one year from the time of the sale, and makes proof of his ownership, the said court shall order the balance in the hands of the Clerk to be paid over to him. At the expiration of one year without such claim, the court shall order the same paid to the Educational Fund of the county.

Before sale.

§ 1887. If the owner of the slave, advertised as a fugitive, shall appear and give satisfactory proof to the Sheriff that he is the true owner, the Sheriff shall order the jailor to deliver the same to him, on his paying all the jail fees and expenses incurred about said slave. If any reward has been offered for the apprehension of said slave, such reward shall be paid to the jailor, or good security in the county given for the same before the possession of the slave shall be given to the claimant.

Collection of reward.

Notice of reward and claim.

§ 1888. Any person apprehending a fugitive slave for whom a reward has been offered, may on the delivery of said slave to the jailor, give him written notice of such reward being offered, and the name of the person offering it, and any jailor who after such notice shall deliver up such fugitive before said reward is paid or security given as above, shall be liable with his sureties on his bond to the person entitled for the amount of such reward.

For the rights of the owner against persons harboring his slave, see Article 2 of this chapter and Penal Code for slaves and free persons of color.

Article 1.—General Principles.

TITLE III.

OF RELATIONS ARISING FROM OTHER CONTRACTS.

CHAPTER 1. Of Partnership.

CHAPTER 2. Of Debtor and Creditor.

CHAPTER 3. Of Bailments.

CHAPTER 4. Of Principal and Surety.

CHAPTER 5. Of Principal and Agent.

CHAPTER I.

OF PARTNERSHIP.

ARTICLE 1. General Principles.

ARTICLE 2. Rights and Liabilities of Partners among themselves.

ARTICLE 3. Rights and Liabilities as to third persons.

ARTICLE 4. Limited Partnership.

ARTICLE I.

GENERAL PRINCIPLES.

SECTION.

1889. How created.
 1890. Extent of Partnership.
 1891. Open and Dormant Partner.
 1892. What constitutes a partnership.
 1893. Time of Commencement.
 1894. Death of partner. &c.
 1895. Duration and dissolution.

SECTION.

1896. How it is dissolved.
 1897. Notice of Dissolution.
 1898. Effect of Dissolution.
 1899. False Partner.
 1900. Denial by Defendant.
 1901. Suits by and against.
 1902. Executory Bond.

§ 1889. A partnership may be created either by written or parol contract, or it may arise from a joint ownership, use and enjoyment of the profits of undivided property, real or personal. How created

§ 1890. As among partners the extent of the partnership is determined by the contract and their several interests. As to third persons, all are liable not only to the extent of their interest in the partnership property, but also to the whole extent of their separate property. Extent of Partnership.

§ 1891. An ostensible partner is one whose name appears to the world as such, and he is bound though he have no interest in Open partner.

Article 1.—General Principles.

- Dormant partner.** the firm. A dormant or secret partner is one whose connection with the firm is really or professedly concealed from the world.
- What constitutes a partnership.** § 1892. A joint interest in the partnership property, or a joint interest in the profits and losses of the business, constitute a partnership as to third persons. A common interest in profits alone does not.
- Time of commencement.** § 1893. If no time is specified for the commencement of the partnership, it commences immediately.
- Death of a partner as it effects continuance.** § 1894. If the contract specifies the term for which the partnership is formed, it will continue for that time or till the death of one partner. If it is desired to continue, notwithstanding the death of a partner, it must be so specified.
- Duration and dissolution.** § 1895. If there is no agreement as to the time of continuance the partnership is at will, and may be dissolved at any time by any partner on giving three months notice to his co-partners.
- How it is dissolved.** § 1896. Every partnership is dissolved at any time by the mutual consent of the parties, by the death, insanity, or conviction for felony of one of the parties, by the marriage of a *feme sole* partner, by the extinction of the business for which it was formed, or by such misconduct of either partner as will justify a court of equity to decree a dissolution.
- Notice of dissolution.** § 1897. The dissolution of a partnership by the retiring of an ostensible partner, must be made known to creditors and to the world. By the retiring of a dormant partner, it must be made known to all who had knowledge of his connection with the firm.
- Effect of dissolution.** § 1898. A dissolution puts an end to all the powers and rights resulting from the partnership to the partners, except for the purpose of a general account and winding up the business. As to third persons, it absolves the partners from all liability for future contracts and transactions, but not for the transactions that are past.
- False partner.** § 1899. No partnership may lawfully insert in their firm name, or style, the name of any individual not actually a co-partner, nor continue in such firm, name or style, the name of a retired partner. And each member of a firm violating this provision shall forfeit the sum of one hundred dollars for every day's violation, to be recovered by any person who may prosecute for the same.
- § 1900. Partners suing, or being sued in their firm name, the

Article 1.—General Principles.

partnership need not be proved unless denied by the defendant, on oath, upon plea in abatement filed. Denial by defendant.

§ 1901. Judgments may be entered up and execution issue in the name of the firm or against a firm. And service of process on one partner with a return of "*non est inventus*" as to the others, shall authorize a judgment against the firm binding all of the firm assets and the individual property of the one served. Suits by and against.

§ 1902. In all legal proceedings, wherein it becomes necessary for partners to give bond, any one of the partners may execute such bond in the firm name. Executory Bond.

ARTICLE II.

RIGHTS AND LIABILITIES OF PARTNERS AMONG THEMSELVES.

SECTION.

1903. Interest of each.
1904. Insolvent partner.
1905. Good faith *inter se*.
1906. Power of each partner.

SECTION.

1907. Introducing new partner.
1908. Power of majority.
1909. Surviving partner.

§ 1903. Unless otherwise provided in the agreement, partners are equally interested in all the stock or property brought into the business—it matters not by which partner—are equally entitled to share the profits, and equally bound to pay the losses. Interest of each.

§ 1904. If one of several partners proves to be insolvent, each partner is bound to contribute according to his interest to sustain the *pro rata* loss of such insolvent in the debts of the firm. Contribution in case of insolvent partner.

§ 1905. The strictest good faith is required among partners, and that which would not amount to fraud as to third persons, may be such a violation of this faith as to justify a court of equity to compel a partner to give up any advantage thus obtained. Good faith inter se.

§ 1906. Every partner has a right to examine into the affairs of the firm, and, unless otherwise agreed to, have joint possession of its effects, to collect and apply its assets, to contract or otherwise bind the firm in matters connected with its business, and to execute any writing or bond in the course of the business. At no time transgressing the privileges of other partners or seeking in bad faith to evade or violate their wishes. Power of each partner.

§ 1907. No partner by assigning his interest or otherwise, can introduce a new partner without the consent of the others, unless such power is reserved in the contract. Introducing new partner.

Article 2.—Rights and Liabilities of Partners among themselves.

Power of majority.

§ 1908. Unless otherwise stipulated, a majority of the partners must control on any question within the scope of the partnership business; but outside of such business, any partner may veto the use of the partnership assets.

Surviving partner.

§ 1909. The surviving partner, in case of death, has the right to control the assets of the firm to the exclusion of the legal representatives of a deceased partner, and he is primarily liable to the creditors of the firm for their debts.

ARTICLE III.

RIGHTS AND LIABILITIES OF PARTNERS AS TO THIRD PERSONS.

SECTION.

1910. Secret stipulations.
1911. Bound by acts of partner.
1912. Duty of agent.
1913. Matters outside of partnership.
1914. Lending money to partner.
1915. Purchasing from partner.

SECTION.

1916. Endorsement, &c.
1917. Liability from fraud of one partner.
1918. For torts of partner.
1919. Power after dissolution.
1920. Disposition of assets, &c.
1921. Garnishment on partners interest.

Secret stipulation.

§ 1910. Third persons are bound by no stipulations among the partners themselves, unless actual notice of such stipulation be proven prior to their action.

Bound by acts of partner.

Effect of notice.

§ 1911. All the partners are bound by the acts of any one, within the legitimate business of the partnership, until dissolution or the commencement of legal process for that purpose, or express notice of dissent to the person about to be contracted with.

Duty of agent.

§ 1912. An agent of the partnership is generally bound to obey each partner. If contradictory instructions are given by different partners, he is not bound to obey either, but should act for the best interest of the partnership.

Matters outside of partnership.

§ 1913. Third persons acting with a partner in a matter not legitimately connected with the partnership, have no right against the firm or any other member.

Lending money to partner.

§ 1914. A person lending money to a partner for the firm is not bound to see to its application, but if he knows, or has reasonable grounds to suspect that it is intended to be applied to other purposes than the business of the firm, he cannot recover it from the partnership.

Purchasing from partner.

§ 1915. Third persons acquire no title to partnership assets by purchase from one member, when notice or a reasonable ground of suspicion is known to them that the partner is misapplying, or seeks to misapply such assets.

Article 3.—Rights and Liabilities of Partners as to Third Persons.

§ 1916. A guaranty or an accommodation endorsement is not within the legitimate business of ordinary partnership. Endorsements, &c.

§ 1917. All the partners are responsible to innocent third persons for damages arising from the fraud of one partner in matters relating to the partnership. Liability for fraud of one partner.

§ 1918. Partners are not responsible for torts committed by a co-partner. For the negligence or torts of their agent or servant they are responsible under the like rules with individuals. For torts of partner. Of servant.

§ 1919. After dissolution, a partner has no power to bind the firm by a new contract, or to revive one already for any cause extinct, nor to renew or continue an existing liability, nor change its dignity or its nature. Power after dissolution.

§ 1920. When a partnership is insolvent, and one of the partners is deceased insolvent, the creditors of the partnership, in equal degree with individual creditors, cannot claim to share in the individual assets of the deceased partner until the individual creditors shall have first received, upon their debts, such a percentage from the individual assets, as such partnership creditors have received from the partnership assets. Disposition of assets among creditors.

§ 1921. The interest of a partner in the partnership assets may be reached by a judgment creditor by process of garnishment served on the firm, and shall not be subject to levy and sale. The lien on such interest shall attach from the date of the judgment against the partner. Garnishment on partners interest.

ARTICLE IV.

LIMITED PARTNERSHIP.

SECTION.

- 1922. Limited partnerships.
- 1923. How constituted.
- 1924. Business—by whom conducted.
- 1925. Certificate—specification of.
- 1926. Acknowledgment of.
- 1927. Certificate and powers—how filed.
- 1928. Affidavit of general partners.
- 1929. Informal partnerships.
- 1930. Publication.
- 1931. Evidence of publication.
- 1932. Renewal or continuance of.
- 1933. Dissolution of.

SECTION.

- 1934. Names of the firm.
- 1935. Suits—how brought.
- 1936. Stock not to be withdrawn.
- 1937. Interest and profits.
- 1938. Special partner, &c.
- 1939. Liability of general partners.
- 1940. Guilty of fraud—how punished.
- 1941. Fraudulent assignments.
- 1942. General or special partners.
- 1943. Liability of special partners.
- 1944. Not to claim credit—when.
- 1945. Dissolution—how effected.

§ 1922. Limited partnerships for the transaction of any mercantile, commercial, mechanical, manufacturing, mining or agri-

Article 4.—Limited Partnerships.

By whom
formed—for
what pur-
poses.

cultural business within this State, may be formed by two or more persons upon the terms, with the rights and powers and subject to the conditions and liabilities herein prescribed; but the provisions of this act shall not be construed to authorize any such partnership for the purpose of banking or making insurance.

How consti-
tuted.

§ 1923. Such partnerships may consist of one or more persons, who shall be called general partners, and who shall be jointly and severally responsible as general partners, and of one or more persons who shall contribute in actual cash a specific sum as capital to the common stock, who shall be called special partners, and who shall not be liable for debts of the partnership beyond the fund so contributed by him, or them, to the capital, except as hereinafter provided.

Business—
by whom
transacted.

§ 1924. The general partners only shall be authorized to transact business, and to sign for the partnership, and to bind the same.

Specifica-
tions of cer-
tificate.

§ 1925. Persons desirous of forming such partnership shall make, and severally sign by themselves, or attorney in fact, a certificate which shall contain—

1. The name of the firm under which such partnership is to be conducted.

2. The general nature of the business intended to be transacted.

3. The names of all the general and special partners inserted therein, distinguishing which are general, and which are special partners, and their respective places of residence.

4. The amount of capital which each special partner shall have contributed to the common stock.

5. The period at which the partnership is to commence, and the period at which it shall terminate, and when made by such attorney in fact, the power of the attorney duly authenticated shall be recorded along with such certificate.

How ac-
knowledged.

§ 1926. The certificates shall be acknowledged by the several persons signing the same, or their attorney in fact, before a Judge of the Superior or Inferior Court, or a Justice of the Peace, or Notary Public, and such acknowledgment shall be certified by the officer before whom the same is made.

Certificates
and powers
of attorneys
—when and
where filed.

§ 1927. The certificate and power of attorney in fact, so acknowledged and certified, shall be filed in the office of the Clerk of the Superior Court of the county in which the principal place

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of business of the partnership shall be situated, and also be recorded by him at large in a book to be kept for that purpose open to public inspection. If the partnership shall have places of business situated in different counties, a transcript of the certificate, and power of attorney in fact, and of acknowledgment thereof, duly certified by the clerk in whose office it shall be filed, under his official seal, shall be filed and recorded in like manner in the office of the Clerk of the Superior Court in every such county; and the clerk for each and every registry required by this act shall be entitled to the sum of five dollars.

§ 1928. At the time of filing the original certificate, with the evidence of the acknowledgment thereof, as before directed, an affidavit or affidavits of the several general partners shall also be filed in the same office, stating that the sums specified in the certificate to have been contributed by each of the special partners to the common stock, have been actually and in good faith paid in cash, and a certified copy of such certificate, power of attorney, and affidavits, shall be evidence in all courts and places whatsoever. Affidavit.

§ 1929. No such partnership shall be deemed to have been formed until such a certificate as is herein mentioned shall have been made, acknowledged, filed and recorded, nor until an affidavit shall have been filed as above directed; and if any false statement be made in such certificate, or affidavit, or if such partnership business be commenced before such certificate or affidavit is filed, all the persons interested in such partnership shall be liable for all the engagements thereof as general partners. Informal
partnerships.

§ 1930. The partners shall publish the terms of the partnership, when registered, for at least six weeks immediately after such registry, in one newspaper in the county in which the place of business is situated, and in one newspaper in the city of Milledgeville. If no newspaper should be published in the county in which the business is to be transacted, the notice shall be published in all the newspapers in the city of Milledgeville, as before required, and if such publication be not made within two months from the filing of such certificate and affidavit the partnership shall be deemed general. How published.

§ 1931. The affidavits of the publication of such notice by the printers, publishers, or editors of the newspapers in which the same shall be published, may be filed in the office of the Clerk Evidence of
publication.

Article 4.—Limited Partnerships.

of the Superior Court in which the certificate has been filed and shall be evidence of the facts therein contained.

Renewal or
continuance
of partner-
ship.

§ 1932. Every renewal or continuance of such partnership beyond the time originally fixed for its duration shall be certified, acknowledged and recorded, and an affidavit of a general partner be made and filed, and notice be given in the manner herein required for its original formation; and every such partnership which shall be otherwise renewed or continued shall be deemed a general partnership.

Alterations
of names,
&c., deemed
a dissolution

§ 1933. Every alteration which shall be made in the names of the partners, in the nature of the business, or in the capital or shares thereof, or in any other matter specified in the original certificate, shall be deemed a dissolution of the partnership; and every such partnership which shall in any manner be carried on after any such alteration shall have been made shall be deemed a general partnership, unless renewed as a special partnership according to the provision of the last section.

Name of
firm.

§ 1934. The business of the partnership shall be conducted under a firm in which the names of the general partners only shall be inserted without the addition of the word "company," or any other general term; and if the name of any special partner shall be used in such firm, he shall be deemed a general partner.

Suits.

§ 1935. Suits to be brought, by any partnership, to be formed under this Code, shall be in the name or names of the general partners only, and suits against such partnership shall be brought against the general partners only, except in cases where the special partner shall be rendered liable as general partners, in which cases suits may be brought against all the partners jointly or severally, or any one or more of the special partners may be sued in the same action with the general partners.

Capital
stock not to
be with-
drawn.

§ 1936. No part of the sum which any special partner shall have contributed to the capital stock, shall be withdrawn by him or paid or transferred to him in the shape of dividends, profits or otherwise, at any time during the continuance of the partnership, but any partner may annually receive lawful interest on the sum so contributed by him, if the payment of such interest shall not reduce the original amount of such capital; and if, after the payment of such interest, any profits shall remain to be divided, he may also receive his portion of such profits, but shall

Article 4.—Limited Partnerships.

not be liable for any debts previously contracted by the general partners.

§ 1937. If it shall appear that, by the payment of interest or profits to any special partner, the original capital has been reduced, or the firm shall be unable to pay its debts, the partner receiving the same shall be bound to restore the interest or profits received by him necessary to make good his original share of the original stock. Interest and profits, &c.

§ 1938. A special partner may, at any time, examine into the state and progress of the partnership concerns, and may advise as to their management, but he shall not transact any business on account of the partnership, nor be employed for that purpose as agent or otherwise. If he shall interfere contrary to these provisions, he shall be deemed a general partner; but he may act as the attorney or counsellor at law, or in equity, for the partnership, without being liable to become a general partner. Privileges and liabilities of special partners.

§ 1939. The general partners shall be liable to account to each other, and to the special partners for their management of the business of the firm, both in law and equity, as other partners are now by law and equity. Liability of general partners.

§ 1940. Every partner who shall be guilty of any fraud in the affairs or business of the partnership, shall be liable, civilly to the party injured, to the extent of his damage, and shall also be liable to an indictment for a misdemeanor, punishable by fine or imprisonment, or both, at the discretion of the Superior Court, by which he shall be tried. Partners guilty of fraud, &c.

§ 1941. Every sale assignment, or transfer of any of the property or effects of such partnership, made by such partnership when insolvent, or in contemplation of insolvency, or after or in contemplation of the insolvency of any partner, with the intent of giving a preference to any creditor of such partnership or insolvent partner over other creditors of such partnership, and every judgment confessed, lien created or security given by such partnership under the like circumstances, and with the like intent, shall be void as against the creditors of such partnership. Fraudulent assignments invalid.

§ 1942. Every such sale, assignment or transfer of any of the property or effects of a general or special partner, who may have become liable as a general partner, made by such general or special partner when insolvent or in contemplation of insolvency, or after or in contemplation of the insolvency of the partnership, with the intent of giving to any creditor of his own, or of the By general or special partners.

Article 4.—Limited Partnerships.

partnership, a preference over creditors of the partnership; every judgment confessed, lien created or security given by any such partner under the like circumstances, and with the like intent, shall be void as against the creditors of the partnership.

Liability of special partners, &c. § 1943. Any special partner who shall violate any provision of the two last preceding sections, or who shall concur in, or assent to any such violation by the partnership, or by any individual partner, shall be liable as a general partner.

Special partners, &c. § 1944. In case of the insolvency or bankruptcy of the partnership, no special partner shall, under any circumstances, be allowed to claim as a creditor until the claims of all the other creditors of the partnership shall be satisfied.

Dissolution—how effected. § 1945. No dissolution of such partnership, by the acts of the parties, shall take place previous to the time specified in the certificate of its renewal, until a notice of such intended dissolution shall have been filed and recorded in the Clerk's office in which the original certificate was recorded, and published at least once a week for four weeks in a newspaper printed in each of the counties where the partnership has places of business; but if no newspaper be printed in such counties, then the notice shall be published for four weeks in all the newspapers in the city of Milledgeville, which notice shall be signed by all the partners, or their representatives; *Provided*, that nothing herein contained shall be so construed as to affect the collection of any demand against either of the special partners which may have been contracted previously to the commencement of such special partnership.

Article 1.—General Principles.

CHAPTER II.

OF DEBTOR AND CREDITOR.

ARTICLE 1. General principles.

ARTICLE 2. Acts void against creditors.

ARTICLE 3. Mortgages and other liens.

ARTICLE 4. Insolvent debtors.

ARTICLE 5. Interest and usury.

ARTICLE I.

GENERAL PRINCIPLES.

SECTION.

1946. Relation of debtor and creditor.

1947. Rights of creditors favored.

1948. Equitable assets.

1949. Attacking judgments.

SECTION.

1950. Pursuing two remedies.

1951. Compulsory election.

1952. Obligations in writing.

1953. Exceptions.

§ 1946. Whenever one person, by contract or by law, is liable and bound to pay to another an amount of money, certain or uncertain, the relation of debtor and creditor exists between them. Relation of debtor and creditor.

§ 1947. The rights of creditors should be favored by the courts, and every remedy and facility afforded them to detect, defeat and annul any effort to defraud them of their just rights. Rights of creditors favored.

§ 1948. Courts of equity should assist creditors in reaching equitable assets, in every case where to refuse interference would jeopard the collection of their debts. Equitable assets.

§ 1949. Creditors may attack, as fraudulent, a judgment or conveyance, or any other arrangement interfering with their rights, either in law or in equity. Attacking judgments.

§ 1950. The creditor cannot pursue the person and property of the debtor at the same time, except in cases specially provided for, but the process last sued out shall be void. Pursuing two remedies.

§ 1951. As among themselves, creditors must so prosecute their own rights as not unnecessarily to jeopard the rights of others; Compulsory election. Hence, a creditor having a lien on two funds of the debtor equally accessible to him, will be compelled to pursue the one on which other creditors have no lien.

§ 1952. To make the following obligations binding on the promiser, the promise must be in writing, signed by the party to Obligations which must be in writing.

Article 1.—General Principles.

be charged therewith, or some person by him lawfully authorized, viz :

- | | |
|---|---|
| By executor, &c. | 1. A promise by any executor, administrator, guardian or trustee to answer damages out of his own estate. |
| To pay debt of another. | 2. A promise to answer for the debt, default or miscarriage of another. |
| Marriage consideration. | 3. Any agreement made upon consideration of marriage, except marriage articles as herein before provided. |
| Sale of land. | 4. Any contract for sale of lands, or any interest in or concerning them. |
| Agreements, not to be performed, in a year. | 5. Any agreement (except contracts with overseers,) that is not to be performed within one year from the making thereof. |
| Contracts about slaves. | 6. Any contract for the sale or gift of slaves. |
| New promise to revive a debt. | 7. Any promise to revive a debt barred by the acts of limitation. |
| Sale of goods over fifty dollars. | 8. Any contract for the sale of goods, wares and merchandize in existence, or not in esse to the amount of fifty dollars or more, except the buyer, shall accept part of the goods sold and actually receive the same, or give something in earnest to bind the bargain or in part payment. |
| Exceptions. | § 1953. The foregoing section does not extend to the following cases, viz : |
| Executed contracts. | 1. When the contract has been fully executed. |
| Performance on one side. | 2. Where there has been performance on one side accepted by the other in accordance with the contract. |
| Part performance amounting to fraud. | 3. Where there has been such part performance of the contract as would render it a fraud of the party refusing to comply if the court did not compel a performance. |

ARTICLE II.

ACTS VOID AGAINST CREDITORS.

SECTION.

1954. Void acts.

SECTION.

1955. Legal preference.

Void acts. § 1954. The following acts by debtors shall be fraudulent in law against creditors, and as to them null and void, viz :

Assignments in trust. 1. Every assignment or transfer by a debtor, insolvent at the time, of real or personal property of any description to any per-

For other provisions as to "debtor and creditor" see Part 2, Title 7, Chapter 7, "on contracts."

Article 2.—Acts void against Creditors.

son, either in trust or for the benefit of himself or any one or more of his creditors, or any person appointed by him, to the exclusion of any other creditor in the equal participation of such property, *unless* such assignments or transfer is a *bona fide* sale, in extinction, in whole or in part, of the debt of the purchaser, and without any trust or benefit reserved to the seller or any person appointed by him.

2. Every conveyance of real or personal estate by writing or otherwise, and every bond, suit, judgment and execution, or contract of any description, had or made with intention to delay or defraud creditors, and such intention known to the party taking: a *bona fide* transaction on a valuable consideration and without notice or grounds for reasonable suspicion, shall be valid.

Conveyance to delay.

3. Every voluntary deed or conveyance, not for a valuable consideration, made by a debtor insolvent at the time of such conveyance.

Voluntary conveyance.

4. Every parol gift of slaves, where the possession either jointly, partially or entirely remains with the donor, or gift in writing under the same circumstances, unless the same be executed with the formality necessary to a bill of sale, and recorded within one year from its execution.

Parol gift of slaves.

§ 1955. A debtor may prefer one creditor to another, and to that end he may *bona fide* give a lien by mortgage or other legal means, or he may sell in payment of the debt, or he may transfer negotiable papers as collateral security, the surplus in such cases not being reserved for his own benefit or that of any other favored creditor to the exclusion of other creditors.

Legal preference.

Section 1.—Mortgages.

ARTICLE III.

OF MORTGAGES AND OTHER LIENS.

SECTION 1. Mortgages.

SECTION 2. Other liens.

SECTION I.

MORTGAGES.

SECTION.

1956. What is a mortgage, &c.
 1957. Form and execution.
 1958. Registry.
 1959. Effect of failure to record.
 1960. How admitted in evidence.
 1961. Defective record.
 1962. Record not in time.
 1963. Probate of record.

SECTION.

1964. Tacking.
 1965. Mortgage to sureties.
 1966. Redemption in ten years.
 1967. Debts due by installments.
 1968. Several distinct mortgages.
 1969. Claiming proceeds of sale.
 1970. Purchasers giving bond, &c.

What is a
mortgage,
&c.

§ 1956. A mortgage in this State is only a security for a debt, and passes no title. It may embrace all property in possession, or to which the mortgager has the right of possession at the time, or may cover a stock of goods, or other things in bulk but changing in specifics, in which case the lien is lost on all articles disposed of by the mortgager up to the time of foreclosure, and attaches on the purchases made to supply their place.

Form and
execution.

§ 1957. No particular form is necessary to constitute a mortgage. It must clearly indicate the creation of a lien, specify the debt to secure which it is given, and the property upon which it is to take effect. It must be executed in the presence of, and attested by, or proved before a Notary Public or Justice of any Court in this State, or a Clerk of the Superior Court, (and in case of real property by one other witness,) and recorded within three months from its date.

Registry.

§ 1958. Mortgages on realty must be recorded in the county where the land lies; on personalty, in the county where the mortgager resided at the time of its execution, if a resident of this State. If a non-resident, then in the county where the mortgaged property is. If a mortgage be executed on personalty, not within the limits of this State, and such property is afterwards brought within the State, the mortgage shall be re-

Section 1.—Mortgages.

recorded according to the above rules within six months after such property is so brought in.

§ 1959. Mortgages not recorded within the time required, remain valid as against the mortgager, but are postponed to all other liens created or obtained or purchases made prior to the actual record of the mortgage. If, however, the younger lien is created by contract, and the party receiving it has notice of the prior unrecorded mortgage, or a purchaser has the like notice, then the lien of the older mortgage shall be held good against them. Effect of failure to record.

§ 1960. Mortgages, when duly executed and recorded, shall be admitted in evidence under the same rules as registered deeds. How admitted in evidence.

§ 1961. A mortgage recorded in an improper office, or without due attestation or probate, or so defectively recorded as not to give notice to a prudent inquirer, shall not be held notice to subsequent *bona fide* purchasers or younger liens. A mere formal mistake in the record shall not vitiate it. Defective record.

§ 1962. The due record of a mortgage, though not made in the time prescribed, is notice from the time of record to all the world. Record not in time.

§ 1963. All the rules prescribed for the probate of deeds to land where the witnesses are dead, insane, or removed from the State, or to the acknowledgment before or attestation by consuls or commissioners, shall apply to the probate of mortgages. Probate for record.

§ 1964. There shall be no tacking of mortgages in this State. Tacking.

§ 1965. Mortgages may be taken by sureties and guarantees to indemnify them against loss. Mortgage to sureties.

1966. If the possession of the property is given to the mortgagee, the mortgager may redeem at any time within ten years from the last recognition by the mortgagee of such right of redemption. Redemption in ten years.

§ 1967. If the mortgage is given to secure several debts falling due at different times, the mortgagee may foreclose when the first becomes due, and the court will control the surplus so as to protect the lien created for the debts not due. Debts due by installments.

§ 1968. So if there be several mortgagees of equal date or embraced in the same mortgage, and one forecloses, the court will control the proceeds of the sale to distribute to the several mortgagees according to their claims. Several distinct mortgagees.

§ 1969. Property mortgaged may be sold under other process, subject to the lien of the mortgage. If the mortgage is fore- Claiming proceeds of sales.

Section 1.—Mortgages.

closed, the mortgagee may place his execution in the hands of the officer of the law making the sale, and cause the title unincumbered to be sold, and claim the proceeds according to the date of his lien.

Purchasers giving bond to respond to lien.

§ 1970. Purchasers at public sales of property subject to the lien of a mortgage, shall give bond and security in double the value thereof to the officer making the sale, conditioned not to remove the property out of the State, and for its forthcoming to answer to the said lien; *Provided*, the mortgagee, or his agent, files with the officer prior to the sale, an affidavit of the amount due on such mortgage, and that he apprehends the loss of said property unless such bond be taken. On failure to give such bond, the property shall be re-sold at the risk of the purchaser.

SECTION II.

OTHER LIENS.

SECTION.

- 1971. Lien of mechanics.
- 1972. Notice of other liens.
- 1973. Lien attaching to proceeds of sale.
- 1974. Trial of issue.
- 1975. Proceedings on part of mechanic.
- 1976. How sued.
- 1977. Effect of possession.
- 1978. Lien of other mechanics.
- 1979. Lien on steamboats.
- 1980. Mode of enforcement.
- 1981. Issue how made.
- 1982. Replevy.

SECTION.

- 1983. Payment of amount due.
- 1984. Lien of mill-wrights & machinists.
- 1985. Stone cutters, &c.
- 1986. Other liens—how enforced.
- 1987. Lien of attorney, factor, &c.
- 1988. Vendor's lien abolished.
- 1989. Attorney's lien—its extent & effect.
- 1990. Settlement by parties.
- 1991. Lien by by-laws.
- 1992. Oldest lien preferred.
- 1993. Lien under charters.
- 1994. Lien on rules absolute.

Lien of mechanics.

§ 1971. All mechanics who have taken no personal security therefor, shall have a lien on every house, and the premises to which it shall be attached, for work done or materials furnished in building or repairing such house. Which lien shall be superior in dignity and of higher claim than any other incumbrance without regard to date. And such lien upon the improvements made by the mechanic, shall attach to them without regard to the title.

Notice of other liens.

§ 1972. Any person holding a lien on such premises or house, may give notice to any mechanic about to build or repair, before the same is commenced, not to proceed therewith. After such notice, the mechanic's lien shall be postponed for the person giving notice.

§ 1973. If any house or premises on which there is a mechanic's lien, be sold by any process from the courts of this State, the purchaser shall obtain the full title and the lien shall attach to the proceeds of the sale, upon notice by the mechanic to the officer to hold the money until the next session of the Superior Court for that purpose. Lien attaching to proceeds of sale

§ 1974. If the claim of lien be disputed by either plaintiff or defendant in the process or decree on which the money was raised, an issue shall be ordered and tried as other causes, and if it be determined against the claimant, he shall pay such damages, not exceeding twenty per cent., as the jury may assess, with interest from the date of the notice to retain, and costs. Trial of issue.

§ 1975. The following provisions must be complied with to make good the mechanic's lien, and on failure of either, the lien shall cease, viz: Proceedings on part of mechanic.

1. A substantial compliance by the mechanic with his contract for building or repairing or materials furnished.

2. The recording of his claim of lien in the clerk's office of the county where the land lies in substance as follows: "A. B., a mechanic, claims a lien on the house, and premises on which it is erected, of C. D. (describing the premises) (for building, repairing, or whatever the claim may be)" within three months from the time the same is completed.

3. The commencement of an action for the recovery of the amount of his claim within twelve months from the time the same shall become due.

§ 1976. In declaring for such debt the mechanic must set forth his lien and the premises on which he claims it, and if the lien is allowed the verdict shall set it forth and the judgment and execution be awarded accordingly. If sued.

§ 1977. The delivery of possession by the mechanic shall not effect his lien. Effect of possession.

§ 1978. All mechanics shall have a lien on all personal property, manufactured or repaired by them, to the extent of the work done and the materials furnished; but such lien shall cease on the delivery of possession to the owner. Lien of other mechanics.

§ 1979. Every officer and employee, or the master or guardian of any colored employee on any steamboat or other water craft, engaged in the navigation of any river within the border or forming the boundary of this State, shall have a lien of the highest dignity upon the said boat or craft for any debt, dues, Lien on steamboats.

Section 2.—Other Liens.

wages or demands that he may have against the owner or lessee of such boat or craft for personal services in connection with the same, or for wood or provisions furnished to the same.

Mode of enforcement.

§1980. Such lien must be prosecuted and enforced in the following manner in substance, viz:

1. There must be a demand on the owner, or agent, or lessee for payment, and a refusal to pay; and such demand and refusal must be averred.

2. It must be prosecuted within one year after the debt becomes due.

3. The person prosecuting such lien, either for himself or as guardian of a free person of color, must make an affidavit before a Justice of the Superior or Inferior Court of the county in which the boat or craft may then lay, upon the same arriving at the place of destination to which it has been freighted, showing all the facts necessary to constitute a lien under this Code and the amount claimed to be due. If the amount claimed is under fifty dollars the application may be made to a Justice of the Peace, who may take all the other steps hereinafter prescribed as in other cases in his court.

Issue—how made.

§1981. If the person defendant in such execution or any creditor of such defendant contests the amount or justice of the claim or the existence of such lien, he may file his affidavit of the fact, setting forth the grounds of such denial, which affidavit shall form an issue to be returned to the court and tried as other causes.

Replevy.

§1982. The defendant may replevy the boat or craft by giving bond and security in double the amount claimed for the payment of the eventual condemnation money.

Payment of amount due.

§1983. If only a part of the amount claimed is denied, the amount admitted to be due must be paid before the affidavit shall be received by the officer.

Lien of millwrights and machinists.

§1984. All millwrights and builders of gold machines shall have a lien upon such mills and machines, of the same dignity as that given above to persons employed on steamboats, and the same may be enforced in the same way.

Lien of stone cutters and marble companies.

§1985. All stone cutters and marble companies shall have a similar lien on the stone or marble cut and prepared by them, for their labor and expenses, and such lien may be enforced in a similar manner.

Section 2.—Other Liens.

§ 1986. All persons having a lien on personalty under any law in this State may enforce the same in a similar manner, by complying with the requisitions prescribed above for persons employed on steamboats, the proceedings to be in the county where the property lies. Other liens—how enforced.

§ 1987. The lien given by the common law to attorneys, factors, inn-keepers, pawnees, carriers and others under special circumstances (except the vendor's lien) are recognized by and may be enforced under the law of Georgia. Liens of attorneys, factors, inn-keepers, pawnees, carriers, &c.

§ 1988. The vendor's equitable lien for the purchase money of lands is abolished in this State. Vendor's lien abolished.

§ 1989. The attorney's lien shall attach for his fees and for a general balance on all sums collected by him, and upon all property recovered by his services, and shall be superior to all other liens thereon. In claim cases the attorney causing the levy and prosecuting the rights of the plaintiff in *fi. fa.* shall be entitled to his fees from the proceeds of the property condemned, although older liens may demand and recover the proceeds from the immediate client of such attorney. Attorney's lien—its extent and effect.

§ 1990. Parties cannot, by settlement between themselves, defeat the attorney of any lien or claim under contract with his client of which the opposite party had notice prior to the consummation of such settlement. Settlement by parties.

§ 1991. The by-laws of a corporation may create a lien upon the shares or other property of the stockholders in favor of the company; such lien is binding upon the corporators themselves and upon all creditors giving credit with notice, or purchasers at public or private sale purchasing with notice. Lien by by-laws.

§ 1992. When different persons hold a lien on the same property, and both declared to be of the same dignity, then the oldest lien shall have the preference. Oldest lien preferred.

§ 1993. All liens created under the charters of incorporated companies are continued under this Code. Liens under charters.

§ 1994. Rules absolute granted against defaulting Sheriffs, Constables and other officers under the various provisions of this Code, shall have a lien on their property from the date of their rendition similar to that of judgments obtained at the same term. Liens on rules absolute.

Section 1—How Discharged.

ARTICLE IV.

INSOLVENT DEBTORS.

SECTION 1. How discharged.

SECTION 2. Prison bounds.

SECTION 3. Property exempt from sale.

SECTION I.

HOW DISCHARGED.

SECTION.

- 1995. Debtors arrested, &c.
- 1996. By giving bond, &c.
- 1997. Notice to creditors.
- 1998. Schedule.
- 1999. Objections.
- 2000. Trial of issue.

SECTION.

- 2001. Verdict for objector.
- 2002. Oath to be taken.
- 2003. Effect of discharge.
- 2004. Perjury.
- 2005. Delivery of property.
- 2006. Disposition of property.

Debtor arrested may be discharged.

§ 1995. Any debtor unable to pay his debts in full, whenever arrested on any process against his person, either mesne or final, may be relieved from imprisonment and future arrest for the same debts upon complying with the provisions of this section.

By giving bond, &c.

§ 1996. He shall tender to the officer arresting him, a bond with good security, payable to the plaintiff in the process, and in double the amount of the debt, conditioned for his appearance at the next term after the expiration of twenty days of the court, whence the process issued (unless the same be a Justices' Court, and in such case to the Inferior Court) then and there to stand to and abide by such proceedings as may be had relative to his application to take the oath prescribed. If at such term he fails to appear, and no sufficient excuse, to be judged of by the court, be rendered for his absence, an order shall be taken requiring the party and his sureties to show cause at the next term why judgment should not be entered on said bond for the amount of the plaintiff's demand; and if no sufficient cause be shown judgment shall be so entered. The sureties shall not have the right to surrender their principal after the first term, unless they satisfy the court that they exercised strict diligence and failed to secure his attendance at that term, and to this end they shall have all the power given by law to special bail.

Failure to appear at court.

Surrender by sureties.

Section 1.—How Discharged.

§ 1997. The insolvent debtor shall give at least ten days' notice of his intended application to the arresting creditor, and may give the same notice to any other of his creditors, and the order of discharge shall set forth the names of all the notified creditors. A notice to an attorney of record shall be held sufficient notice to his client, and service on one of a firm shall be sufficient. If creditors reside out of the State, and their claims are not in suit, notice by publication, once a week for two months, shall be held sufficient to them.

Notice to creditors.

Non-resident.

§ 1998. Every applicant, at least ten days before the session of the court, shall file a schedule of all his real and personal estate, money, debts, credits and effects in possession, or in action, or to be enjoyed in future, whether the same be legal or equitable.

Schedule.

§ 1999. Every creditor of such applicant may appear and file objections to the granting a discharge of the applicant on either of the following grounds:

Objections.

1. A willful failure to include in the schedule property which should be thus included; the creditor specifying the property.

2. Any fraudulent attempt by the applicant to defeat the enforcement of the rights of creditors.

3. The loss by the applicant, at any species of gaming or lottery, within twelve months before his application, at any one time, the sum of one hundred dollars, or at different times the aggregate sum of three hundred dollars.

§ 2000. The objections filed shall constitute the issue, and shall be submitted to a jury as other causes, upon the trial of which the applicant may be sworn as a witness at the instance of the objector; and if he refuses to answer any pertinent and legal questions, after notice from the court, his application shall be refused.

Trial of issue.

§ 2001. If the jury find a verdict sustaining the objection filed, the court shall order the applicant into the custody of the Sheriff, to be safely kept as provided by law, until the debt of the arresting creditor is satisfied, unless the jury further find that the omission was not fraudulent; in which last case, upon the delivery of the property, the defendant shall be allowed to take the oath.

Verdict for objector.

§ 2002. If no objections are filed, or if filed the verdict is in favor of the applicant, the court shall cause the following oath

Oath to be taken.

Section 1.—How Discharged.

to be entered on the minutes, and sworn to and subscribed by the applicant, viz :

“I, A. B., do solemnly swear (or affirm, as the case may be,) in the presence of Almighty God, that I am not possessed of any estate, real or personal, money, debts, credits or effects, legal or equitable, (such property as is exempt by law from levy and sale alone excepted,) other than is contained in the schedule filed by me, and that I have not, directly or indirectly, since my arrest or before, sold, leased, assigned or otherwise disposed of or made over, in trust for myself, or others appointed by me, any part of my lands, estate, goods, stock, money, debts or credits, whereby I have or expect any benefit or profit to myself, my wife or my heirs. So help me God.”

Effect of discharge.

§ 2003. After taking the oath, the debtor is discharged from arrest at any time at the instance of either of the notified creditors, and such arrest shall be false imprisonment; but his property remains subject to levy and sale for the satisfaction of their debts.

Perjury.

§ 2004. Willful and fraudulent false swearing in taking the oath shall be perjury.

Delivery of property.

§ 2005. Before taking the oath the debtor shall deliver into the court all his title papers to lands returned in the schedule, within his control; and also all notes, bonds, contracts, accounts, books or other evidences of debts mentioned in the schedule, and shall deliver to the Sheriff all personal property mentioned therein.

In another county.

If the debtor be arrested in a county different from that whence the process issued, he may deliver any personal property returned in his schedule to the Sheriff of the county of his residence, who shall hold it subject to the order of the court before whom the application is to be made.

Disposition of property.

§ 2006. The court may make such order for the sale, or other disposition of the property, or collection of the debts returned in the schedule, as in its judgment is most beneficial to the creditors, and to this end shall have all necessary power to enforce a faithful discharge of duty by those to whom such assets shall be entrusted.

Section 2.—Prison Bounds.

SECTION II.

PRISON BOUNDS.

SECTION.

2007. Laid off.

2008. Plan of bounds.

2009. How to get benefit of.

SECTION.

2010. For six months.

2011. Sheriff—when surety.

2012. Jailer's fees.

§ 2007. The Sheriff of every county, under the direction of Laid off. the Inferior Court, shall cause to be surveyed and laid off around every jail, in such shape as may be most convenient, one hundred acres of land, the boundaries of which shall be the limits of the prison bounds, which limits may be re-surveyed and changed by the Inferior Court at any time within their discretion.

§ 2008. A plan of such bounds shall be returned to the Clerks Plan of bounds. of each, the Superior and Inferior Courts of the county, and entered by them upon their minutes as a part of the record.

§ 2009. Any person arrested and committed to jail for debt, How to get benefit of. may have the free use and enjoyment of his liberty within the limits of such prison bounds, by tendering to the Sheriff a bond with good security, payable to the plaintiff in the process, in double the amount of the debt for which he is arrested, conditioned that he will not pass over or leave the boundaries thus laid off at any time without being legally discharged. Upon a violation of this condition, the creditor may commence an action upon such bond instantly.

§ 2010. The privilege of prison bounds shall be extended to a For six months. debtor imprisoned for the term of six months, and no longer, upon the same arrest.

§ 2011. If the Sheriff takes insufficient security, he shall be Sheriff—when surety. held and bound as surety himself.

§ 2012. If the jailer diets the prisoner when within prison Jailer's fees. bounds, he must look to him alone for his fees.

Section 3.—Property Exempt from Sale.

SECTION III.

PROPERTY EXEMPT FROM SALE.

SECTION.

- 2013. Property exempt from sale.
- 2014. Schedule—wife's privileges.
- 2015. Land—how laid off.
- 2016. Objections—how tried.
- 2017. Town property.

SECTION.

- 2018. Sale subject to encumbrance.
- 2019. Trespass by officer.
- 2020. Alienation and encumbrances.
- 2021. Settled on wife and children.

Property exempt from sale.

§ 2013. The following property of every debtor, who is the head of a family, shall be exempt from levy and sale by virtue of any process whatever, under the laws of this State; nor shall any valid lien be created thereon, except in the manner herein-after pointed out, but shall remain for the use and benefit of the family of the debtor:

1. Fifty acres of land, and five additional acres for each of his or her children under the age of sixteen years. This land shall include the dwelling-house, if the value of such house and improvements does not exceed the sum of two hundred dollars; *Provided*, that none of the above land be within the limits of a city, town, or village, and does not include any cotton or wool factory, saw or grist mill, or any other machinery propelled by water or steam, the value of which exceeds the sum of two hundred dollars; *And provided, also*, that such land shall not derive its chief value from other cause than its adaptation to agricultural purposes; or, in lieu of the above land, real estate in a city, town, or village, not exceeding five hundred dollars in value.

2. One farm-horse or mule.

3. One cow and calf.

4. Ten head of hogs and fifty dollars worth of provisions, and five dollars worth additional for each child.

5. Beds, bedding, and common bedsteads sufficient for the family.

6. One loom, one spinning-wheel, and two pair of cards, and one hundred pounds of lint cotton.

7. Common tools of trade of himself and his wife.

8. Equipment and arms of a militia soldier, and trooper's horse.

9. Ordinary cooking utensils and table crockery.

10. Wearing apparel of himself and family.

11. Family Bible, religious works, and school books.

Section 3.—Property Exempt from Sale.

12. Family portraits.

13. The library of a professional man, in actual practice or business, not exceeding three hundred dollars in value, and to be selected by himself.

§ 2014. Every debtor seeking the benefit of the act, or if he refuses, his wife, or any person acting as her next friend, shall make out a schedule and description of the property claimed by him to be exempt under this law, and return the same to the Clerk of the Inferior Court, who shall record the same in a book to be kept by him for that purpose.

Schedule—
wife's privilege.

§ 2015. Upon application by an insolvent debtor, it shall be the duty of the County Surveyor, or any other surveyor, if there be no County Surveyor, to lay off the land allowed to his family under this law, and to make a plat of the same, which plat shall be returned to the Clerk of the Inferior Court, and recorded as before provided for schedules returned.

Land—how
laid off.

§ 2016. Should any creditor, for any cause, desire to dispute the propriety of the survey, or the value of the improvements, upon application to the Inferior Court, and notice to the debtor, the said court may appoint three appraisers to view the survey, and to value the improvements, and on their return the said court may direct the surveyor to make such alterations as shall, in the judgment of the court, be conformable to law.

Objections—
how tried.

§ 2017. If the debtor owns town property, exceeding in value the sum of five hundred dollars, and it cannot be so divided as to give to his family that amount, he may give notice to the officer levying thereon, and when the proceeds of the sale are to be distributed the court shall order five hundred dollars of the same to be invested, by some proper person, in a home for the family of the debtor, which shall be exempt, as if laid off under this law.

Town property.

Five hundred dollars
of proceeds.

§ 2018. If, from any cause, the land exempt has not been laid off when the remainder is offered for sale, notice being given of the fact, the purchaser will buy subject to this encumbrance.

Sale subject
to encumbrance.

§ 2019. Any officer knowingly levying on or selling any property of a debtor exempt under this law, a schedule of which has been returned, as required, is guilty of a trespass, and suit may be brought therefor, in the name of the wife or family of the debtor, and the recovery shall be for their exclusive use.

Trespass by
officer.

§ 2020. The debtor shall have no power to alienate or encumber the property exempt under this law; but the same may be sold by the debtor and his wife, if any, jointly, with the consent

Alienation
and encumbrances.

Section 3.—Property Exempt from Sale.

of the Inferior Court of the county, the proceeds to go to the use of the debtor's family.

§ 2021. The property exempt under this law shall be for the use of the wife during her life, and at her death be equally divided between her children under the age of sixteen years. —

ARTICLE V.

INTEREST AND USURY.

SECTION.

2022. Lawful interest.
2023. Usury.
2024. Effect of usury.
2025. Back interest.
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SECTION.

2027. Interest on judgment.
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2029. Interest on liquidated demands.
2030. On merchants' accounts.

Lawful interest.

§ 2022. Lawful interest in this State shall be at the rate of seven per cent. per annum.

Usury.

§ 2023. Usury is the reserving and taking, or contracting to reserve and take, either directly or by indirection, a greater sum for the use of money than the lawful interest.

Effect of usury.

§ 2024. The effect of usury is to annul and make void the contract for the usury; the lender having the right to recover the principal sum loaned, with legal interest. All titles to property, made as a part of an usurious contract, or to evade the laws against usury, are void.

Back interest.

§ 2025. Interest from date, when stipulated, if the debt is not punctually paid at maturity, may be recovered; *Provided*, interest has not already been included in the principal amount.

Lex loci.

§ 2026. Every contract bears interest according to the law of the place of the contract, at the time of the contract, unless upon its face it is apparent that the intention of the parties referred the execution of the contract to another forum, in this case the law of the forum shall govern.

Interest on judgment.

§ 2027. All judgments in this State bear lawful interest upon the principal amount recovered.

Payment—how applied to interest.

§ 2028. When a payment is made upon any debt, it shall be applied first to the discharge of any interest due at the time, and the balance, if any, to the reduction of the principal. If the payment does not extinguish the interest then due, no interest shall be calculated on such balance of interest, but only on the principal amount up to the time of the next payment.

Article 5.—Interest and Usury.

§ 2029. All liquidated demands, where by agreement or otherwise the sum to be paid is fixed or certain, bear interest from the time the party is liable and bound to pay them; if payable on demand, from the time of the demand. In case of promissory notes payable on demand, the law presumes a demand instantly, and gives interest from date. Interest on liquidated demands.

§ 2030. All accounts of merchants, tradesmen and mechanics, which by custom become due at the end of the year, bear interest from that time upon the amount actually due whenever ascertained. On merchants accounts.

CHAPTER III.

OF BAILMENTS.

ARTICLE 1. General principles.

ARTICLE 2. Of carriers and herein of R. R., &c.

ARTICLE 3. Of hiring.

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2032. Property in bailee.

2033. Care and diligence.

2034. Ordinary.

SECTION.

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2036. Gross neglect.

2037. Burden of proof.

§ 2031. A bailment is a delivery of goods or property for the execution of a special object, beneficial either to the bailor or bailee, or both: and upon a contract, express or implied, to carry out this object and dispose of the property in conformity with the purpose of the trust. Definition.

§ 2032. In all cases the bailee, during the bailment, has a right to the possession of the property, and in most cases a special right of property in the thing bailed. For a violation of these rights by any one he is entitled to his action. Property in bailee.

§ 2033. All bailees are required to exercise care and diligence in protecting and keeping safely the thing bailed. Different de- Care and diligence.

Article 1.—General Principles.

degrees of diligence are required according to the nature of the bailments.

Ordinary.

§ 2034. *Ordinary diligence*, is that care which every prudent man takes of his own property of a similar nature. The absence of such diligence is termed *ordinary neglect*.

Extraordinary.

§ 2035. *Extraordinary diligence*, is that extreme care and caution which very prudent and thoughtful persons use in securing and preserving their own property. The absence of such diligence is termed *slight neglect*.

Gross neglect.

§ 2036. *Gross neglect*, is the want of that care which every man of common sense, how inattentive soever he may be, takes of his own property.

Burden of proof.

§ 2037. In all cases of bailments after proof of loss, the burden of proof is on the bailee to show proper diligence.

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OF CARRIERS AND HEREIN OF THE LIABILITIES OF RAILROAD AND STEAMBOAT COMPANIES.

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- 2054. Liability of R. R. Co's. as carriers.
- 2055. When there are several.

Definition.

§ 2038. Any person undertaking to transport goods to another place for a compensation, is a carrier, and as such is bound to ordinary diligence.

Common carrier.

§ 2039. One who pursues the business constantly or continuously for any period of time, or any distance of transportation, is a common carrier, and as such, is bound to use extraordinary diligence. In cases of loss the presumption of law is against him, and no excuse avails him unless it was occasioned by the act of God or the public enemies of the State.

Liability.

Carrier of passengers.

§ 2040. A carrier of passengers is bound also to extraordinary diligence on behalf of himself and his agents to protect the lives and persons of his passengers. But he is not liable for injuries to the person, though he be a slave (if such slave is rightfully received by the carrier,) after having used such diligence.

§ 2041. A common carrier cannot limit his legal liability by any notice given, either by publication or by entry on receipts given or tickets sold. He may make an express contract and will then be governed thereby. Effect of notice to limit.

§ 2042. A common carrier, holding himself out to the public as such, is bound to receive all goods and passengers offered, that he is able and accustomed to carry, upon compliance with such reasonable regulations as he may adopt for his own safety and the benefit of the public. Duty as to reception of goods, &c.

§ 2043. The responsibility of the carrier commences with the delivery of the goods, either to himself or his agent, or at the place where he is accustomed or agrees to receive them. It ceases with their delivery at destination according to the direction of the person sending, or according to the custom of the trade. Time of responsibility.

§ 2044. The carrier of passengers is responsible only for baggage placed in his custody, yet a passenger cannot relieve himself from liability for freight by assuming to take care of his own baggage. For baggage.

§ 2045. The common carrier is bound not only for the safe transportation and delivery of goods, but also that the same be done without unreasonable delay. For delay.

§ 2046. A *stoppage in transitu* by the vendor or consignor relieves the carrier from his obligation to deliver, nor is he thenceforward responsible for more than ordinary diligence in the care of the goods. Stoppage in transitu.

§ 2047. The right of *stoppage in transitu* exists whenever the vendor in a sale on credit seeks to resume the possession of goods while they are in the hands of a carrier or middle man, in their transit to the vendee or consignee, on his becoming insolvent. It continues until the vendee obtains actual possession of the goods. When it exists.

§ 2048. The carrier cannot dispute the title of the person delivering the goods to him by setting up adverse title in himself, or a title in third persons, which is not being enforced against him. Estoppel on carrier.

§ 2049. The carrier has a lien on the goods for the freight, and may retain possession until it is paid, unless this right is waived by special contract or actual delivery. This lien exists only when the carrier has complied with his contract as to transportation. He can recover *pro rata* for the actual distance trans- Lien.

Article 2.—Of Carriers, &c.

ported when the consignee voluntarily receives the goods at an intermediate point.

On baggage. § 2050. The carrier of passengers has a lien on the baggage, not only for its freight but for the passenger's fare.

Fraud on carrier. § 2051. The carrier may require the nature and value of the goods delivered to him to be made known, and any fraudulent acts, sayings or concealment by his customers will release him from liability.

Limit as to value of baggage. § 2052. A carrier of passengers may limit the value of the baggage to be taken for the fare paid; in case of loss, however, and though no extra freight has been demanded or paid, the carrier is responsible for the value of the baggage lost; *Provided*, the same be only such articles as a traveler for business or pleasure would carry for his or her own use.

What passengers may be refused. § 2053. Carriers of passengers may refuse to admit, or may eject from their conveyances all persons refusing to comply with reasonable regulations, or guilty of improper conduct, or of bad, dissolute, doubtful or suspicious characters; so they may refuse to convey persons seeking to interfere with their own business or interest.

Liability of Railroad Companies as carriers. § 2054. Railroad companies are common carriers, and liable as such. As such companies necessarily have many employees who cannot possibly control those who should exercise care and diligence in the running of trains, such companies shall be liable to such employees as to passengers for injuries arising from the want of such care and diligence. If such employees are slaves the company is liable to the master.

When there are several. § 2055. When there are several connecting railroads under different companies, and the goods are intended to be transported over more than one railroad, each company shall be responsible only to its own terminus and until delivery to the connecting road; the last company which ~~lets~~ received the goods as "in good order" shall be responsible to the consignee for any damage, open or concealed, done to the goods, and such companies shall settle among themselves the question of ultimate liability.

Article 3.—Of Hiring.

ARTICLE III.

OF HIRING.

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2056. Contract of hiring.
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 2081. Generally an entire contract.

§ 2056. Hiring is a contract by which one person grants to another either the enjoyment of a thing or the use of the labor and industry, either of himself or his slave, during a certain time, for a stipulated compensation, or where one contracts for the labor or services of another about a thing bailed to him for a specified purpose.

Contract of hiring.

§ 2057. The hirer of things acquires a qualified ownership of them for the time, which entitles him to all their increase and to the possession and enjoyment of them, during the period of bailment, against even the owner himself.

Title of hirer.

§ 2058. The contract may be for the return of the thing or of like property of the same kind and quality. In the former case the risk of death or inevitable accident is with the bailor, and he can re-take possession immediately at the expiration of the time of hiring. In the latter case the risk is with the bailee, and he must deliver the thing hired before the bailor's interest is re-vested.

Duty as to delivery.

§ 2059. The obligations of the bailor of things are to do no act to deprive the hirer of the use and enjoyment of the chattel during the period of the bailment; to keep the thing in suitable order and repair for the purposes of the bailment; and to warrant the right of possession, and that the thing bailed is free from any secret fault rendering it unfitted for the purpose for which it is hired.

Obligations of the bailor.

§ 2060. The engagements of the hirer of things are to put the thing to no other use than that for which it is hired; to take or

Engagement of the hirer.

Article 3.—Of Hiring.

dinary care in its use; to re-deliver at the expiration of the bailment; and to comply generally with the terms of the hiring. If the bailor sends his own agents with the thing bailed, as a driver for his horse, then the hirer is bound either to the bailor or to third persons, only for the consequences of his own directions and for gross neglect.

Effect of violation.

§ 2061. For a violation of the engagements of either party, the other may abandon the contract; and in case the hirer puts the thing to a different use, the bailor may sue as for a conversion, even though the hirer be an infant.

For torts—
who may
sue.

§ 2062. For an interference with the possession, the right of action is in the hirer; for any injury to the property, or any interference with his rights of property, the bailor also has his right of action.

Effect of loss
or destruc-
tion.

§ 2063. The loss or destruction of the thing hired, without fault on the part of the hirer, puts an end to the bailment, and the hirer should pay only for the time it was enjoyed.

Hiring of
slaves.

§ 2064. In a contract for the hire of slaves, the hirer acquires no title or property in the slave, but only the right to the use and enjoyment of the labor, skill and industry of the slave for the time of the bailment. Hence the increase of the slave belongs to the master, and he is responsible for physician's bills, unless the necessity for medical treatment arose from the fault or neglect of the hirer.

If he runs
away.

§ 2065. If a slave runs away from the hirer, he must pay the hire in full, unless such was a habit of the slave and not communicated to the hirer at the time of the contract. If he is not in default, the fact that the slave is runaway releases him from the obligation to re-deliver at the expiration of the term.

If he is sick

§ 2066. If a slave loses time from sickness, the hirer is entitled to no abatement of the hire, unless the disease be one to which the slave was previously subject, and the fact not communicated to the hirer.

If he dies.

§ 2067. If a slave dies during the time for which he is hired, and from no fault or neglect of the hirer—the onus to prove which is on the hirer—he is bound only for hire to the time of his death.

Neglect in
case of sick-
ness.

§ 2068. To fail to call for medical treatment, when accessible and needed, will be held gross neglect by the hirer; and for this purpose the hirer is agent for the owner so far as to bind him for such medical attendance. In all such cases it is the duty of the

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hirer to communicate to the owner the condition of the slave, and the fact of medical treatment being required, and to follow strictly his instructions in regard thereto. A failure to do this, when practicable, will entitle the master to recover the physician's bill from the hirer.

§ 2069. The hirer of a slave has the right, and is bound to control him as a master during the time for which he is hired. He is bound to provide him with necessary food, clothing and lodging; to require only ordinary labor from him; and neither by himself nor his agents unnecessarily to expose or cruelly to treat him; and such hirer is liable to the master for all injuries to the slave arising either from the neglect or willful misconduct of his agents to the slave while under the control of such agents.

§ 2070. The hirer of a slave is liable in damages to the master for any injury to the slave arising from the negligence or unskillfulness of other employees of the hirer engaged in the same service.

§ 2071. In other respects the obligations and engagements of the bailor and hirer of slaves, are the same with the bailor and hirer of things before specified.

§ 2072. No hirer of things has a right to remove such things beyond the jurisdiction of this State, except by consent of the bailor, nor to remove a slave to another portion of this State, when such removal might endanger the health of the slave, nor to put the thing hired to any hazardous use, unless specially contracted for.

§ 2073. No hirer of a thing has the right to re-let or hire the thing bailed to another, except with the consent, express or implied, of the bailor. In such case the bailor may either take immediate possession of the thing bailed, or he may waive this right and hold the hirer bound to extraordinary care and diligence on the part of himself and the hirer from him.

§ 2074. A thing hired is not subject to sale under judgment obtained subsequent to the contract of hire against the owner, but may be levied on and a bond for its forthcoming at the expiration of the time for which it is hired, may be demanded of the person hiring; *Provided*, the time of hiring does not exceed one year.

§ 2075. The hire of labor or services is the essence of every bailment in which goods are delivered to another, and compensation paid for care, attention or labor bestowed upon them. It

Article 3.—Of Hiring.

includes the contracts of forwarding and commission merchants, factors, wharfingers, mechanics, and all agents in such transactions.

Rule of duty. § 2076. In all such cases the bailee is not only bound to exercise skill in the labor and work bestowed, but it is a part of the contract that he shall exercise ordinary care and diligence in keeping and protecting the articles entrusted to him.

Title to thing on which labor is bestowed. § 2077. In such cases, if the identical article, though materially changed by the labor bestowed is to be returned, the title remains in the bailor. If the bailee furnishes a portion of the materials, the title to the entire structure is in the party furnishing the larger portion of the materials. If the bailor furnishes materials—such as silver for plate—but the contract does not contemplate the use of that material specially—then the title is in the bailee, to the article made until it is delivered.

Labor on shares. § 2078. If materials are furnished to be manufactured on shares, the title remains in the bailor until the delivery to him of his portion of the manufactured goods.

Possession. § 2079. The bailee, for hire of labor and services, is entitled to the possession of the thing bailed, pending the bailment. He has also a special lien upon the same for his labor and services, until he parts with possession; and if he delivers up a part, the lien attaches to the remainder in his possession for the entire claim under the same contract.

Loss or destruction. § 2080. If the thing bailed for labor and services be destroyed without fault on the part of the bailee, the loss falls upon the bailor, and the bailee may demand compensation for the labor expended and materials used upon it.

Generally an entire contract. § 2081. As a general rule, the contract of bailment is an entire contract, and a full performance is a condition precedent to an action upon it.

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ARTICLE IV.

OF DEPOSITS.

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 2100. Duty of inn-keeper.
 2101. His lien.
 2102. Keeper of livery stable.

§ 2082. When chattels are delivered by one person to another to keep for the use of the bailor, it is called a deposit; the depositary may undertake to keep it without reward, or gratuitously, it is then a naked deposit; if he receives or expects a reward or hire, he is then a depositary for hire; very variant consequences follow the difference in the contract.

§ 2083. A person may voluntarily undertake to be a depositary, or he may become so involuntarily, as by finding; if a naked depositary, he is responsible only for gross negligence.

§ 2084. Deposits of money in a bank do not constitute a case of naked deposit, the use of the money being a valuable consideration. A special deposit of a sealed package of money would be a naked deposit.

§ 2085. If one, in addition to safe keeping, undertakes gratuitously to carry money, or other articles, to another place, his liability is the same as that of a naked depositary.

§ 2086. A naked depositary may, at any time, terminate the bailments by a re-delivery of the articles to the bailor.

§ 2087. A naked depositary may not use the deposit, without increasing his responsibility, unless such use is necessary for its preservation, or, from the circumstances, the consent of the depositor may be reasonably presumed.

§ 2088. A naked depositary is entitled to be re-imbursed all charges and expenses incurred by reason of the deposit, and may retain possession until the same are paid.

§ 2089. Depositaries for hire are bound to exercise ordinary care and diligence, and are liable as in other cases of bailment

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for hire; they have a lien also for their hire, and may retain possession until it is paid.

Factor's lien. § 2090. A factor's lien extends to all balances on general account, and attaches to the proceeds of the sale of goods consigned, as well as to the goods themselves. Peculiar confidence being reposed in the factor, he may, in the absence of instructions, exercise his discretion according to the general usages of the trade; in return, greater and more skillful diligence is required of him, and the most active good faith.

Warehousemen. § 2091. A warehouseman is a depositary for hire, and is bound only for ordinary diligence; a failure to deliver the goods, on demand, makes it incumbent on him to show the exercise of ordinary diligence.

Wharfinger. § 2092. A wharfinger is also a depositary for hire, and liable upon the same principles.

Inn. § 2093. Under the term "inn" the law includes all taverns, hotels, and houses of public general entertainment for guests.

Liability of inn-keeper. § 2094. An inn-keeper is a depositary for hire, but from the peculiar nature of his business, his liability is governed by more stringent rules.

Guests. § 2095. All persons entertained for hire at an inn, or tavern, or hotel, are guests.

Liability of inn-keeper for stolen goods. § 2096. An inn-keeper is bound to extraordinary diligence in preserving the property of his guests, entrusted to his care, and is liable for the same, if stolen, where the guest has complied with all reasonable rules of the inn.

Proof. § 2097. It is not necessary to show actual delivery to the inn-keeper. Depositing goods in a public room, set apart for such articles, or leaving them in the room of the guest, or placing a horse in the stable, is a delivery to the inn-keeper; if, however, the guest delivers his goods to a servant under special charge to him to keep the same, the inn-keeper is not liable therefor.

Deposit of valuables. § 2098. The inn-keeper may provide an iron safe, or other place of deposit for valuable articles, and by posting a notice thereof, may require his guests to place such valuable articles therein, or he will be relieved from responsibility for them.

Presumption of law. § 2099. In case of loss, the presumption is want of proper diligence in the landlord. Negligence or default by the guest himself, of which the loss is a consequence, is a sufficient defence. The inn-keeper cannot limit his liability by a public notice; he may adopt reasonable regulations for his own protection, and the

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publication of such to his guests binds them to comply therewith.

§ 2100. The inn-keeper who advertises himself as such, is bound to receive, as far as he can accommodate, all persons offering themselves as guests, of good character, and who are willing to comply with his rules. Persons entertaining only a few individuals, or simply for the accommodation of travelers, are not inn-keepers, but simply depositaries for hire, bound to ordinary diligence. Duty of inn-keeper.

§ 2101. The inn-keeper has a lien on the goods of all his guests for all his reasonable charges, and may retain possession until they are paid; his lien attaches though the guest has no title, or even stole the property, and the true owner must pay the charges upon that specific article, before receiving the same. His lien.

§ 2102. The keeper of a livery stable is a depositary for hire, and is bound to the same diligence and entitled to the same lien as an inn-keeper. Keeper of livery stable.

ARTICLE V.

OF LOANS.

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- 2103. Division of Loans.
- 2104. Loan for use.
- 2105. For whose benefit.
- 2106. Diligence.
- 2107. Borrower no title.
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- 2110. Necessary charges.
- 2111. Increase.
- 2112. Loans to married women.
- 2113. How used.
- 2114. Death of parties.

§ 2103. Loans are of two kinds—for consumption or for use. A loan for consumption is where the article is not to be returned in specie, but in kind; this is a sale, and not a bailment. A Division of loans.

§ 2104. A loan for use is the gratuitous grant of an article to another for use, to be returned in specie, and may be either for a certain time, or indefinitely, and at the will of the grantor. Loan for use.

§ 2105. A loan is generally entirely for the benefit of the borrower, but sometimes it is for the joint benefit of the lender and borrower, and occasionally for the exclusive benefit of the lender, as where one lends a horse to another to transact business for the lender; in the two latter cases the responsibility of the borrower is varied and less stringent, according to the circumstances and purpose of the loan. For whose benefit.

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- Diligence.** § 2106. The borrower usually is bound to exercise extraordinary care and diligence, and is liable for slight neglect.
- Borrower no title.** § 2107. The borrower acquires no property in the thing loaned, but only the right to possess and use it. For any interference with that right he may maintain an action.
- Not transferable.** § 2108. A loan being for the personal benefit and use of the borrower, he cannot transfer the possession to another without the consent, express or implied, of the lender. Hence, if the loan be for a definite time the borrower has no such interest as is subject to levy and sale.
- When revocable.** § 2109. The lender may not revoke a loan for a definite time so long as the borrower meets fully his engagements. A loan at will or indefinitely may be revoked at any time.
- Necessary charges.** § 2110. A loan being gratuitous, the borrower must meet all necessary charges and expenses in preserving and taking care of the property during the time of the loan. If however, extraordinary expenses be necessary to protect the property from destruction, the lender must reimburse the borrower such expenses.
- Increase.** § 2111. The increase, except by special contract, belongs to the lender.
- Loans to married women.** § 2112. By consent of the husband a loan may be made to a married woman. In such case, the husband is bound as if he was the borrower, but has no control over the property.
- How used.** § 2113. The loan must be used strictly for the purpose and in the manner contemplated by the parties in contract. A violation by the borrower is in law a conversion.
- Death of parties.** § 2114. The death of the lender terminates all indefinite loans or loans at will or pleasure. It does not terminate a loan for a definite time. The death of the borrower terminates all loans to him.

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What is. § 2115. A pledge or pawn is property deposited with another as security for the payment of a debt. Delivery of the property

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is essential to this bailment, but promissory notes and evidences of debt may be delivered in pledge. The delivery of title deeds creates no pledge.

§ 2116. The receiver in pledge or pawn of promissory notes is such a *bona fide* holder as will protect him under the same circumstances as a purchaser from the equities between the parties, but not from the true owner if fraudulently transferred though without notice to him. Pledge of notes.

§ 2117. The pawnee may sell the property received in pledge after the debt becomes due and remains unpaid; but he must always give notice for thirty days to the pawner of his intention to sell, and the sale must be in public, fairly conducted and to the highest bidder, unless otherwise provided by contract. Sale by pawnee.

§ 2118. The pawnee may use the goods pawned, provided the use does not impair their real value. He has a lien on them for the money advanced, though not for other debts due to him. He may retain possession until his lien is satisfied, and has a right of action against any one interfering therewith. Use of goods pawned. Lien.

§ 2119. The general property in the goods remain in the pawner, but the pawnee has a special property for the purposes of the bailment. The death of neither party interferes with their respective interests. Property in goods pawned.

§ 2120. The pawnee may transfer his debt, and with it possession of the thing pawned, and the purchaser stands precisely in his situation. Posses- Transfer.

§ 2121. Property in pawn may be seized and sold under execution against the pawner, but upon notice by the pawnee to the levying officer, the court in distributing the proceeds will recognize his lien according to its dignity, and give such direction to the funds as shall protect his legal rights. Sale under execution.

§ 2122. The pawnee is bound for ordinary care and diligence. If the property pledged be promissory notes or other evidences of debt, the pawnee must exercise ordinary diligence in collecting and securing the same. Liability of pawnee.

§ 2123. The pawner must pay all necessary expenses and repairs upon the property, but if the pawn has itself been profitable, or if the pawnee has used it to his own advantage, the pawner may require him to account for such profits. Necessary expenses.

§ 2124. All increase of property in pawn belongs to the pawner. Increase.

CHAPTER IV.

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OF THE CONTRACT.

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What constitutes suretyship.

§ 2125. The contract of suretyship is that whereby one obligates himself to pay the debt of another in consideration of credit or indulgence, or other benefit given to his principal, the principal remaining bound therefor. It differs from a guaranty in this, that the consideration of the latter is a benefit flowing to the guarantor.

The nature of the obligation.

§ 2126. The obligation of the surety is accessory to that of his principal, and if the latter from any cause becomes extinct, the former ceases of course, even though it be in judgment. If, however, the original contract of the principal was invalid from a disability to contract, and this disability was known to the surety, he is still bound.

Stricti juris

§ 2127. The contract of suretyship is one of strict law, and his liability will not be extended by implication or interpretation.

Form immaterial.

§ 2128. The form of the contract is immaterial, provided the fact of suretyship exists; hence an accommodation endorser is considered merely as a surety.

ARTICLE II.

RELATIVE RIGHTS OF CREDITOR AND SURETY.

SECTION.

2129. Effect of release.
 2130. A change in contract.
 2131. Of risk.
 2132. Tender of surety.
 2133. Notice to sue.

SECTION.

2134. Holding to bail of surety.
 2135. Extending liability.
 2136. Promise in ignorance.
 2137. Process—how sued out.

§ 2129. The creditor may release or compound with the surety without releasing the principal, but the release of, or compounding with one surety, discharges a co-surety. Effect of release.

§ 2130. A change of the nature or terms of a contract is called a novation; such novation, without the consent of the surety, discharges him. A change of contract.

§ 2131. Any act of the creditor, either before or after judgment against the principal, which injures the surety, or increases his risk, or exposes him to greater liability, will discharge him; a mere failure by the creditor to sue, as soon as the law allows, or negligence to prosecute with vigor his legal remedies, unless for a consideration, will not release the surety. Of risk.

§ 2132. The surety may tender to the creditor the amount of his debt, and demand that the evidence of, and securities for the same, be delivered up to him, to be enforced against his principal or co-sureties, and a failure of the creditor to comply, when within his power, shall operate to discharge the surety. Tender by surety.

§ 2133. Any surety, guarantor, or endorser, at any time after the debt on which he is liable becomes due, may give notice in writing to the creditor, or his agent, or any person having possession or control of the obligation, to proceed to collect the same out of the principal or any one of several principals liable therefor, and if the creditor or holder refuses or fails to commence an action for the space of three months after such notice (the principal being within the jurisdiction of this State,) the endorser, guarantor or surety giving the notice, as well as all subsequent endorsers and all co-sureties, shall be discharged. Notice to sue.

§ 2134. Any surety, guarantor or endorser, desiring to have his principal held to bail, may make affidavit before any one authorized to administer an oath, stating the fact of his suretyship, guarantee or endorsement, and the contract on which he is liable, and that he has reason to apprehend that the payment of said Holding to bail by surety.

Article 2.—Relative Rights of Creditor and Surety.

debt, or some part thereof, will devolve upon him, unless his principal is held to bail; upon such affidavit being presented to the creditor, or his agent or attorney holding such contract, it shall be his duty to commence suit forthwith, and such affidavit being filed with the petition shall operate as the affidavit of the plaintiff in other cases; upon failure of the creditor to sue on such affidavit being presented as above set forth, the surety, guarantor or endorser shall be discharged.

Extending liability.

§ 2135. The creditor must pursue his remedy against the surety within the time prescribed by law, and no payment or promise by the principal or by a co-surety can extend the obligation of the surety or the remedy of the creditor against him.

Promise in ignorance.

§ 2136. If by any act of the creditor the surety is discharged, and in ignorance of the fact of such discharge, the surety promises to pay, such promise shall not be binding.

Process—how sued out.

§ 2137. When the fact of suretyship appears on the face of the contract, the creditor shall sue out process and enter up judgment against him as such.

ARTICLE III.

RIGHTS OF SURETY AGAINST PRINCIPAL.

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- 2138. Process against principal.
- 2139. For money paid.
- 2140. Effect of judgment surety.
- 2141. Payment of usury.
- 2142. Foreclosure of mortgage.
- 2143. Proof of suretyship.
- 2144. After judgment.

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- 2145. Control of *ji. fa*
- 2146. When sued separately.
- 2147. Payment pending the action.
- 2148. Contribution.
- 2149. Control by endorser.
- 2150. *Bona fide* purchaser protected.

Process against principal.

§ 2138. A surety or indorser is entitled to the process of attachment, or *ne exeat*, against his principal before payment of the debt under the same circumstances as any other creditor.

For money paid.

§ 2139. Payment by a surety or endorser of a debt past due, entitles him to proceed immediately against his principal for the sum paid, with interest thereon, and all legal costs to which he may have been subjected by the default of his principal.

Effect of judgment on surety.

§ 2140. If the payment was made under judgment, and the principal had notice of the pendency of the suit against the surety, the amount of such judgment shall be conclusive against the principal as to the amount for which the surety was bound. If

Article 3.—Rights of Surety against Principal.

the payment was not made under judgment, the principal may dispute the validity of the payment as to the amount, or as to the competency of the person to whom it was paid.

§ 2141. If the contract was originally usurious, and the surety in payment includes the usury, he shall recover the same from the principal, unless previous to the payment, he had notice of the intention of the principal to resist such usury. Payment of usury.

§ 2142. If the principal executes any mortgage or gives other security to the surety or endorser to indemnify him against loss by reason of his suretyship, the surety or endorser may proceed to foreclose such mortgage, or enforce such other lien or security so soon as judgment shall be rendered against him on his contract. Foreclosure of mortgages.

§ 2143. If the fact of suretyship does not appear on the face of the contract, it may be proved by parol, either before or after judgment, the creditor not being delayed in his remedy by such collateral issue between the principal and his surety. If before judgment, the surety shall give notice to the principal of his intention to make such proof. Proof of suretyship.

§ 2144. If judgment has been rendered without such proof, the surety shall give at least ten days' notice to his principal of his intention to apply, at the next term of the court where the judgment was entered, to make such proofs, and to have the fact of his suretyship entered of record, together with an order for the control of such judgment and execution there are against the principal on payment of the same by him. After judgment.

§ 2145. Any surety on the original contract, or on stay of execution, or an appeal, or in any other way, or the representative of a deceased surety, who shall have paid off or discharged the judgment, or execution in whole or in part, and shall have the fact of such payment by him entered on such execution by the plaintiff or his attorney, or the collecting officer, shall have the control of such execution, and the judgment upon which it is founded, to the same extent as if he was the original plaintiff therein, and be subrogated to all the rights of such plaintiff, for the purpose of reimbursing himself from his principal. Control of *fi. fa.*

§ 2146. If the surety be sued separately from his principal, on payment by him of the judgment against him, he shall be entitled to control the judgment and execution against his principal in the same manner as if the judgment and execution were joint, and if he does not appear as surety in the judgment against him, When sued separately.

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he may give notice and make the proof and obtain the control in the same manner as pointed out in cases of joint judgments.

Payments
pending the
action.

§ 2147. If the surety pay off the debt pending the action against the principal and himself, or against the principal alone, such payment shall operate only to cause the action to proceed for the benefit of such surety, and the judgment may be entered in the name of the original plaintiff for the use of such surety.

Contribu-
tion.

§ 2148. All the foregoing provisions shall apply to cases where there are more than one surety, so as to enable a surety discharging the joint debt, in whole or in part, either pending the action or after joint or several judgments, to control the same against his co-sureties for the purpose of compelling them to contribute their respective shares of the amount so paid by him.

Control by
endorser.

§ 2149. Every endorser, who shall pay off and discharge the debt on which he is endorser, either pending the action or after judgment, whether the judgment be joint against the principal and all the endorsers, or several against such, shall be entitled to control the judgment and executions founded thereon against the principal and all prior endorsers, in the same manner, upon the same proof, and under the same circumstances, as has been herein provided in the case of sureties; and if such endorser shall collect the same of a prior endorser, such prior endorser shall have the same control of the judgment, or judgments, against the principal, and any endorser prior to him.

Bona fide
purchasers
protected.

§ 2150. When the surety does not appear to be such in the judgment and execution, the lien of such judgment, when controlled by the surety, shall not interfere with *bona fide* purchasers without notice from the principal, whose rights were vested before the order giving control to the surety was granted.

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ARTICLE IV.

RIGHTS OF SURETIES AMONG THEMSELVES.

SECTION.

2151. Right of contribution.

2152. Interest thereon.

SECTION.

2153. Duty to account.

2154. *Ne exeat* at instance of surety.

§ 2151. Where several are sureties for the same principal, for the same sum of money, either by one or by distinct instruments, and one pays more than an equal share of the sum, he may compel contribution from his co-sureties. If one of the co-sureties be insolvent, the deficiency in his share must be borne equally by the solvent sureties.

Right of contribution.

§ 2152. The sum recovered as contribution bears interest from the time it was paid by the surety, and shall be deemed and held a liquidated demand.

Interest thereon.

§ 2153. A surety suing for contribution must first account for all money or other thing received from the principal to indemnify him against loss; and if he has paid the entire debt, he may compel his co-surety to transfer to him any mortgage or other security taken from the principal for the protection of such co-surety by relieving him of all liability for contribution.

Duty to account.

Transfer of securities.

§ 2154. One of several sureties upon a debt not due, or a bond or other obligation not yet complied with, or if the debt be due it remains unpaid, may, by writ of *ne exeat*, detain a co-surety seeking to remove beyond the jurisdiction of the State, until their joint obligation is discharged.

Ne exeat at the instance of a surety.

ARTICLE V.

RIGHTS OF SURETIES AS TO THIRD PERSONS.

SECTION.

2155. Subrogation.

SECTION.

2156. As to sureties.

§ 2155. A surety who has paid the debt of his principal is subrogated both at law and in equity to all the rights of the creditor, and, in a controversy with other creditors, ranks in dignity the same as the creditor whose claim he paid.

Subrogation.

§ 2156. He is entitled also to be substituted in place of the creditor as to all securities held by him for the payment of the debt.

As to securities.

For the summary remedy afforded a surety to compel contribution from his co-sureties, and an endorser against prior endorsers, see preceding article.

CHAPTER V.

OF PRINCIPAL AND AGENT.

ARTICLE 1. Relation of principal and agent among themselves.

ARTICLE 2. Rights and liabilities of principal to third persons.

ARTICLE 3. Rights and liabilities of agent to third persons.

ARTICLE 4. Of overseers.

ARTICLE I.

RELATION OF PRINCIPAL AND AGENT AMONG THEMSELVES.

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2165. Personal profit.
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 2167. Agent of several.
 2168. Commission and expenses.
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 2171. Of mingling goods.

How it
arises.

§ 2157. The relation of principal and agent arises wherever one person, expressly or by implication, authorizes another to act for him, or subsequently ratifies the acts of another in his behalf.

What may
be done by
agent.

§ 2158. Whatever one may do himself may be done by an agent, except such personal trusts in which special confidence is placed in the skill, discretion, or judgment of the person called on to act; so an agent may not delegate his authority to another, unless specially empowered so to do.

Who may
be agent.

§ 2159. Any person may be appointed an agent who is of sound mind; so a principal is bound by the acts of his infant agent, but a *feme covert* cannot be an agent for another than her husband, except by his consent, in which case he is bound by her acts; and a slave cannot be an agent for any one except his master or employer.

How the
agency is
created.

§ 2160. The act creating the agency must be executed with the same formality (and need have no more) as the law prescribes for the execution of the act for which the agency is created. A corporation may create an agent in its usual mode of transacting business, and without its corporate seal.

Revocation.

§ 2161. Generally, an agency is revocable at the will of the principal. The appointment of a new agent for the performance

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of the same act, or the death of either principal or agent, revokes the power. If, however, the power is coupled with an interest in the agent himself, it is not revocable at will; and in all cases the agent might recover from the principal for an unreasonable revocation any damages he may have suffered by reason thereof.

§ 2162. The agent must act within the authority granted to him, reasonably interpreted; if he exceeds or violates his instructions, he does it at his own risk, the principal having the privilege of affirming or dissenting, as his interest may dictate. In cases where the power is coupled with an interest in the agent, unreasonable instructions, detrimental to the agent's interest, may be disregarded.

Agent limited by his authority.

§ 2163. An agent for hire is bound to exercise, about the business of his principal, that ordinary care, skill, and diligence, required of a bailee for hire. A voluntary agent, without hire or reward, is liable only for gross neglect.

Diligence of an agent.

§ 2164. Without the express consent of the principal, after a full knowledge of all the facts, an agent employed to sell cannot be himself the purchaser, and an agent to buy cannot be himself the seller.

Agent cannot buy or sell for himself.

§ 2165. The agent must not make a personal profit from his principal's property; for all such he is bound to account.

Personal profit.

§ 2166. An agent cannot dispute his principal's title, except in such cases where legal proceedings, at the instance of others, have been commenced against him.

Estoppel.

§ 2167. Where several persons appoint an agent to do an act for their joint benefit, the instructions of one, not inconsistent with the general directions, shall protect the agent in his act.

Agent of several.

§ 2168. An agent who has discharged his duty is entitled to his commission, and all necessary expenses incurred about the business of his principal; if he has violated his engagements, he is entitled to no commission.

Commission and expenses.

§ 2169. No rights can arise to either party out of an agency created for an illegal purpose.

Illegal purpose.

§ 2170. A ratification by the principal relates back to the act ratified, and takes effect as if originally authorized. A ratification may be express or implied from the acts or silence of the principal. A ratification once made cannot be revoked.

Effect of ratification.

§ 2171. An agent by willfully mingling his own goods with those of his principal does not create a tenancy in common, but if incapable of separation, the whole belongs to the principal.

Of mingling goods.

ARTICLE II.

RIGHTS AND LIABILITIES OF PRINCIPAL TO THIRD PERSONS.

SECTION.

2172. Principal—how far bound.
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 2175. Failing to disclose principal.
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 2180. Injuries by another agent.
 2181. Trespass of agent.
 2182. Benefit of contract to principal.
 2183. Money illegally paid, &c.
 2184. Agent is a competent witness.

Principal—
how far
bound.

§ 2172. The principal is bound by all the acts of his agent within the scope of his authority; if the agent exceeds his authority the principal cannot ratify in part and repudiate in part, he must adopt either the whole or none.

Forms im-
material.

§ 2173. The form in which the agent acts is immaterial; if the principal's name is disclosed, and the agent professes to act for him, it will be held to be the act of the principal.

Extent of
authority.

§ 2174. The agent's authority will be construed to include all necessary and usual means for effectually executing it. Private instructions or limitations, not known to persons dealing with a general agent, cannot affect them. In special agencies for a particular purpose, persons dealing with the agent should examine his authority.

Failing to
disclose
principal.

§ 2175. If an agent fails to disclose his principal, yet, when discovered, the persons dealing with the agent may go directly upon the principal, under the contract, unless the principal shall have previously accounted and settled with the agent.

Credit given
to agent.

§ 2176. If the credit is given to the agent by the choice of the seller, he cannot afterwards demand payment of the principal.

Representa-
tions by
agent.

§ 2177. The principal is bound by all representations made by his agent in the business of his agency, and also by his willful concealment of material facts, although they are unknown to the principal, and known only by the agent.

Notice to.

§ 2178. Notice to the agent of any matter connected with his agency, is notice to the principal.

Principal
bound for
neglect and
fraud.

§ 2179. The principal is bound for the care, diligence, and fidelity of his agent in his business, and hence he is bound for the neglect and fraud of his agent in the transaction of such business.

Injuries by
another
agent.

§ 2180. The principal is not liable to one agent for injuries arising from the negligence or misconduct of other agents about

Article 2.—Rights and Liabilities of Principal as to Third Persons.

the same business: the exception in case of a slave has been previously stated.

§ 2181. The principal is not liable for the willful trespass of his agent, unless done by his command or assented to by him. Trespass of agent.

§ 2182. The principal shall have advantage of his agent's contracts in the same manner as he is bound by them, so far as they come within the scope of his agency. If however, the agency has been concealed, the party dealing with him may set up any defence against the principal which he has against the agent. Benefit of contract to principal.

§ 2183. The principal may recover back money paid illegally, or by mistake of his agent, or goods wrongfully transferred by the agent, the party receiving the goods having notice of the agent's want of authority or willful misconduct. Money illegally paid, &c.

§ 2184. The agent is a competent witness either for or against his principal, notwithstanding he may strictly come within the rule of incompetency from interest. His interest goes to his credit. The declarations of the agent as to the business transacted by him, are not admissible against his principal, unless they were a part of the negotiation, and constituting the *res gestae*, or else the agent be dead. Agent is a competent witness.

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SECTION.

2189. When responsible for credit, &c.
2190. Public agent.
2191. Liability for excess of authority.
2192. Enforcing contracts, &c.

§ 2185. Any act authorized or required to be done under this Code by any person in the prosecution of his legal remedies, may be done by his agent, and for this purpose he is authorized to make an affidavit and execute any bond required, though his agency be created by parol. In all such cases, if the principal repudiate the act of the agent, the agent shall be personally bound together with his sureties. Agent may act under this Code for principal.

§ 2186. If money be paid to an agent by mistake, and he in good faith pays it over to his principal, he shall not thereafter be personally liable therefor. In all other cases he is liable for its repayment. If money be paid by an agent by mistake, he may recover it back in his own name. How bound.
Money paid by mistake may be recovered.

Article 3.—Rights and Liabilities of Agents as to Third Persons.

When he has a right of action

§ 2187. Generally an agent has no right of action on contracts made for his principal. The following are exceptions :

1. A factor contracting on his own credit.
2. Where promissory notes or other evidences of debt are made payable to an agent of a corporation, or joint stock company.
3. In all cases where the contract is made with the agent in his individual name, though his agency be known.
4. Auctioneers may sue in their own name for goods sold by them.
5. In cases of agency coupled with an interest in the agent known to the party contracting with him. In all these cases, payment to the principal before notice of the agent's claim, is a good defence.

For interference with his possession.

§ 2188. An agent having possession, actual or constructive, of the property of his principal, has a right of action for any interference with that possession by third persons.

When responsible for credit given.

§ 2189. Where the agency is known, and the credit is not expressly given to the agent, he is not personally responsible upon the contract. The question to whom the credit is given, is a question of fact to be decided by the jury under the circumstances of each case.

Public agents.

§ 2190. Public agents, contracting in behalf of the public, are not individually liable on such contracts.

Liability for excess of authority.

§ 2191. All agents, by an express undertaking to that effect, may render themselves individually liable. And every agent exceeding the scope of his authority is individually liable to the person with whom he deals; so also for his own tortious act, whether acting by command of his principal or not, he is responsible; for the negligence of his under-servant, employed by him in behalf of his principal, he is not responsible.

Or tort.

Enforcing contracts exceeding his authority.

§ 2192. When the agent exceeds his authority, so that the principal is not bound, the agent cannot enforce the contract in his own name against the person with whom he deals, unless the contract has been fully executed upon the part of the agent, or the credit was originally given to the agent.

Article 4.—Overseers.

ARTICLE IV.

OVERSEERS.

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2193. Right and power of overseer.

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SECTION.

2195. Parol contracts.

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§ 2193. In the absence of the master, the overseer stands in his place. It is his duty to see to the sustenance and protection of his employer's property, and to discharge this duty, he is justified in repelling aggressors and trespassers to the same extent with the master.

Right and powers of overseers.

§ 2194. The overseer, in the absence of the master, is the general agent of his employer, and has the same power, and binds his principal to the same extent, so far as concerns the business over which he is placed, as other general agents.

As general agent.

§ 2195. Contracts between employers and overseers may be by parol, though they may extend beyond a year from the time of the contract.

Parol contracts.

§ 2196. When the contract is for a year, and the employer wrongfully discharges the overseer before the end of the year, the overseer may either sue immediately for any special injury from the breach of the contract, or treating the contract as rescinded, may sue for the value of the services rendered, or he may wait till the expiration of the year and sue for, and recover his entire wages.

Suit on breach of contract.

TITLE IV.

OF PROPERTY AND THE TENURE BY WHICH IT IS HELD.

CHAPTER 1. Of realty.

CHAPTER 2. Of personalty.

CHAPTER I.

OF REALTY.

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Realty defini-
tion.

§ 2197. Realty, or real estate, includes all lands and the buildings thereon, and all things permanently attached to either, or any interest therein or issuing out of, or dependent thereon. The right of the owner of lands extends downwards and upwards indefinitely.

Fixtures.

§ 2198. Anything intended to remain permanently in its place, though not actually attached to the land, such as a rail fence, is a part of the realty and passes with it. Machinery not actually attached, but movable at pleasure, is not a part of the realty.

Detached
becomes
personalty.

§ 2199. Anything detached from the realty becomes personalty instantly on being so detached, and may be the subject matter of larceny, even by the person wrongfully detaching it.

Allodial te-
nure.

§ 2200. The tenure by which all realty is held in this State is under the State as original owner; it is without service of any kind, and limited only by the right of eminent domain remaining in the State.

Eminent do-
main.

§ 2201. The right of eminent domain is the right of the State, through its regular organization, to re-assert, either temporarily or permanently, its dominion over any portion of the soil of the State, on account of public exigency and for the public good; thus in time of war or insurrection the proper authorities may possess and hold any part of the territory of the State for the

common safety; and in time of peace the Legislature may authorize the appropriation of the same to public purposes, such as the opening of roads, construction of defences, or providing channels for trade or travel.

§ 2202. It is the province of the Legislature to judge of the exigencies requiring the exercise of this right, but if, under pretext of such necessity, the property of one is taken for the private use of another, the courts should declare the law inoperative. When to be exercised.

§ 2203. The Legislature may exercise this right either directly through the officers of the State, or through the medium of corporate bodies, or by means of individual enterprise. How.

§ 2204. Except in cases of extreme necessity and great urgency, the right of eminent domain cannot be exercised without first providing for just compensation to the owner for the interference with his exclusive rights. Just compensation.

§ 2205. Analogous to the right of eminent domain is the power from necessity vested in corporate authorities of cities, towns and counties to interfere with and sometimes to destroy the private property of the citizen for the public good, such as the destruction of houses to prevent the extension of a conflagration, or the taking possession of buildings to prevent the spreading of contagious diseases. In all such cases any damages accruing to the owner from such acts, and which would not otherwise have been sustained, must be paid by such corporation. Destroying property for public good.

§ 2206. Running water, while on land, belongs to the owner of it, but he has no power to divert it from the usual channel, nor can he so use or adulterate it as to interfere with the enjoyment of it by the next owner. Owner of running water.

§ 2207. The beds of streams not navigable belong to the owner of the adjacent land; if the stream of water is the dividing line each owner is entitled to the thread or centre of the main current; if the current changes gradually the line follows the current; if from any cause it takes a new channel, the original line, if capable of identification, remains the boundary. Gradual accretions of land on either side accrue to the owner. Streams boundary lines.

§ 2208. A navigable stream is one capable of bearing upon its bosom, either for the whole or a part of the year, boats loaded with freight in regular course of trade. The mere rafting of timber or transporting wood on small boats does not make a stream navigable. Navigable streams.

Owners of adjacent lands.

§ 2209. The right of the owner of lands adjacent to navigable streams, extends to low water mark in the bed of the stream.

Power of owner of streams.

§ 2210. The owner of a stream not navigable is entitled to the same exclusive possession thereof as he has of any other part of his land; and the legislature has no power to compel or interfere with him in its lawful use, for the benefit of those above or below him on the stream, except to restrain nuisances.

Levees and ditches.

§ 2211. All persons owning, or who may hereafter own lands, on any water courses in the State, are authorized and empowered to ditch and embank their lands, so as to protect the same from freshets and overflows in said water courses; *Provided*, always that the said ditching and embanking does not divert said water course from its ordinary channel, but nothing shall be so construed as to prevent the owners of land from diverting unnavigable water courses through their own lands.

Bridge or ferry right.

§ 2212. The right to construct a bridge or establish a ferry for private use across a water course within or adjoining lands, is appurtenant to the ownership of the land, but the right to establish and keep a public bridge or ferry is a franchise to be granted by the State. Where such a grant interferes with the owner's right of exclusive possession, just compensation to him must be first made.

Franchise—when exclusive.

§ 2213. No franchise granted by this State shall be held to be exclusive, unless plainly and expressly so declared to be in the grant.

Private ways.

§ 2214. The right of private way over another's land may arise from express grant, or from prescription by seven years uninterrupted use through improved lands, or twenty years use over wild lands, or by implication of law when such right is necessary to the enjoyment of lands granted by the same owner, or by compulsory purchase and sale through the Inferior Court in the manner prescribed by this Code.*

Charges on land.

§ 2215. Annuities or legacies, or debts charged upon lands by testaments, attach thereto and follow the lands in the hands of all persons.

* For further provision as to water courses, roads, bridges and ferries, see Part 1, Title 6, Chapter 5.

CHAPTER II.

OF PERSONALTY.

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2217. Slaves.

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2220. Property in wild animals, &c.

SECTION.

2221. Deposit and increase on land.

2222. Increase follows mother.

2223. Rights and remedies.

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§ 2216. Personality, or personal estate, includes all such property What is. as is movable in its nature: in fact, everything having value inherent in itself, or the representative of value, and not included in the definition of realty. Stocks representing shares in an incorporated company holding lands, or a franchise in or over lands, Stocks. are personality, except in mining and manufacturing companies, whose principal investments are in realty and machinery attached thereto, in which case the stock shall be deemed realty.

§ 2217. Slaves are personality, although, from their value and Slaves. the peculiar consideration due to the nature of this property, the law governing them is, in many respects, more analagous to the law of realty than of personality.

§ 2218. Personality in possession is where the right of property Possession. is accompanied by immediate possession, actual or constructive.

§ 2219. Personality to which the owner has a right of possession Chose in action. in future, or a right of immediate possession, wrongfully withheld, is termed by the law a chose in action.

§ 2220. Property may exist in all animals, birds, and fishes; Property in wild animals, &c. to constitute property in those which are wild by nature, as distinguished from domestic animals, one must have them within his actual possession, custody, or control; this he may obtain either by taming or domesticating them, or by confining them within restricted limits, or by killing or capturing them.

§ 2221. Any deposit made by wild animals on realty, belongs Deposit and increase on land. to the owner; thus, honey deposited by bees in a tree, belongs to the owner of the tree, though the bees may be hired by another; so the eggs and young of birds, or the increase of animals, so long as they remain unable to leave the land, belong to the owner.

§ 2222. The increase of all animals follow the condition of the Increase follows mother. mother, and belong to the owner of the mother at the time of birth. The increase of slaves follow the title in expectancy as well as in possession.

Rights and remedies.

§ 2223. For every violation of a contract, express or implied, and for every injury done by another to person or property, the law gives a right to recover and a remedy to enforce it. Such a right is a chose in action, and such a remedy is an action or suit at law.

Assignment of choses in action.

§ 2224. All choses in action, arising upon contract, may be assigned so as to vest the title in the assignee, but he takes it, except negotiable securities, subject to the equities existing between the assignor and debtor at the time of the assignment, and until notice of the assignment is given to the person liable.

TITLE V.

OF ESTATES AND THE RIGHTS ATTACHED THERETO.

CHAPTER 1. Of absolute estates, or in fee simple.

CHAPTER 2. Of estates for life.

CHAPTER 3. Of estates in remainder and reversions.

CHAPTER 4. Of estates for years.

CHAPTER 5. Of landlord and tenant.

CHAPTER 6. Of estates upon condition.

CHAPTER 7. Of tenancy in common.

CHAPTER 8. Of trust estates.

CHAPTER I.

OF ABSOLUTE ESTATES OR IN FEE SIMPLE.

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2226. Fee simple.

2227. May be in abeyance.

2228. What words create.

SECTION.

2229. Technical words.

2230. Estate's tail.

2231. Remote limitations.

What is.

§ 2225. Estate is the quantity of interest which an owner has in property; in this State it is applicable equally to realty and personalty. Any estate may be created in the latter that can be created in the former, and the rules of construction as to both shall be the same. The provisions of this Code, under this title, when not restricted to one, apply to both.

In what created.

Fee simple.

§ 2226. An absolute or fee simple estate is one in which the owner is entitled to the entire property, with unconditional power

Chapter 1.—Of Absolute Estates, or in Fee Simple.

of disposition during his life, and descending to his heirs and legal representatives upon his death intestate. Realty and slaves descend directly to the heirs, subject to be administered by the legal representative, if there be one, for the payment of debts and the purposes of distribution. If there be a legal representative, the right to recover them is in him, if there be none, the heirs may sue in their own name.

§ 2227. An absolute estate may be created to commence in future, and the fee may be in abeyance without detriment to the rights of subsequent remainders. A fee may be limited upon a fee, either by deed or will, where the plain intention of the grantor or testator requires it, and no other rule of law is violated thereby.

§ 2228. The word "heirs," or its equivalent, is not necessary to create an absolute estate, but every conveyance, properly executed, shall be construed to convey the fee, unless a less estate is mentioned and limited in such conveyance. If a less estate is expressly limited, the courts shall not, by construction, increase such estate into a fee, but disregarding all technical rules, shall give effect to the intention of the maker of the instrument, as far as the same is lawful, if the same can be gathered from its contents, and if not, in such case, the court may hear parol evidence to prove the intention.

§ 2229. Limitations over to "heirs," "heirs of the body," "lineal heirs," "lawful heirs," "issue," or words of similar import, shall be held to mean "children" whether the parents be alive or dead, and under such words children, and the descendants of deceased children, by representation in being at the time of the vesting of the estate, shall take.

§ 2230. Estate's tail are prohibited and abolished in this State. Gifts or grants to one, and the heirs of his body, or his heirs male or heirs female, or his heirs by a particular person, or his children, or his issue, convey an absolute fee. Estate's tail being illegal, the law will never presume or imply such an estate. Limitations, which, by the English rules of construction, would create an estate tail by implication in this State, shall give a life estate to the first taker with remainder over in fee to his children and their descendants as above provided; and if none are living at the time of his death, remainder over in fee to the beneficiaries intended by the maker of the instrument.

Remote limitations.

§ 2231. All limitations over after the death of the first taker, upon his dying without heirs, or dying without issue, or dying without leaving heirs or issue, or on failure of issue or other and equivalent terms, shall be construed to mean a failure of heirs or issue at the time of the death of the first taker, and shall convey the estate in the manner prescribed in Section 2230.

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OF ESTATES FOR LIFE.

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 2233. How created.
 2234. Estates during widowhood, &c.
 2235. Rights and liabilities of tenants.
 2236. Increase.
 2237. Emblements.
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2239. Tenancy by courtesy.
 2240. Cruel treatment of slaves.
 2241. Sale of slaves by tenant for life.
 2242. Of lands.
 2243. Removal of personalty.
 2244. Bond of purchaser, &c.

What is.

§ 2232. An estate for life may be either for the life of the tenant or of some other person or persons, even though such other person be a slave.

How created

§ 2233. An estate for life may be created by deed or will, or express agreement of the parties, or by operation of law; it cannot be created in such property as is destroyed in the use.

Estates during widowhood, &c.

§ 2234. Estates which may extend during life, but must terminate at death, so long as they exist, are deemed life estates; such are estates during widowhood.

Rights and liabilities of tenant for life.

§ 2235. The tenant for life is entitled to the full use and enjoyment of the property, so that in such use he exercises the ordinary care of a prudent man for its preservation and protection, and commits no acts tending to the permanent injury of the person entitled in remainder or reversion. For the want of such care, and the willful commission of such acts, he forfeits his interest to the remainder-man if he elects to claim immediate possession.

Increase.

§ 2236. The natural increase of the property, unless it be a slave, belongs to the tenant for life. Any extraordinary accumulation of the corpus, such as issue of new stock upon the share of an incorporated or joint stock company, attach to the corpus and go with it to the remainder-man.

§ 2237. If the life estate be terminated not by the act of the

tenant, he and his legal representatives shall be entitled to em-^{Emble-}blements, which are the profits of the crop sowed by him during^{ments.} life, whether the plants be annual or perennial, and the use of the slaves employed about its cultivation for the purpose of perfecting and gathering it.

§ 2238. If a tenant for life hires out a slave, or rents the land^{Of slaves.} for the year and dies, or the estate is otherwise terminated during the year, the hirer shall be entitled to the slave, and the tenant to the land, for the term of the year, upon complying with his contract with the tenant for life.

§ 2239. There is no tenancy by courtesy in Georgia.

By courtesy.

§ 2240. A tenant for life, convicted criminally of cruel treat-^{Cruel treat-}ment of the slave, or one of a parcel of slaves, in which he has^{ment of} an estate for life, forfeits his entire interest in all, and the rights^{slaves.} of the remainder-man to the possession attaches immediately on such conviction. The like conviction of his agent, where the act is done by his command or consent, shall have the same effect.

§ 2241. The tenant for life in slaves, who shall, by sale or other^{Sale of} means, fraudulently attempt to defeat the interest of the remain-^{slaves by}der-man, forfeits thereby his entire interest, and is moreover liable^{tenant for} immediately to the remainder-man for the full value of the prop-^{life.}erty. The purchaser, under such sale, acquires no title whatever as against the remainder-man; if, however, the sale be made in good faith, the purchaser shall have the estate for life.

§ 2242. No forfeiture shall result from a tenant for life selling^{Of lands.} the entire estate in lands; the purchaser acquires only his interest.

§ 2243. The tenant for life, in personalty, cannot remove it be-^{Removal of}yond the jurisdiction of this State without the consent of the re-^{personalty.}mainder-man. If he attempts to do so fraudulently, he forfeits his interest; if not fraudulently, the remainder-man, or reversioner, is entitled to the writ of *ne exeat* to restrain him.

§ 2244. Where a life estate is sold under process of law, upon^{Bond of pur-}the demand of any one interested in remainder, his agent or at-^{chaser, &c.}torney, accompanied by a statement, under oath, of his interest, it shall be the duty of the officer making the sale, to require of the purchaser a bond, in double the value of the property, with good security, for the delivery of the property to the persons entitled in remainder, which bond shall be filed in the office of the Clerk of the Superior Court of the county where the sale is made, and subject to be sued on by any person interested in remainder:

on failure to give such bond, the property shall be re-sold at the risk of the purchaser, if notice of the demand was given before he purchased.

CHAPTER III.

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2245. Definition.
 2246. No particular estate necessary.
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2250. Created by parol.
 2251. Vesting of remainders favored.
 2252. Assent of executor.
 2253. Merger.
 2254. Estates during widowhood.

Definitions. § 2245. An estate in remainder is one limited to be enjoyed after another estate is determined, or at a time specified in the future. An estate in the reversion is the residue of an estate, usually the fee left in the grantor and his heirs after the determination of a particular estate which he has granted out of it. The rights of the reversioner are the same with those of a vested remainder-man in fee.

No particular estate necessary. § 2246. No particular estate being necessary to sustain a remainder under this Code, the defeat of the particular estate for any cause does not destroy the remainder.

Vested or contingent. § 2247. Remainders are either vested or contingent. A vested remainder is one limited to a certain person at a certain time, or upon the happening of a necessary event. A contingent remainder, is one limited to an uncertain person, or upon an event which may or may not happen.

Rights of heirs. § 2248. If the remainder-man dies before the time arrives for possessing his estate in remainder, his heirs are entitled to a vested remainder interest, and to a contingent remainder interest when the contingency is not as to the person, but as to the event. If the contingency be as to the person, and that person be not in esse at the time when the contingency happens, his heirs are not entitled.

Perpetuities § 2249. Limitations of estates may extend through any number of lives in being at the time when the limitations commence, and twenty-one years, and the usual period of gestation added thereafter. A limitation beyond that period, the law terms a perpetuity, and forbids its creation when an attempt is made to create a perpetuity. The law gives effect to the limitations not

Chapter 3.—Of Estates in Remainder and Reversions.

too remote, declaring the others void, and thereby vests the fee in the last taker under the legal limitations.

§ 2250. Remainders cannot be created by parol. They may be created for persons not in being, and if a vested remainder, it opens to take in all persons within the description coming into being up to the time of enjoyment commencing.

Creation by parol.
Opening if vested.

§ 2251. The law favors the vesting of remainders in all cases of doubt. In construing wills, words of survivorship shall refer to the death of the testator in order to vest remainders, unless a manifest intention to the contrary appears.

Vesting of remainders favored.

§ 2252. The assent of the executor to a legacy to the tenant for life enures to the benefit of the remainder-man. Remainder-man at the termination of the life estate may take possession immediately. If however, the will provides for a sale or other act to be done for the purpose of, or prior to a division, the executor may recover possession for the purpose of executing the will.

Assent of the executor.

§ 2253. If two estates in the same property unite in the same person in his individual capacity, the less estate is merged in the greater.

Merger.

§ 2254. An estate may be created during widowhood, and such estates shall be subject to the same rules as life estates. Limitations over upon the marriage of a widow shall be valid, unless such limitations are manifestly intended to operate as a restraint upon the free action of such widow in respect to marriage, and are not simply prudential provisions for the protection of the interest of children, or others in such event; in such cases they are void.

Estates during widowhood.

Limitations over on marriage.

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2256. Distinction from bailment.
2257. Rights of tenant.

SECTION.

2258. Emblements.
2259. Expenses and repairs.
2260. Lease.

§ 2255. An estate for years is one which is limited in its duration to a period fixed, or which may be made fixed and certain. If it be in lands, it passes as realty in this State. It may be for

Definition.

For rules prescribing the effect of certain limitations in creating remainders, refer to Chapter 1 of this Title. And for remedies of remainder-men against tenant for life and purchasers, refer to Chapter 2 of this Title.

any number of years, so that the limitation be within the rule against perpetuities.

Distinction
from bail-
ment.

§ 2256. It differs when applied to personalty from a contract of hiring in this, that the latter is a bailment conveying no interest in the property to the bailee, but a mere right of use; when applied to realty, it differs from the relation of landlord and tenant in this, that in the latter, the tenant has no estate, but a mere right of use, very similar to the right of a hirer of personalty.

Rights of
tenant.

§ 2257. An estate for years carries with it the right to use in as absolute a manner as a greater estate, but not to the injury of the property or of the person entitled, either in remainder or reversion; the same acts of omission and commission which have been heretofore prescribed as grounds of forfeiture of an estate for life, will operate to the same effect against a tenant for years.

Emblements

§ 2258. A tenant for years is not entitled to emblements, unless the estate be terminated before the period fixed by the happening of some contingency provided in its creation, and without fault on the part of the tenant.

Expenses
and repairs.

§ 2259. A tenant for years is bound for all repairs or other expense necessary for the preservation and protection of the property.

Lease.

§ 2260. When one grants to another an estate for years out of his own estate, reversion to himself, it is usually termed a lease. It may be confined to a particular interest in lands, such as mining or agricultural, in which event no other interest passes. If no object of the lease is stated, the mining interest will not pass unless the circumstances justify an implication of such an intention in the parties.

Construc-
tion.

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- 2261. Definition.
- 2262. How created.
- 2263. Rights of tenants.
- 2264. Delivery of possession.
- 2265. Estoppel.
- 2266. Repairs and improvements.
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- 2268. Lien.
- 2269. Interest.
- 2270. Rent paid in kind.
- 2271. Duration of tenancy.
- 2272. Notice to quit.
- 2273. Emblements.
- 2274. Casualties no abatement of rent.

Chapter 5.—Of Landlord and Tenant.

§ 2261. When the owner of lands grants to another simply the right to possess and enjoy the use of such lands, either for a fixed time or at the will of the grantor, and the tenant accepts the grants, the relation of landlord and tenant exists between them. In such case no estate passes out of the landlord and the tenant has only a usufruct which he cannot convey except by the landlord's consent, and which is not subject to levy and sale. Definition.

§ 2262. Contracts creating the relation of landlord and tenant, for any time not exceeding one year, may be by parol, and if made for a greater time shall have effect of a tenancy at will. How created

§ 2263. The tenant has no right beyond the use of the land and tenements rented to him, and such privileges as are necessary to the enjoyment of his use. He cannot cut or destroy growing trees, remove permanent fixtures, or otherwise injure the property. He may use other timber for firewood and the pasturage for his cattle. Rights of tenants.

§ 2264. The tenant must deliver possession at the expiration of his term, and if he fails or refuses to do so a summary remedy is given to the landlord. Delivery of possession.

§ 2265. The tenant cannot dispute his landlord's title, nor attorn to another claimant while in possession. Estoppel.

§ 2266. The landlord must keep the premises in repair, and is liable for all substantial improvements placed upon them by his consent. Repairs and improvements.

§ 2267. The landlord shall have power to distrain for rent as soon as the same is due, or before due, if the tenant is seeking to remove his goods from the premises. If the tenant fails to pay the rent due at any time, the landlord may re-enter immediately and dispossess the tenant. If the tenant holds over after his term expires the landlord may recover double rent for such time. Distress for rent.

§ 2268. The landlord's lien for his rent shall attach from the time of levying his distress warrant, but it shall take precedence of no lien of older date except as to the crop raised on the premises. Lien.

§ 2269. All contracts for rent shall bear interest from the time the rent is due, and judgments upon suits for rent may be rendered at the first term. Interest.

§ 2270. When the rent agreed to be paid is a part of the crop such portion shall not be liable to be levied on by any process for debt against the tenant; *Provided*, the contract is in writing and the rent does not exceed one-half of the crop. Rent paid in kind.

Chapter 5.—Of Landlord and Tenant.

- Duration of tenancy.** § 2271. Where no time is specified for the termination of the tenancy, the law construes it to be for the calendar year, but if it is expressly a tenancy at will then either party may terminate it at will.
- Notice to quit.** § 2272. Two months' notice is necessary from the landlord to terminate a tenancy at will. One months' notice is necessary from tenant.
- Emblements** § 2273. The tenant at will is entitled to his emblements if the crop is sowed before notice to quit by the landlord, or the tenancy otherwise suddenly terminated, as by sale of the estate by the landlord, or by judicial sale, or death of the landlord or tenant.
- Casualties no abatement of rent.** § 2274. The destruction of a tenement by fire, or the loss of possession by any casualty, not caused by the landlord, or from defect of his title, shall not abate the rent contracted to be paid.

CHAPTER VI.

OF ESTATES ON CONDITION.

- | SECTION. | SECTION. |
|--|--------------------------------------|
| 2275. Definition. | 2278. Disability. |
| 2276. Precedent & subsequent conditions. | 2279. Dependant covenants, &c. |
| 2277. Repugnant condition. | 2280. Effect of breach of condition. |
- Definition.** § 2275. An estate may be granted upon a condition, either express or implied, upon performance or breach of which the estate shall either commence, be enlarged, or be defeated.
- Precedent and subsequent.** § 2276. Conditions may be either precedent or subsequent. The former require performance before the estate vests; the latter may cause a forfeiture of a vested estate. The law inclines to construe conditions to be subsequent rather than precedent, and to be remediable by damages rather than by forfeiture.
- Repugnant condition.** § 2277. A condition repugnant to the estate granted is void, so are conditions to do impossible or illegal acts, or which in themselves are contrary to the policy of the law.
- Disability.** § 2278. No legal disability, except being *non compos mentis*, will excuse a person from failing to comply with a condition annexed to his or her estate; no notice of such condition need be given by the person claiming under the limitation over.
- Notice.** § 2279. The dependence or independence of covenants or conditions, must be collected from the intention of the parties, viewing the entire instrument; in dependent conditions the fail-

ure of the person first required to act is an excuse to the other party for failing to comply. If the conditions be independent no such excuse avails—the law inclines to construe conditions to be independent.

§ 2280. Upon breach of condition subsequent, working a forfeiture, the person to whom the estate is limited may enter immediately. Effect of breach of condition.

CHAPTER VII.

OF TENANCY IN COMMON.

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2281. Joint tenancies abolished.
2282. Definition of tenancy in common.
2283. Rights, &c., of co-tenants.

SECTION.

2284. Adverse possession.
2285. Partition.

§ 2281. Joint tenancy does not exist in this State, and all such estates, under the English law, will be held to be tenancies in common under this Code. Joint tenancies abolished.

§ 2282. Wherever two or more persons, from any cause, are entitled to the possession, simultaneously, of any property in this State, a tenancy in common is created. Tenants in common may have unequal shares; they will be held to be equal, unless the contrary appears. The fact of inequality does not give the person holding the greater interest any privileges, as to possession, superior to the person owning a lesser interest, so long as the tenancy continues. Definition of tenancy in common.

§ 2283. Every tenant in common has the right to possess the joint property, and so long as he occupies no greater portion of it than his own share would be on division, and does not withdraw from it any of its essential value, such as mineral deposits, he is not liable to account for rent to his co-tenant: but if he receives any rent, or other profit, or commits any waste; or if he, by any means, deprives his co-tenant of the use of his fair proportion of the property, or if he appropriates all to his exclusive use, or if the property is of such a character as the use of it must necessarily be exclusive, then he is liable to account to his co-tenant. Rights and liabilities of co-tenants.

§ 2284. There can be no adverse possession against a co-tenant until actual ouster, or exclusive possession after demand, or express notice of adverse possession, in either of which events the co-tenant may sue at law for his possession. Adverse possession.

Partition. § 2285. Upon application by any tenant in common, the Superior Court may order partition as hereinafter provided.

CHAPTER VIII.

OF TRUST ESTATES.

ARTICLE 1. Of their creation and nature.

ARTICLE 2. Of trustees, appointment, powers, &c.

ARTICLE I.

OF THEIR CREATION AND NATURE.

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2286. Definition.
 2287. For whom.
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 2290. Definition.
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 2295. Executed and executory.
 2296. Use upon use.
 2297. Implied trusts.
 2298. Parol evidence.
 2299. Precatory words.

Definition. § 2286. Estates may be created, not for the benefit of the grantee, but for the use of some other person. They are termed trust estates. No formal words are necessary to create such an estate. Whenever a manifest intention is exhibited, that another person shall have the benefit of the property, the grantee shall be declared a trustee.

For whom. § 2287. Trust estates may be created for the benefit of any female, or minor, or person *non compos mentis*. *They cannot be created, in any property, for any male person of sane mind.* In such cases, whether of express or implied trusts, the beneficiary takes the property free from the trust. If created for the joint benefit of a man and his wife, one-half the estate vests in the husband, and the remainder in the trustee for the separate use of the wife.

Separate estates. § 2288. No words of separate use are necessary to create a trust estate for the wife. The appointment of a trustee, or any words sufficient to create a trust, shall operate to create a separate estate.

Express, &c. § 2289. Trusts are either express or implied.

Definitions. § 2290. Express trusts are those created and manifested by agreement of the parties. Implied trusts are such as are inferred

by law from the nature of the transaction, or the conduct of the parties.

§ 2291. All express trusts must be created or declared in writing. Express. &c.

§ 2292. An express trust may depend for its operation upon a future event, and is then a contingent trust. It may operate in favor of additional or other beneficiaries upon specified contingencies, and is then a shifting trust. Contingent and shifting.

§ 2293. An implied trust is sometimes for the benefit of the grantor, or his heirs, or heirs or next of kin of a testator, and is then a resulting trust. Resulting trust.

§ 2294. Trusts are either executed or executory. In the former, everything has been done by the trustee required to secure the property, or render certain the interest of the beneficiaries, and all that remains for him to do, is to preserve the property and execute the beneficial purposes. In executory trusts, something remains to be done by the trustee, either to secure the property, to ascertain the objects of the trusts, or to distribute according to a specified mode, or some other act, to do which requires him to retain the legal estate. Executed and executory.

§ 2295. In an executed trust, for the benefit of a person capable of taking and managing property in his own right, the legal title is merged immediately into the equitable interest, and a perfect title vests in the beneficiary according to the terms and limitations of the trust. Executed and executory.

§ 2296. The technical rule that a trust cannot be limited on a trust, and that, consequently, only the first trust is executed, is abolished. Use upon use.

§ 2297. Trusts are implied—

1. Whenever the legal title is in one person, but the beneficial interest, either from the payment of the purchase money or other circumstances, is either wholly or partially in another. Implied trusts.

2. Where, from any fraud, one person obtains the title to property which rightly should belong to another.

3. Where, from the nature of the transaction, it is manifest that it was the intention of the parties that the person taking the legal title shall have no beneficial interest.

4. Where a trust is expressly created, but no uses are declared, or are ineffectually declared, or extend only to a part of the estate, or fail from any cause, a resulting trust is implied for the benefit of the grantor, or testator, or his heirs.

Article 1.—Creation and Nature of Trust Estates.

Parol evidence.

§ 2298. In all cases when a trust is sought to be implied, the court may hear parol evidence of the nature of the transaction, or the circumstances, or conduct of the parties, either to imply or rebut a trust.

Precatory words.

§ 2299. Precatory or recommendatory words will create a trust if they are sufficiently imperative to show that it is not left discretionary with the party to act or not, and if the subject matter of the trust is defined with sufficient certainty, and if the object is also certainly defined, and the mode in which the trust is to be executed.

ARTICLE II.

OF TRUSTEES—THEIR APPOINTMENT, POWERS, &c.

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- 2300. Trustees appointed.
- 2301. Proceeding at chambers.
- 2302. Return to Ordinary.
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- 2304. Duty of trustees.
- 2305. Sales by trustees.
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- 2307. Purchaser with notice.
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- 2310. Following funds.
- 2311. Disposition of income.
- 2312. Lien.
- 2313. Debts of *cestui que* trust.
- 2314. Sale by beneficiary.
- 2315. Lien on estates for trust funds.
- 2316. Acceptance of trust.
- 2317. Extent of trustee's estate.
- 2318. Relief of securities on bond.
- 2319. Compensation.

Trustees appointed, &c.

§ 2300. Trustees may be appointed by the party creating the estate, and he may confer the power of removal and appointment, by the deed to the beneficiaries, prescribing the mode of its execution.

Proceeding at chambers.

§ 2301. The Judge of the Superior Court of each county, has power, either in term or at chambers, on petition by all the beneficiaries in a deed, who have arrived at years of discretion, and on proper notice to the trustee, if there be one residing in this State, to remove and appoint trustees, prescribing in each case such terms, and requiring such bonds as in his discretion he may think proper, but in no case omitting to require a bond where minor beneficiaries are, or may be interested. The petition, notice, order and other papers in such cases, if done in vacation, shall be returned to the Clerk of the Superior Court, to be recorded in the book of the minutes of said court.

Returns to Ordinary.

§ 2302. All trustees having in their hands a pecuniary fund, as a part of the trust estate, or receiving any sums of money as in-

come or proceeds of such estate, shall make returns to the Ordinary, and receive commissions on such returns, under the same rules and regulations as are prescribed for guardians, and such returns, when allowed and recorded by the Ordinary, shall be *prima facie* evidence in their favor as to their correctness.

§ 2303. A naked trustee, holding the title when possession of the property is with the beneficiary, is in no way responsible for its income or preservation, except where there are beneficiaries in remainder, or who are minors, and in such case he is responsible only for gross neglect. Liability of naked trustees.

§ 2304. Trustees, having possession of the trust property, are bound to ordinary diligence in the preservation and protection of the same. Duty of trustees.

§ 2305. A trustee, unless expressly authorized by the act creating the trust, or with the voluntary consent of all the beneficiaries, has no authority to sell or convey the corpus of the trust estate, but such sales must be by virtue of an order of the Court of Chancery, upon a regular application to the same; such application may be made to the Judge in vacation, on full notice to all parties in interest, and the order for such sale may be granted at chambers, the proceedings to be recorded, as above provided, on application for appointment of trustees. Sales by trustees.

§ 2306. Sales by trustees, unless otherwise provided in the order, shall be made under the same rules and restrictions, in every respect, as provided for sales by administrators of estates. The same.

§ 2307. The purchaser from a trustee, with notice, actual or constructive of the trust, holds as trustee for the beneficiaries; if the purchase be *bona fide*, and without notice, the purchaser holds the property freed from the trust. Purchaser with notice.

§ 2308. Any trustee holding trust funds may invest the same in stocks, bonds, or other securities, issued by this State, making a true return of the price paid, and time of purchase; such investments shall be free from taxation, so long as held for the trust estate. Any other investments of trust funds must be made under an order of the Superior Court, either in term or granted by the Judge in vacation, or else at the risk of the trustee. Investment in stocks.

§ 2309. The trustee must not use the trust funds to his own profit. He is liable to account for all such profits made. Profits made.

§ 2310. The beneficiary of a trust estate may follow the funds

Article 2.—Of Trustees—their Appointment, Powers, &c.

- Following funds. wherever they can be traced, and, at his option, may affirm or reject an unauthorized investment by the trustee.
- Disposition of income. § 2311. Trustees are authorized, out of the income of the estate, to pay all debts incurred for its protection and preservation, and to appropriate a sufficiency of the balance for the support and maintenance of the beneficiaries of the trust. He cannot encroach upon the corpus of the estate, except by order of the Chancery Court.
- Lien. § 2312. Trustees are not authorized to create any lien upon the trust estate, except such as are given by law.
- Debts of cestui que trust. § 2313. A beneficiary having possession of the trust estate, or when the trustee fails or refuses to provide for its protection and preservation, or for the support and maintenance of the beneficiary, may, though a *feme covert*, contract debts for these purposes. The trust estate of such beneficiary shall be liable for the payment of such debts.
- Sale by beneficiary. § 2314. A beneficiary of a trust estate, of full age and of sound mind, may voluntarily sell and convey any portion of her interest in such estate to any person, except her husband or her trustee, and, upon application to the court, such sale may be confirmed, in the discretion of the court, and the proceeds re-invested under order of the court.
- Lien on estates for trust funds. § 2315. The estate of a trustee, dying chargeable with trust funds in hand, shall be appropriated, first, to the payment of such indebtedness, after the funeral expenses, in preference to all other liens and claims whatever.
- Acceptance of trust. § 2316. The acceptance of a trust is necessary to constitute a person trustee; it may be done by acts as well as words. After acceptance no disclaimer will remove the character of trustee.
- Extent of trustee's estate. § 2317. Generally, a trustee takes an estate as large and extended as the necessities of the trust require, and no more.
- Relief of sureties. § 2318. Sureties on the bonds of trustees may be relieved from liability by the Judge of the Superior Court, either at a regular term or at chambers, upon the same terms and conditions as prescribed for the relief of sureties on the bonds of guardians by the Ordinary.
- Compensation. § 2319. Trustees, for their service, shall be entitled to the same compensensation as guardians for similar services.

TITLE VI.

OF TITLE AND THE MODE OF CONVEYANCE.

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CHAPTER 2. Of title by will.

CHAPTER 3. Of title by descent, administration and distribution.

CHAPTER 4. Of title by judicial sale.

CHAPTER 5. Of title by contract.

CHAPTER 6. Of title by escheat and forfeiture.

CHAPTER 7. Of title by prescription.

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CHAPTER I.

OF TITLE BY GRANT.

ARTICLE 1. Generally.

ARTICLE 2. Of head rights.

ARTICLE 3. Of land lotteries.

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ARTICLE I.

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§ 2320. Title is the means whereby a person's right to prop-
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tle.

§ 2321. One person may have the right of possession and
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§ 2322. The title to all lands in this State originates in grants
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Origin in
grant.

Article 1.—Grants Generally.

Form of grants.

§ 2323. The form of grants heretofore used in this State is hereby established, and a substantial compliance with the same shall be held sufficient.

Errors in grants may be corrected.

§ 2324. The following errors in the issuing and recording of grants may be corrected, viz: any error in the name or residence of the grantee, or the location, or character, or boundary of the land, or in any other matter or thing connected with the application for, or issuing of the grant, or in recording or transcribing the names of applicants for draws, or of fortunate drawers in the several land lotteries, or any omission in any of the offices, or on the part of any of the agents of the State, or any other mistake in the recording thereof, or any other error whereby the true grantee is deprived of, or jeoparded in his right.

Proceeding for this purpose.

§ 2325. In all such cases the application must be made in writing to the Governor, and evidence produced to him that notice in writing of the nature and time of the application has been served upon every person who may be in any manner interested in the question; and if no objection be filed, and satisfactory evidence of the error or mistake be produced and submitted to writing, the Governor may pass an order requiring the error to be corrected, and if necessary, a new grant to be issued upon the first grant being delivered up to be cancelled.

Effect of objections.

§ 2326. If objections be filed, and it shall appear that such correction will interfere with the vested rights of other *bona fide* claimants, the Governor shall refuse to make such correction, but leave the parties to their judicial remedies.

Issue—how formed and tried.

§ 2327. If the fact is doubtful as to the interference with the vested rights of others, the Governor may cause an issue to be made, and to certify the same to the Superior Court of the county where the land lies, requiring the court to cause the same to be tried before a special jury, and have their verdict certified to him.

Question of law—how decided.

§ 2328. If the doubt arises upon a question of law, the Governor may certify the same to the Judges of the Supreme Court, and request their written opinion of the same to be returned to him.

Filing of papers.

§ 2329. All the papers and evidence upon every such application shall be filed and preserved in the Executive office.

If original grant is lost.

§ 2330. If the applicant for a corrected grant shall not be able to produce the original grant to be cancelled, the Governor may

Article 1.—Grants Generally.

issue the corrected grant, after advertising for six months at the expense of the applicant, for any objection to be filed.

§ 2331. All corrected grants shall take effect from the time of the issue of the original grant, but shall not affect the vested rights of *bona fide* purchasers without notice, and all corrected grants shall bear upon their face a note of the correction made, and the date of the Executive order under which it was made. Effect of corrected grants

§ 2332. Grants issued by the State may be set aside by the Superior Court of the county where the land lies upon a writ of *scire facias*, on the ground that the same were obtained by fraud or willful misrepresentations by the grantee, or those in privity with him, to the officers of the State: or on the ground of collusion between the grantee and the said officers: or of fraud, accident or mistake by the officers known to the grantee. How grants may be set aside.

§ 2333. Grants may be impeached before the courts where they are void upon their face, or are issued without authority of law, or against a prohibition in a statute, or for property to which the State had no title. But mere irregularities in the proceedings to obtain them shall not be inquired into, nor can a mistake in the name of the grantee be proved by parol. How impeached.

§ 2334. A grautee of lands or a franchise takes nothing by implication, but is confined to the terms of his charter: but every presumption is in favor of a grant. Nothing taken by implication.

§ 2335. Twenty years' possession of land under a claim of right, when the same is subject to entry and grant, shall authorize the courts to presume a grant. Presumption of a grant.

ARTICLE II.

OF HEAD RIGHTS.

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- 2336. Lands subject to head rights.
- 2337. Irregularities do not avoid, &c.
- 2338. Former acts continued.
- 2339. Inferior Court, &c.
- 2340. Application for warrant, &c.
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- 2343. Warrant.
- 2344. His certificate if the land is granted.
- 2345. False return by surveyor.
- 2346. Duty of clerk.
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- 2348. Interest not subject to levy, &c.
- 2349. Grants must be had in two years.

§ 2336. The lands heretofore declared by law to be subject to entry under the various acts granting head rights, shall so continue without any further act extending the time. Lands subject to head rights.

Article 2.—Of Head Rights.

Irregularities do not avoid past grants.

§ 2337. All grants heretofore issued on warrants granted by land courts, professing to be constituted under said acts, shall be held valid and good, notwithstanding one or more Justices of the Inferior Court may have constituted the land court, and notwithstanding any other irregularity not the result of, or amounting to fraud.

Former acts continued.

§ 2338. The several acts opening land courts in different counties, and all acts amendatory of the same, shall remain in force after the adoption of this Code in the same manner as if the same were of force prior to such adoption, except so far as changed by this article.

Inferior Court shall be the land court.

§ 2339. The Inferior Court of each county shall hereafter constitute the land court, and all the powers of the land court, are hereby transferred to said Inferior Court, to be exercised only at a regular term thereof.

Application for warrants—how made

§ 2340. All applications for warrants shall be made in writing to said court, and shall specify as accurately as possible, the vacant land for which a warrant is sought, and written notice, at least ten days before the session of the court shall be served by the Sheriff or his Deputy on the person in possession, if any, and on each owner of land adjoining the land alleged to be vacant, if such owner resides in the county. If he is non-resident, that fact shall be returned by the officer, and the court shall adopt such means as it deems proper to convey notice to him. The record must show the names of the persons notified, and the grant shall be valid against no other owner of adjacent lands.

Preference to first filed or person in possession.

§ 2341. All such applications shall be filed by the clerk as received, and when two or more applications are filed for the same land the first filed shall have the preference, unless one of the applicants be in actual or constructive possession, in which case he shall have the preference.

Caveat.

§ 2342. Any owner of the adjacent land or lands covered by the application, may file a caveat to the issuing a warrant, or to the granting of the land, at any time before the certified plat of the same is transmitted to the office of the Secretary of State, and such application and caveat shall be transmitted by said court to the Superior Court of the county, to be there tried as other land cases. The final judgment of the Superior Court shall be certified by its clerk back to the land court.

How tried.

Warrant.

§ 2343. If no caveat is filed, or if filed is not sustained, the said Inferior Court shall issue a warrant directed to the County

Article 2.—Of Head Rights.

Surveyor, requiring him to view the land alleged to lie vacant, and if upon due examination of the adjoining surveys he is satisfied that the same is vacant, to make an accurate survey and plat of the same and return the plat to the said court with his official certificate as to its accuracy, the time of survey, and his opinion that the same is vacant. Notice of the time of survey shall be given to all the owners of adjacent lands, resident within the county, by the County Surveyor at least ten days before the time appointed, and like notice of any delay or postponement of the time.

Duty of surveyor.

§ 2344. If the County Surveyor shall be satisfied that the land is not vacant, he shall certify the fact to the court issuing the warrant, with the name of the grantee or grantees, to whom, in his opinion, the same has been granted, and return the warrant to the court. The applicant, if he sees proper, may take issue upon such return, and such issue shall be transmitted to the Superior Court, in like manner as a caveat, to be there tried. The Superior Court shall give notice, in the most practicable manner to the owner or owners of the old grant or grants of the pendency of such issue before the trial of the same. If the issue is found for the applicant the survey shall proceed.

His certificate if the land is granted.

Issue thereon.

§ 2345. Any County Surveyor who shall knowingly or without due precaution certify as vacant, land covered by a former grant, shall be liable, with his sureties on his bond, to the owner of such land for double the value of the same, at any time before the trial of the cause.

False return by Surveyor.

§ 2346. It shall be the duty of the Clerk of the Inferior Court to record accurately all such plats as shall be ordered to be sent to the Secretary of State's office, to be granted.

Duty of clerk.

§ 2347. When a survey of vacant land is returned by the County Surveyor, and no caveat is filed, or if filed, is not sustained, the court shall pass an order declaring the application sustained and the report of the Surveyor confirmed, and direct the plat of the survey, together with a certified copy of the order, to be forwarded to the office of the Secretary of State, by whom it shall be recorded, and a grant to the land to the applicant, or his assignee, shall be made and issued as in other cases.

Grant—how obtained.

§ 2348. Though subject to be assigned, the interest of the applicant in the land surveyed shall not be subject to levy and sale prior to the issuance of the grant.

Interest not subject to levy and sale

Article 2.—Of Head Rights.

Grants must be had in two years. § 2349. If a grant is not applied for in two years from the passing of the final order by the land court, the land shall be considered vacant, and subject to re-survey under head rights.

ARTICLE III.

OF LAND LOTTERIES.

SECTION.

2350. Former acts continued.

SECTION.

2351. Reverted lots.

Former acts continued.

§ 2350. The several acts in reference to the various land lotteries, heretofore authorized by this State, so far as the same are now in force, shall remain of the same effect and validity as if this Code was not adopted, except so far as the same may be modified by the operation thereof.

Reverted lots.

§ 2351. All lands reverting to the State, under the operation of these laws, and not yet disposed of, and all reserves still belonging to the State, shall remain the property of the State, until further action by the Legislature. And all such, together with all ungranted lands, now within the bounds of the State, and not subject to grant under its laws, are hereby pledged and set apart to be appropriated by the Legislature to the cause of education in this State.

ARTICLE IV.

PROCESSIONING.

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2352. Appointment of proceSSIONERS.

2353. What is proceSSIONING.

2354. Surveyor's duty.

2355. Rules in disputed lines.

2356. General reputation—when evidence

SECTION.

2357. Adverse possession.

2358. Protest and appeal, &c.

2359. Fees.

2360. Return.

2361. Land cut off by running stream.

Appoint-ment of proceSSIONERS.

§ 2352. The Justices of the Inferior Court of each county, or any three of them, shall, at the second term of their court, on every second year, appoint three suitable persons in every militia district in the county, who shall be proceSSIONERS of land for that district, until their successors are appointed. Vacancies may be filled in the same manner, at any time. If none are appointed, the court shall appoint, at any regular term, on the application of any land owner.

Article 4.—Processioning.

§ 2353. Every owner of land, any portion of which lies in any district, though the remainder lies in an adjoining district, or an adjoining county, who desires the lines around his entire tract to be surveyed and marked anew, shall apply to the processioners of said district to appoint a day when a majority of them, with the County Surveyor, will trace and mark the said lines. Ten days' written notice of the time of such running and marking shall be given to all the owners of adjoining lands, if resident within this State; and the processioners shall not proceed to run and mark such lines until satisfactory evidence of the service of such notice shall be produced to them.

What is processioning.

§ 2354. It shall be the duty of the County Surveyor, with the processioners, taking all due precaution to arrive at the true lines, to trace out and plainly mark the same. The surveyor shall make out and certify a plat of the same, and deliver a copy thereof to the applicant, and in all future disputes arising in reference to the boundary lines of such tract, with any owner of adjoining lands, having due notice of such processioning, such plat, and the lines so marked, shall be *prima facie* correct, and such plat, certified as aforesaid, shall be admissible in evidence, without further proof.

Surveyor's duty.

Plat.

Evidence.

§ 2355. In all cases of disputed lines the following rules shall be respected and followed: natural land marks, being less liable to change, and not capable of counterfeit, shall be the most conclusive evidence; ancient or genuine landmarks, such as corner station or marked trees, shall control the course and distances called for by the survey. If the corners are established, and the lines not marked, a straight line, as required by the plat, shall be run, but an established marked line, though crooked, shall not be overruled; courses and distances shall be resorted to in the absence of higher evidence.

Rules in disputed lines.

§ 2356. General reputation in the neighborhood shall be evidence as to ancient landmarks of more than thirty years' standing, and acquiescence for seven years, by acts or declarations, of adjoining land owners, shall establish a dividing line.

General reputation—when evidence.

Acquiescence.

§ 2357. Where actual possession has been had, under a claim of right, for more than seven years, such claim shall be respected, and the lines so marked as not to interfere with such possession.

Adverse possession.

§ 2358. Any owner of adjoining lands, who may be dissatisfied with the lines, as run and marked by the processioners and surveyor, may file his protest thereto, with the processioners, within

Protest and appeal to Superior Court.

Article 4.—Processioning.

thirty days after such lines are run and marked, specifying therein the lines objected to, and the true line, as claimed by him; and it shall be the duty of the processioners to return all the papers, including the plat made by the surveyor, with such protest, to the Clerk of the Superior Court of the county or counties where the disputed land lies, (copies being sent to the adjoining county) and it shall be the duty of the clerk to enter the same on the issue docket, as other causes, to be tried in the same manner, and under the same rules, as other cases. The verdict of the jury, and the judgment of the court, shall be framed to meet the issue tried and decided.

Fees. § 2359. The applicant shall pay to each of the processioners one dollar per day for his services, and to the County Surveyor two dollars per day for his services. If a protest is filed, the costs of the court shall abide the issue.

Return. § 2360. The processioners shall make a return of their acts, together with the plat of the surveyor, to the Clerk of the Inferior Court of the county, to be kept on file in his office.

Land cut off by running stream. § 2361. When any water course is one of the boundary lines of a tract of land, and its course shall have been changed by nature or art, so that its present channel shall cut off a part of said land, the processioners and surveyor shall certify the fact, and the plat of the surveyor shall plainly mark the original and present channels, designating the exact quantity of land so cut off.

CHAPTER II.

OF TITLE BY WILL.

ARTICLE 1. Of the nature of wills—by whom and how executed.

ARTICLE 2. Of probate and its effects.

ARTICLE 3. Of the executor.

ARTICLE 4. Of devises and legacies.

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ARTICLE I.

OF THE NATURE OF WILLS—BY WHOM AND HOW EXECUTED.

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 2372. Codicil.
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SECTION.

2376. Eccentricity, imbecility, &c.
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 2385. Time of competency of witnesses.
 2386. Effect of witness being legatee.
 2387. Knowledge of contents.
 2388. Charitable devises.
 2389. Discretion to executors.

§ 2362. A will is the legal expression of a man's wishes as to the disposition of his property after his death. What is a will.

§ 2363. No particular form of words is necessary to constitute a will, and in all cases, to determine the character of an instrument, whether it is testamentary or not, the test is the intention of the maker, from the whole instrument, read in the light of the surrounding circumstances. If such intention be to convey a present estate, though the possession be postponed until after his death, the instrument is a deed; if the intention be to convey an interest accruing and having effect only after his death, it is a will. Form. When it is a will.

§ 2364. An instrument may have effect in part as a deed, and in part as a will, even as to the same property. May be both deed and will.

Article 1.—Nature of Wills, &c.

Mutual wills § 2365. Mutual wills may be made either separately or jointly, and in such case the revocation of one is the destruction of the other.

When a will takes effect. § 2366. A will takes effect instantly upon the death of testator, however long the probate may be postponed.

Power of testators. § 2367. A testator, by his will, may make any disposition of his property, not inconsistent with the laws or contrary to the policy of this State; he may bequeath his entire estate to strangers, to the exclusion of his wife and his children, but in such case the will should be closely scrutinized, and upon the slightest evidence of aberration of intellect, or collusion, or fraud, or any undue influence, or unfair dealing, probate should be refused.

Will may be good in part and void in part. § 2368. If a will be legal in part and illegal in part, that which is legal may be sustained, unless the whole will so constitute one testamentary scheme that the legal alone cannot give effect to the testator's intention; in such case the whole will fails.

Will should be voluntary § 2369. The very nature of a will requires that it should be freely and voluntarily executed, hence anything which destroys this freedom of volition invalidates a will; such as fraudulent practices upon testator's fears, affections, or sympathies; duress, or any undue influence whereby the will of another is substituted for the wishes of the testator.

Fraud vitiates. § 2370. A will procured by misrepresentations or fraud of any kind, to the injury of the heirs at law, is void.

Mistake vitiates *pro tanto*. § 2371. A will executed under a mistake of facts as to the existence or conduct of the heirs at law of the testator, is inoperative, so far as such heir at law is concerned, but the testator shall be deemed to have died intestate as to him.

Codicil. § 2372. A codicil is an addition or supplement to a will, either to add to, take from, or alter the provisions of the will. It must be executed with the same formality as a will, and when admitted to probate, forms a part of the will.

Who may make a will. § 2373. Every free person is entitled to make a will, unless laboring under some disability of the law; this disability arises either from a want of capacity, or a want of perfect liberty of action.

Infants. § 2374. Infants under fourteen years of age are considered wanting in that discretion necessary to make a will.

Insane persons. § 2375. An insane person cannot generally make a will. A lunatic may during a lucid interval. A monomaniac may make a will, if the will is in no way the result of, or connected with

that monomania. In all such cases it must appear that the testament does speak the wishes of the testator, unbiased by the mental disease with which he is affected.

§ 2376. Eccentricity of habit or thought does not deprive a person of the power of making a testament; old age, and the weakness of intellect resulting therefrom, does not, of itself, constitute incapacity. If that weakness amounts to imbecility, the testamentary capacity, is gone. In cases of doubt as to the extent of this weakness, the reasonable or unreasonable disposition of his estate should have much weight in the decision of the question.

§ 2377. An incapacity to contract may co-exist with a capacity to make a will; the amount of intellect necessary to constitute testamentary capacity, is that which is necessary to enable the party to have a decided and rational desire as to the disposition of his property. His desire must be decided in distinction from the wavering, vacillating fancies of a distempered intellect. It must be rational in distinction from the ravings of a madman, the silly pratings of an idiot, the childish whims of imbecility, or the excited vagaries of a drunkard.

§ 2378. Married women are incapable of making wills for want of perfect liberty of action, being presumed to be under the control of their husbands. A married woman may make a will in the following cases—

1. Where express power to will her separate estate is reserved or granted to her in the instrument creating the same, or by marriage contract.

2. When having a separate estate, absolutely, or an estate in expectancy, her husband consents to her disposing of the same by will.

3. Where her will is in execution of a power vested in her.

4. Whenever by reason of the abandonment of her husband, or a divorce from bed and board, or for other cause, the law declares her to have the right of a *feme sole* as to her own earnings.

§ 2379. Conviction of crime in no case deprives a person of the power of making a will, nor does any imprisonment, unless such imprisonment be used as duress to compel the person to make a testament different from his own will.

§ 2380. A slave cannot make a will; a free person of color may make a will.

Article 1.—Nature of Wills, &c.

Of blind
mutes.

§ 2381. A person deaf, dumb and blind may make a will in this State; *Provided*, the interpreter and scrivener are both attesting witnesses thereto, and are both examined upon the motion for probate of the same. In such cases, strict scrutiny into the transaction should precede the admission of the paper to record.

Interpreter.

§ 2382. In all cases when an interpreter is necessary to convey to the scrivener or to the witnesses the wishes of the testator, such interpreter must be a person competent to be a witness, and must be sworn on the motion for probate, if within the jurisdiction of the court.

Formalities
of execution.

§ 2383. All wills (except nuncupative wills,) disposing of realty or personalty, must be in writing, signed by the party making the same, or by some other person in his presence, and by his express directions, and shall be attested and subscribed in the presence of the testator by three or more competent witnesses.

Attestation
by illiterate
witnesses.

§ 2384. A witness may attest by his mark, provided he can swear to the same; but one witness cannot subscribe the name of another, even in his presence and by his direction.

Time of
competency
of witness.

§ 2385. The question of competency of the witness relates to the time of his testifying; but a witness competent at the time of attestation, cannot defeat the will by rendering himself incompetent prior to the time of probate, but in such cases his testimony shall be received, submitting its credibility to the jury.

Effect of
witness be-
ing legatee.

§ 2386. If a subscribing witness is also a legatee or devisee under the will, the witness is competent, but the legacy or devise is void; but a husband may be a witness to a will by which a legacy creating a separate estate is given to his wife, the fact going only to his credit.

Knowledge
of contents.

§ 2387. In all cases a knowledge of the contents of the paper by the testator is necessary to its validity; but usually where a testator can read and write, his signature or the acknowledgement of his signature, is sufficient. If however, the scrivener or his immediate relations are large beneficiaries under the will, greater proof will be necessary to show a knowledge of the contents by the testator.

Charitable
devises.

§ 2388. No person leaving a wife or child or descendants of child, shall, by will, devise more than one-third of his estate to any charitable, religious, educational or civil institution to the exclusion of such wife or child, and in all cases the will containing such devise shall be executed at least ninety days before the death of the testator, or such devise shall be void.

§ 2389. A testator may by will dispense with the necessity of his executor making inventory or returns: *Provided*, the same does not work any injury to creditors or third persons, other than legatees under the will. Discretion to executors.

ARTICLE II.

OF PROBATE AND ITS EFFECT.

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 2403. Who may offer a will.
 2404. When it must be offered.
 2405. Renunciation final.
 2406. Admission of executors or legatee.

§ 2390. The Court of Ordinary has exclusive jurisdiction over the probate of wills. The residence of testator at his death gives jurisdiction to the Ordinary of that county. Jurisdiction of Ordinary.

§ 2391. If the testator shall die out of the county of his residence, and the witnesses to his will shall reside in the county where he died, the Ordinary of the latter county may receive the probate in common form of such will, and transmit it, certified under his seal of office, together with the original will, to the Ordinary of the county of the residence: and such certified probate shall authorize the latter court to grant probate and admit to record in common form, and to grant letters testamentary or of administration therein: *Provided, always*, that no caveat is filed to such probate and record. Probate in another county.

§ 2392. Probate of a will may be either in common or solemn form. In the former case, upon the testimony of a single subscribing witness, and without notice to any one, the will may be proven and admitted to record. But such probate and record is not conclusive upon any one interested in the estate adversely to the will; and if afterwards set aside, does not protect the executor in any of his acts further than the payment of the debts of the estate. Purchasers under sales from him legally made, will be protected if *bona fide* and without notice. In common form.

§ 2393. Probate by the witnesses, or in solemn form, is where after due notice to all the heirs at law, the will is proven by all In solemn form.

Article 2.—Of Probate and its Effects.

the witnesses in existence, and within the jurisdiction of the court, or by proof of their signatures, and that of the testator, the witnesses being dead, and ordered to record, such probate is conclusive upon all the parties notified, and all the legatees, under the will who are represented in the executor.

Limitation
of seven
years.

§ 2394. Probate in common form, becomes conclusive upon all parties in interest after the expiration of seven years from the time of such probate, except minor heirs at law, who require proof in solemn form, and interpose a *caveat* at any time within four years after arrival at age. In such cases, if the will is refused probate and record in solemn form, an intestacy shall be declared only as to such minor, and not as to others whose right to *caveat* is barred by lapse of time.

Probate in
vacation.

§ 2395. Probate in common form, may be taken by the Ordinary at any time during vacation, but the order admitting the will to record, and granting letters testamentary, shall be granted only at a regular term.

Notice to
heirs.

§ 2396. Notice of a motion for probate in solemn form must be personal, if the party resides in the State, and at least ten days before the term of the court when the probate is to be made; if the residence be without the State or unknown, then the court shall pass such order, as to publication, as will tend most effectually to give notice. The records of the court shall show the persons notified, and the character of the notice given.

Guardians
ad litem for
minors.

§ 2397. If any of the persons interested as heirs be minors, or of unsound mind, guardians *ad litem* shall be appointed by the court, or the probate shall not be conclusive as to them.

Examina-
tion by com-
mission.

§ 2398. Witnesses to wills may be examined by commission, in the same cases, and under the same circumstances, as other witnesses in other cases, and the Ordinary shall have power to issue commissions to take testimony, and to compel the attendance of witnesses in like manner with the Superior Court.

Will must
be filed.

§ 2399. Every person having possession of a will must file the same with the Ordinary of the county having jurisdiction, and, on failure to do so, the Ordinary may issue process as for contempt, and fine and imprison the person thus withholding the paper, until the same shall be delivered.

Copy of a
will when
established.

§ 2400. If a will be lost or destroyed subsequent to the death, or without the consent of the testator, a copy of the same, clearly proved to be such by the subscribing witnesses and other evidence, may be admitted to probate and record in lieu of the

original; but in every such case, the presumption is of revocation by the testator, and that presumption must be rebutted by proof.

§ 2401. The original will, when proved and recorded, shall remain of file in the office of the Ordinary, and certified copies thereof shall be evidence in any cause and in any court in this State. Original will, &c.

§ 2402. If a party claims title to personalty in this State, under a will of a non-resident, executed and admitted to probate in another State, a copy of said will, and the probate thereof, and the order admitting the same to record, according to the laws of such other State, when properly certified under the laws of the Confederate States, shall be admitted in evidence in place of the original. Foreign will

§ 2403. The right to offer a will for probate belongs to the executor, if one be named. If the executor be dead, or non-resident, or refuses to act, or none be named, any person interested may offer the will for probate. Who may offer a will.

§ 2404. The executor must offer the will for probate as soon as practicable after the death, and must qualify, unless restrained by the will, within twelve months after the same is admitted to record. If he fails to offer it for probate for an unreasonable time, or is not qualified within the time specified, he shall be deemed to have renounced his right as executor. If, however, there are several executors, and one qualifies in the time specified, and afterwards dies, or is removed, another may then qualify within twelve months from the decease of his co-executor, and be entitled to all the rights of an originally qualified executor. When it must be offered.

§ 2405. An executor who has, either formally or by operation of law, voluntarily renounced his trust, cannot afterwards relieve himself from the effect of such renunciation. Renunciation final.

§ 2406. On the investigation of an issue of *derisavit vel nov*, the admission of an executor, before qualification, or of a legatee, (unless the sole legatee,) shall not be admissible in evidence to impeach the will, except the admission be in reference to the conduct or acts of the executor or legatee himself, as to some matter relevant to the issue. Admission of executor, &c.

ARTICLE III.

OF THE EXECUTOR.

SECTION.

2407. Power before probate.
 2408. Appointment—how made.
 2409. Administrator with will annexed.
 2410. Executor *de son tort*
 2411. Oath of executor.
 2412. Marriage of female executrix.

SECTION.

2413. *De son tort*.
 2414. Interest of executor.
 2415. Bond of executor.
 2416. Powers, duties and liabilities.
 2417. When more than one executor.
 2418. Foreign executor.

Power be-
fore pro-
bate.

§ 2407. So soon as the probate of the will is made in common form, in vacation, and before it is admitted to record, and before qualification, the executor named therein may exercise all the powers of a temporary administrator as to the collecting and preserving the estate; but if a *caveat* is filed to the record of the will, pending the investigation of such *caveat*, even though the executor may have been qualified on proof in common form, the Ordinary, in his discretion, may require of him a bond as temporary administrator on such estate.

Appoint-
ment—how
made.

§ 2408. No formal words are necessary to the appointment of an executor. Any expression of confidence by the testator, and a desire that such an one shall carry into effect his wishes, will amount to an appointment as executor. Citizens of this State only are eligible to be executors. An infant may be appointed, but cannot qualify until of age, unless expressly directed by the testator.

Administra-
tor, &c.

§ 2409. If no executor is appointed, or can or will serve, administration, with the will annexed, shall be granted by the Ordinary, under the same rules as shall be prescribed for the granting of administration generally; and such administrator, when so appointed, shall have all the powers of the executor, except such as manifestly arise from personal trust and confidence placed in the executor named.

Executor
de son tort.

§ 2410. If any person, without authority of law, wrongfully intermeddles with, or converts to his own use the personalty of a deceased individual, whose estate has no legal representative, he shall be held and deemed an executor in his own wrong, and as such shall be liable to the creditors and heirs, or legatees of such estate, for double the value of the property so possessed or converted by him; nor shall such executor be allowed to set off any debt due to him by the deceased, or voluntarily paid by him out

Article 3.—Of the Executor.

of the assets. If such executor dies, his legal representatives shall be liable in the same manner, and to the same extent, as if he was still living.

§ 2411. Every executor and administrator, with the will annexed, upon qualification, shall take and subscribe the following oath: Oath of executor.

“I do solemnly swear that this writing contains the true last will of the within named A. B., deceased, so far as I know or believe, and that I will well and truly execute the same in accordance with the laws of this State. So help me God.”

§ 2412. The marriage of a female executrix abates her letters. Marriage of female executrix. The Ordinary, in his discretion, may grant letters of administration, to her husband, with the will annexed. Until the appointment of a representative of the estate, the husband may act in right of his wife, and shall be responsible as if he was executor.

§ 2413. The marriage of an executrix, in her own wrong, does not affect her liability, but the husband shall be jointly liable with her. De son tort.

§ 2414. The executor shall take no beneficial interest, under any will, (except his commission) unless the same be expressly given to him by will; but, in every case, the executor or administrator, with the will annexed, shall be entitled to possess and administer the entire estate, although any part thereof be undivided, holding the residuum, after payments of debts and legacies, for distribution according to the laws of this State. Interest of executor. Trustee of residuum.

§ 2415. An executor is not required to give bond on qualification, but the Ordinary, on his own motion, or upon the representation of any person in interest that an executor is mismanaging the estate, or is about to remove it without the State, may require such executor to show cause why he should not give bond and security for the faithful execution of his trust, and on failure to give bond, when and as required, the Ordinary may revoke his letters, and appoint another representative for the estate. The executor who has given bond shall stand on the same footing, and be liable to all the rules and regulations hereinafter prescribed in reference to the bonds and sureties of administrators. Bond of executor.

§ 2416. All the provisions of this Code, with reference to administrators of estates, prescribing the commissions allowed to them, their duties, powers, and liabilities, the mode of affecting sales, of making and receiving titles to property sold or purchased by their intestates, of investing the funds, of obtaining letters of Powers, duties, and liabilities.

dismission, of removing proceedings to the county of their residence, of compelling settlements before the Ordinary, and in all other matters in their nature applicable to executors, shall be held and taken to apply to, and include, executors, to the same extent as if they were named therein.

When more than one executor.

§ 2417. If several executors are named in the will, one or more qualifying shall be entitled to execute all the trusts confided to all, unless specially prohibited by the will; if more than one qualifies, each is authorized to discharge the usual functions of an executor, but all must join in executing special trusts. Each executor is responsible for his own acts only, unless, by his own act or gross negligence, he has enabled or permitted his co-executor to waste the estate.

Foreign executor.

§ 2418. Executors qualified according to the law of their domicile, upon wills properly admitted to probate in another State, upon filing with the court a certified copy of such proceedings, shall be entitled to use all the processes and remedies prescribed by the laws of this State, in the same manner as if qualified under the laws of this State; if not filed before suit brought, the court may allow such certified copy to be filed afterwards, on such terms as it may prescribe.

ARTICLE IV.

OF DEVISES AND LEGACIES.

SECTION.

- 2419. Assets to pay debts.
- 2420. Effect of, &c.
- 2421. Assent of one.
- 2422. Meaning of words.
- 2423. Gifts of income.
- 2424. Intention of testator.
- 2425. Parol evidence on ambiguities.
- 2426. General and specific legacies.
- 2427. Income goes with corpus.
- 2428. Interest on legacies.

SECTION.

- 2429. After acquired property.
- 2430. Lapsed legacy.
- 2431. Ademption of legacy.
- 2432. Substitution.
- 2433. Election.
- 2434. Conditions.
- 2435. Payment of debts.
- 2436. Bequest of charity.
- 2437. Executory devise.

Assets to pay debts.

§ 2419. All property, both real and personal, in this State, being assets to pay debts, no devise or legacy passes the title until the assent of the executor is given to such devise or legacy.

Effect of, &c.

§ 2420. The assent of the executor may be presumed from his conduct, as well as his expressed consent; the executor, however, cannot, by assenting to legacies, interfere with the rights of credi-

Article 4.—Of Devises and Legacies.

tors, nor can he, by capriciously withholding his assent, destroy the legacy. In equity, the legatee may compel him to assent.

§ 2421. If there are several qualified executors, the assent of one vests the title in the legatee, unless the other has actual possession of the property. Assent of one.

§ 2422. No particular words are necessary to a devise or bequest. "Lend" will be construed to mean "give," unless the context requires its restricted meaning. Meaning of words.

§ 2423. An unconditional gift of the entire income of property, or interest accruing from a fund, will be construed into a gift of the property or fund, unless the provisions of the will require a more limited meaning. Gifts of income.

§ 2424. In the construction of all legacies, the court will seek diligently for the intention of the testator, and give effect to the same, as far as it may be consistent with the rules of law, and to this end the court may transpose sentences or clauses, and change connecting conjunctions, or even supply omitted words in cases where the clause, as it stands, is unintelligible or inoperative, and the proof of intention is clear and unquestionable; but if the clause, as it stands, may have effect, it shall be so construed, however well satisfied the court may be of a different testamentary intention. Intention of testator.

§ 2425. When called upon to construe a will, the court may hear parol evidence of the circumstances surrounding the testator at the time of its execution, so the court may hear parol evidence to explain all ambiguities, both latent and patent. Parol evidence on ambiguities.

§ 2426. Legacies may be either general or specified. A specific legacy is one which operates upon property particularly designated. A gift of money to be paid from a specified fund is nevertheless a general legacy. General and specific legacies.

§ 2427. The income, profits or increase of specific legacies, as a general rule, go with the legacy, though the time of enjoyment or of vesting may be postponed. Income goes with corpus.

§ 2428. A general legacy usually bears interest from the expiration of twelve months from the death of the testator. But when the condition of the estate at that time, as to the payment of debts and legacies, is doubtful, or the fund out of which the legacy is to be paid is unavailable for all the charges made upon it, or any other equitable circumstance intervenes, the general rule yields to the equity and necessity of the particular case. A Interest on legacies.

Article 4.—Of Devises and Legacies.

general legacy to be paid at a future time or event bears no interest until such time or event.

After acquired property.

§ 2429. All property acquired subsequent to the making of the will, shall pass under it, if its provisions be sufficiently broad to embrace such property.

Lapsed legacies.

§ 2430. If a legatee dies before the testator, or is dead when the will is executed, but shall have issue living at the death of testator, such legacy if absolute and without remainder or limitation, shall not lapse, but shall vest in the issue in the same proportions as if inherited directly from their deceased ancestor.

Ademption of legacy.

§ 2431. A legacy is adeemed or destroyed, wholly or in part, whenever the testator, after making his will during his life, delivers over the property or pays the money bequeathed to the legatee, either expressly or by implication, in lieu of the legacy given, or when the testator conveys to another the specific property bequeathed, and does not afterwards become possessed of the same, or otherwise places it out of the power of the executor to deliver over the legacy. If the testator attempts to convey and fails for any cause, the legacy is still valid.

Substitution

§ 2432. If the testator exchanges the property bequeathed for other of the like character, or merely changes the investment of a fund bequeathed, the law deems the intention to be, to substitute the one for the other and the legacy shall not fail.

Election.

§ 2433. A legatee taking under a will must allow, as far as he can, all the provisions of the will to be executed. Hence, if he has an adverse claim to the will, he will be required to elect, whether he will claim under the will or against it. The mere fact of being a creditor does not constitute a case of election.

Conditions.

§ 2434. A condition *in terrorem* is void, unless there is a limitation over to some other person, in which event the latter takes. Conditions which are impossible, illegal or against public policy, are void.

Payment of debts.

§ 2435. Unless otherwise directed, the debts of a testator should be paid out of the residuum. If it prove to be insufficient, then general legacies must abate *pro rata*, to make up the deficiency. If they are insufficient, then specific legacies should abate in the same manner. If the executor has assented to the legacies, and the legatees are in possession after exhausting the assets in the hands of the executor, the creditor may proceed against each legatee for his *pro rata* share. For the payment of debts, realty and personalty shall be alike liable.

Article 4.—Of Devises and Legacies.

§ 2436. A devise or bequest to a charitable use will be sustained and carried out in this State, and in all cases where there is a general intention manifested by the testator to effect a certain purpose, and the particular mode in which he directs it to be done fails from any cause, a Court of Chancery may, by approximation, effectuate the purpose in a manner most similar to that indicated by the testator. Bequest to charity.

§ 2437. An executory devise is such a future disposition of property as would fail as a remainder by reason of some technical defect, but which if not violative of the policy of the law, will be sustained when found in a will. Executory devise.

ARTICLE V.

OF REVOCATION.

SECTION.

2438. Revocation.
2439. Express or resulting.
2440. How executed.
2441. Cancellation.
2442. Intention to revoke.

SECTION.

2443. Implied revocation.
2444. Inconsistent provisions.
2445. Revocation by marriage, &c.
2446. Re-publication—how effected.

§ 2438. A will having no effect until the death of the testator, is necessarily revocable by him at any time before his death, and even in case of mutual wills with a covenant against revocation, the power of revocation remains. Revocation.

§ 2439. A revocation may be either express or resulting. An express revocation is where the maker by writing or acts annuls the instrument. An implied revocation results from the execution of a subsequent inconsistent will. The former takes effect instantly, or independent of the validity or ultimate fate of the will, or other instrument containing it. The latter takes effect only when the subsequent inconsistent will becomes effectual, and hence, if from any cause it fails, the revocation is not completed. Express or resulting.

§ 2440. An express revocation, by written instrument, must be executed with the same formality, and attested by the same number of witnesses, as are requisite for the execution of a will. The destruction of a will, expressly revoking all former wills, does not revive a former will, unless subsequently re-published. In such cases, the re-publication may be proved by parol. How executed. Re-publication.

Article 5.—Of Revocation.

Cancellat-
tion.

§ 2441. An express revocation may be effected by any destruction or obliteration of the original will, or a duplicate done by the testator, or by his directions, with an intention to revoke; such intention, will be presumed from the obliteration or cancelling of a material portion of the will; but if the part cancelled be immaterial, such as the seal, no such presumption arises.

Intention to
revoke.

§ 2442. In all cases of revocation, the intention to revoke is necessary to make it effectual. An express clause of revocation will not operate upon a testamentary paper, where it is manifest that such was not the intention.

Implied
revocation.

§ 2443. An implied revocation extends only so far as the inconsistency exists. Any portion of the first will, which can stand consistently with the testamentary scheme, and bequests made in the last, shall remain unrevoked.

Inconsistent
provisions.

§ 2444. When there are inconsistent provisions in the same will, the latter must prevail.

Revocation
by mar-
riage, &c.

§ 2445. In all cases, the marriage of the testator, or the birth of a child to him, subsequent to the making of a will in which no provision is made in contemplation of such an event, shall be a revocation of the will.

Re-publica-
tion—how
effected.

§ 2446. A codicil, properly executed, and annexed to a revoked will, shall amount to a re-publication of the same. Any writing executed with all the formalities required for a will, may operate as a re-publication. A re-publication of the same paper, in the presence of three witnesses, who shall subscribe as additional attesting witnesses, shall be good. A parol re-publication, in the presence of the original witnesses to the will, shall be good.

ARTICLE VI.

OF NUNCUPATIVE WILLS.

SECTION.

2447. Nuncupative wills—when granted.
2448. When proved.

SECTION.

2449. Notice to heirs.
2450. All property passes.

Nuncupa-
tive wills—
when
granted.

§ 2447. No nuncupative will shall be good that is not proved by the oaths of at least three competent witnesses that were present at the making thereof, nor unless it be proved that the testator, at the time of pronouncing the same, did bid the persons present, or some of them, bear witness that such was his will, or to that effect. nor unless such nuncupative will was made in the

Article 6.—Of Nuncupative Wills.

time of the last sickness of the deceased, and in the house of his habitation or dwelling, or where he hath been resident for the space of ten days, or more, next before the making of such will, except where such person was surprised or taken sick, being from his own home, and died before he returned to the place of his dwelling.

§ 2448. Application for probate of a nuncupative will, must be made before the court within six months after the death of the testator, and the substance of the testamentary dispositions must be reduced to writing within thirty days after the speaking of the same. When proved.

§ 2449. Upon all applications for probate of nuncupative wills, the same notice must be given to the heirs at law, as required on probates in solemn form of other wills. Notice to heirs.

§ 2450. All property, real and personal, may pass by nuncupative wills properly made and proved. All property may pass, &c.

CHAPTER III.

OF TITLE BY DESCENT AND ADMINISTRATION.

ARTICLE 1. Of inheritable property and the relative rights, &c.

ARTICLE 2. Of administration.

ARTICLE I.

OF INHERITABLE PROPERTY AND THE RELATIVE RIGHTS OF THE HEIRS AND ADMINISTRATOR.

SECTION.

2451. Descent to heir.

2452. Rules of inheritance.

2453. Property to *feme covert*.

SECTION.

2454. Right of administrator. &c.

2455. May recover of heirs.

§ 2451. Upon the death of the owner of any estate in realty or negroes, which estate survives him, the title vests immediately in his heirs at law. The title to all other property owned by him vests in the administrator of his estate for the benefit of the heirs and creditors. Descent to heir.

§ 2452. The following rules shall determine who are the heirs at law of a deceased person: Rules of inheritance.

1. The husband is sole heir of his intestate wife.

Article 1.—Of Inheritable Property, &c.

2. If the intestate dies without children, or the descendants of children, leaving a wife, the wife is his sole heir.

3. If there are children, or those representing deceased children, the wife shall have a child's part, unless the shares exceed five in number, in which case the wife shall have one-fifth part of the estate. If the wife elects to take her dower, she has no farther interest in the realty.

4. Children stand in the first degree from the intestate, and inherit equally all property of every description, accounting for advancements as hereinafter explained. Posthumous children stand upon the same footing with children in being upon all questions of inheritance. The lineal descendants of children stand in the place of their deceased parents; and in all cases of inheritance from a lineal ancestor, the distribution is *per stirpe* and not *per capita*.

5. Brothers and sisters of the intestate stand in the second degree, and inherit, if there is no widow, or child, or representative of child. The half-blood on the paternal side inherit equally with the whole blood. If there is no brother or sister of the whole or half-blood on the paternal side, then those of the half-blood on the maternal side shall inherit. The children or grandchildren of brothers and sisters, deceased, shall represent and stand in the place of their deceased parents, but there shall be no representation farther than this among collaterals.

6. The father, if living, inherits equally with brothers and sisters, and stands in the same degree. If there be no father, and the mother is alive, and a widow, she shall inherit in the same manner as the father would. If the mother is not a widow, she shall not be entitled to any portion of such estate, unless it shall be that of the only or last surviving child of the mother, in which event she shall take as if unmarried.

7. In all degrees more remote than the foregoing, the paternal and maternal next of kin shall stand on an equal footing.

8. First cousins stand next in degree; uncles and aunts inherit equally with consins.

9. The more remote degrees shall be determined by the rules of the canon law, as adopted and enforced in the English Courts prior to the fourth day of July, A. D. 1776.*

* For rules of inheritance among illegitimates, see Title 11, Chapter 11, Article 2.

Article 1.—Of Inheritable Property. &c.

§ 2453. Whenever any *feme covert*, having a child, or children, by a former marriage, is, or becomes, entitled to property, by inheritance, at any time, or devise, antecedent in date to her last marriage, and not in trust, the possession of which is not obtained prior to such marriage, such property shall not belong to the husband of such *feme covert*, but shall be equally divided between all the children of such *feme covert*, living at the time when possession is obtained, and such *feme covert*. The portions of such *feme covert*, and her children by her last husband, shall alone be subject to be reduced to possession by, and the title vest in, such husband.

§ 2454. Upon the appointment of an administrator, the right to the possession of the whole estate is in him, and so long as such administrator continues, the right to recover possession of the estate from third persons is solely in him. If there be no administration, or if the administrator appointed consents thereto, the heirs at law may take possession of the lands and slaves, or may sue therefor in their own right.

§ 2455. The administrator may recover possession of any part of the estate from the heirs at law, or purchasers from them; but in order to recover lands or slaves, it is necessary for him to show, upon the trial, either that the property sued for has been in his possession, and, without his consent, is now held by the defendant, or that it is necessary for him to have possession for the purpose of paying the debts, or making a proper distribution. An order for sale or distribution, granted by the Ordinary, after notice to the defendant, shall be conclusive evidence of either fact.

ARTICLE II.

OF ADMINISTRATION.

- SECTION 1. Different kinds of administrators, &c.
 SECTION 2. Of their appointment, bonds and removal.
 SECTION 3. Of inventories, appraisements and returns.
 SECTION 4. Of managing the estate and paying debts.
 SECTION 5. Of receiving and making titles on bonds for titles.
 SECTION 6. Of administrators' sales.
 SECTION 7. Of distribution, advancements, &c., for family.
 SECTION 8. Of commissions and extra compensation.
 SECTION 9. Of final settlements and receipts, &c.
 SECTION 10. Of letters of dismissal and resignation.
 SECTION 11. Of removing proceedings to another county.
 SECTION 12. Of foreign administrators, &c.

SECTION I.

DIFFERENT KINDS OF ADMINISTRATORS, AND RULES OF GRANTING LETTERS.

SECTION.	SECTION.
2456. Temporary letters.	2461. Rules for granting letters.
2457. <i>Pendente lite</i> .	2462. Clerk—when to be administrator.
2458. <i>De bonis non</i> .	2463. Survivorship among administrators.
2459. With the will annexed.	2464. Need not be person citing.
2460. Citizens only qualified.	

Temporary
letters.

§ 2456. The Ordinary may, at any time, grant temporary letters of administration upon any unrepresented estate, for the purpose of collecting and taking care of the effects of the deceased, to continue and have effect until permanent letters are granted, and from the order granting temporary letters there shall be no appeal.

*Pendente
lite.*

§ 2457. Pending an issue of *devisavit vel non*, upon any paper propounded as a will, temporary letters of administration may be granted, unless the will has already been admitted to probate in common form and letters testamentary issued.

*De bonis
non.*

§ 2458. Administration *de bonis non* is granted upon an estate already partially administered, and, from any cause, unrepresented.

Section 1.—Different kind of Administrators, &c.

§ 2459. Administration with the will annexed, is granted where ^{With the will annexed.} the deceased died testate, but no executor appears to qualify and execute the will. If the executor appointed is disqualified, for want of age, the letters may be granted until the disability ceases.

§ 2460. None but citizens of the Confederate States, residing ^{Citizens only qualified.} in the State of Georgia, are qualified to be made administrators.

§ 2461. In the granting of letters of administration of any ^{Rules for granting letters.} kind, the following rules shall be observed, the applicant being, in all cases, of sound mind, and laboring under no disability—

1. The husband or wife surviving, irrespective of age, shall be first entitled.

2. The next of kin, at the time of the death, according to the law declaring relationship and distribution, shall be next entitled; but if the party died testate, the person most beneficially interested under the will shall have the preference. Relations by consanguinity shall be preferred to those by affinity.

3. If there be several of the next of kin, equally near in degree, the person selected in writing by a majority of those interested as distributees of the estate, and who are capable of expressing a choice, shall be appointed.

4. If no such preference is expressed, the Ordinary may exercise his discretion in selecting the one best qualified for the office.

5. Where no application is made by the next of kin, a creditor may be appointed; and among creditors, as a general rule, the one having the greatest interest will be preferred.

6. The persons entitled to an estate may select a disinterested person as administrator, and, if otherwise qualified, he shall be appointed.

7. The person entitled to administration may desire a third person associated with him in the administration, and, in such case, if otherwise qualified, he may be appointed.

8. No person shall be appointed administrator who is neither of kin to the intestate or a creditor, or otherwise interested in the grant of administration, except in the cases before provided.

9. If a married woman is next of kin, her husband is entitled to the administration. If a female administratrix or executrix marries, her husband may be appointed administrator; the Ordinary, however, may, in his discretion, grant the letters to any other person entitled thereto under any of the prescribed rules.

10. If the decedent be a free person of color, his guardian is

See Law, 6706

Section 1.—Different kind of Administrators, &c.

entitled to the administration; if no guardian, or he declines, any other citizen may be appointed.

11. As a general rule, to cover all cases not specially provided for, the person having the right to the estate ought to have the administration.

12. Temporary letters of administration, pending the litigation on a propounded will, should generally be granted to the nominated executor.

Clerk—when
to be admin-
istrator.

§ 2462. If, from any cause, an estate be unrepresented, and not likely to be represented, the Ordinary may vest the administration in the Clerk of the Superior or Inferior Court of the county, or any other person whom he may deem fit and proper; a citation being first published for thirty days, as in other cases; and such clerk, if appointed, shall be compelled to discharge the duties of the office; if, however, such estate does not exceed in value the sum allowed by law to the widow and children, no administration shall be necessary, but the Ordinary shall, by order, set apart the same to the widow and children.

Small es-
tates except-
ed.

Survivor-
ship among
administra-
tors.

§ 2463. If administration has been granted to more than one, upon the death of either the right of administration survives to the other.

Need not be
person
citing.

§ 2464. Administration may be granted to other persons than him in whose name the citation issues, and without a new citation being published.

SECTION II.

OF THE APPOINTMENT OF ADMINISTRATORS, THEIR BOND AND REMOVAL.

SECTION.

- 2465. Application.
- 2466. Citation.
- 2467. Oath.
- 2468. Bond.
- 2469. To be filed.
- 2470. Suits on bonds.
- 2471. Execution—how issued.

SECTION.

- 2472. Provision for new sureties
- 2473. Joint bond.
- 2474. Defaulting administrator.
- 2475. Liability of sureties, &c.
- 2476. Suits not to abate.
- 2477. If several administrators, &c.
- 2478. Account with heir at law.

Application.

§ 2465. Every application for letters of administration must be made to the Ordinary of the county of the residence of the deceased, if a resident of this State, and if not a resident, then in some county where the estate, or some portion thereof is.

Section 2.—Appointment, Bonds and Removal of Administrators.

§2466. The Ordinary must issue a citation, giving notice of ^{Citation.} the application to all concerned, in the gazette in which the county advertisements are usually published, for thirty days, and at the first regular term, after the expiration of that time, the application should be heard or regularly continued.

§2467. Every administrator, when qualified, (which may be ^{Oath.} done in vacation if appointed at a regular term) shall take and subscribe the following oath or affirmation:

“I do solemnly swear (or affirm) that A. B., deceased, died intestate, so far as I know or believe, and that I will well and truly administer on all the estate of the said deceased, and disburse the same as the law requires, and discharge to the best of my ability all my duties as administrator. So help me God.”

§2468. Every administrator upon his qualification shall give ^{Bond.} bond, with good and sufficient security, to be judged of by the Ordinary, in a sum equal to double the amount of the estate to be administered; such bond shall be payable to the Ordinary for the benefit of all concerned, and shall be attested by him or his deputy, and shall be conditioned for the faithful discharge of his duty as such administrator, as required by law. A substantial compliance with these requisitions for the bond, shall be deemed sufficient, and no administrator's bond shall be declared invalid, by reason of any variation therefrom, as to payee, amount or condition, where the manifest intention was to give bond as administrator, and a breach of his duty as such has been proved.

§2469. All administrators' bonds shall be kept of file by the ^{To be filed.} Ordinary, the same being first recorded within six days after their execution in a book to be kept for that purpose.

§2470. The administrator and his sureties shall be held and deemed joint and several obligors, and may be sued as such in ^{Suits on bond.} the same action, and if the administrator is beyond the jurisdiction of this State, or is dead, and his estate unrepresented, or is in such position that an attachment may be issued against him, the sureties or any one or more of them may be sued. No prior judgment, establishing the liability of the administrator or a *devastavit* by him, shall be necessary before suit against the sureties on the bond.

§2471. In all cases of judgments recovered against the administrator and his sureties, the execution issued shall be first levied ^{Execution—how issued.} on the property of the principal, and no levy shall be made on the property of the sureties until there is a return of *nulla bona*

Section 2.—Appointment, Bonds and Removal of Administrators.

as to the principal, unless the plaintiff in *fi. fa.* shall file with the levying officer an affidavit that the surety is actually removing or secreting his property so as to avoid the payment of such judgment.

Provisions
for new
sureties.

§ 2472. The provisions hereinbefore made in case the surety on a guardian's bond dies, or becomes insolvent, or removes from the State, or from other causes becomes insufficient, or in case the surety desires to be relieved as surety, shall be applicable to sureties on administrators' bonds in the same manner and under the same conditions as if they were therein named.

Joint bond.

§ 2473. If two or more administrators unite in a common bond, all the sureties are bound for the acts of each administrator, and the administrators themselves are mutual sureties for each other's conduct.

Defaulting
administra-
tor.

§ 2474. Whenever the Ordinary knows, or is informed by any person having any interest in the estate, that the administrator wastes, or in any manner mismanages the estate, or that he or his sureties are likely to become insolvent, or that he refuses or fails to make returns as required by law, or that for any reason

Citation.

he is unfit for the trust reposed in him, he shall cite such administrator to answer to such charge at some regular term of the court, and upon the hearing of his return the Ordinary may, in his discretion, revoke the letters of administration, or require additional security, or pass such other order as in his judgment is expedient under the circumstances of each case.

Proceedings

Liability of
sureties of
removed ad-
ministrator.

§ 2475. In all cases of removal of an administrator for any cause, the sureties on his bond are liable for his acts in connection with his trust, up to the time of his settlement with an administrator *de bonis non*, or the distributees of the estate.

Suits not to
abate.

§ 2476. The revocation of letters of administration shall not abate any suit pending for or against the administrator, but the administrator *de bonis non* shall be made a party in proper cases by *scire facias*, as in case of the death of a party.

If several
administra-
tors and one
only is re-
moved.

§ 2477. If there are more administrators than one, and complaint is made against one only, and his letters are revoked, the entire trust remains in the hands of the other and with him, as to an administrator *de bonis non* the removed co-administrator must account.

Account
with heirs at
law.

§ 2478. If there be no administrator *de bonis non* appointed, or if he fails to bring the removed administrator to an account,

Section 2.—Appointment, Bonds and Removal of Administrators.

the heirs at law, or distributees, or legatees, (if there be a will) may sue directly for an account and settlement.

SECTION III.

OF INVENTORIES, APPRAISEMENT AND RETURNS.

SECTION.

2479. Inventory and appraisement.
 2480. How made and returned.
 2481. When to be executed.
 2482. What to contain.
 2483. Joint inventory.
 2484. Oath of appraisers.
 2485. Return of appraisers.

SECTION.

2486. Neglect of administrator, &c.
 2487. Cannot take property at valuation.
 2488. Annual return.
 2489. Vouchers.
 2490. Duty of Ordinary.
 2491. Non-resident or dead administrator
 2492. Ordinary's docket.

§ 2479. Immediately upon the qualification of every administrator the Ordinary should issue a warrant (or if property be in different counties, warrants) of appraisement directed to five disinterested freeholders, citizens of the county where the personal property is, any three of whom shall be qualified to act, requiring them on oath fairly and justly to appraise and value all of the personal property of the deceased produced to them by the administrator.

Inventory and appraisement.

§ 2480. The administrator shall make a just and true inventory of all the personal property owned and possessed by the deceased at his death, and shall produce and exhibit the same, if possible, to the appraisers appointed as aforesaid. And when such inventory and appraisement is returned to the Ordinary, the administrator shall swear, in addition to the usual oath on making returns, that such inventory contains a true account of all the goods and chattels, rights and credits of the deceased, within his hands, possession or knowledge.

How made and returned

§ 2481. The warrant of appraisement must be executed, except providentially prevented, within sixty days after the same is issued, and the inventory and appraisement should be returned to the Ordinary within four months after the qualification of the administrator. If the execution or return be delayed beyond the periods specified, the Ordinary should inquire into the reason and spread the same on his record with the return.

When to be executed.

§ 2482. A debt due by the administrator to the estate must be included in the inventory, and notice taken of any interest the estate may have in an unsettled partnership, though the assets be in the hands of a surviving partner.

What to contain.

Section 3.—Of Inventories, Appraisements and Returns.

Joint inven- § 2483. The inventory should be made jointly by all the ad-
tory. ministrators, but is not conclusive proof of joint possession of
the assets.

Oath of ap- § 2484. The appraisers before entering upon their duties shall
praisers. take and subscribe an oath, before an officer authorized to ad-
minister it, or before one of their number, who is hereby author-
ized to administer the same, faithfully to discharge their duty as
appraisers.

Return of § 2485. The return of the appraisers shall be in writing, and
appraisers. certified by their own signatures, any three being competent to
act. It shall be delivered to the administrator, and by him
returned to the Ordinary.

Neglect of § 2486. The neglect of an administrator to return a correct
administrators in this inventory and appraisement shall be held as sufficient ground for
behalf. removal.

Cannot take § 2487. No trustee is allowed to convert the trust property
property at to his own use, accounting for it at the appraised value. But
valuation. in such cases he must account for its true value.

Annual re- § 2488. On or before the regular term of the court in July in
turns. each and every year, every administrator shall make a true and
just account, upon oath, of his receipts and expenditures in
behalf of the estate during the preceding year, together with a
note or memorandum of any other fact necessary to the exhibit
of the true condition of such estate. To this account shall be
attached copies of all the vouchers, showing the correctness of
each item. If any of the receipts be for cotton, corn, or other
produce sold, the voucher shall show the quantity of each, the
price at which it was sold, the name of the purchaser and the
time of the sale.

Vouchers. § 2489. The annual return of an administrator shall be accom-
panied by the original vouchers, and it shall be the duty of the
Ordinary to compare the originals with the copies, before return-
ing the originals to the administrator.

Duty of Or- § 2490. The Ordinary shall carefully examine each return and
dinary. its vouchers, and if found correct, and no objection be filed in
thirty days from the time it is filed in office, shall allow the same,
and order it to be recorded, together with the copy vouchers
attached. The return and copy vouchers shall be kept of file in
the Ordinary's office. The return thus allowed and recorded
shall be *prima facie* evidence in favor of the administrator of
its correctness.

Section 3.—Of Inventories, Appraisements and Returns.

§2491. The return of a non-resident administrator may be admitted to record upon the affidavit of his surety. And if the administrator be dead, the representative of his estate may make a return of the accounts of the deceased administrator in the same manner, and to have the same effect as if he were living.

Non-resident or dead administrator.

§2492. To insure annual returns from every administrator, it shall be the duty of the Ordinary to keep a docket of all such as are liable to make returns, and immediately after the session of the July term in each year, to cite all defaulters to show cause for their neglect. A willful and continued failure shall be good cause of removal from the trust.

Ordinary's docket.

SECTION IV.

OF MANAGING THE ESTATE AND PAYING THE DEBTS.

SECTION.

- 2493. Payment of debts.
- 2494. Debts paid by heirs.
- 2495. When the debts are to be paid.
- 2496. Priority of debts.
- 2497. How paid.
- 2498. Collection by administrator.
- 2499. Or by distributee or creditor.
- 2500. Power of administrator, &c.

SECTION.

- 2501. Debts barred, &c.
- 2502. Counsel fees.
- 2503. Investment in stocks.
- 2504. Continuing business of deceased.
- 2505. Hiring of negroes.
- 2506. Duty as to contracts.
- 2507. Twelve months' exemption, &c.

§2493. Every administrator shall give six weeks' notice, by advertisement in one of the public gazettes of this State, or at three different places of the most public resort in the county, for creditors of the estate to render in an account of their demands. The administrator shall be allowed twelve months, from the date of his qualification, to ascertain the condition of the estate. Creditors failing to give notice within that time lose all right to an equal participation with creditors of equal dignity to whom distribution is made before notice of such claims is brought to the administrator; nor can they hold the administrator liable for a misappropriation of the fund; if, however, there are assets in the hands of the administrator sufficient to pay such debts, and no claims of higher dignity are unpaid, the assets shall be thus appropriated notwithstanding the failure to give notice.

Payment of debts.

§2494. If the estate has been distributed to the heirs at law, without notice of an existing debt, the creditor may compel them to contribute *pro rata* to the payment of his debt.

Debts paid by heirs.

Section 4.—Of Managing the Estate and Paying the Debts.

When the
debts are to
be paid.

§ 2495. The administrator should pay the debts of the estate, wholly or in part, at the expiration of the first year from his appointment. If partial payment is made it should be *pro rata* on debts of equal dignity. Successive dividends to creditors should be made at the end of every year, until the estate is paid out. If the administrator is himself a creditor he cannot retain his own debt, but must share with others of equal dignity.

Priority of
debts.

§ 2496. In the payment of the debts of a decedent, they shall rank in priority in the following order:

1. Funeral expenses to correspond with the circumstances of the deceased in life, including the physician's bill and expenses of the last sickness. If the estate is solvent the administrator is authorized to provide a suitable protection for the grave of the deceased.

2. The necessary expenses of administration, including a provision for the support of the family.

3. Unpaid taxes, or other debts, due to the State, or the Confederate States.

4. Debts due by the deceased as executor, administrator or guardian for the estate committed to him as such, or any debt due by the deceased as trustee, having had actual possession, control and management of the trust property.

5. Judgments, mortgages, and all other liens, created during the lifetime of deceased, and to be paid according to their priority of lien. Mortgages and other liens on specific property to be preferred only so far as such property extends.

6. Debts due for rent.

7. All liquidated demands, including foreign judgments, dormant judgments, bonds, and all other obligations in writing for the payment of money, promissory notes, and all debts the amount due on which was fixed and ascertained or acknowledged prior to the death of the decedent.

8. Open accounts.

How paid.

§ 2497. All the estate, real and personal, unless otherwise provided by this Code, is liable for the payment of debts. If there is a will, the property charged with the debts should be first applied, next the residuum, or if there be no residuary clause the undevise estate; next, general legacies must abate *pro rata*, and lastly, specific legacies must contribute.

§ 2498. An administrator is bound to place in suit every debt due the estate, which he may reasonably expect to recover; and

Section 4.—Of Managing the Estate and Paying the Debts.

if by his neglect, or indulgence, the debt is barred by the lapse of time, or is otherwise lost to the estate, he is responsible therefor.

Collection by administrator.

§ 2499. If the administrator for any cause declines to place any claim in suit, he may, nevertheless, assign the same to a distributee or creditor, who may, at his own expense, prosecute the same, the proceeds, if recovered, after paying expenses, to be distributed by the administrator.

Or by distributee or creditor.

§ 2500. An administrator is authorized to compromise a contested claim for or against the estate, to submit such matters to arbitration, to release a debtor, if for the benefit of the estate, and to constitute an attorney in fact to act in his stead, he being responsible for his conduct.

Power of administrator over debts to estate.

§ 2501. An administrator in his discretion may relieve a debt from the bar interposed by the lapse of time, by a new promise to pay: *Provided*, such bar had not occurred in the lifetime of his intestate. In such cases the distributees can make him responsible, by proof, that the claim against the estate was in reality unjust.

Debts barred by statute of limitation.

§ 2502. An administrator is authorized to provide for the estate competent legal counsel, according to the exigencies of the estate he represents.

Counsel fees.

§ 2503. When from any cause an administrator is compelled to hold the funds of the estate in his hands, he is authorized to invest the same in stocks, bonds, or other securities issued by this State, or (by leave of the Ordinary) in bonds issued by the proper authorities of the cities of Savannah and Augusta. In such case he shall, within twelve months thereafter, make a legal return thereof, in which shall be set forth the price paid, the time of the purchase, and the name of the seller. Such investments shall not be subject to taxation so long as they are held for the estate. If an executor or trustee has in his hands money as the separate estate of a married woman, absolutely or for life, he may under the direction of the Superior Court invest such funds in land, or negroes, or both.

Investment in stocks.

In land and negroes in certain cases.

§ 2504. An administrator may exercise his discretion in continuing the business of his intestate until the expiration of the current year. Up to the time of sale or distribution the administrator must manage and dispose of the property of the estate for the best interest of the estate.

Continuing business of deceased.

Section 4—Of Managing the Estate and Paying the Debts.

Hiring of negroes.

§ 2505. The negroes of the estate may be hired by the administrator privately, and in so doing he should look to the preservation and protection of the property as much as to the annual income, and whenever it is necessary the administrator, under the order of the court, may work the lands and slaves of deceased for the benefit of the estate.

Duty as to contracts.

§ 2506. The administrator, as far as possible, must fulfill the executory and comply with the executed contracts of the deceased, and he has a corresponding right to demand the same of the parties contracted with. If, however, the personal skill of the intestate entered into the consideration of the contract, his death renders the execution impossible, and the contract, though entire, must be considered as divisible and closed at his death, and the part execution by the deceased authorizes and requires a corresponding compliance by the other contractor.

Twelve months' exemption from suit.

§ 2507. No suit to recover a debt due by the decedent shall be commenced against the administrator until the expiration of twelve months from his qualification. This exemption shall not apply to an administrator *de bonis non*, unless appointed within the year allowed to his predecessor. And in all cases the administrator *de bonis non* shall be made a party to suits pending against the administrator upon *scire facias* issued to the first term.

SECTION V.

OF RECEIVING AND MAKING TITLES ON BONDS FOR TITLES

SECTION.

2508. Making titles on bond of intestate.
2509. Notice.
2510. Vendee dying, title to heirs.

SECTION.

2511. Vendor and vendee dying.
2512. Costs.

Making titles on bond of intestate.

§ 2508. If the intestate, during his life, executed a bond to make titles to land, and dies without making such titles, the holder of such bond, after having complied with its condition, may apply to the Ordinary having jurisdiction over the estate, for an order requiring the administrator to execute the titles according to the terms of the bond, in all cases annexing to his petition a copy of the bond.

Notice.

§ 2509. Personal notice of such application must be given to the administrator, and three months' notice to all concerned, by publication in the gazette in which the county advertisements

Section 5.—Receiving and making Titles on Bonds for Titles.

are inserted. If no objection is filed, and the Ordinary is satisfied of the truth of the allegations in the petition, the order shall be granted. If, however, any one of the heirs at law files a written objection to the proceeding, the application shall be dismissed and the petitioner remitted to his proceeding in the Superior Court. *Caveat.*

§ 2510. If the vendee dies, having possession of a bond for titles, the Ordinary of the county having jurisdiction of the estate, may, upon a similar application by any one of the heirs at law of the vendee, and on notice to the vendor, and public notice to all concerned, as provided in the foregoing section, order the title to be made to the heirs at law of the deceased. Such titles, however, shall not prevent such lands being assets in the hands of the administrator for the payment of debts. *Vendee dying, title to heirs.*

§ 2511. If both the vendor and vendee die, the notice shall be given to the legal representative of the vendor, who shall make the title to the heirs of the vendee. *Vendor and vendee dying.*

§ 2512. In all cases arising under this section, the costs of the proceeding shall be paid by the applicant for the title. *Costs.*

SECTION VI.

OF ADMINISTRATOR'S SALES.

SECTION.

- 2513. Sale of perishable property.
- 2514. Sales at public outcry.
- 2515. Terms of sale.
- 2516. Sale of wild lands.
- 2517. And of insolvent papers.
- 2518. Sale of land on negroes.
- 2519. Manner of sale.
- 2520. Recital in deed.
- 2521. Sale of slaves to pay debts.

SECTION.

- 2522. Land lying in two counties.
- 2523. Children not separated, &c.
- 2524. Effect of warranty.
- 2525. Property held adversely.
- 2526. Claim—where and how tried.
- 2527. Private sales against public policy.
- 2528. Sales by executor, &c.
- 2529. Return of sales.

§ 2513. The personal perishable property should be sold at as early a day as practicable, consistent with the interest of the estate. It must be done under order from the Ordinary, in which the kind of notice and the length of time it shall be given, being not less than ten days, shall be specified. The order for sale shall be granted as of course, unless the application is from a temporary administrator, when the Ordinary may exercise his discretion. *as Sale of perishable property.*

Section 6.—Of Administrator's Sales.

Sales at public outcry.

§ 2514. All sales by administrators, (except of annual crops sent off to market, and of vacant lands,) shall be at public outcry between the hours of ten o'clock, A. M., and four o'clock, P. M., nor shall any sale be continued from day to day unless so advertised. Good faith is required of the administrator in all cases that the property be sold in such manner and quantities as shall be deemed most advantageous to the estate.

To best advantage.

Terms of sale.

§ 2515. The administrator may exercise his discretion in demanding cash or extending credit. Full notice should be given, and the best interest of the estate observed. If credit is given, the administrator must, at his own risk, determine the sufficiency of the security given. If the security taken is ample at the time, and subsequently the debt is lost after the utmost diligence by the administrator, he will not be responsible for the amount.

Diligence as to surety.

Sale of wild lands.

§ 2516. On application by the administrator, and due notice advertised as hereinafter provided in case of lands, the Ordinary may grant an order authorizing the administrator to sell, at private sale, wild uncultivated lands lying in counties other than that of the administration; *Provided*, no objection is filed by any one interested in the estate, and the Ordinary is satisfied that such private sale is preferable.

And of insolvent papers.

§ 2517. All notes, bonds, judgments, accounts, or other evidences of debt, which, after due diligence, remain uncollected, and are deemed insolvent or doubtful, may be sold by the administrator, under an order of the Ordinary, at public outcry, during the usual hours of sale, on the regular day of Sheriff's sales, and at the court-house door; thirty days' notice of such sale being given at the court-house door, and at three or more public places in the county.

Sale of land or negroes.

Notice.

§ 2518. If, at any time, it becomes necessary for the payment of the debts of the estate, or for the purposes of distribution, to sell the land or negroes of the decedent, the administrator shall, by written petition, apply to the Ordinary for leave to sell, setting forth, in the petition, the reason for such application, and notice of the same shall be published once every two weeks for two months before the hearing, in the gazette in which the county advertisements are published. If no objection is filed, and the Ordinary is satisfied of the truth of the allegations in the petition, an order shall be passed granting the leave to sell, specifying therein the land and negroes as definitely as possible.

Section 6.—Of Administrator's Sales.

§ 2519. Every such sale shall be advertised in the same gazette for forty days after the leave granted and before the sale. It shall be had at public auction, on the first Tuesday of the month, between the usual hours of sale, and at the place of public sales in the county having jurisdiction of the administration, unless by special order in the discretion of the Ordinary, a portion of the land or negroes is sold in another county where the land lies or the negroes are domiciled. Manner of sale.

§ 2520. The recital of a compliance with these provisions in the administrator's deed, shall be *prima facie* evidence of the facts. Recital in deed.

§ 2521. The slaves belonging to an estate shall never be sold for the purpose of paying the debts, (unless directed by the will,) unless the other personal estate, together with the hire of the slaves for twelve months, will be insufficient to discharge them; and where the application to sell is for the purpose of distribution, the Ordinary must be satisfied that the distributees have actual notice of the application. Sale of slaves to pay debts or distribution.

§ 2522. If land ordered to be sold is composed of one tract or body of land lying partially in two counties, the sale may be had in either county, as directed by the Ordinary. Land lying in two counties.

§ 2523. Children, not exceeding eight years of age, of any female slave, shall not be separated from the mother, either for the purpose of sale or distribution, when such sale or distribution is made by any administrator, executor, guardian or other trustee; nor shall husband and wife, recognized as such by the deceased master when both belong to the estate, be sold separately. Children not separated from mother.

§ 2524. An administrator cannot bind the estate by any warranty in any conveyance or contract made by him, nor is he personally bound by such covenant, unless the intention of personal liability is distinctly expressed. Effect of warranty.

§ 2525. An administrator cannot sell property held adversely to the estate by a third person; he must first recover possession. Property held adversely.

§ 2526. If an administrator offers or proposes to sell any real estate which is claimed by any other person, such third person may interpose his claim, which shall be tried in the county where the land lies. If the claim be to personal property, it shall be tried in the county of the residence of the administrator. Claim—where and how tried.

§ 2527. A private sale of land or slaves, under an obligation to perfect by legal formality, is contrary to public policy, and renders such sales always open to review at the option of parties at Private sale against policy.

Section 6.—Of Administrator's Sales.

interest. Such sales, made prior to December 17th, 1859, are legal and valid.

Sales by ex-
ecutors, &c.

§ 2528. If a will authorizes a private sale by the executor, an administrator, with the will annexed, may execute the power and sell the property without order from the Ordinary. If the will merely designates the property to be sold without specifying the mode of sale, no application for leave to sell is necessary; but in other respects the executor or administrator, with the will annexed, must comply with the requisitions before specified.

Return of
Sales.

§ 2529. An administrator must make a full return of every sale, specifying the property sold, the purchasers, and the amounts, together with the terms of sale.

SECTION VII.

OF DISTRIBUTION, ADVANCEMENTS AND PROVISION FOR FAMILY.

SECTION.

- 2530. Rule of distribution.
- 2531. Year's support to family.
- 2532. Schedule.
- 2533. Title to property set apart.
- 2534. Provision in lieu of year's support.
- 2535. Two sets of children.
- 2536. Fees and costs.
- 2537. Advancements.
- 2538. Proof of.

SECTION.

- 2539. Portions in trust, &c.
- 2540. Advancements, &c.
- 2541. How estimated.
- 2542. Division in kind.
- 2543. Order for partition.
- 2544. Return.
- 2545. Refunding bond.
- 2546. Widow may select.

Rule of dis-
tribution.

§ 2530. After the payment of expenses of administration, and the debts of the deceased, the balance of the estate, both real and personal, stands subject to distribution among the heirs at law of the deceased, according to the relationship hereinbefore prescribed.

Years' sup-
port to fam-
ily.

§ 2531. Among the necessary expenses of administration, and to be preferred before all other debts, is the provision for the support of the family, to be ascertained as follows: Upon the death of any person, testate or intestate, leaving an estate, solvent or insolvent, and leaving a widow, or a widow and minor child, or children, or minor child or children only, it shall be the duty of the Ordinary, on the application of the widow, or the guardian of the child, or children, or any other person in their behalf, on notice to the representative of the estate, if there is one, and if none, without notice, to appoint five discreet appraisers; and it shall be the duty of such appraisers, or a majority of them, to

set apart and assign to such widow and children, or children only, either in property or money, a sufficiency from the estate for their support and maintenance for the space of twelve months, to be estimated according to the circumstances and standing of the family previous to the death of the testator or intestate, and keeping in view also the solvency of the estate. If there be a widow, the appraisers shall also set apart, for the use of herself and children, a sufficient amount of the household furniture. The provision set apart for the family shall, in no event, be less than the sum of one hundred dollars, and may extend to the whole estate.

Furniture.

§ 2532. It shall be the duty of the appraisers to make a schedule of the property so set apart by them, and return the same, under their hands and seals, to the Ordinary, within three months from the date of their action, to which return objections may be filed by any person interested, at any time within six months after the filing of the same in office, and if no objections are made, or if made are disallowed, the Ordinary shall record the return so made, in a book to be kept for this purpose; if an appeal be taken, pending the appeal the family shall be furnished with necessaries by the representative of the estate.

Objections.

§ 2533. The property so set apart by the appraisers shall vest in the widow, for the use of herself and the children, so long as they are minors, and if no widow, in such children, share and share alike.

Title to property set apart.

§ 2534. A testator may, by his will, make provision in lieu of this support for twelve months, in which case the widow may elect, under the same rules as regulated her election of dower.

Provision in lieu of year's support.

§ 2535. If there are two sets of minor children, by different wives, the appraisers shall specify the portion going to the children of the deceased wife, which portion shall vest in them.

Two sets of children.

§ 2536. The reasonable charges of the appraisers, to be assessed by the Ordinary, and the fees of the Ordinary, shall be paid by the applicant out of the fund set apart. The Ordinary may issue a writ of *ferri facias* against the representative of the estate for the amount so awarded, as aforesaid.

Fees and costs.

Fl. fa. vs. adm'r. &c.

§ 2537. An advancement is any provision by a parent, made to and accepted by a child, out of his estate, either in money or property, during his lifetime, over and above the obligation of the parent for maintenance and education. Donations from affection, and not made with a view of settlement, nor intended as

Advancements.

advancements, shall not be accounted for as such; nor shall the support of a child under the parental roof, although past majority, nor the expenses of education, be held as advancements, unless charged as such by the parent.

Proof of.

§ 2538. A memorandum of advancements, in the handwriting of the parent, or subscribed by him, shall be evidence of the fact of advancement, but shall not be conclusive as to the valuation of the property, unless inserted as a part of testator's will, or referred to therein.

Portions in trust and to grand children.

§ 2539. A portion given in trust for the benefit of a child is an advancement to such beneficiary, as if directly given to her. A portion given to the children of a deceased child is an advancement to that distributive share of the estate, and the grandchildren must regulate and equalize inequalities among themselves, in dividing the surplus coming to them.

Advancements—how accounted for.

§ 2540. In the distribution of an estate, every child of the intestate, and if a child be dead, the representative of that distributive share must first account for any and all advancements made in intestate's lifetime; if the advancements amount to, or exceed, the share received by an unadvanced child, such advanced distributee shall receive nothing farther from the estate; if the advancement is less, then each unadvanced or less advanced distributee shall first be made equal to such advancement, before a general and equal distribution is made. If there be a widow, she shall be made equal to advanced children, as other distributees.

How estimated.

§ 2541. Every advancement, unless a value is agreed on at the time of its acceptance, shall be estimated at its value at the time of the advancement. And no interest shall be charged upon the value thereof, until the time of the first distribution of the estate, from which date advancements shall be reckoned with regard to interest in the same manner as an equal amount of the estate received at that time.

Division in kind.

§ 2542. Whenever it is practicable the Ordinary, may order a distribution of the estate in kind, which order may be granted on the application of the representative, or any distributee of the estate. In all cases the applicant shall give at least twenty days'

Notice.

written notice to all parties in interest within this State who are of age, and to the guardians, if any, of minor distributees, and shall also give notice to any persons in interest residing out of

the State, by publication of the same at least twice a month for four months in one of the gazettes of this State.

§ 2543. Upon hearing the petition of the applicant the Ordinary, if no good cause to the contrary be shown, shall grant an order for division, and appoint three or more freeholders of the county where the property is situated, whose duty it shall be to appraise and impartially divide the property into the requisite number of shares, and by lot, or otherwise, to assign to each distributee his share, equalizing the same, if necessary, by balances in money, to be paid either out of the estate or by the respective distributees; such appraisers and partitioners being first sworn to the faithful and impartial discharge of their duty as such; if only a portion of the distributees, or legatees, are entitled at the time to the possession of their portion of the property, their shares may be set apart as aforesaid, and the remainder be left in common stock for future distribution.

Order for partition.

Duty of partitioners.

Partial division.

§ 2544. The return of the division and partition thus made, shall be in writing, signed by the appraisers, and any party in interest may file objections to such return before it is made the judgment of the Court of Ordinary. If such objections be sustained, the Ordinary shall order a new division by the same or other partitions.

Return.

§ 2545. In all cases of distribution in kind, the administrator, before delivering up the property, may demand of each distributee, or his guardian, bond and security; to refund his proportionable part of any debt which may be afterwards established against the estate, and the costs attending the recovery thereof.

Refunding bond.

§ 2546. In every partition or division of the estate of an intestate, the widow, if any, shall be allowed to select her portion or share of the negroes, the same being fairly appraised, and not exceeding her distributive share beyond her interest in the balance of the estate.

Widow may select.

SECTION VIII.

OF COMMISSIONS AND EXTRA COMPENSATION.

SECTION.

- 2547. Ordinary commissions.
- 2548. On interest made.
- 2549. No commissions on payments, &c.
- 2550. None for delivering property, &c.
- 2551. Traveling and other expenses.

SECTION.

- 2552. Extra compensation.
- 2553. No fund shall pay commissions, &c.
- 2554. Forfeiture of commissions.
- 2555. Expense of agents.

Section 8.—Of Commission and Extra Compensation.

Ordinary
commissions

§ 2547. As a compensation for his services, the administrator shall have a commission of two and one-half *per cent.* on all sums of money received by him on account of the estate, (except money loaned by him and repaid to him,) and a like commission on all sums paid out by him, either to debts, legacies or distributees. Such commissions are part of the expense of administration, and should be paid from the general estate, if any. If none, then to be deducted from the debt or legacy paid.

On interest
made.

§ 2548. If in the course of administration the administrator shall receive interest on money loaned by the intestate, or by himself as administrator, and shall return the same to the Ordinary so as to become chargeable therewith as a part of the corpus of the estate, he shall be entitled to ten per cent. additional commission on all such amounts of interest made.

No commis-
sions, &c.

§ 2549. The administrator is entitled to no commissions on debts, legacies or distributive shares paid to himself, and if there are more than one administrator, the division of the commissions allowed them, among themselves, shall be according to the services rendered by each.

Divisions,
&c.None for de-
livering pro-
perty in
kind.

§ 2550. No commissions shall be paid to any administrator or executor for delivering over of any property in kind. But the Ordinary may allow reasonable compensation for such service, not exceeding three per cent. on the appraised value. If however, land and negroes are worked together by any trustee for the benefit of the parties in interest, or negroes are hired out from year to year from the same cause, the Ordinary may, in his discretion, allow to such trustee additional compensation for such services; in no case exceeding *ten per cent.* of the annual income of the property so managed.

Traveling
and other
expenses.

§ 2551. An administrator in the discharge of his duty, required to travel out of his county, shall be allowed the amounts of his actual disbursements, to be ascertained by his own statements under oath. The Ordinary may also allow him a reasonable compensation for the time devoted to this service; *Provided*, under the circumstances, the Ordinary adjudges such additional compensation a proper charge against the estate.

Extra com-
pensation.

§ 2552. In other cases of extraordinary services, extra compensation may be allowed by the Ordinary. But in no case is the allowance of extra compensation by the Ordinary conclusive upon the parties in interest.

Section 8.—Of Commission and Extra Compensation.

§ 2553. Where from any cause a trust fund shall pass through the hands of several administrators or other trustees, by reason of the death, removal, resignation or otherwise of the first qualified trustee, such fund, shall not be subject to diminution by charges of commissions by each successive trustee holding and receiving in the same right; but commissions for receiving the fund shall be paid to the first trustee or his representative, and commissions for paying out, shall be paid to the trustee actually disbursing the fund, and no commission shall be paid for handing over the fund to the successor of a trustee.

No fund shall pay commissions but one.

§ 2554. Administrators and other trustees failing to make annual returns as herein before required, shall forfeit all commissions for transactions during the year within which no return is made, unless the Ordinary, upon cause shown, shall, by special order on the minutes, relieve them from this forfeiture.

Forfeiture of commissions

§ 2555. Among the expenses of administration, should be included and allowed the expenses of such agents as the administrator finds it necessary to employ for the estate. The existence of the necessity must be satisfactorily shown to the Ordinary.

Expense of agents.

SECTION IX.

OF FINAL SETTLEMENTS AND RECEIPTS.

SECTION.

2556. Settlement before the Ordinary.

2557. How made.

2558. Settlement in Court of Equity.

2559. Rule for charging interest.

SECTION.

2560. How and when compounded.

2561. Final receipts may be recorded.

2562. Refunding Bonds, when to be given.

§ 2556. Any person interested as distributee or legatee, may after the expiration of one year from the grant of administration, cite the administrator to appear before the Ordinary for a settlement of his accounts, or if the administrator chooses, he may cite all of the distributees, to be present at the settlement of his accounts by the Ordinary; such settlement shall be conclusive upon the administrator, and upon all the distributees, who are present at the hearing.

Settlement before the Ordinary.

§ 2557. Upon proof of such citation, by a distributee, the Ordinary may proceed to make an account, hear evidence upon any contested question, and settle finally, between the distributee and administrator; such settlement may be enforced by execu-

How made and enforced.

Section 9.—Of Final Settlements and Receipts.

Appeal. tion or attachment, for contempt, either party having the liberty of appeal.

Settlement in Court of Equity. § 2558. A Court of Equity, shall have concurrent jurisdiction, over the settlement of accounts of administrators.

Rule for charging interest. § 2559. In making such settlements a reasonable time, according to the facts of each case, should be allowed to the trustee to invest funds coming into his hands, before charging him with interest thereon, and in like manner, disbursements made by the trustee, should as a general rule, bear interest from some period anterior to the date of payment, according as he may have retained funds to meet them. In every case, the object is to charge the trustee with such interest as a diligent man would make, and to see that the trust fund is not used for his private benefit.

How and when compounded. § 2560. The interest to be charged against trustees, appointed since 1st January, 1848, and hereafter appointed, shall be at the rate of seven per cent. per annum, without compounding, for six years from the date of their qualification, and after that time, at the rate of six per cent. per annum, annually compounded. But any trustee, may relieve himself from this rule by returning annually, the interest actually made and accounting for the balance of the fund. And any distributee, may recover greater interest, by showing that the trustee actually received more, or that he used the funds himself to greater profit.

Final receipt may be recorded. § 2561. The final receipts on settlements given by distributees or legatees to an administrator, if attested by a Judge of any Court in this State, a Justice of the Peace or a Notary Public, may be admitted to record by the Clerk of the Superior Court of the county of the residence of the administrator, and when recorded, shall be admitted in evidence, without further proof, and in case of the loss of the original, a copy may be used in evidence, under the same rules as copies of registered deeds.

Refunding bonds—when to be given. § 2562. An administrator, where litigation against the estate is pending or is threatened, or notice of a claim has been given to him, may demand of the distributees or legatees, refunding bonds to indemnify him against such claims, and on failure to give such bonds, the administrator may reserve enough of the assets to respond to such claims; but in no case, shall the administrator require a refunding bond from the heir, when no threatened suit or claim renders such bond necessary.

SECTION X.

OF LETTERS OF DISMISSION AND RESIGNATION.

SECTION.

2563. Dismission, how granted.

2564. Duty of Ordinary.

2565. Fraudulent discharge.

SECTION.

2566 Disposition of unclaimed funds.

2567. Registration—how made.

§ 2563. An administrator, who has fully discharged all his duties, may petition the Ordinary to pass an order discharging him from his trust; upon such petition a citation shall issue, requiring all persons concerned to show cause, against the granting of the discharge. Such citation shall be published in the gazette for six months.

Dismission
—how granted.

§ 2564. Upon the hearing, the Ordinary shall examine closely into the condition of the estate, and the conduct of the administrator, and if he shall be satisfied that he has faithfully and honestly discharged the trust and confidence reposed in him, the prayer of the petitioner shall be granted, and the administrator released from all liability as such; *Provided*, any heir, distributee, or legatee, who is a minor at the time of the discharge, may, within five years after his arrival at majority, commence suit against the administrator, and such discharge shall be no bar to his action.

Duty of
Ordinary.Exception
in favor of
minors.

§ 2565. A discharge obtained by the administrator, by means of any fraud practiced on the heirs or the Ordinary, is void, and may be set aside on motion, and proof of the fraud. No discharge should be granted without actual examination by the Ordinary and the order of discharge should assert such examination into the accounts of the administrator.

Fraudulent
discharge.Examina-
tion by Or-
dinary.

§ 2566. If funds are in the hands of the administrator, and no person claiming the same, the Ordinary may nevertheless grant a discharge, at the same time passing an order either requiring the administrator to deposit the fund in such solvent bank as the court may direct, or else authorizing him to retain the same in his hands at an interest not exceeding four per cent. per annum. The discharge shall not take effect until the money is deposited, or in the event of its being retained by the administrator, it shall not relieve him or his sureties from their liability to comply with such order and respond for such fund.

Disposition
of unclaimed
funds.

§ 2567. Any administrator, who from age, infirmity, removal from the county, or for any other cause, desires to resign his

Resignation
—how
made.

Section 10.—Of Letters of Dismission and Resignation.

trust, may petition the Ordinary, stating the reasons and the name of a suitable person qualified and entitled to, and willing to accept the trust; whereupon, the Ordinary shall cite such person, and the next of kin of the intestate, to appear and show cause why the order should not be granted. If no good cause be shown, and the Ordinary is satisfied that the interest of the estate will not suffer, the resignation shall be allowed, and the administrator shall be discharged from his trust whenever he has fairly settled his accounts with his successor and filed with the Ordinary the receipt in full of such successor. Minors in interest shall be allowed five years from the time of their arrival at majority to examine into and open such settlement.

Exception in favor of minors.

SECTION XI.

OF REMOVING PROCEEDINGS TO ANOTHER COUNTY.

SECTION.

2568. Proceedings to obtain order.
2569. Executor need not give bond.

SECTION.

2570. Sureties—how liable

Proceedings to obtain order.

§ 2568. Whenever from a change of residence or other cause an administrator may desire to remove the jurisdiction of his trust from the Court of Ordinary of the county of the residence of testator or intestate to that of his own residence, the same may be done by complying with the following requisitions:

1. By obtaining a copy of all the records of the Ordinary relative to his trust, and causing the same to be recorded by the Ordinary of the county of his residence.

2. By giving to the Ordinary of his county new bond with good security for the discharge of his duty as administrator in the same manner as if the administration was originally granted there.

3. By filing with the Ordinary of the county having original jurisdiction, a certificate, under the seal of the Ordinary of the county to which the trust is to be removed, that the foregoing provisions have been complied with.

4. The Ordinary having jurisdiction shall then pass an order transferring the trust to the Ordinary of the other county.

§ 2569. An executor who has not been required to give bond shall not be required to give bond on removal of his trust to another county.

Executor need not give bond.

Section 11.—Of Removing Proceedings to another county.

§ 2570. On removal of an administration as herein provided, the sureties on the first bond are liable only for the conduct of the administrator up to the time of removal; the sureties on the second bond are liable for all his acts from the commencement of the administration. If the latter are made responsible for acts prior to the removal, they have a right of contribution against the former.

SECTION XII.

OF FOREIGN ADMINISTRATORS.

SECTION.

2571. Privileges in this State.
2572. Exemplification.

SECTION.

2573. Protection of heir, &c.
2574. Transfer of stock, &c.

§ 2571. When a person at the time of his death is domiciled in another State, and administration is there regularly granted on his estate, either to an executor or administrator, such executor or administrator, if there be none appointed in this State, may institute his suit in any court of this State to enforce any right of action, or recover any property belonging to the deceased, or accruing to his legal representative as such.

§ 2572. Pending the action, a properly authenticated exemplification of the letters testamentary or of administration shall be filed with the Clerk of the Court, to become a part of the record; *Provided*, the cause is pending in a court of record. If it be a summary process, the exemplification shall be filed with the papers.

§ 2573. If any citizen of this State is interested as creditor, heir or legatee in the estate of which such administrator or executor is the representative, he may, by application to a Court of Equity, compel such foreign executor or administrator to protect his interest according to equity and good conscience before removing such assets beyond the limits of this State.

§ 2574. Such foreign executor or administrator may transfer bank stock standing in the name of the decedent and check for deposits made by him, or dividends declared on his stock, first filing with the bank a certified copy of his appointment and qualification.

CHAPTER IV.

OF TITLE BY JUDICIAL SALE.

SECTION.

2575. Effects in passing title.

2576. Original title.

2577. Note in writing unnecessary.

2578. *Caveat Emptor*.

2579. Covenants running with land.

SECTION.

2580. Putting purchaser in possession.

2581. Seizure of personalty.

2582. Sale of stocks.

2583. Titles made by successors.

2584. Purchaser need not trace funds.

Effects in
passing title.

§ 2575. A sale regularly made, by virtue of Judicial process, issuing from a court of competent jurisdiction, shall convey the title as effectually as if the sale was made by the person against whom the process issues.

Original title.

§ 2576. In all controversies in the courts of this State, the purchaser at such a sale shall not be required to show title deeds back of his purchase, unless it be necessary for his case, to show good title in the person whose interest he purchased.

Note in writing unnecessary.

§ 2577. No note or memorandum in writing shall be necessary to charge any purchaser at a Judicial sale.

Caveat emptor.

§ 2578. The purchaser must look for himself as to the title and soundness of all property sold under Judicial process. Actual fraud or misrepresentation by the officer or his agent may bind him personally. No covenant of warranty binds him individually, unless made with that intention and for a valuable consideration.

Fraud.

Warranty.

Covenants running with land.

§ 2579. The purchaser at Judicial sales may enforce any covenants of warranty running with the land, which may be incorporated in the previous title deeds.

Putting purchaser in possession.

§ 2580. Whenever a present interest in land is sold by any Judicial officer it shall be his duty to place the purchaser or his agent in possession of the land, and to this end he may dispossess the defendant in the process, his heirs and his tenants, or his lessees or vendees of younger date than the judgment upon which the process issues, but he may not dispossess other tenants claiming under an independent title.

Seizure of personalty.

§ 2581. To authorize a sale of personal property there must be an actual or constructive seizure. A future interest in personalty cannot be seized and sold, but the lien of judgments will

Lien on future interests.

attach thereto, so far as to prevent alienation, before the right to present possession accrues.

§ 2582. Shares in a bank, or other corporation, may be levied on and sold, either under attachment or *fi. fa.*, in the county where the corporation does business; notice of such levy being given to the defendant, if his residence be known, and also to the officers of the corporation; such sales shall be made only by the Sheriff, or his deputy, and constables levying thereon, shall turn over such levies to the Sheriff. Only one share shall be sold at once. The Sheriff shall give the purchaser a certificate of his purchase, which, on presentation to the officers of the corporation, shall authorize a transfer of the stock to him. Transfers of stock after levy of an attachment, or after judgment, and with notice to the corporation of the levy or judgment, are absolutely void. If the shares be in a railroad, canal, turnpike, or plank road company, they may be levied on and sold in any county through which the same passes.

Sale of stocks.

§ 2583. If a Sheriff fails to make titles to a purchaser, his successor in office may make them in the same manner as if he had sold the property.

Titles made by successor.

§ 2584. The purchaser at Judicial sales is not bound to look to the appropriation of the proceeds of the sale, nor to the returns made by the officer, nor is he required to see that the officer has complied fully with all those regulations prescribed in such cases. All such irregularities create questions and liabilities between the officer and parties interested in the sale. The innocent purchaser is bound only to see that the officer has competent authority to sell, and that he is apparently proceeding to sell under the prescribed forms.

Purchaser need not trace funds.

CHAPTER V.

OF TITLE BY CONTRACT.

ARTICLE 1. Of private sales.

ARTICLE 2. Of gifts.

ARTICLE I.

OF PRIVATE SALES.

SECTION.	SECTION.
2585. Essentials of sale.	2600. Delivery of goods.
2586. Sales by auction.	2601. Sales of articles being manufactured
2587. Sales to defraud creditors. &c.	2602. Consideration.
2588. Protection of <i>bona fide</i> purchaser.	2603. Inadequacy.
2589. Duress or fraud.	2604. When due.
2590. What is fraud.	2605. Stoppage in transitu.
2591. Concealment when fraud.	2606. Purchaser without notice.
2592. Mistake.	2607. Implied warranty.
2593. Duress.	2608. Breach.
2594. Possibility cannot be sold.	2609. Good faith.
2595. Title conveyed.	2610. Vices of slaves.
2596. Purchaser without notice.	2611. Defects generally.
2597. Contracts entire or divisible.	2612. Patent defects.
2598. Deficiency in sale of lands.	2613. Barter and exchange.
2599. Loss of land from defect of title.	

Essentials of sale.

§ 2585. Three elements are essential to a contract of sale: 1. An identification of the thing sold. 2. An agreement as to the price to be paid. 3. Consent of the parties.

Sales by auction.

§ 2586. In case of sales by auction, the auctioneer shall be considered agent of both parties, so far as to dispense with any further memorandum in writing than his own entries.

Sales to defraud creditors or purchaser.

§ 2587. Every sale made with intent to defraud either creditors of the vendor or prior or subsequent purchasers, if such intention be known to the vendee, shall be absolutely void as against such creditors or purchasers.

Protection of *bona fide* purchasers.

§ 2588. Every voluntary deed or conveyance made by any person, shall be void as against subsequent *bona fide* purchaser for value, without notice of such voluntary conveyance.

Duress or fraud.

§ 2589. Fraud or duress, by which the consent of a party has been obtained to a contract of sale, voids the sale.

What is fraud.

§ 2590. Fraud may exist from misrepresentation by either party, made with design to deceive, or which does actually deceive the other party, and in the latter case such misrepresenta-

Article 1.—Of Private Sale.

tion voids the sale, though the party making it was not aware that his statement was false. Such misrepresentation may be perpetrated by acts as well as words, and by any artifices designed to mislead. A misrepresentation, not acted on, is not ground for annulling a contract.

§ 2591. Concealment of material facts may, in itself, amount to a fraud— Concealment—when fraud.

1. When direct inquiry is made and the truth evaded.

2. When, from any reason, one party has a right to expect a full communication of the facts from the other.

3. Where one party knows that the other is laboring under a delusion with respect to the property sold or the condition of the other party, and yet keeps silence.

4. Where the concealment is of intrinsic qualities of the article which the other party, by the exercise of ordinary prudence and caution, could not discover.

§ 2592. Mistake of law, if not brought about by the other party, is no ground for annulling a contract of sale. Mistake. Mistake of a material fact may, in some cases, justify a rescission of the contract; mere ignorance of a fact will not.

§ 2593. Duress consists in any illegal imprisonment or legal imprisonment used for an illegal purpose, or threats of bodily or other harm, or other means amounting to or tending to coerce the will of another, and actually inducing him to do an act contrary to his free will. Duress.

§ 2594. A bare contingency or possibility cannot be the subject of a sale, unless there exists a present right in the person selling, to a future benefit; so a contract for the sale of goods to be delivered at a future day where both parties are aware that the seller expects to purchase himself to fulfill his contract, and no skill and labor or expense enters into the consideration, but the same is a pure speculation upon chances, is contrary to the policy of the law, and can be enforced by neither party. Possibility cannot be sold. Speculating contracts.

§ 2595. The seller can convey no greater title than he has himself. The *bona fide* purchaser of a negotiable paper not dishonored, or of money, or bank bills, or other recognized currency, will be protected in his title, though the seller had none. There is no "market overt" in Georgia. Title conveyed. Market overt.

§ 2596. A title obtained by fraud, though voidable in the vendee, will be protected in a *bona fide* purchaser without notice. Purchaser without notice.

Article 1.—Of Private Sales.

Contracts
entire or di-
visible.

§ 2597. The contract of sale may be entire or divisible. If entire, a failure in part voids the whole. If divisible, the voidance is only in proportion and to the extent of the failure. The intention of the parties determines the question of entirety or divisibility.

Deficiency
in sale of
lands.

§ 2598. In a sale of lands, if the purchase is *per acre*, a deficiency in the number of acres may be apportioned in the price. If the sale is by the tract or entire body, a deficiency in the quantity sold cannot be apportioned. If the quantity is specified, as "more or less," this qualification will cover any deficiency not so gross as to justify the suspicion of willful deception, or mistake amounting to fraud; in this event the deficiency is apportionable; the purchaser may demand a rescission of the sale or an apportionment of the price according to relative value.

Purchaser
losing land,
&c.

§ 2599. If the purchaser loses part of the land from defect of title, he may claim either a rescission of the entire contract, or a reduction of the price according to the relative value of the land so lost.

Delivery of
goods.

§ 2600. Generally, the delivery of goods is essential to the perfection of a sale. The intention of the parties to the contract may dispense therewith: delivery need not be actual; constructive delivery may be inferred from a variety of facts; until delivery is made or dispensed with, the goods are at the risk of the seller.

Sales of ar-
ticles being
manufac-
tured.

§ 2601. When the sale is of goods to be manufactured and delivered at a future time, the question of risk will depend upon the fact to be ascertained in each case, whether the parties stipulate for a particular article in course of construction, or an article filling the specification of the contract. In the former case the title passes to the vendee before delivery; in the latter it does not.

Considera-
tion.

§ 2602. A valuable consideration is essential to a sale; it must either be definite or an agreement made by which it can be made certain; if its ascertainment becomes impossible, there is no sale.

Inadequacy.

§ 2603. Inadequacy of price is no ground for rescission of a contract of sale, unless it is so gross as combined with other circumstances to amount to a fraud.

When due.

§ 2604. Unless credit is specifically agreed on or is the custom of the trade, the purchase money is due immediately, and the seller may demand payment before delivering the goods.

Article 1.—Of Private Sales.

§ 2605. If the goods are delivered before the price is paid the seller cannot retake because of failure to pay; but until actual receipt by the purchaser the seller may at any time arrest them on the way and retain them until the price is paid. If credit has been agreed to be given, but the insolvency of the purchaser is made known to the seller, he may still exercise the right of stoppage *in transitu*. Stoppage *in transitu*.

§ 2606. A *bona fide* assignee of the bill of lading of goods for a valuable consideration and without notice that the same were unpaid for, and the purchaser insolvent, will be protected in his title against the seller's right of stoppage *in transitu*. Purchaser without notice.

§ 2607. If there is no express covenant of warranty, the purchaser must exercise caution in detecting defects; the seller however, in all cases (unless expressly, or from the nature of the transaction excepted,) warrants— Implied warranty.

1. That he has a valid title and right to sell.
2. That the article sold is merchantable and reasonably suited to the use intended.
3. That he knows of no latent defects undisclosed.

§ 2608. A breach of warranty, express or implied, does not annul the sale if executed, but gives the purchaser a right to damages. It may be pleaded in abatement of the purchase money. If the sale be executory, it is a good reason for the purchaser to refuse to accept possession of the goods. Breach. Effect of.

§ 2609. Covenants of warranty should be so construed as to require and encourage the utmost good faith in all contracting parties. Good faith.

§ 2610. Vices of character in a slave, which if known, would injure his sale in ordinary market are such latent defects as good faith requires the seller to disclose. Vices of slaves.

§ 2611. Any vice or defect in the thing sold, which renders it either absolutely useless, or its use so inconvenient and imperfect that it is reasonable to suppose that the purchaser would not have contracted, had he knowledge of its existence, is such a latent defect as good faith requires the seller to disclose. Defects generally.

§ 2612. Patent defects are not covered by a general express warranty, unless intended to be so covered. In proof of this intention parol evidence is admissible. Patent defects.

§ 2613. Contracts of barter or exchange stand upon the same footing with private sales, so far as the same principles can be applied to them. Barter and exchange.

ARTICLE II.

OF GIFTS.

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2614. Essentials.
 2615. Acceptance.
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 2623. Loan to married daughters.
 2624. Gifts by persons, &c.
 2625. Gifts for illegal purposes.
 2626. *Donat'io causa mortis*.

- Essentials. § 2614. To constitute a valid gift there must be the intention to give by the donor, acceptance by the donee and delivery of the article given, or some act accepted by the law in lieu thereof.
- Acceptance. § 2615. If the donation be of substantial benefit, the law presumes the acceptance, unless the contrary be shown. A parent, guardian or friend may accept for an infant. The officers of a corporation accept for it.
- Effect of written deed. § 2616. When the law requires a conveyance in writing to the validity of a gift, or the conveyance is made for a good consideration, such conveyance, executed and delivered, will dispense with the necessity of a delivery of the article given. A gift in writing without good consideration and without delivery, is void.
- Delivery. § 2617. Actual manual delivery is not essential to the validity of a gift. Any act which indicates a renunciation of dominion by the donor, and the transfer of dominion to the donee, is a constructive delivery.
- Void conditions. § 2618. Impossible, illegal or immoral conditions are void, and do not invalidate a perfect gift.
- Gifts void against creditors, &c. § 2619. An insolvent person cannot make a valid gift to the injury of his existing creditors. And where possession, partially or entirely, remains with the donor, every parol gift is void against *bona fide* creditors and purchasers without notice.
- Gift of slaves. § 2620. No gift of slaves is valid against creditors or subsequent *bona fide* purchasers without actual notice where the possession, either partially or entirely, remains with the donor, unless the same be in writing, signed by the donor, attested by at least one subscribing witness, and proved or acknowledged and recorded within one year from the execution thereof.
- Presumption of gift. § 2621. The delivery of personal property by a parent into the exclusive possession of a child living separate from the parent, shall create a presumption of a gift to the child; this presump-

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tion may be rebutted by evidence of an actual contract of lending, or from circumstances from which such a contract may be inferred.

§ 2622. The exclusive possession by a child of lands belonging ^{Of lands.} originally to a father, without payment of rent for the space of seven years, shall create conclusive presumption of a gift, and convey title to the child, unless there is evidence of a loan or of a claim of dominion by the father acknowledged by the child, or of a disclaimer of title on the part of the child.

§ 2623. If the child be a married daughter, the contract of loan ^{Loans to married daughters.} referred to in the two preceding paragraphs must be assented to by the husband to rebut the presumption of a gift.

§ 2624. A gift by any person just arrived at majority, or otherwise peculiarly subject to be affected by such influences, to his ^{Gifts by persons lately minors, &c.} parent, guardian, trustee, attorney or other person standing in a similar relationship of confidence, shall be scrutinized with great jealousy, and upon the slightest evidence of persuasion or influence towards this object, shall be declared void at the instance of the donor or his legal representative at any time within five years after the making of such gift.

§ 2625. If a gift be made for a specific purpose, expressed or secretly understood, and such purpose is illegal, or from other ^{Gift for illegal purposes} cause fails or cannot be accomplished, the donee shall hold as trustee for the donor or his next of kin.

§ 2626. A gift in contemplation of death (*donatio causa mortis*) ^{Donatio causa Mortis.} must be made by a person during his last illness, or in peril of death, must be intended to be absolute only in the event of death, and must be perfected by either actual or symbolical delivery; such a gift, so evidenced, may be made of any personal property, by parol and proved by one or more witnesses.

CHAPTER VI.

OF TITLE BY ESCHEATS AND FORFEITURE.

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- 2627. Escheat.
- 2628. Alien heirs.
- 2629. Escheator.
- 2630. Duty of Ordinary.
- 2631. Proceeds—how disposed of

SECTION.

- 2632. Counsel for Escheator.
- 2633. Claim within six years.
- 2634. Forfeiture.
- 2635. Purchase by Alien.
- 2636. Other forfeitures.

§ 2627. Escheat is where upon failure of heirs, the estate of an

Escheat. intestate falls to the State. In no other case does an estate escheat in Georgia.

Alien heirs. § 2628. If the heirs of an intestate or the devisees of land of a testator, be aliens or otherwise incapable of holding title to lands, the Ordinary, shall order the legal representative of the estate to sell the lands, and pay over the proceeds to such devisee or next of kin.

Escheator. § 2629. The Clerk of the Inferior Court of each county, shall be the escheator of such county, and as such, shall be entitled to administration, and shall apply for administration on the estate of every person dying in such county intestate, and without known heirs or next of kin; or if administration be already granted to another, such Clerk, as escheator, shall have the right to call such administrator to account, and receive from him, the property, when declared to be escheated to the State.

Duty.

Duty of Ordinary. § 2630. The escheator, so soon as he shall obtain possession of the estate as administrator, shall make known to the Ordinary of the county, the fact, that the same has apparently escheated to the State, whereupon, the said Ordinary shall pass an order requiring the said administrator, to advertise by publication in one or more papers in this and other States, according to the circumstances of each case, notifying all persons interested as next of kin of such deceased person, of the fact and date of his death, the amount of the estate, and the pendency of proceedings to escheat the same, which publication shall be continued for six months. If no person shall appear, and claim as heir, within twelve months from the date of the first publication, the Ordinary, shall pass an order declaring the said property escheated to the State. If any person claims the property alleged to be escheated, the claim shall be interposed, and tried as claims at administrators' sales.

Claimants.

Proceeds—How disposed of. § 2631. The proceeds of escheated property, shall be paid in each county, to the Ordinary or other treasurer of the Educational Fund of such county, to become a part of such fund.

Solicitor General—Counsel for Escheator. § 2632. In all trials arising in reference to escheated property, the Solicitor General shall be *ex officio* counsel for the escheator.

Claim within six years. § 2633. The next of kin, or heir of such deceased person may at any time, within six years after such order declaring the estate escheated, (or if laboring under any disability, within three years after the removal of the same,) bring suit against the treasurer of said Educational Fund, for the principal of the said sum.

Chapter 6.—Of Title by Escheats and Forfeiture.

without interest, and upon proof of his right thereto, may recover the same without costs.

§ 2634. Forfeiture to the State for crime, is abolished in this State, except so far as the lien which the State holds upon all the property of an offender for the costs of the prosecution against him. Forfeiture.

§ 2635. A conveyance of land to an alien, incapable of holding the same works a forfeiture of the title to the same to the State. And such lands may be recorded by the Clerk of the Inferior Court, where they are situated to be sold under an order of said Court, and the proceeds added to the Educational Fund of the county. Purchase by alien.

§ 2636. Forfeitures are worked by various acts, specified in different parts of this Code, for the benefit of persons named therein. Other forfeitures.

CHAPTER VII.

OF TITLE BY PRESCRIPTION.

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- 2637. Prescription.
- 2638. Adverse possession.
- 2639. Actual possession.
- 2640. Constructive possession.
- 2641. Possession for 20 years.
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- 2643. Dedication.
- 2644. Prescription for Slaves.
- 2645. Disabilities.
- 2646. Stops the prescription.
- 2647. Other exceptions.
- 2648. Transfer of prescriptive title.

§ 2637. Title by prescription, is the right, which a possessor acquires to property by reason of the continuance of his possession for a period of time fixed by the laws. Prescription

§ 2638. Possession to be the foundation of a prescription, must be in the right of the possessor, and not of another, must not have originated in fraud, must be public, continuous, exclusive, uninterrupted and peaceable, and be accompanied by a claim of right. Permissive possession cannot be the foundation of a prescription, until an adverse claim, and actual notice to the other party. Adverse possession.

§ 2639. Actual possession of lands, is evidenced by enclosure, cultivation or any use and occupation thereof, which is so notorious as to attract the attention of every adverse claimant, and so exclusive, as to prevent actual occupation by another. Actual possession.

§ 2640. Constructive possession of lands, is where a person having paper title to a tract of land, is in actual possession of only a part thereof. In such a case, the law construes the possession to Constructive possession.

extend to the boundary of the tract. Hence, adjacent owners, may be in constructive possession of the same land, being included in the boundaries of each tract. In such cases, no prescription can arise in favor of either.*

Possession
for 20 years.

§ 2641. Actual adverse possession of lands by itself, for twenty years, shall give good title by prescription against every one, except the State or persons laboring under the disabilities herein after specified.

Possession
for 7 years.

§ 2642. Adverse possession of lands, under written evidence of title, for seven years, shall give a like title by prescription. But if such written title, be forged or fraudulent, and notice thereof be brought home to the claimant before or at the time of the commencement of his possession, no prescription can be based thereon.

Dedication.

§ 2643. If the owner of lands, either expressly or by his acts dedicates the same to public use, and the same is so used, for such a length of time, that the public accomodation, or private rights might be materially affected by an interruption of the enjoyment, he cannot afterwards, appropriate it to private purposes.

Prescription
for slaves.

§ 2644. Adverse possession of slaves or other personal property within this State, for four years, shall give a like title by prescription. No prescription arises if the property be concealed or removed out of the State, or otherwise is not subject to reclamation.

Disabilities.

§ 2645. No prescription works against the rights of a minor during infaney, of a married woman during coverture, of a person imprisoned during his confinement, or of an insane person so long as the insanity continues; but each of these shall have a like number of years, after the disability is removed, to assert his claim and title to realty or personalty against the person prescribing.

Stop the
prescription.

§ 2646. A prescription commenced shall cease against persons under disability pending the disability, but on removal thereof, the prior possession may be tacked or added to the subsequent possession to make out the prescription.

Other ex-
ceptions.

§ 2647. A prescription does not run against an unrepresented estate until representation; *Provided*, the lapse does not exceed five years, nor against a joint title which cannot be severally enforced, and a portion of the owners labor under either of the

*See Title 8, Chapter 3, Article 1.

foregoing disabilities, nor in cases of fraud debarring or deterring the other party from his action until the fraud is discovered, nor against a party who commences his action in time, but is nonsuited, or dismisses for one time and re-commences within six months.

§ 2648. An inchoate prescriptive title may be transferred by a possessor to a successor, so that the successive possessions may be tacked to make out the prescription. Transfer of prescriptive title.

CHAPTER VIII.

OF CONVEYANCES OF TITLES.

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- 2650. Future interest.
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- 2655. Deeds to personalty.
- 2656. Inconsistent clauses.
- 2657. Recitals.
- 2658. Estoppel.
- 2659. Ancient deed.
- 2660. Establishing copies, &c.

§ 2649. A deed to lands in this State must be in writing, signed by the maker, attested by at least two witnesses, and delivered to the purchaser, or some one for him, and be made on a valuable or good consideration. The considerations of a deed may be always inquired into when the principles of justice require it.* Requisites of a deed.

§ 2650. A future interest or estate may be conveyed by deed, but it must operate to transfer the title immediately, or the instrument will be testamentary and revocable. Future interest.

§ 2651. No prescribed form is essential to the validity of a deed to lands or personalty. If sufficient in itself to make known the transaction between the parties, no want of form will invalidate it. Form of deed.

* See further as to considerations, Title 3, on contracts, Chapter 3.

Article 1.—Generally.

- Escrows.** § 2652. A deed delivered to another to be delivered on certain conditions to the grantee, is an escrow. Possession of the deed by the grantee is presumptive proof of a delivery, but may be rebutted.
- Deed of an infant.** § 2653. The deed of an infant is voidable at his pleasure on majority. The making of another deed at that time voids the first without an entry on the lands.
- Adverse possession.** § 2654. A deed to lands, made while the same are held adversely to the maker of the deed, is not void.
- Deeds to personalty.** § 2655. A deed to slaves or other personalty needs no attesting witness to make it valid; in other respects the principles applicable to deeds to lands are applicable to it. Generally, a deed is not necessary to convey titles to personalty.
- Inconsistent clauses.** § 2656. If two clauses in a deed be utterly inconsistent, the former must prevail, but the intention of the parties, from the whole instrument, should, if possible, be ascertained and carried into effect.
- Recitals.** § 2657. The recital in a deed of the receipts of the purchase money, does not estop the maker from denying the fact and proving the contrary.
- Estoppel.** § 2658. The maker of a deed cannot subsequently claim adversely to his deed under a title acquired since the making thereof. He is estopped from denying his right to sell and convey.
- Ancient deed.** § 2659. A deed more than thirty years old, having the appearance of genuineness on inspection, and coming from the proper custody, if possession has been consistent therewith, is admissible in evidence without proof of execution.
- § 2660. If an original deed be lost, a copy may be established by the Superior Court of the county where the land lies, and, when so established, shall have all the effect of the original.

ARTICLE II.

OF COVENANTS AND WARRANTY.

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2662. General warranty.	2665. Warranty of title, &c.
2663. Of a slave.	2666. Offer to rescind.

Covenants running with lands.

§ 2661. The purchaser of land obtains with the title, however conveyed to him, at public or private sale, all the rights which

Article 2.—Of Covenants and Warranty.

any former owner of the land, under whom he claims, may have had by virtue of any covenants of warranty of title, or of quiet enjoyments, or of freedom from incumbrances, contained in the conveyance from any former grantor, unless the transmission of such covenants with the land is expressly negatived in the covenant itself.

§ 2662. A general warranty of title against the claims of all persons, includes in itself covenants of a right to sell, and of quiet enjoyment and of freedom from incumbrances. General warranty.

§ 2663. A general warranty of a slave “in every respect,” includes validity of title, mental and physical soundness, and freedom from latent vices or defects, rendering him valueless, or unfit for the use intended. Of a slave.

§ 2664. “Healthy” in a warranty of a slave refers to physical soundness; “sound” includes mind and body. Healthy and sound.

§ 2665. A covenant of warranty of title to a slave goes with the slave to an assignee, who may sue thereon, in his own name. Title goes with slave.

§ 2666. An offer to rescind is not necessary to a recovery upon a covenant of warranty. An offer by the warrantor to rescind, and a refusal by the warrantee, should be considered in estimating damages.* Offer to rescind.

ARTICLE III.

OF REGISTRATION.

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- 2667. When and where recorded.
- 2668. Attestation.
- 2669. Probate by witness.
- 2670. By other persons.
- 2671. Record of Execution.

SECTION.

- 2672. Bills of sale to slaves.
- 2673. Former acts continued.
- 2674. Original deed evidence.
- 2675. Copy—when evidence.

§ 2667. Every deed conveying lands shall be recorded in the office of the Clerk of the Superior Court of the county where the land lies, within one year from the date of such deed; on failure to record within this time the record may be made at any time thereafter, but such deed loses its priority over a subsequent deed from the same vendor, recorded in time, and taken without notice of the existence of the first. When and where recorded.

*As to damages for breach of covenants, see Part 2, Title 7, on contracts, Chapter 9, for other provisions as to warrantees, see Chapter 5, Article 1, of this Title on private sales.

Attestation. § 2668. To authorize the record of a deed to realty or personally it must be attested, if executed out of this State, by a commissioner of deeds for the State of Georgia, or a consul or vice consul of the Confederate States, (the certificates of these officers, under their seals, being evidence of the fact,) or by a Judge of a court of record in the State where executed, with a certificate of the clerk, under the seal of such court, of the genuineness of the signature of such Judge. If executed in this State it must be attested by a Judge of a court of record of this State, or a Justice of the Peace, or Notary Public, or Clerk of the Superior Court in the county in which the three last mentioned officers, respectively, hold their appointments, or if subsequent to its execution the deed is acknowledged in the presence of either of the above named officers, that fact, certified on the deed by such officer, shall entitle it to be recorded.

Probate by witness.

§ 2669. If a deed is neither attested by or acknowledged before either of the officers aforesaid, it may be admitted to record upon the affidavit of a subscribing witness, before either of the above named officers, testifying to the execution of the deed and its attestation according to law; a substantial compliance with this requisition shall be held sufficient in the absence of all suspicion of fraud.

By other persons.

§ 2670. If the subscribing witness, or witnesses, be dead, or lunatic, or removed without the State, or otherwise incapacitated to make the affidavit, the affidavit of a third person to the fact, and to the genuineness of the handwriting of the subscribing witness, or witnesses, shall be sufficient to admit the deed to record.

Record of execution.

§ 2671. A purchaser at Sheriff's sale may have the execution under which the property was sold recorded with his deed, together with all the entries on the said execution, and in the event of the loss or destruction of the original execution, a copy from such record shall be admitted in evidence.

Bills of sale to slaves.

§ 2672. Deeds and bills of sale to slaves, and other personalty, may be recorded in the office of the Clerk of the Superior Court of the county where the maker resides; such record being permissive and not compulsory, is not constructive or implied notice to any one: it is otherwise, where the law requires the record to be made, and it is properly made.

Former acts continued.

§ 2673. All deeds heretofore, by any act, declared valid, or where improperly recorded, the record has been declared valid or

Article 3.—Of Registration.

sufficient, shall continue under this Code in the same situation as if the original acts remained in force.

§2674. A registered deed shall be admitted in evidence, in any court in this State, without further proof, unless the maker of the deed, or one of his heirs, or the opposite party in the cause will file an affidavit that the said deed is a forgery, to the best of his knowledge and belief, when the court shall arrest the cause, and require an issue to be made and tried as to the genuineness of the alleged deed.

§2675. If the original deed be lost a copy from the registry, if duly recorded, shall be admitted in evidence, whenever the court is satisfied of the fact of loss or destruction, and to this fact the party may be a witness.

TITLE VII.

OF CONTRACTS.

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CHAPTER 2. Of the parties.

CHAPTER 3. Of the consideration.

CHAPTER 4. Of illegal and void contracts.

CHAPTER 5. Of construction of contracts.

CHAPTER 6. Of bills of exchange, promissory note, &c.

CHAPTER 7. Of contracts of insurance.

CHAPTER 8. Of defences to contracts.

CHAPTER 9. Of breach and damages.

CHAPTER I.

GENERAL PRINCIPLES.

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- 2677. Executed and executory.
- 2678. Of record.
- 2679. Specialty.
- 2680. Simple contracts.
- 2681. Parol contracts.
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- 2683. Absolute or conditional.

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- 2684. Conditions precedent, &c.
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- 2686. Novation.
- 2687. Entire or severable.
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- 2689. Assent.
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Chapter 1.—General Principles.

- What is a contract.** § 2676. A contract is an agreement between two or more parties for the doing or not doing of some specified thing.
- Executed or executory.** § 2677. An executed contract is one in which all the parties thereto have performed all the obligations which they have originally assumed. An executory contract is one in which something remains to be done by one or more parties.
- Of record.** § 2678. A contract of record is one which has been declared and adjudicated by a court having jurisdiction, or which is entered of record in obedience to or in carrying out the judgments of a court.
- Specialty.** § 2679. A specialty is a contract under seal, and is considered by the law as entered into with more solemnity, and consequently of higher dignity than ordinary simple contracts.
- Simple contracts.** § 2680. All other contracts than those specified above, are termed simple contracts.
- Parol contracts.** § 2681. Simple contracts may be either in writing or rest only in words, as remembered by witnesses. Parol contracts under this Code shall include only the latter.
- Essentials.** § 2682. To constitute a valid contract there must be parties able to contract, a consideration moving to the contract, the assent of the parties to the terms of the contract, and a subject matter upon which it can operate.
- Absolute or conditional.** § 2683. A contract may be absolute or conditional. In the former, every covenant is independent, and the breach of one does not relieve the obligation of another. In the latter, the covenants are dependent the one upon the other, and the breach of one is a release of the binding force of all dependent covenants. The classification of every contract must depend upon a rational interpretation of the intention of the parties.
- Conditions precedent and subsequent.** § 2684. Conditions may be precedent or subsequent. In the former, the condition must be performed before the contract becomes absolute and obligatory upon the other party. In the latter, the breach of the condition may destroy the party's rights under the contract, or may give a right to damages to the other party according to a true construction of the intention of the parties.
- Void conditions.** § 2685. Impossible, immoral and illegal conditions are void, and are binding upon no one.
- Novation.** § 2686. One simple contract as to the same matter, and on no new consideration does not destroy another between the same parties; but if new parties are introduced by novation so as to

change the person to whom the obligation is due, the original contract is at an end.

§ 2687. A contract may be either entire or severable. In the former, the whole contract stands or falls together. In the latter, the failure of a distinct part does not void the remainder. The character of the contract in such case is determined by the intention of the parties. Entire or severable.

§ 2688. In some cases even an entire contract is apportionable, as where the price to be paid is not fixed, or is by the contract itself apportioned according to time, so if the failure of one party to perform is caused by the act of the other, the contract may still be apportioned. Appointment.

§ 2689. The consent of the parties being essential to a contract until each has assented to all the terms, the contract is incomplete; until assented to, each party may withdraw his bid or proposition, unless a given time is agreed on in which the other party may assent. Assent.

§ 2690. If the proposition is made by letter, the acceptance by written reply takes effect from the time it is sent, and not from the time it is received. Hence, the proposer cannot withdraw in the meantime. If the latter contains alternative propositions, the party receiving may elect.* Contract by letter.

CHAPTER II.

OF THE PARTIES.

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- 2691. Personal disabilities.
- 2692. *Feme covert*.
- 2693. Infant when bound.
- 2694. Personal exemption.
- 2695. Infants doing business, &c.
- 2696. Marriage contracts of infants.

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- 2697. Insane persons.
- 2698. May be pleaded.
- 2699. Drunkard.
- 2700. Slaves.
- 2701. Free persons of color.
- 2702. *Lex loci* contractors.

§ 2691. The following persons cannot generally make a valid contract: married women, infants, insane persons, drunkards, slaves and free persons of color. Personal disabilities.

§ 2692. The contracts of a married woman are generally void.† Feme covert

§ 2693. The contracts of an infant under twenty-one years of

* As to the contracts which to be binding must be in writing, see Title 3, Chapter 2 Article 1.

† For the exceptions to this rule, see Part 2, Title 2, Chapter 1, Article 2.

Infant—when bound. age are void, except for necessaries, and for necessaries, they are not valid, unless the party furnishing them proves that the parent or guardian fails or refuses to supply sufficient necessaries for the infant. If however, the infant receives property or other valuable consideration, and after arrival at age retains possession of such property or enjoys the proceeds of such valuable consideration, such a ratification of the contract shall bind him.

Personal exemption. § 2694. The exemption of the infant is a personal privilege. The party contracting with him cannot plead it, unless he was ignorant of the fact at the time of the contract. Nor can third persons avail themselves of it as a defence.

Infants doing business, &c. § 2695. If an infant by permission of his parent or guardian, or by permission of law practises any profession or trade, or engages in any business as an adult, he shall be bound for all contracts connected with such profession, trade or business.

Marriage contracts of infants. § 2696. Marriage contracts and settlements made by infants, but of lawful age to marry, are binding, as if made by adults.

Insane persons. § 2697. An insane person cannot contract prior to commission sued out and guardianship appointed; a lunatic may contract during lucid intervals. After guardianship, he cannot, nor can a person restored to sanity contract until the guardianship is dissolved. Necessaries furnished an insane person may be recovered upon the same proof as if furnished to infants.

May be pleaded. § 2698. A man may plead his own incapacity to contract.

Drunkard. § 2699. A drunkard, when actually intoxicated to such an extent as to deprive him of reason, can make no valid contract with any one cognizant of the fact of his condition. If the party contracting was at all instrumental in producing the state of intoxication, the contract is invalid, however partial the intoxication may be.

Slaves. § 2700. Slaves are incapable of contracting on their own behalf. All such contracts are void. Frequently they are criminal. **As agents.** Slaves may contract as agents for the master or employer, but for no one else.

Free persons of color. § 2701. Free persons of color can contract only through their guardians. Their contracts are voidable, not void, and only at the instance of their guardians by ratifying, the guardian may enforce them.

Les loci contractors. § 2702. Sometimes persons are capable to contract by the law of the place of the contract, but incapable under the law of this State. In such case, generally, the law of the place of the con-

tract is enforced, unless the circumstances show an attempt to evade the law of this State, or the contract is of such a character as contravenes the policy of our law.*

CHAPTER III.

OF THE CONSIDERATION.

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2705. Good and valuable.	2710. Impossible consideration.
2706. Inadequacy of consideration.	2711. Consideration moving from another.
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§ 2703. A consideration is essential to a contract, which the law will enforce. An executory contract, without such consideration, is called *nudum pactum*, or a naked promise. In some cases, a consideration is presumed, and an averment to the contrary, will not be received; such are generally contracts under seal, and negotiable instruments alleging a consideration upon their face, in the hands of innocent holders without notice, who have received the same, before dishonored. *Nudum Pactum*
Presumption of consideration.

§ 2704. A consideration is valid, if any benefit accrues to him who makes the promise, or any injury to him who receives the promise. Valid consideration.

§ 2705. Considerations are distinguished into good and valuable. A good consideration, is such as is founded on natural duty and affection, or on a strong moral obligation. A valuable consideration, is founded on money or something convertible to money, or having a value in money, except marriage, which is a valuable consideration. Good and valuable.

§ 2706. Mere inadequacy of consideration, alone, will not void a contract. If the inadequacy be great, it is a strong circumstance to evidence fraud. And on a suit for damages for breach of the contract, the inadequacy of consideration will always enter as an element in estimating the damages. Inadequacy of consideration.

§ 2707. If the consideration be founded in a mistake of fact or of law, the promise founded thereon cannot be enforced. Mistake.

§ 2708. A promise of another, is a good consideration for a promise. So in mutual subscriptions for a common object, the Mutual Promises.

* See General Preliminary Principles.

promises of the others is a good consideration for the promise of each.

Good in part
and bad in
part.

§ 2709. If the consideration be good in part and void in part, the promise will be sustained or not according as it is entire or severable as hereinafter prescribed. But if the consideration be illegal in whole or in part, the whole promise fails.

Impossible
considera-
tion.

§ 2710. An impossible consideration, is insufficient to sustain any promise, otherwise if the consideration be possible but improbable.

Considera-
tion moving
from another.

§ 2711. If there be a valid consideration for the promise, it matters not from whom it moved. The promisee may sustain his action, though a stranger to the consideration.

Failure of
considera-
tion.

§ 2712. If the consideration, apparently good or valuable, fails either wholly or in part before the promise is executed, such failure may be pleaded in defence to the promise. If it be partial an apportionment must be made according to the facts of each case.

CHAPTER IV.

OF ILLEGAL AND VOID CONTRACTS.

SECTION.

2713. Void.
2714. Against public policy.
2715. Fraud.

SECTION

2716. Duress.
2717. Gaming contracts.

Void.

§ 2713. A contract to do an immoral or illegal thing is void. If the contract be severable, that which is legal will not be annulled by that which is illegal.

Against pub-
lic policy.

§ 2714. A contract which is against the policy of the law, cannot be enforced; such are contracts tending to corrupt legislation or the judiciary, contracts in general in restraint of trade, contracts to evade or oppose the revenue laws of another country, wagering contracts, contracts of maintenance or champerty.

Fraud.

§ 2715. Fraud voids all contracts. Fraud may not be presumed, but being in itself subtle, slight circumstances may be sufficient to carry conviction of its existence.

Duress.

§ 2716. The free assent of the parties being essential to a valid contract, duress, either of imprisonment or by threats, or other arts, by which the free will of the party is restrained, and his consent induced, will void the contract. Legal imprisonment, if not used for illegal purposes, is not duress.

Chapter 4.—Of Illegal and Void Contracts.

§2717. Gaming contracts are void, and all evidences of debt or incumbrances or liens on property, executed upon a gaming consideration, are void in the hands of any person. Money paid or property delivered up, upon such consideration, may be recovered back from the winner by the loser, if he shall sue for the same in six months after the loss, and after the expiration of that time, it may be sued for by any person, at any time within four years, for the joint use of himself and the Educational Fund of the county.*

Gaming contracts.

Suits to recover back.

CHAPTER V.

OF CONSTRUCTION OF CONTRACTS.

SECTION.

2718. By whom construed.

2719. Intention of parties.

SECTION.

2720. Or of one party known to the other.

2721. Rules of interpretation.

§2718. The construction of a contract is a question for the court. Where any matter of fact is involved, (as the proper reading of an obscurely written word) the jury should find the fact.

By whom construed.

§2719. The cardinal rule of construction is to ascertain the intention of the parties. If that intention be clear, and it contravenes no rule of law, and sufficient words be used to arrive at the intention, it shall be enforced, irrespective of all technical or arbitrary rules of construction.

Intention of Parties.

§2720. The intention of the parties, may differ among themselves. In such case, the meaning placed on the contract by one party, and known to be thus understood by the other party, at the time, shall be held as the true meaning.

Or of one party known to the other

§2721. The following rules among others may aid in arriving at the true interpretation of contracts—

Rules of interpretation.

1. Parol evidence is inadmissible to add to, take from or vary a written contract. All the attendant and surrounding circumstances may be proved, and if there is an ambiguity, latent or patent, it may be explained; so if a part of a contract only is reduced to writing, (such as a note given in pursuance of a contract,) and it is manifest that the writing was not intended to speak the whole contract, then parol evidence is admissible.

Parol evidence, &c

*As to contracts void against creditors—see Part 2, Title 3, Chapter 2, Article 2, and against purchasers see Part 2, Title 6, Chapter 5, Article 1.

Meaning of words.

2. Words generally bear their usual and common signification; but technical words, or words of art, or used in a particular trade or business, will be construed, generally, to be used in reference to this peculiar meaning. The local usage or understanding of a word may be proved in order to arrive at the meaning intended by the parties.

Whole contract to be considered.

3. The construction which will uphold a contract in whole and in every part, is to be preferred, and the whole contract should be looked to in arriving at the construction of any part.

Strongest against promisee.

4. If the construction is doubtful, that which goes most strongly against the party executing the instrument, or undertaking the obligation, is generally to be preferred.

Grammatical construction.

5. The rules of grammatical construction usually govern, but to effectuate the intention they may be disregarded; sentences and words may be transposed, and conjunctions substituted for each other. In extreme cases of ambiguity, where the instrument, as it stands, is without meaning, words may be supplied.

Printing.

6. When a contract is partly printed and partly written, the latter part is entitled to most consideration.

Implied estates. Time.

7. Estates and grants, by implication, are not favored.

8. Time is not generally of the essence of a contract; but by express stipulation or reasonable construction, it may become so.

CHAPTER VI.

OF BILLS OF EXCHANGE, AND PROMISSORY NOTES, AND OTHER NEGOTIABLE INSTRUMENTS.

ARTICLE 1. Of negotiable papers, and how transferred.

ARTICLE 2. Of endorsers, notice and protest.

ARTICLE 3. Of the rights of holders.

ARTICLE 4. Of damages.

ARTICLE I.

OF NEGOTIABLE PAPERS, AND HOW TRANSFERRED.

SECTION.

2722. Bill of exchange.
2723. Promissory note.
2724. Negotiable.
2725. Bonds, &c., negotiable.

SECTION.

2726. Limited endorsement.
2727. Implied warranty.
2728. Bill, &c., payable out of a fund.
2729. Acceptance, &c.

Article 1.—Of Negotiable Papers, and how Transferred.

§ 2722. A bill of exchange is an order by one person, called the Bill of exchange. drawer or maker, to another called the drawee and acceptor, to pay money to another, (who may be the drawer himself,) called the payee, or his order, or to the bearer. Parties. If the payee or a bearer transfers the bill by endorsement, he then becomes the endorser. If the drawer or drawee resides out of this State, it is then called a foreign bill of exchange.

§ 2723. A promissory note is a written promise made by one Promissory note. or more to pay to another, or order or bearer, at a specified time, a specific amount of money or other articles of value. If made by more than one, it may be a joint promise, or joint and several, in which case each is bound for the whole separately at the option of the holder. If the payment is in articles other than Payable in specifics. money, and is not punctually made, the holder may recover the value of such articles at the time the note was due, at the place where it was payable, if a specific place is mentioned, otherwise at the place where it was made, with lawful interest thereon.

§ 2724. A promissory note is negotiable by endorsement of the Negotiable. payee or holder, or if payable to bearer by transfer and delivery only; the maker may restrain the negotiability thereof by expressing such intention in the body of the instrument.

§ 2725. All bonds, specialties, or other contract in writing for Bonds, &c., negotiable. the payment of money or any article of property, and all judgments and executions, from any court in this State, are negotiable by endorsement, or written assignment, in the same manner as bills of exchange and promissory notes. No endorsement or assignment need be under seal.

§ 2726. Any person endorsing or transferring a negotiable in- Limited endorsement. strument, may limit his own liability upon such endorsement or transfer by express restrictions therein; and the assignor of a judgment shall not be held liable as endorser, unless in such assignment he expressly contracts so to be.

§ 2727. Every transferrer of a negotiable instrument, whether Implied warranty. by endorsement or delivery, warrants (unless otherwise agreed by the parties) that he is the lawful holder and has a right to sell, that the instrument is genuine, and that he has no knowledge of any fact which proves the instrument to be worthless, either by insolvency of the maker, payment or otherwise.

§ 2728. An acceptance of a bill or order may be conditioned Bill, &c., payable out of a fund. or payable out of a certain fund; and in all cases the acceptor

Article 1.—Of Negotiable Papers, and how Transferred.

Lien. shall have a lien on the funds or property of the drawer in his hands, for the payment of the acceptances in his behalf.

**Presump-
tion of
funds.** § 2729. An ordinary acceptance does not raise a presumption of funds in the hands of the acceptor, but the onus is on the drawer to show funds in his hands.

ARTICLE II.

OF ENDORSERS, NOTICE AND PROTEST.

SECTION.

2730. Contract of endorser.

2731. Protest and notice.

2732. Endorser sued with maker.

SECTION.

2733. Holidays excepted.

2734. Days of grace.

**Contract of
endorser.**

§ 2730. In ordinary endorsements, the contract of the endorser is to pay the money, if the parties to the instrument, primarily liable thereon, fail to pay according to the terms thereof; hence, if there are several endorsers, each is liable to subsequent ones in the order of their endorsements.

**Protest and
notice.**

§ 2731. When bills of exchange and promissory notes are made for the purpose of negotiation, or intended to be negotiated at any chartered bank, and the same are not paid at maturity, notice of the non-payment thereof, and of the protest of the same for non-payment, or non-acceptance, must be given to the endorsers thereon within a reasonable time, either personally or by post, (if the residence of the endorser be known,) or the endorser will not be held liable thereon; but in no other case, and upon no other bills or notes, shall notice or protest be held necessary to charge the endorser.

**Endorser
sued with
maker.**

§ 2732. In all cases the endorser may be sued in the same action and in the same county with the maker, or drawer, or acceptor.

**Holidays ex-
cepted.**

§ 2733. The first day of January, the 25th day of December, and any day appointed by the Governor of this State, or the President of the Confederate States, or the civil authorities of any city, as a day of fast or thanksgiving, shall be held and considered in the same manner as the first day of the week, known as Sunday, for all purposes connected with the presenting for judgment or acceptance, and protesting and giving notice of dishonor of any bill, check, order or note.

Article 2.—Of Endorsers, Notice and Protest.

§ 2734. The three days generally known as days of grace, and Days of grace. by custom allowed on papers payable at banks or broker's offices, shall not be allowed upon any bill or draft payable at sight.

ARTICLE III.

OF THE RIGHT OF HOLDERS.

SECTION.

2735. Right of *bona fide* holder.
 2736. Over due notice.
 2737. Presumption of good faith.
 2738. Holder of collaterals.

SECTION.

2739. Title not to be inquired into.
 2740. What is notice.
 2741. Bills payable on demand, &c.

§ 2735. The *bona fide* holder for value of a bill, draft, or promissory note, or other negotiable instrument, who receives the same before it is due, and without notice of any defect or defence, shall be protected from any defences set up by the maker, acceptor, or endorser, except the following: 1. *Non est factum*. 2. Gambling or immoral and illegal consideration. 3. Fraud in its procurement. Right of bona fide holder.

§ 2736. If the holder receives it, after it is due, its non-payment at maturity is notice to him of dishonor, and he takes it subject to all the equities existing between the original parties thereto; and if there be several notes constituting one transaction, but due at different times, the fact that one is over due and unpaid, shall be notice to the purchaser of all, to put him on his guard as to each. Overdue notice. One of several.

§ 2737. The holder of a note is presumed to be *bona fide* and for value; if either fact is negatived by proof, the defendants are let in to all their defences; such presumption is negatived by proof of any fraud in the procurement of the note. Presumption of good faith.

§ 2738. The holder of a note as collateral security for a debt, stands upon the same footing as a purchaser. Holder of collaterals.

§ 2739. The title of the holder of a note cannot be inquired into, unless it is necessary for the protection of the defendant, or to let in the defence which he seeks to make. Title not to be inquired into.

§ 2740. Any circumstances which would place a prudent man upon his guard in purchasing negotiable paper, shall be sufficient to constitute notice to a purchaser of such paper before it is due. What is notice.

§ 2741. Bills, notes, or other paper, payable on demand, are due immediately. When no time is specified for the payment of a bill or order, it is due as soon as presented and accepted. Bills payable on demand, &c.

Article 4.—Of Damages.

ARTICLE IV.

OF DAMAGES.

SECTION.

2742. Damages on foreign bills.

SECTION.

2743. If out of the Confederate States.

Damages on
foreign bills.

§ 2742. If any bill of exchange, draft, or order, is made payable at any place out of this State, and within the Confederate States, and the same is returned under protest for non-acceptance or non-payment, the holder thereof shall be entitled to recover of the drawer and endorsers in the first case, and the acceptor also in the latter case, in addition to the principal, interest, and protest fees, five per cent. on the principal, as damages for non-acceptance or non-payment.

If out of the
Confederate
States.

§ 2743. If such bill, draft or order, is payable at a place without the limits of the Confederate States, the holder may recover ten per cent. damages, as above, for non-acceptance or non-payment.

CHAPTER VII.

OF CONTRACTS OF INSURANCE.

ARTICLE 1. Of fire insurance.

ARTICLE 2. Of life insurance.

ARTICLE 3. Of marine insurance.

ARTICLE 4. Of mutual insurance.

ARTICLE I.

OF FIRE INSURANCE.

SECTION.

2744. Contract.
2745. Interest of assured.
2746. Insuring interest of another.
2747. Changing property.
2748. Construction.
2749. Loss—what it is.
2750. Loss unknown to parties.
2751. Diligence by assured.
2752. Application good faith.
2753. Misrepresentation.
2754. Concealment.
2755. Willful misrepresentation.

SECTION.

2756. Increasing risk
2757. Alienation.
2758. Transfer to one of several.
2759. Partial sale.
2760. Transfer after loss.
2761. Or by operation of law.
2762. Second insurance.
2763. Prescribing regulations.
2764. Amount of recovery.
2765. Estimated value.
2766. Privilege of rebuilding, &c.
2767. Recovery back by insurer.

Article 1.—Of Fire Insurance.

§ 2744. The contract of fire insurance is one whereby an individual, or company, in consideration of a premium paid, agrees to indemnify the assured against loss by fire to the property described in the policy, according to the terms and stipulations thereof; such contract to be binding must be in writing, but delivery is not necessary, if in other respects the contract is consummated. Contract.

§ 2745. To sustain any contract of insurance, it must appear that the assured has some interest in the property or event insured, and such as he represented himself to have. A slight or contingent interest is sufficient, whether legal or equitable, and several having different interests may unite in procuring one policy: so a husband or parent may insure the separate property of his wife or child, the recovery being held by him in trust for them, but a mere expectation of an interest is not insurable. Interest of assured.

§ 2746. If one undertakes to insure the interest of another, it must be done by his consent, or be subsequently ratified by him, but an insurer may re-insure to protect himself against loss on his contract. Insuring interest of another.

§ 2747. A policy of insurance may be made to cover property changing daily in its specific articles, as a stock of goods. Changing property.

§ 2748. The contract of insurance should be construed so as to carry out the true intention of the parties. Construction.

§ 2749. A loss or injury may occur from fire without the actual burning of the articles or property, as a house blown up to stop a conflagration, or goods removed in imminent danger, or damaged by water used to extinguish the flames. Loss—what it is.

§ 2750. If the loss has already occurred, and both parties are ignorant of it, the contract is valid. But the slightest grounds of suspicion known to the insured will vitiate the contract, unless made known to the insurer. Loss unknown to the parties.

§ 2751. The assured is bound to ordinary diligence in protecting the property from fire, and gross negligence on his part will relieve the insurer; simple negligence by a servant or the assured, unaffected by fraud or design in the latter, will not relieve the insurer. Diligence by assured.

§ 2752. Every application for insurance must be made in the utmost good faith, and the representations contained in such application are considered as covenanted to be true by the applicants. Any variation by which the nature or extent or character of the risk is changed, will void the policy. Application—good faith.

Article 1.—Of Fire Insurance.

Misrepresentation.

§ 2753. Any verbal or written representations of facts by the assured to induce the acceptance of the risk, if material, must be true, or the policy is void. If however, the party has no knowledge, but states on the representation of others, *bona fide*, and so informs the insurer, the falsity of the information does not void the policy.

Concealment.

§ 2754. A failure to state a material fact, if not done fraudulently, does not void. But the willful concealment of such a fact, which would enhance the risk, will void the policy.

Increasing risk.

§ 2755. Any change in the property, or the use to which it is applied, without the consent of the insurer, whereby the risk is increased, voids the policy.

Willful misrepresentation.

§ 2756. Willful misrepresentation by the assured or his agent as to the interest of the assured, or as to other insurance, or as to any other material injury made, will void the policy.

Alienation.

§ 2757. An alienation of the property insured and a transfer of the policy without the consent of the insurer, voids it. But the mere hypothecation of the policy, or creating a lien on the property, does not void.

Transfer to one of several.

§ 2758. A policy issuing to several may be transferred to one of the assured without the consent of the insurer.

Partial sale.

§ 2759. A partial sale of property insured, voids the policy only *pro tanto*. A sale not fully executed, and possession remaining with the assured, does not void.

Transfer after loss.

§ 2760. After the loss occurs, a sale of the property and transfer of the policy does not affect the liability of the insurer, but the assignee may recover.

Or by operation of law.

§ 2761. A transfer of the property or policy by operation of law, or under the order of the court, will confer on the assignee all the rights of the assured.

Second insurance.

§ 2762. A second insurance on the same property, unless by consent of the insurer, voids his policy.

Prescribing regulations.

§ 2763. Every insurer has a right to prescribe regulations as to notice and preliminary proof of loss, which must be substantially complied with by the assured; *Provided*, the same are made known at the time of insurance, and are not materially changed during the existence of the contract. An absolute refusal to pay waives a compliance with these preliminaries.

Amount of recovery.

§ 2764. The assured may recover the full amount of his loss; *Provided*, the same is within the amount insured. If he has sev-

Article 1.—Of Fire Insurance.

eral policies on the same property, the recovery from each company will be *pro rata* as to the amount insured.

§ 2765. The value of property is to be estimated at the time of the loss; contingent profits are not a part of such value. Estimated value.

§ 2766. The privilege of rebuilding or re-instating the property must be reserved in the policy, or it does not exist. In such cases, the assured has no claim for rents if done within a reasonable time, nor the insurer for increased value, from the fact of new and more valuable materials. Privilege of rebuilding.

§ 2767. If after payment of the loss the insurer discovers evidence to show himself not liable on the policy, he may recover back the money in an action for money had and received. Recovery back by insurer.

ARTICLE II.

OF LIFE INSURANCE.

SECTION.

2768. Contract.

2769. By whom taken.

2770. To whom to be paid.

SECTION.

2771. Principles of Fire Insurance, &c.

2772. Self-caused death, releases.

2773. Time—how counted.

§ 2768. An insurance upon life is a contract by which the insurer, for a stipulated sum, engages to pay a certain amount of money if another dies within the time limited by the policy. The life may be that of the assured or of another, even if a slave, in whose continuance the assured has an interest. Contract.

§ 2769. Contracts of life insurance can be taken only by persons or corporations specially authorized so to do by law. By whom taken.

§ 2770. The assured may direct the money to be paid to his personal representatives, or to his widow, or to his children, or to his assignee. And upon such direction given and assented to by the insurer, no other person can defeat the same. But the assignment is good without such assent. To whom to be paid.

§ 2771. The principles before stated as to fire insurance wherever applicable, are equally the law of life insurance. Fire Insurance applicable.

§ 2772. Death by suicide, or by the hands of justice, either punitive or preventive, releases the insurer from the obligation of his contract. Self-caused death releases.

§ 2773. A policy of life insurance runs from mid-day of the date of the policy, and the time must be estimated accordingly, if the policy is limited to a specified number of years. Fines—how counted.

ARTICLE III.

OF MARINE INSURANCE.

SECTION.

2774. Contract.
 2775. Unlawful commerce.
 2776. Double insurance.
 2777. Implied warranty.
 2778. Illegal voyage.
 2779. Deviation.

SECTION.

2780. Perils of the sea.
 2781. Continuance of risk.
 2782. Increase of risk.
 2783. Open policy.
 2784. Value—how ascertained.
 2785. Former rules applicable.

Contract.

§ 2774. A contract of marine insurance, is one by which a person, or corporation, for a stipulated premium, insures another against losses occurring by the casualties of the sea.

Unlawful commerce.

§ 2775. Prohibited or illegal commerce, or commerce with an enemy, or goods contraband of war, are not the subject of marine insurance.

Double insurance.

§ 2776. Double marine insurance may be obtained by a party having an insurable interest, but in case of loss, he can recover from both companies only the full value of such interest; and if one underwriter pays the whole amount, he is entitled to contribution from the others.

Implied warranty.

§ 2777. The assured impliedly warrants, that the ship is sea worthy, and shall not be changed, except from necessity, and that she shall be employed, conducted and navigated, with reasonable skill and according to law.

Illegal voyage.

§ 2778. The illegality of the voyage, whether known to the assured or not, renders the contract void.

Deviation.

§ 2779. A deviation from the voyage, if voluntary, and not from necessity, voids the policy. This necessity may arise from: 1. Stress of weather 2. Want of necessary repairs. 3. Joining convoy. 4. Succoring ships in distress. 5. Avoiding capture or detention. 6. Sickness of master or crew. 7. Mutiny on board. 8. Any similar cause founded upon reason.

Perils of the sea.

§ 2780. The "perils of the sea," comprehend all those misfortunes, to which goods and ships at sea are exposed from earth, air, fire or water. Loss from enemies is not included, unless expressly named. The negligence or unskillfulness of masters or mariners, is not included in a policy on the ships or goods belonging to the owners of the vessel. If loss occurs to third persons therefrom, the underwriter may recover from the owner of the ship the amount paid by him.

Article 3.—Of Marine Insurance.

§ 2781. Generally the risk continues till the goods are delivered on shore at the port of destination, or to others by direction of the assured. Continuance of risk.

§ 2782. Any change by which the risk is increased voids the policy. Increase of risk.

§ 2783. An open policy is where the amount of the interest of the assured is not fixed by the policy, but is left to be adjusted in case of loss; such policies may issue in blank, to be filled by the insured as new risks may be desired. Open policy.

§ 2784. The value stated in a policy, is always subject to be reduced by proof. Value—how ascertained.

§ 2785. The rules as to warranties, misrepresentations and concealments, are the same in marine, as in fire insurance. Former rules applicable.

ARTICLE IV.

OF MUTUAL INSURANCE.

SECTION.

2786. Contract.

2787. By-laws.

2788. Officers, agents of all.

SECTION.

2789. Liability for reducing funds.

2790. Stricter good faith.

2791. Agents of foreign companies.

§ 2786. The contract of insurance is sometimes upon the idea of mutuality, by which each of the assured becomes one of the insurers, thereby becoming invested in the profits, and liable for the losses; without a charter, such an organization would be governed by the general law of partnership, when incorporated they are subject to the terms of their charter. Contract.

§ 2787. The rules and regulations of such a company, adopted in pursuance of the charter, becomes a part of each policy, and all the assured are presumed to have notice thereof. But new conditions cannot be annexed to the policy, after it is issued, except by the consent of the assured. By-laws.

§ 2788. The officers of such a company are the agents of all the assured, and to the effect of their misconduct or neglect, shall affect each, upon the general principles governing principal and agent, except as to the transaction of making the contract of insurance; up to the time of its execution, the assured stands as a third party, and the officer issuing the policy acts for those already in the company. Officers, agents of all.

Article 4.—Of Mutual Insurance.

Liability for
reducing
funds.

§ 2789. If a mutual insurance company, by dividends, reduces its available funds below the point of remaining able to meet all losses occurring on policies then in existence, the directors of such company primarily, and the parties receiving the dividends, ultimately and *pro rata*, shall be liable individually, jointly and severally, for the amount of such unpaid losses.

Stricter good
faith.

§ 2790. A stricter good faith, as to representations and concealments, should be required in mutual insurances than in any other similar contracts.

Agencies of
foreign com-
panies.

§ 2791. Agents of all foreign insurance companies must obtain a license before taking insurance in this State, under the penalties, and in accordance with the provisions of this Code.

CHAPTER VIII.

OF DEFENCES TO CONTRACTS.

ARTICLE 1. Denial of the contract.

ARTICLE 2. Denial of its obligation, &c.

ARTICLE 3. Payment and herein of appropriation of payments.

ARTICLE 4. Performance and herein of tender.

ARTICLE 5. Accord and satisfaction.

ARTICLE 6. Arbitrament and award.

ARTICLE 7. Pendency of another, &c.

ARTICLE 8. Set-off and recoupment.

ARTICLE 9. Limitation of actions.

ARTICLE I.

DENIAL OF THE CONTRACT.

SECTION.

2792. *Non est factum*.

2793. Effect of alteration.

2794. By whom tried.

SECTION.

2795. Preliminary proof.

2796. Endorsement, &c.

*Non est fac-
tum*.

§ 2792. A party may deny the original execution of the contract sought to be enforced, or its existence in the shape then subsisting. In either event, if the contract be in writing and so declared upon the denial, must be on oath and filed at the first term after service is perfected.

Effect of al-
teration.

§ 2793. If a written contract be altered intentionally, and in a

Article I.—Denial of the Contract.

material part thereof, by a person claiming a benefit under it, with intent to defraud the other party, such alteration voids the whole contract at the option of the other party. If the alteration be unintentional, or by mistake, or in an immaterial matter, or not with an intent to defraud, if the contract is originally executed, can be discovered, and is still capable of execution, it will be enforced by the court. If the alteration be made by a stranger, and not at the instance, or by collusion of a party, or privy, if the original words can still be restored, the contract will be enforced.

§ 2794. The materiality of an alteration is a question of law. By whom tried.
The fact of an alteration is a question for the jury.

§ 2795. If the contract is not set forth as the basis of the action, so as to require a denial on oath, an alteration in a material part requires explanation before it can be admitted as evidence. Preliminary proof.
This preliminary proof is submitted to the court.

§ 2796. An endorsement or assignment of any bill, bond or note, when the same is sued by the endorsee, need not be proved, Endorsement, &c., not to be proved.
unless denied on oath.

ARTICLE II.

DENIAL OF THE OBLIGATION OF A CONTRACT, EITHER ORIGINALLY OR BY SUBSEQUENT ACT OF THE OPPOSITE PARTY.

SECTION.

2797. Denial of obligation.
2798. Conditions.
2799. Dependent covenants.
2800. Rescission.

SECTION.

2801. Without consent.
2802. Covenant not to sue.
2803. Release.
2804. Inter-marriage.

§ 2797. Any fact going to show that the original contract was not obligatory, though executed, may be set up as a defence. Denial of obligation.

§ 2798. A condition precedent or subsequent, not complied with, want or failure of consideration, or any act of the opposite party, by which the obligation of the contract has ceased, may be pleaded as a defence. Conditions.

§ 2799. Where covenants are dependent, the failure of performance by the opposing party may be a good defence. Dependent covenants.

§ 2800. A rescission of the contract by consent, or a release by the other contracting party, is a complete defence. Rescission.

§ 2801. In some cases a party may rescind without the consent of the opposite party for non-performance by him of his cove- Without consent.

Article 2.—Denial of the Obligation of a Contract, &c.

nants; but this can be done only when both parties can be restored to the condition in which they were before the contract was made.

Covenant
not to sue.

§ 2802. A covenant never to sue is equivalent to a release; so also a bond to indemnify the debtor against his own debt.

Release.

§ 2803. A release sometimes results as an operation of law, as when a creditor releases another who is bound jointly with, or primarily to the debtor, or accepts from the debtor a higher security for the same debt not intended to be collateral thereto.

Intermar-
riage.

§ 2804. Intermarriage of the parties generally releases a debt, but such is not the effect when the bond or obligation is given in contemplation of marriage.

ARTICLE III.

OF PAYMENT AND HEREIN OF APPROPRIATION OF PAYMENTS.

SECTION.

2805. Payment generally.

2806. To naked trustee.

2807. By post.

SECTION.

2808. Bank bills.

2809. Stakeholder.

2810. Appropriation of payments.

Payment
generally.

§ 2805. Payment of money due to the creditor or his authorized or general agent, or one whom the creditor accredits as agent, though he may not be so, or to his partner interested with him in the money, shall be good; and if such agent receives property other than money as money, the creditor is bound thereby.

To naked
trustee.

§ 2806. Payment to a nominal party, or a naked trustee, without authority to receive, if made collusively and with intention to defeat the true owner, shall have no effect.

By post.

§ 2807. Payment by post is at the risk of the sender, unless done by direction, either express or implied, of the creditor or his agent.

Bank bills,
checks and
notes.

§ 2808. Bank bills, if received in payment, are warranted by the payer to be genuine, and that as far as he knows the bank is solvent. Bank checks and promissory notes are not payment until themselves paid.

Stakeholder.

§ 2809. A stakeholder of money risked on a wager is bound to re-pay to the party depositing at any time he may demand it, before it is actually paid over to the winner; but if paid over to the winner *bona fide*, and without notice of the depositor's intention to retract, this payment is a protection.

Article 3.—Of Payment, and herein of Appropriation of Payments.

§ 2810. When a payment is made by a debtor to a creditor holding several demands against him, the debtor has the right to direct the claim to which it shall be appropriated. If he fails to do so, the creditor has the right to appropriate at his election. If neither exercises this privilege, the law will direct the application in such manner as is reasonable and equitable, both as to the parties and third persons. As a general rule, the oldest lien and the oldest item in an account will be first paid, the presumption of law being that such would be the fair intention of the parties.

Appropriation of payments.

ARTICLE IV.

OF PERFORMANCE AND HEREIN OF TENDER.

SECTION.

2811. Performance.
2812. Impossibility of performance.
2813. Part performance.
2814. Fault of other party.

SECTION.

2815. Tender.
2816. Of specific articles.
2817. Reasonable demand.
2818. Effect of tender.

§ 2811. Performance, to be effectual, must be by the party bound to perform, or his agent, (where personal skill is not required) or some one substituted, by consent, in his place. It must be a substantial compliance with the spirit, and not the letter only, of the contract, and done within a reasonable time.

Performance

§ 2812. If such a performance is impossible, and becomes so by the act of God, such impossibility is itself a defence equivalent to performance; but if by proper prudence such impossibility might have been avoided by the promiser, it ceases to be an excuse for non-performance.

Impossibility of performance.

§ 2813. In a severable contract, or one admitting of apportionment, a part performance may be a defence *pro tanto*.

Part performances.

§ 2814. If the non-performance is caused by the act or fault of the opposite party, that excuses the other party from performance.

Fault of other party.

§ 2815. A tender properly made may be equivalent to performance; if in money, the coin need not be actually presented, unless demanded; it must be certain and unconditional, except for a receipt in full or delivery of the obligation, and may be made by an agent or friend, and to an agent authorized to receive. It must be in full of the specific debt, and not in part, and may be

Tender.

Article 4.—Of Performance, and herein of Tender.

made at any time before final trial, and if sustained, no subsequent cost shall be paid by the defendant; if rejected, and not on any ground of informality, such informality cannot be afterwards urged in objection to the tender.

Of specific articles.

§ 2816. A tender of specific articles must be such as to enable the party to whom tendered to take immediate possession, and at the time and place agreed on in the contract. If no place is agreed on they must be carried to the person entitled to them, if residing within this State, unless, from the nature of the articles, or the contract, another place of delivery be inferred. If the articles be cumbrous, the deliverer may demand of the receiver to appoint a convenient place of delivery, and on failure to do so the tender shall be considered complete.

Reasonable demand.

§ 2817. If the promise be to deliver on demand, the demand must be reasonable as to time, place, and manner; if the promise be to deliver at a certain time and place, a tender at the time and place is good, though the receiver is not present.

Tender at place.

Effect of tender.

§ 2818. A valid tender of chattels transfers the title thereto to the person bound to receive, and the possession of the promiser, if he retains possession from that time, is for the benefit of the owner, but without liability to account for profits, or for more than ordinary prudence in their preservation and protection.

ARTICLE V.

ACCORD AND SATISFACTION.

SECTION.

- 2819. What is accord and satisfaction.
- 2820. When an extinguishment.
- 2821. Must be of benefit to creditor.

SECTION.

- 2822. Less than debt is not.
- 2823. Compromise.

What is accord and satisfaction.

§ 2819. Accord and satisfaction is where the parties, by a subsequent agreement, have satisfied the former one, and the latter agreement has been executed. The execution of a new agreement may itself amount to a satisfaction, where it is so expressly agreed by the parties, and without such agreement, if the new promise is founded on a new consideration, the taking of it is a satisfaction of the former contract.

When an extinguishment.

§ 2820. An accord and satisfaction may not amount to an extinguishment of the original debt, but may extend only to suspend the execution or collection thereof for a limited time; in the meantime an action cannot be sustained.

Article 5.—Accord and Satisfaction.

§ 2821. The accord and satisfaction must be of some advantage, legal or equitable, to the creditor, or it will not have the effect of barring him from his legal rights. The acknowledgment of a disputed title, or the securing of a doubtful claim, would be such an advantage. Must be of benefit to creditor.

§ 2822. An agreement by a creditor to receive less than the amount of his debt cannot be pleaded as an accord and satisfaction, unless it be actually executed by the payment of the money or the giving of additional security, or the substitution of another debtor, or some other new consideration. Less than debt is not.

§ 2823. A compromise, or mutual accord and satisfaction, is binding on the parties. Compromise

ARTICLE VI.

ARBITRAMENT AND AWARD.

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2824. What is.
2825. Trustees may submit.
2826. Of the submission.
2827. Arbitrators limited by authority.
2828. General submission.
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SECTION.

2830. May be valid in part only.
2831. Awarded by umpire.
2832. Reference *pendente lite*.
2833. Setting aside an award.
2834. Fraud.

§ 2824. Parties disagreeing as to their rights or liabilities may submit the matter to third persons to decide, and the award made by such arbitrators is binding on the persons submitting. What is.

§ 2825. Guardians, trustees, executors, or administrators, may, in good faith, and with proper prudence, submit to arbitration the matters in controversy in connection with the estate they represent. Trustees may submit.

§ 2826. A submission may be in parol, and the award also be verbal, when the matters in dispute do not exceed in value the sum of five hundred dollars, but all submissions by persons acting as trustees, as above, must be in writing, and the award rendered in writing. Of the submission.

§ 2827. Arbitrators should not exceed their authority, and the award should cover all matters submitted, and should be rendered in accordance with the terms of the submission; if the award covers too much, and the excessive part can be separated from the other, that which is good shall remain valid. Arbitrators limited by authority.

§ 2828. Under a general submission the arbitrators are bound

Article 6.—Arbitrament and Award.

General sub- to decide only those matters brought to their consideration by
mission. the parties.

Award. § 2829. The award must be certain and final, although it may be in the alternative; it must be possible and reasonable, and must be made by the arbitrators themselves, or the umpire provided for in the submission, and not by other persons.

May be valid in part only. § 2830. If an award be defective in part, that which is valid, if capable of separation, shall stand.

Award by umpire. § 2831. If an umpire be provided for in the submission, an award by him alone, or jointly with the arbitrators, will be good.

Reference *pendente lite*. § 2832. Pending litigation may be referred to arbitration, under an order of court, by consent of parties, and the award, when rendered may be made the judgment of the court.

Setting aside an award. § 2833. To sustain an award, no unfair advantage should be given to either party in the hearing of the case or the rendering of the award. A palpable mistake of law, or a reference of any matter to chance or lot, would vitiate an award.

Fraud. § 2834. Fraud in the arbitrators, or in either party in obtaining an award, would set it aside.

ARTICLE VII.

OF PENDENCY OF ANOTHER ACTION AND FORMER RECOVERY.

SECTION.

2835. Plaintiff required to elect.

2836. Attachment excepted.

2837. Suits by informers.

SECTION.

2838. Former judgment.

2839. Parol evidence admissible.

Plaintiff required to elect.

§ 2835. No suitor is entitled to prosecute two actions in the courts of this State at the same time for the same cause and against the same party, and in such a case the defendant may require the plaintiff to elect which he will prosecute, if commenced simultaneously; and the pendency of the former is a good defence to the latter, if commenced at different times.

Attachment excepted.

§ 2836. This rule does not apply to a prior attachment against property where the defendant is subsequently served personally, nor to an attachment sued out *pendente lite*. But the judgment in the case against the person must set out the fact of its identity with the proceeding against the property.

Suits by informers.

§ 2837. In suits by informers, the first filed in office has precedence for the same cause of action, and the latter must abate.

Article 7.—Of pendency of another Action and former Recovery.

§ 2838. An adjudication of the same subject matter in issue in a former suit between the same parties, by a court of competent jurisdiction, should be an end of litigation. Former judgment.

§ 2839. Parol evidence is admissible to show that a matter apparently covered by the judgment was really not passed upon by the court. Parol evidence admissible.

ARTICLE VIII.

OF SET-OFF AND RECOUPMENT.

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2840. Set-off.
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2842. Mutual debt.
2843. Judgments.
2844. Set-off *vs. cestui que trust*.
2845. Set-off against negotiable note.
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SECTION.

2847. Valuable improvements.
2848. Effect of dismissal.
2849. Debts not due.
2850. Recoupment.
2851. Difference from set-off.
2852. For what it lies.
2853. When it lies.

§ 2840. Set-off is a defence which goes not to the justice of plaintiff's demand, but sets up a demand against the plaintiff to counterbalance his in whole or in part. Set-off.

§ 2841. Between the parties themselves any mutual demands existing at the time of the commencement of the suit may be set-off. What may be.

§ 2842. Set-off must be between the same parties and in their own right. If originally otherwise, but at the commencement of suit equitably within this rule, they may be set-off. Thus, a claim against a partnership may be set-off against a surviving partner in a suit brought in his own right, and a debt due to principal may be set-off in a suit against principal and surety. Mutual debts.

§ 2843. Judgments in the same court may be set-off against each other on motion, the balance on the larger being collectable under execution. The rights of an assignee shall not be interfered with if *bona fide* and for value. Judgments.

§ 2844. If the plaintiff sues for the benefit of another person, a set-off against the beneficiary shall be allowed. Set-off vs. cestui que trust.

§ 2845. When a negotiable paper is sued by a holder or endorsee, received under dishonor, no set-off is allowed against the original payee except such as is in some way connected with the debt sued on, or the transaction out of which it sprung. Set-off against negotiable note.

Article 8.—Of Set-off and Recoupment.

- Against testator or intestate. § 2846. A debt of a testator or intestate is not a proper set-off against a debt contracted with the representative of the estate. But it is otherwise if both were contracted during the life time of the decedent.
- Valuable improvements. § 2847. Against a claim for mesne profits, the value of improvements made by one *bona fide* in possession under a claim of right, is a proper subject matter of set-off.
- Effect of dismissal. § 2848. After a plea of set-off is filed, the plaintiff may not dismiss his action so as to interfere with such plea, unless by leave of the court on sufficient cause shown, and on terms prescribed by the court.
- Debts not due. § 2849. If a plaintiff resides without this State, or is insolvent, the defendants may set-off against him a debt not due, under such equitable terms as may be prescribed by the court.
- Recoupment § 2850. Recoupment is a right of the defendant to have a deduction from the amount of the plaintiff's damages, for the reason, that the plaintiff has not complied with the cross obligations or independent covenants arising under the same contract.
- Difference from set-off. § 2851. It differs from a set-off in this: the former is confined to the contract on which plaintiff sues, while the latter includes all mutual debts and liabilities.
- For what it lies. § 2852. Recoupment lies for overpayments by defendant, or payments by fraud, accident or mistake.
- Where it lies. § 2853. Recoupment may be pleaded in all actions *ex contractu*, where from any reason, the plaintiff under the same contract, is in good conscience liable to defendant.*

*For further provisions as to set-off and recoupment, see Part 3, Title 3, Chapter 1.

Section 1.—Periods of Limitation.

ARTICLE IX.

LIMITATION OF ACTIONS ON CONTRACTS.

SECTION 1. Periods of limitation.

SECTION 2. Exceptions and disabilities.

SECTION 3. New promise.

SECTION I.

PERIODS OF LIMITATION.

SECTION.

2854. On foreign men.
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SECTION.

2861. Certiorari.
 2862. Writs of error.
 2863. Executors, administrators, &c.
 2864. Other actions *ex contractu*.
 2865. Good in equity.
 2866. Suits by informers.

§2854. All suits upon judgments obtained out of this State, shall be brought within five years, after such judgment is obtained. On foreign judgment.

§2855. No judgment hereafter obtained in the courts of this State, shall be enforced after the expiration of seven years from the time of its rendition, when no execution has been issued upon it: or when execution has been issued, and seven years shall have expired from the time of the last entry upon the execution, made by an officer authorized to execute and return the same; such judgments may be revived by *scire facias*, or be sued on, within three years from the time they become dormant. Domestic judgments.

§2856. Actions upon bonds or other instruments under seal, shall be brought within twenty years after the right of action accrues, but no instrument shall be considered under seal, unless so recited in the body of the instrument. On specialties.

§2857. All suits for the enforcement of rights accruing to individuals under statutes, acts of incorporation, or by operation of law, shall be brought within twenty years after the right of action accrues. Statutory rights.

§2858. All actions upon promissory notes, bills of exchange or other simple contract in writing, shall be brought within six years after the same becomes due and payable. Simple contracts.

Section 1.—Periods of Limitation.

- Open ac-
counts. § 2859. All actions upon open account, or for the breach of any contract, not under the hand of the party sought to be charged, or upon any implied assumpsit or undertaking, shall be brought within four years after the right of action accrues.
- Bills of re-
view and for
new trial. § 2860. All bills of review or for a new trial, in a court of equity, (unless the latter be founded on proof of perjury, in a material witness for the successful party) shall be brought within three years after such decree or judgment has been rendered.
- Certiorari. § 2861. All writs of certiorari shall be allowed and brought within three months after the rendition of the judgment sought to be reversed.
- Writs of
error. § 2862. All writs of error must be sued out within thirty days from the adjournment of the court where the decision complained of was made, or if made at chambers, from the time of the decision.
- Executors
administra-
tors, &c. § 2863. All actions against executors, administrators, guardians or trustees, except on their bonds, must be brought within ten years after the right of action accrues.
- Other ac-
tions, ex-
cept con-
tractiv. § 2864. All other actions upon contracts, express or implied, not hereinbefore provided for, must be brought within four years from the accrual of the right of action.
- Good in
equity. § 2865. The limitations herein provided, apply equally to courts of law and equity, and in addition to the above, courts of equity may interpose an equitable bar, in accordance with the established rules of such courts, whenever, from the lapse of time and laches of the complainant, it would be inequitable to allow a party to enforce his legal rights.
- Suits by in-
formers. § 2866. All actions by informers to recover any fine, forfeiture, or penalty, shall be commenced within one year from the time the defendant's liability thereto was discovered, or by reasonable diligence could have been discovered.

SECTION II.

EXCEPTIONS AND DISABILITIES.

SECTION.

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2868. Occurring after accrual of right.
2869. Unrepresented estate.
2870. Absence from State of defendant.

SECTION.

2871. Joint action and a part barred.
2872. Fraud.
2873. Non-suit or dismissal.
2874. If pleaded as set-off.

§ 2867. Married women, infants, idiots, or insane persons, or

Section 2.—Exceptions and Disabilities.

persons imprisoned, who are such when the cause of action accrues, shall be entitled to the same time, after the disability is removed, to bring an action as is prescribed in this Code for other persons.

Persons ex-
cepted.

§ 2868. If either of the foregoing disabilities happens after the right of action accrues, and is not voluntarily caused or undertaken by the person claiming the benefit thereof, the limitation shall cease to operate during its continuance.

Occurring
after the ac-
crual of
right.

§ 2869. The time occurring between the death of a person and representation taken upon his estate, or between the termination of one administration and the commencement of another, shall not be counted against his estate; *Provided*, such time does not exceed five years; but at the expiration of that time, the limitation shall commence, though the cause of action accrued after his death.

Unrepre-
sented es-
tate.

§ 2870. If the defendant, in any of the cases herein named, shall remove from this State, the time of his absence from the State, and until he returns to reside, shall not be counted or estimated in his favor.

Absence
from State
of defen-
dant.

§ 2871. If there is a joint right of action, and some of the persons having such right are under any of the foregoing disabilities, the terms mentioned herein shall not be computed against such joint action, until all the disabilities are removed; but if the action might be severed, and each sue for his own share, those free from disability shall be barred, and the rights of those only protected who are under such disability.

Joint action
and a part
barred.

§ 2872. If the defendant, or those under whom he claims, has been guilty of a fraud by which the plaintiff has been debarred or deterred from his action, the period of limitation shall run only from the time of the discovery of the fraud.

Fraud.

§ 2873. If a plaintiff shall be non-suited, or shall discontinue or dismiss his case, and shall re-commence within six months, such renewed case shall stand upon the same footing as to limitation with the original case; but this privilege of dismissal and renewal shall be exercised only once under this clause.

Non-suit or
dismissal.

§ 2874. Where any matter has been pleaded as a set-off in a suit, and the suit is dismissed, or the case is otherwise disposed of without a hearing upon the merits of the set-off, such set-off shall not be barred until the expiration of six months next after the time of such disposition of such suit.

If pleaded as
set-off.

SECTION III.

NEW PROMISE.

SECTION.

2875. Must be in writing.

2876. Credit on note.

2877. Effect of new promise.

SECTION.

2878. By partner.

2879. By joint contractor.

Must be in writing.

§ 2875. A new promise, in order to renew a right of action already barred, or to constitute a point from which the limitation shall commence running on a right of action not yet barred, must be in writing, either in the party's own handwriting, or subscribed by him, or some one authorized by him.

Credit on note.

§ 2876. A payment entered upon a written evidence of debt by the debtor, or any other written acknowledgment of the existing liability, is equivalent to a new promise to pay.

Effect of new promise.

§ 2877. A new promise revives or extends the original liability. It does not create a new one.

By partner.

§ 2878. After the dissolution of a partnership, a new promise, by one partner, revives or extends the partnership debt only as to himself, and not as to his co-partners.

By joint contractor.

§ 2879. In cases of joint or joint and several contracts, a new promise, by one of the contractors, operates only against himself.

CHAPTER IX.

OF BREACH AND DAMAGES.

SECTION.

2880. Breach of entire, &c.

2881. Liquidated damages.

2882. Penalties.

2883. Expense of litigation.

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2887. Nominal damages.

2888. Discretion of jury.

2889. On covenants, &c.

2890. On bond for titles.

2891. Necessary expense.

2892. Warranty of title of slave.

2893. Of soundness.

Breach of entire, &c.

§ 2880. If a contract be entire, but one suit can be maintained for a breach thereof; but if it be severable, or if the breaches occur at successive periods in an entire contract, (as where money is to be paid by installments,) an action will lie for each breach; but all the breaches occurring up to the commencement of the action, must be included therein.

§ 2881. Damages are given as compensation for the injury sus-

tained. If the parties agree, in their contract, what the damages for a breach shall be, they are said to be liquidated, and unless the agreement violates some principle of law, the parties are bound thereby. Liquidated damages.

§ 2882. Penalties in bonds are not liquidated damages, and even if called such, yet if it appears unreasonable, and not so actually intended by the parties, the law will give only the actual damages; and in all cases where the damage is capable of computation, and is not uncertain in its character, such stipulations will be declared not to be penalties. Penalties.

§ 2883. The expenses of litigation are not generally allowed as a part of the damages; but if the defendant has acted in bad faith, or has been stubbornly litigious, or has caused the plaintiff unnecessary trouble and expense, the jury may allow them. Expense of litigation.

§ 2884. Exemplary damages can never be allowed in cases arising on contracts. Exemplary damages.

§ 2885. Remote or consequential damages are not allowed whenever they cannot be traced solely to the breach of the contract, or unless they are capable of exact computation, such as the profits, which are the immediate fruit of the contract, and are independent of any collateral enterprise entered into in contemplation of the contract. Remote damages.

§ 2886. In all cases where an amount ascertained would be the damages at the time of the breach, it may be increased by the addition of legal interest from that time till the recovery. Interest.

§ 2887. In every case of breach of contract the other party has a right to damages; but if there has been no actual damage, the plaintiff can recover nominal damages which will carry the costs. But if the defendant, before suit is brought or afterwards, and before trial, tenders to the plaintiff as much, or more than he finally recovers, no costs shall be recovered accruing subsequent to the tender. Nominal damages. Tender.

§ 2888. The question of damages being one for the jury, the court should not interfere, unless the damages are either so small or so excessive as to justify the inference of gross mistake or undue bias. Discretion of Jury.

§ 2889. Upon a covenant of warranty of title to land, the damages should be the purchase money, with interest thereon from the time of sale, unless the jury should think under the circumstances of the case, that the use of the premises was equal to the interest on the money, and that such equitable set-off should be On covenants of warranty of land

allowed. If valuable improvements have been made, the interest should be allowed.

On bond for titles.

§ 2890. Upon breach of a bond for titles to land, the value of the premises at the time of the breach, with interest thereon, should be the measure of damages. But if the vendee has brought up the outstanding title, the actual damage sustained by him only, can be recovered.

Necessary expense.

§ 2891. Any necessary expense which one of two contracting parties incurs in complying with the contract, may be recovered as damages.

Warranty of title of slave

§ 2892. Upon breach of a covenant of warranty of title to a slave, the measure of damages should be the purchase money, with interest thereon. When the circumstances render it equitable, the jury may set-off the hire of the slave against the interest.

Of soundness.

§ 2893. Upon a covenant of warranty of soundness of a slave, the measure of damages should be the difference between the price paid and the actual value of the unsound slave, with interest on such balance from the time of sale.

TITLE VIII.

OF TORTS OR INJURIES TO PERSONS OR PROPERTY.

CHAPTER 1. General principles, and herein of fraud and deceit.

CHAPTER 2. Of injuries to the person.

CHAPTER 3. Of injuries to property.

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CHAPTER 5. Of damages.

CHAPTER I.

GENERAL PRINCIPLES AND HEREIN OF FRAUD AND DECEIT.

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- 2896. Failing in legal duty.
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- 2902. Letters to obtain credit.
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- 2904. By wife, servant, &c.
- 2905. By employee.
- 2906. Ratification.
- 2907. Vicious animals.
- 2908. Frauds by acts or silence.
- 2909. Action does not abate.

§ 2894. A tort is a legal wrong committed upon the person or property independent of contract. It may be either—

What are torts.

1. A direct invasion of some legal right of the individual.
2. The infraction of some public duty by which special damage accrues to the individual.
3. The violation of some private obligation by which like damage occurs to the individual.

In the former case, no special damage is necessary to entitle the party to recover. In the two latter cases, such damage is necessary.

§ 2895. Injury in common with the community, though to a greater extent, will not give a right of action for the infraction of some public duty. It must be some special damage to the individual in which the public have not participated, although liable thereto.

Injury common to all.

§ 2896. When the law requires one to do an act for the benefit of another, or to forbear the doing of that which may injure another, though no action be given in express terms upon the accrual of damage, the party may recover.

Failing in legal duty.

§ 2897. Private duties may arise either from statute or flow from relations created by contract, express or implied. The violation of any such specific duty, accompanied with damage, gives a right of action.

Private duties.

§ 2898. When a transaction partakes of the nature both of a tort and a contract, the party complainant may waive the one and rely solely upon the other.

Elections.

§ 2899. No privity is necessary to support an action for a tort, but if the tort results from the violation of a duty itself, the consequence of a contract, the right of action is confined to the parties and privies to that contract, except in cases where the party would have had a right of action for the injury done, independent of the contract.

Privity.

§ 2900. Fraud by one, accompanied with damage to the party defrauded, in all cases gives a right of action.

Fraud and damage.

§ 2901. Willful misrepresentation of a material fact made to induce another to act, and upon which he does act to his injury, will give a right of action; mere concealment of such a fact, unless done in such a manner as to deceive and mislead, will not support an action. In all cases of deceit, knowledge of the falsehood constitutes an essential element. A fraudulent or reckless representation of a fact as true, which the party may not know

Deceit.

to be false, if intended to deceive, is equivalent to a knowledge of the falsehood.

Letters to
obtain credit

§ 2902. No action shall be sustained for deceit in representation to obtain credit for another, unless such misrepresentation be in writing, signed by the party to be charged therewith.

Torts to wife
&c.

§ 2903. Every person may recover for torts committed to himself or his wife, or his child, or his ward, or his servant, or his slave.

By wife, ser-
vant, &c.

§ 2904. Every person shall be liable for torts committed by his wife, and for torts committed by his child, or servant or slave by his command, or in the prosecution, and within the scope of his business, whether the same be by negligence or voluntary.

By em-
ployee.

§ 2905. The employer is not responsible for torts committed by his employee when the latter exercises an independent business, and in it, is not subject to the immediate direction and control of the employer.

Ratification.

§ 2906. By ratification of a tort committed for one's benefit, the ratifier becomes liable, as if he commanded it, otherwise, if the act was done for the benefit of a third person.

Vicious ani-
mals.

§ 2907. A person who owns or keeps a vicious or dangerous animal of any kind, and by the careless management of the same, or by allowing the same to go at liberty, another without fault on his part is injured thereby, such owner or keeper shall be liable in damages for such injury.

Frauds by
acts or si-
lence.

§ 2908. A fraud may be committed by acts as well as words. And one who silently stands by and permits another to purchase his property without disclosing his title, is guilty of such a fraud, as estops him from subsequently setting up such title against the purchaser.

Action does
not abate.

§ 2909. No action for a tort shall abate by the death of either party where the wrong doer received any benefit from the tort complained of.

CHAPTER II.

OF INJURIES TO THE PERSON.

ARTICLE 1. Physical injuries.

ARTICLE 2. Reputation.

ARTICLE 3. Other injuries to the person.

ARTICLE I.

PHYSICAL INJURIES.

SECTION.

2910. Intention.

2911. What is a tort on person.

2912. If a felony.

SECTION.

2913. Homicide of husband or father.

2914. Diligence of plaintiff.

2915. Malpractice of surgeon or physician.

§ 2910. A physical injury done to another gives a right of action, whatever may be the intention of the actor, unless he is justified under some rule of law. The intention should be considered in the assessment of damages.

§ 2911. Any violent injury or attempt to commit a physical injury illegally upon a person, is a tort for which damages may be recovered.

§ 2912. If the injury amounts to a felony, as defined by this Code, the person injured must either simultaneously or concurrently, or previously, prosecute for the same, or allege a good excuse for the failure so to prosecute.

§ 2913. A widow, or if no widow a child or children, may recover for the homicide of the husband or parent; and if suit be brought by the widow or children, and the former, or one of the latter, dies pending the action, the same shall survive in the first case to the children, and in the latter case to the surviving child or children.

§ 2914. If the plaintiff, by ordinary care, could have avoided the consequences to himself, caused by the defendant's negligence, he is not entitled to recover. But in other cases the defendant is not relieved, although the plaintiff may, in some way, have contributed to the injury sustained.

§ 2915. A person professing to practice surgery, or the administering of medicine for a compensation, must bring to the exercise of his profession a reasonable degree of care and skill; any injury resulting from a want of such care and skill will be a tort for which a recovery may be had.

ARTICLE II.

INJURIES TO REPUTATION.

SECTION 1. Libel and slander.

SECTION 2. Malicious prosecution.

SECTION I.

OF LIBEL AND SLANDER.

SECTION.

2916. Libel.

2917. Malice.

2918. Publication.

2919. Slander.

SECTION.

2920. Charge of adultery with negro.

2921. Truth.

2922. Privileged communications.

2923. Malicious use of.

Libel.

§ 2916. A libel is a false and malicious defamation of another, expressed in print, or writing, or pictures, or signs, tending to injure the reputation, as an individual, and exposing him to public hatred, contempt, or ridicule. The publication of the libellous matter is essential to a recovery.

Malice.

§ 2917. In all actions for printed or spoken defamation, malice is inferred from the character of the charge. The existence of malice may be rebutted by proof, which, in all cases, will go in mitigation of damages, and in cases of privileged communications, will be in bar of the recovery.

Publication.

§ 2918. A libel is published so soon as it is communicated to any person, other than the party libelled.

Slander.

§ 2919. Slander, or oral defamation, consists: first, in imputing to another a crime punishable by law; or, second, charging him with having some contagious disorder, or being guilty of some debasing act, which may exclude him from society; or, third, in charges made on another in reference to his trade, office, or profession, calculated to injure him therein; or, fourth, any disparaging words, productive of special damage, flowing naturally therefrom. In the latter case, the special damage is essential to support the action; in the three former, damage is inferred.

Charge of intercourse with a slave.

§ 2920. Any charge or intimation against a free white female of having sexual intercourse with a slave, or free person of color, is slanderous, without proof of special damage.

Truth.

§ 2921. The truth of the charge made may always be proved in justification of the libel or slander.

Section 1.—Of Libel and Slander.

§ 2922. The following are deemed privileged communications: Privileged communications.

1. Statements made *bona fide* in the performance of a public duty.
2. Similar statements in the performance of a private duty, either legal or moral.
3. Statements made with the *bona fide* intent, on the part of the speaker, to protect his own interest in a matter where it is concerned.
4. Fair and honest reports of the proceedings of Legislative or Judicial bodies.
5. Comments of counsel, fairly made, on the circumstances of his case, and the conduct of parties in connection therewith.
6. Comments upon the acts of public men, in their public capacity, and with reference thereto.

§ 2923. In every case of privileged communications, if the privilege is used merely as a cloak for venting private malice, and not *bona fide* in promotion of the object for which the privilege is granted, the party defamed has a right of action. Malicious use of.

SECTION II.

MALICIOUS PROSECUTION.

SECTION.

2924. Malicious prosecution.
 2925. Probable cause.
 2926. Evidence of prosecutor.
 2927. Grand jurors exempt.

SECTION.

2928. Measure of damages.
 2929. Malice inferred.
 2930. What is a prosecution.
 2931. When the right accrues.

§ 2924. A criminal prosecution, maliciously carried on, and without any probable cause whereby damage ensues to the person prosecuted, gives him a cause of action. Malicious prosecution.

§ 2925. Want of probable cause shall be a question for the jury, under the direction of the court, and shall exist when the circumstances are such as to satisfy a reasonable man that the accuser had no ground for proceeding but his desire to injure the accused. Probable cause.

§ 2926. In investigating the question of probable cause, the evidence given by the prosecutor himself upon the criminal prosecution, may be submitted to the jury by either party, the credibility thereof to be determined by them. Evidence of prosecutor.

§ 2927. No member of a grand jury is liable to an action for a malicious prosecution upon a presentment made by the body, but Grand jurors exempt.

Section 2.—Malicious Prosecution.

- if such presentment is made at the instigation of a third person, from malice on his part, and without probable cause, he shall be liable, as if he was named as prosecutor.
- Instigator.**
- Measure of damages.** § 2928. The recovery shall not be confined to the actual damage sustained by the accused, but shall be regulated by the circumstances of each case.
- Malice inferred.** § 2929. A total want of probable cause is a circumstance from which malice may be inferred, but such inference may be rebutted by proof.
- What is a prosecution.** § 2930. An inquiry before a committing court, or Justice of the Peace, amounts to a prosecution.
- When the right accrues.** § 2931. The prosecution must be ended before the right of action accrues.

ARTICLE III.

OTHER TORTS TO THE PERSON.

SECTION 1. False imprisonments.

SECTION 2. Malicious arrest.

SECTION 3. Nuisances and other injuries to health.

SECTION I.

FALSE IMPRISONMENT.

SECTION.

2932. Definition.

2933. Under warrant.

SECTION.

2934. Joint act of several.

- Definition.** § 2932. False imprisonment consists in the unlawful detention of the person of another, for any length of time, whereby he is deprived of his personal liberty.
- Under warrant.** § 2933. If the imprisonment is by virtue of a warrant, neither the party *bona fide* suing out, nor the officer who in good faith executes the same, is guilty of false imprisonment, though the warrant be defective in form, or be void for want of jurisdiction, in such cases the good faith must be determined from the circumstances of each case. The same is true of the judicial officer issuing the warrant, the presumption being always against him as to good faith, when he has no jurisdiction.
- Presumption.**

Section 1—False Imprisonment.

§2934. If the imprisonment be the act of several persons, the party may sue them jointly or separately, and if jointly, all shall be responsible for the entire recovery. Joint act of several.

SECTION II.

MALICIOUS ARREST.

SECTION.

2935. Definition.

2936. Malice.

SECTION.

2937. Probable cause.

2938. Person exempt.

§2935. An arrest under process of law, without probable cause, when done maliciously, gives a right of action to the party arrested. Definition.

§2936. Malice may consist in personal spite, or in a general disregard of the right consideration of mankind directed by chance against the individual injured. Malice.

§2937. "Want of probable cause" is the same in this action, as in "malicious prosecution." Probable cause.

§2938. The willful arrest under civil process, of a person exempt by law from such arrest, shall be deemed malicious until the contrary is proved. Person exempt.

SECTION III.

NUISANCES AND OTHER INJURIES TO HEALTH

SECTION.

2939. Public or private.

2940. Special damage.

2941. Injury to person or property.

2942. What is a nuisance.

2943. Right of alienee.

SECTION.

2944. Injunction.

2945. Unwholesome provisions.

2946. Adulterated drugs.

2947. Mistake of druggist.

§2939. Nuisances are either public or private. A public nuisance is one which damages all persons who come within the sphere of its operations, though it may vary in its effects on individuals. A private nuisance is one limited in its injurious effects to one or a few individuals. Generally, a public nuisance gives no right of action to any individual but must be abated by a process instituted in the name of the State. A private nuisance gives a right of action to the person injured. Public and private.

Section 3.—Nuisances and other Injuries to Health.

- Special damages.** § 2940. If, however, a public nuisance causes special damage to an individual, in which the public do not participate, such special damage gives a right of action.
- Injury to person or property.** § 2941. A private nuisance may injure either the person or property, or both, and in either case a right of action accrues.
- What is a nuisance.** § 2942. A nuisance is anything that worketh hurt, inconvenience or damage, to another, and the fact that the act done may otherwise be lawful, does not keep it from being a nuisance. The inconvenience complained of must not be fanciful, or such as would affect only one of fastidious taste, but it must be such as would affect an ordinary reasonable man.
- Right of abatement.** § 2943. The abatement of the person owning the property injured, may sue for a continuance of the nuisance; so the abatement of the property causing the nuisance is responsible for a continuance of the same. In the latter case, there must be a request to abate before action brought.
- Injunction.** § 2944. Where the consequences of a nuisance about to be erected or commenced will be irreparable in damages, and such consequences are not merely possible, but to a reasonable degree certain, a court of equity may interfere to arrest a nuisance before it is completed.
- Unwholesome provisions.** § 2945. A person who knowingly or carelessly sells to another unwholesome provisions of any kind, the defect being unknown to the purchaser, and damage results to the purchaser, or his family, or his property, such person shall be liable in damages for such injury.
- Adulterated drugs.** § 2946. A person who knowingly or carelessly, by himself or his agents, sells to another adulterated drugs or liquors, by the use of which, damage accrues to the purchaser or his patients, or his family, or his property, shall be liable in damages for the injury done.
- Mistake of druggist.** § 2947. If a vendor of drugs and medicines, by himself or his agent, either knowingly or negligently furnishes the wrong article or medicine, and damage accrues from the use of the drug or medicine furnished to the purchaser, or his patients, or his family, or his property, the vendor shall respond in damages for the injury done. If death ensues to the purchaser, in any case arising under this or the two foregoing paragraphs, the right of action shall be to the widow or children as prescribed in cases of physical injuries.

SECTION IV.

OF INDIRECT INJURIES TO THE PERSON.

SECTION.

2948. Negligence by trustee.
 2949. Abducting or harboring wife.
 2950. Criminal conversation.
 2951. Seduction of daughter.

SECTION.

2952. Furnishing liquor to minor son.
 2953. Or gaming with him.
 2954. Procurer of wrong, &c.

§ 2948. In every case of trust or confidence reposed, in consideration of a reward paid or promised, negligence in the person trusted, to the injury of the other, will give a right of action. Negligence by trustee.

§ 2949. A husband has a right of action against another for abducting or harboring his wife. Furnishing shelter and food to a wife driven from her home by cruel treatment, is an act of humanity, and gives no right to the husband. Abducting or harboring wife.

§ 2950. Adultery, or criminal conversation with a wife, gives a right of action to the husband. In such cases, proof of the marriage may be made by general reputation, and the parties living together as man and wife. Crim. con.

§ 2951. The seduction of a daughter unmarried and living with her parent, whether followed by pregnancy or not, gives a right of action to the father or to the mother, if the father be dead, or absent permanently, or refuses to sue. No loss of service need be alleged or proved. The seduction is the gist of the action, and in well defined cases the damages should be exemplary. Seduction of daughter.

§ 2952. A father, or if the father be dead, a mother shall have a right of action against any person who sells or furnishes spirituous liquors to his or her son, under age, for his own use, and without his or her permission. Furnishing liquor to minor son.

§ 2953. A like right of action shall accrue against any person who shall play and bet at any game of chance, with a minor son, for money or other thing of value. Gaming with him.

§ 2954. In all cases, he who maliciously procures an injury to be done to another, whether it be an actionable wrong or a breach of contract, is a joint wrong-doer, and may be sued either alone or jointly with the actor. Procurer of wrong is joint wrong-doer.

CHAPTER III.

OF INJURIES TO PROPERTY.

- ARTICLE 1. To real estate.
 ARTICLE 2. To personalty generally.
 ARTICLE 3. To slaves.
 ARTICLE 4. By railroad companies.

ARTICLE I.

TO REAL ESTATE.

SECTION.

2955. Interfering with enjoyment, &c.
 2956. Right of possession.
 2957. Bare possession.
 2958. Bare title.
 2959. Disputed possession.

SECTION.

2960. Water courses.
 2961. Underground streams.
 2962. Rights above and below surface.
 2963. Right of way or of common.
 2964. Slander of title.

Interfering
with enjoy-
ment of.

§ 2955. The right of enjoyment of private property being an absolute right of every citizen, every act of another, which unlawfully interferes with such enjoyment, is a cause of action.

Right of
possession.

§ 2956. The bare right of possession to lands authorizes their recovery by the owner of such right, and also damages for the withholding of the right.

Bare posses-
sion.

§ 2957. The bare possession of lands authorizes the possessor to recover damages from any person who wrongfully, in any manner, interferes with such possession.*

Bare title.

§ 2958. The person having title to lands, if no one is in actual possession under the same title with him, may maintain an action for a trespass thereon; and if a tenant be in possession, and the trespass be such as injures the freehold, the owner, or a remainder-man or reversioner, may still maintain trespass.

Disputed
possession.

§ 2959. Where two persons claim to have actual possession of the same land, he is deemed in possession, who has the legal title, and the other is a trespasser.

Water
courses.

§ 2960. The owner of land is entitled to the free and exclusive enjoyment of all water courses, not navigable, flowing over his land; and the diverting of the stream, wholly or in part from the same, or the obstructing thereof, so as to impede its course or cause it to overflow or injure his land, or any right appurte-

* See Title 6, Chapter 7.

Article 1.—To Real Estate.

nant thereunto, or the adulterating thereof, so as to interfere with its value to him, is a trespass upon his property.

§ 2961. The course of a stream of water underground, and its exact condition before its first use, are so difficult of ascertainment, that trespass cannot be brought for any supposed interference with the rights of a proprietor. Under-ground streams.

§ 2962. The owner of realty having title downwards and upwards indefinitely, an unlawful interference with his rights, below or above the surface, alike gives him a right of action. Rights above and below the surface.

§ 2963. The unlawful interference with a right of way, or of common, is a trespass to the party entitled. Right of way, &c.

§ 2964. The owner of any estate in lands may maintain an action for libellous or slanderous words, falsely and maliciously impugning his title, if any damage has accrued to him therefrom. Slander of title.

ARTICLE II.

OF INJURIES TO PERSONALTY GENERALLY.

SECTION.

2965. Injury to possession.
2966. Mere possession.
2967. Trover.

SECTION.

2968. Trespass.
2969. In cases of bailment.
2970. Remainder interest.

§ 2965. The owner of personalty is entitled to the possession thereof. Any deprivation of such possession is a tort for which an action lies. Injury to possession.

§ 2966. Mere possession of a chattel, if without title, or wrongfully, will give a right of action for any interference therewith, except as against the true owner or the person wrongfully deprived of possession. Mere possession.

§ 2967. Trover may be used as a form of action to recover the possession of chattels, an alternative verdict in damages, to be discharged on delivery of the property, being taken; but it shall not be necessary to prove any conversion of the property where the defendant is in possession when the action is brought. Trover.

§ 2968. Any abuse of, or damage done to the personal property of another unlawfully, is a trespass for which damages may be recovered. Trespass.

§ 2969. In cases of bailments, where the possession is in the bailee, a trespass, committed during the existence of the bailment, will give a right of action to the bailee for the interference In cases of bailments.

Article 2.—Of Injuries to Personalty Generally.

with his special property, and a concurrent right of action to the bailor for the interference with his general property.

Remainder
interests.

§ 2970. A remainder-man, or reversioner of personalty, may maintain an action against a wrong-doer for any injury going to destroy the existence or ultimate value of the property. In such cases the tenant in possession, and remainder-man or reversioner, may sue jointly for the injury to the entire estate, the recovery being held under like limitations.

ARTICLE III.

OF INJURIES TO SLAVES.

SECTION.

2971. General principles.

2972. To master's title.

2973. Injury by co-employee.

SECTION.

2974. Corrupting a slave.

2975. Inducing to crime.

2976. Harboring Fugitive.

General
Principles.

§ 2971. All the principles stated in the preceding article apply to slaves. From the peculiar nature of this property, other principles are specially applicable to them.

To Master's
Title.

§ 2972. The master may also maintain an action for libellous and slanderous words, falsely and maliciously impugning his title to his slave, if actual damage has accrued to him therefrom.

Injury by
co-employee

§ 2973. The rule of law that a principal is not liable for the trespass or injury occurring to one employee from the negligence or misconduct of another, while engaged in the same service, is not applicable to the case of slaves so employed. In all such cases, the master has a right of action.

Corrupting
a Slave.

§ 2974. One who voluntarily corrupts the slave of another by furnishing him with spirituous liquors, encouraging him to steal or to runaway, or otherwise to render him less valuable to his master, commits a tort, for which the master may recover in damages.

Inducing to
Crime.

§ 2975. If a slave by the enticement, encouragement or command of another, commits an offence by which the master loses his services for any length of time, or his property by the forfeiture of his life, the person so enticing, encouraging or commanding, shall be responsible to the owner for the damage so done.

Harboring
Fugitive.

§ 2976. One who harbors or assists in concealing or supporting the fugitive slave of another is responsible to the master in damages.

ARTICLE IV.

OF INJURIES BY RAILROAD COMPANIES.

SECTION.

2977. Damages for right of way.

2978. Damages by running of cars, &c.

2979. Consent or negligence.

SECTION.

2980. Injury by co-employee.

2981. Record of stock killed.

2982. Taking slave without permit.

§ 2977. In controversies with respect to the damages to be assessed for the right of way, under any railroad charter, the award of a majority of the appraisers appointed under the charter shall be sufficient. Damages for right of way.

§ 2978. A railroad company shall be liable for any damage done to persons, slaves, stock or other property, by the running of the locomotives, or cars, or other machinery of such company, or for damage done by any person in the employment and service of such company, unless the company shall make it appear that their agents have exercised all ordinary and reasonable care and diligence, the presumption in all cases being against the company. Damages by running of cars, &c.

§ 2979. No person shall recover damage from a railroad company, for injury to himself or his property, where the same is done by his consent, or is caused by his own negligence. If the complainant and the agents of the company are both at fault, the former may recover, but the damages shall be diminished by the jury in proportion to the amount of default attributable to him. Consent or negligence.

§ 2980. If the person injured is himself an employee of the company, and the damage was caused by another employee, and without fault or negligence on the part of the person injured, his employment by the company shall be no bar to the recovery. Injury by co-employee

§ 2981. Every railroad company shall require of every engine-runner, employed by them, to render daily, to a proper officer, an account of any stock or other property injured as aforesaid, which returns shall be kept recorded in a book, and open for the inspection of all persons. For the failure to keep such a record, and to require such return, the company shall be liable for ten per cent. extra damage to every person whose property is injured by them. Record of stock killed.

§ 2982. Every railroad company, by its agents, receiving on board their cars a slave, without a written permission from the master or employer of such slave, or some person authorized to Taking slave without permit.

Article 4.—Of Injuries by Railroad Companies.

give such permission, to that effect, shall be liable to the master or employer for double the damage sustained by reason of such reception; unless, thereby, the slave has been enabled permanently to escape from bondage, or has lost his life, in either of which cases, the company shall be liable for the full value of such slave, with a reasonable hire, and all necessary expenses incurred by the master by reason of their misconduct.*

CHAPTER IV.

OF DEFENCES.

ARTICLE 1. Of justification.

ARTICLE 2. Of satisfaction and herein of tender.

ARTICLE 3. Of limitation of actions.

ARTICLE 4. Other defences.

ARTICLE I.

OF JUSTIFICATION.

SECTION.

2983. Justification.

2984. Extenuation.

SECTION.

2985. Consent.

Justification § 2983. In every case of tort, if the defendant was authorized by law to do the act complained of, he may plead the same as a justification; by such plea he admits the act to be done, and shall be entitled to all the privileges of one holding the affirmative of the issue.

Extenuation § 2984. What does not amount to justification may be pleaded in extenuation and mitigation of damages.

Consent. § 2985. As a general rule, there can be no tort committed to a person consenting thereto, if that consent be free and not obtained by fraud, and be the action of a sound mind. The consent of a person incapable to consent, as a minor, a slave, and in some cases a married woman, cannot affect the rights of the husband, parent, guardian or master.

* See Part 1. Title 6 Chapter 5. Article 4. as to railroad crossings and injuries done thereat.

ARTICLE II.

OF SATISFACTION AND HEREIN OF TENDER.

SECTION.

2986. Satisfaction.

2987. Compounding a felony.

SECTION.

2988. Tender of damages.

2989. Tender in trover.

§ 2986. If the tort complained of does not amount to a crime, ^{Satisfaction.} the person injured may consent to a satisfaction and settlement thereof; and if it does amount to a crime, the person injured may agree upon and receive compensation for the personal injury; any attempt, however, to satisfy the public offence, or to suppress a prosecution therefor, is illegal, and vitiates the entire agreement, except in those cases where the law expressly allows of such a settlement.

§ 2987. If the offence sought to be satisfied, or the prosecution ^{Compound-} sought to be suppressed, amounts to a felony, the agreement ^{ing a felony.} itself is an offence under the Penal Code, and though executed, is no defence to an action for the tort; but if the offence is not a felony, and the agreement is fully executed, it shall be a satisfaction for the private tort.

§ 2988. A person committing a tort to the person or property ^{Tender of} may, before or after suit brought, tender to the person injured ^{damages.} such an amount of damages as in his judgment covers the injury, and if the same be rejected, he may deposit the amount in the office of the Clerk of the Superior Court of the county of his residence, as a continued tender; and if the jury trying the cause shall give no more damages than the amount tendered, the plaintiff shall recover no costs accruing subsequent to the time of the tender.

§ 2989. In actions for the recovery of personal property, if the ^{Tender in} defendant at the first term, will tender the property to the plain- ^{trover.} tiff, together with reasonable hire for the same since the conversion, disclaiming all claim of title, the costs of the action shall be paid by the plaintiff, unless he can prove a previous demand of the defendant, and a refusal to deliver it up.

ARTICLE III.

OF LIMITATION OF ACTIONS.

SECTION.

2990. Trespass of realty.
2991. To personalty.

SECTION.

2992. To the person.
2993. Disabilities.

Trespass to realty.

§ 2990. All actions for trespass upon or damages to realty, shall be brought within four years after the right of action accrues.

To the personalty.

§ 2991. Actions for injuries to personalty shall be brought within four years after the right of action accrues.

To the person.

§ 2992. Actions for injuries done to the person shall be brought within two years after the right of action accrues, except for injuries to the reputation, which shall be brought within one year.

Disabilities.

§ 2993. The disabilities and exceptions prescribed in limiting actions on contracts shall be allowed and held applicable to actions for tort.

ARTICLE IV.

OF OTHER DEFENCES.

SECTION.

2994. Arbitrament and award.
2995. Former recovery, &c.

SECTION.

2996. Infancy.

Arbitrament and award.

§ 2994. Arbitrament and award is a good defence to an action for a tort, and the rules prescribed in reference to this defence to a contract, apply equally to a tort.

Former recovery, &c.

§ 2995. Former recovery, and the pendency of another suit, are also good defences, and subject to the same rules as when applied to contracts. Sometimes a party may sue either for the tort or upon the contract; in such case he must elect on which he will proceed.

Infancy.

§ 2996. Infancy is no defence to an action for a tort, provided the defendant has arrived at those years of discretion and accountability prescribed by this Code for criminal offences.

CHAPTER V.

OF DAMAGES.

SECTION.	SECTION.
2997. General rule.	3005. Rule to ascertain.
2998. Aggravation.	3006. Exception to the rule.
2999. Vindictive damages.	3007. Against joint trespassers.
3000. Necessary expenses.	3008. Contribution.
3001. Division.	3009. Hire of slaves.
3002. General damages.	3010. Highest amount proved.
3003. Direct and consequential.	3011. Death, &c., of property.
3004. Too remote.	3012. Verdict in trover. effect on title.

§ 2997. Damages are given as compensation for the injury done, and generally this is the measure where the injury is of a character capable of being estimated in money. If the injury be small, or the mitigating circumstances be strong, nominal damages only are given. General rule

§ 2998. In every tort there may be aggravating circumstances, either in the act or the intention, and in that event the jury may give additional damages, either to deter the wrong doer from repeating the trespass, or as compensation for the wounded feelings of the plaintiff. Aggravation

§ 2999. In some torts the entire injury is to the peace, happiness, or feelings of the plaintiff; in such cases, no measure of damages can be prescribed, except the enlightened conscience of impartial jurors; the worldly circumstances of the parties, the amount of bad faith in the transaction, and all the attendant facts, should be weighed. The verdict of the jury, in such a case, should not be disturbed, unless the court should suspect bias or prejudice from its excess or its inadequacy. Vindictive damages.

§ 3000. In all cases necessary expenses consequent upon the injury done, are a legitimate item in the estimate of damages. Necessary expenses.

§ 3001. Damages may be either general or special, direct or consequential. Division.

§ 3002. "General" damages are such as the law presumes to flow from any tortious act, and may be recovered without proof of any amount. "Special" damages are such as actually flowed from the act, and must be proved, in order to be recovered. General damages. Special.

§ 3003. "Direct" damages are such as follow immediately upon the act done. "Consequential" damages are such, as are the necessary and connected effect of the tortious act, though to some extent depending upon other circumstances. Direct and consequential.

Too remote. § 3004. If the damages are only the imaginary or possible result of the tortious act, or other and contingent circumstances preponderate largely in causing the injurious effect, such damages are too remote to be the basis of recovery against the wrong-doer.

Rule to ascertain. § 3005. Damages which are the legal and natural result of the act done, though contingent to some extent, are not too remote to be recovered. But damages traceable to the act, but not its legal or material consequence, are too remote and contingent.

Exception to rule. § 3006. If, however, the tort is committed, or the contract broken or the duty omitted, with a knowledge and for the purpose of depriving the party injured of such benefits as are specified in the last paragraph, then the remote damages are made by such knowledge and intent a proper subject for consideration by the jury.

Against joint trespassers. § 3007. Where several trespassers are sued jointly, the plaintiff may recover against all damages for the greatest injury done by either. But the jury may in their verdict, specify the particular damages to be recovered of each, and judgment in such case, must be entered severally.

Contribution. § 3008. If judgment is entered jointly against several trespassers and is paid off by one, the others shall be liable to him for contribution.

Hire of slaves. § 3009. In an action for the recovery of slaves, if the defendant is a *bona fide* claimant, the recovery for hire may be diminished by necessary expenses incurred in the rearing or preserving the property from loss. But this rule shall not apply to a wrong doer of whose good faith the jury are not satisfied.*

Highest amount proved. § 3010. In estimating the value of personalty unlawfully detained, the plaintiff may recover the highest amount which he can prove between the time of the conversion and the trial.

Death, &c. of property; how far a defence. § 3011. The death, or destruction, or any material injury to the property pending the litigation, shall be no defence to a mere wrong-doer. If the defendant is a *bona fide* claimant, and the injury arises from the act of God, and in no wise the result of defendant's conduct, the jury may take the same into consideration, but in no case shall such an event cast the costs upon the plaintiffs.

* As to setting off "valuable improvements" against mesne profits, see Title 7, Chapter 8, Article 8.

§3012. An alternative verdict in an action of trover, so far vests the title to the property sued for in the plaintiff, that until the judgment is paid by the defendant, such judgment shall have the first lien on the property sued for, to the exclusion of all other claims whatsoever.

Verdict in trover. Effect on title.

TITLE IX.

OF EQUITY.

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CHAPTER I.

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- Jurisdiction.** § 3013. All equity jurisdiction in this State is vested in the Superior Courts of the several counties.
- Grounds of relief.** § 3014. Equity jurisdiction is established and allowed for the protection and relief of parties, where from any peculiar circumstances, the operation of the general rules of law would be deficient in protecting from anticipated wrong or relieving for injuries done.
- Choice of form.** § 3015. No suitor, however, is compelled to appear on the equity side of the court, but he may institute his proceeding for an equitable cause of action upon the common law side of the court at his option, and the court may allow the jury to find a verdict, and a judgment be rendered thereon, so moulded and framed to give equitable relief in the case, as verdicts and decrees are rendered and framed in equity proceedings.
- Equity follows the law.** § 3016. Equity is ancillary, not antagonistic to the law. Hence equity follows the law where the rule of law is applicable, and the analogy of the law, where no rule is directly applicable.
- Complainant must do equity.** § 3017. He who would have equity must do equity, and give effect to all equitable rights in the other party respecting the subject matter of the suit.
- Complete justice.** § 3018. Equity seeks always to do complete justice; and hence, having the parties before the court rightfully, it will proceed to give full relief to all parties in reference to the subject matter of the suit, provided the court has jurisdiction for that purpose.
- What ought to be done is done.** § 3019. Equity considers that done which ought to be done, and directs its relief accordingly.
- Equities equal.** § 3020. Where equities are equal the law will prevail. If equities are unequal the superior equity must prevail: superior diligence as to time will create such inequality.
- Volunteers.** § 3021. The equity under trust or contract for value is superior to that of a mere volunteer.
- Party misled.** § 3022. The equity of a party who has been misled is superior to that of him who willfully misleads him.
- Equality of equity.** § 3023. In many cases, equality is equity in the distribution of equitable assets.
- Notice.** § 3024. He who takes with notice of an equity, takes subject to that equity.
- Bona fide purchaser.** § 3025. A *bona fide* purchaser for value, and without notice of an equity, will not be interfered with by a court of equity.
- Both parties at fault.** § 3026. When both parties are at fault, and equally so, equity will not interfere, but leaves them where it finds them. The

rule is otherwise, if the fault of one over-balances, decidedly, that of the other.

§ 3027. Equity gives no relief to one whose long delay renders Laches. the ascertainment of the truth difficult, though no legal limitation bars the right.

§ 3028. Equity will not take cognizance of a plain legal right, where an adequate and complete remedy is provided by law, but a mere privilege to a complainant to sue at law, or the existence of a common law remedy, not as complete or effectual as the equitable relief, shall not deprive equity of jurisdiction. Common law remedy.

§ 3029. Where law and equity have concurrent jurisdiction, the court first taking will retain it, unless a good reason can be given for the interference of equity. Concurrent jurisdiction.

§ 3030. In equity causes, the court may refer any part of the facts to a master or auditor, and his report thereon shall be *prima facie* the truth, after allowance by the court, either party having the liberty to except. But the final decision upon the facts shall be by a special jury. Masters.

§ 3031. Courts of equity shall have authority to appoint receivers, to take possession of and protect trust or joint property and funds, whenever the danger of destruction and loss shall require such interference. Receivers.

§ 3032. All orders and decrees of the court may be enforced by attachment against the person; decrees for money may be enforced by execution against the property. Attachment and execution.

§ 3033. Generally equity jurisprudence embraces the same matters of jurisdiction and modes of remedy in Georgia as was allowed and practiced in England. Extent of jurisdiction.

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- 3038. Answer how far evidence.
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§ 3034. A court of equity may compel either party to discover facts, within his knowledge, beneficial to the other party, and material to his case, and this, either upon a bill for discovery Discovery.

- and relief, or for discovery alone—ancillary to some other civil proceedings. But the party seeking relief may waive discovery, and in such case, the defendant's answer is not evidence.
- May be waived.**
- Privilege of party.** § 3035. No party shall be required to discover matters tending to criminate himself, or to expose him to a penalty or forfeiture, nor to make discovery of irrelevant matters, nor the advice of his professional advisers, nor his consultation with them, nor matters relating to his own, and not the plaintiff's case, nor can official persons be called on to disclose any State matters, of which the policy of the State and the interest of the community require concealment.
- Extent of discovery.** § 3036. The discovery must be full and free as to all matters of fact of which it is properly sought, and must include the respondent's information and belief. If documents are desired in defendant's possession or power, he must produce or satisfactorily account for them.
- Under oath.** § 3037. The discovery must be under oath or affirmation, but may be confined to those points to which special interrogatories are placed in the bill.
- Answer how far evidence.** § 3038. The answer of a defendant, as to facts within his own knowledge responsive to the discovery sought, is evidence in his favor, and can be rebutted only by two witnesses, or one witness and corroborating circumstances. The complainant is not bound to read any portion of the answer, except that responsive to the bill. The defendant may read all as pleading. If the bill is for discovery alone, then the whole answer must be read together. And in the latter case, the complainant must pay the costs.
- What is response.** § 3039. What is responsive is a question for the court. Any explanation of an admission made, or fact necessarily connected with it, is part of the response. Any matter in avoidance thereof is new matter, and must be proved.
- Answers of co-defendants.** § 3040. The answer of one defendant is evidence for another, whenever it states facts against his own interest, and in favor of his co-defendants.

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OF PERPETUATION OF TESTIMONY.

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§ 3041. Courts of equity may entertain proceedings for the perpetuation of testimony, in all cases, where the fact to which the testimony relates cannot be made immediately the subject of investigation at law, and the common law proceeding authorized under this Code for any cause, cannot be available, or as completely available, as a proceeding in equity. When it may be done.

§ 3042. It is immaterial as to the possession of the property, nor will the proceeding be denied, though all parties in interest cannot be ascertained or reached. Possession immaterial.

§ 3043. Testimony thus taken shall be afterwards used only from the necessity of the case, but in such case may be used against all persons, whether parties to the proceeding or not. When evidence.

§ 3044. The complainant shall in all such cases be taxed with the costs. Costs.

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§ 3045. An accident, relievable in equity, is such an occurrence, not the result of negligence or misconduct of the party seeking relief in relation to a contract, as was not anticipated by the parties when the same was entered into, and which gives an undue advantage to one of them over another in a court of law. What is accident.

§ 3046. In cases of lost bonds or negotiable securities, the court will decree payment, upon indemnity given against liability or loss thereon. Lost bonds or notes.

- Error in form.** § 3047. If the form of conveyance is, by accident or mistake, contrary to the intention of the parties in their contract, equity will interfere to make it conform thereto.
- Rule of construction.** § 3048. Equity seeks always to construe conditions subsequent into covenants, and to relieve against forfeitures, where the rules of construction will allow.
- Volunteers.** § 3049. Equity will not interfere to relieve against accidents or mistakes of mere volunteers, but if the contract is actually executed, then all the rights growing out of it against or in favor of anybody, will be enforced.
- What is mistake.** § 3050. Mistake, relievable in equity, is some unintentional act, or omission, or error, arising from ignorance, surprise, imposition, or misplaced confidence. This power is exercised with caution, and to justify it, the evidence must be clear, unequivocal and decisive as to the mistake.
- Parol evidence.** § 3051. Parol evidence is admissible to prove a mistake in a deed, or any other contract required by law to be in writing.
- Against whom, &c.** § 3052. Equity will grant the relief as between the original parties, or their privies in law, in fact or in estate, except *bona fide* purchasers for value without notice.
- Division of mistakes.** § 3053. Mistakes may be either of law or of fact.
- Ignorance of law.** § 3054. Mere ignorance of the law on the part of the party himself, where the facts are all known, and there is no misplaced confidence, and no artifice, or deception, or fraudulent practice, is used by the other party, either to induce the mistake of law, or to prevent its correction, will not authorize the intervention of equity.
- Mistake of law by parties.** § 3055. An honest mistake of the law, as to the effect of an instrument on the part of both contracting parties, when such mistake operates as a gross injustice to one, and gives an unconscionable advantage to the other, may be relieved in equity.
- By the draftsman or agent.** § 3056. A mistake of law in the draftsman, or other agent, by which the contract, as executed, does not fulfill, or violates the manifest intention of the parties to the agreement, is relievable in equity.
- Reforming a contract, &c.** § 3057. A distinction exists between reforming a contract and executing a contract in case of mistake. To authorize the former, the court must be satisfied, by the evidence, that the mistake was mutual; but the court may refuse to act in the latter case, if the mistake is confined to the party refusing to execute.

Chapter 4.—Of Accident and Mistake.

§ 3058. In all cases of a mistake of a fact material to the contract, or other matter affected by it, if the party complaining applies within a reasonable time, equity will relieve. Mistake of fact.

§ 3059. If the party, by reasonable diligence, could have had knowledge of the truth, equity will not relieve, nor will the ignorance of a fact, known to the opposite party, justify an interference, if there has been no misplaced confidence, nor misrepresentation, nor other fraudulent act. Negligence. Concealment.

§ 3060. Ignorance by both parties of a fact does not justify the interference of the court, nor will a mistake, in judgment or opinion merely as to the value of property, authorize such interference. Mutual ignorance, &c.

§ 3061. Accident or mistake, in the execution of a power, or causing the defective execution of the power, will be remedied in equity. In execution of a power.

§ 3062. Equity will interfere to set aside a judgment of a court having jurisdiction only where the party had a good defence, of which he was entirely ignorant, or where he was prevented from making it by fraud or accident, or the act of the adverse party unmingled with negligence or fraud on his part. Setting aside a judgment.

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- 3068. Surcharge falsify.
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- 3070. Appointment of auditor.
- 3071. Effect of a report.
- 3072. Equitable set-off.

§ 3063. Equity jurisdiction over matters of account extends to mutual account growing out of privity of contract, or where accounts are complicated and intricate, or where a discovery or writ of *ne exeat* is prayed and granted, or where the account is of a trust fund, or accounts between partners and tenants in common, or where a multiplicity of suits would render a trial difficult, expensive and unsatisfactory at law. Accounts.

§ 3064. If a party having charge of the property of others so confounds it with his own, that the line of distinction cannot be drawn, all the inconvenience is thrown upon him who causes the confusion, and he must distinguish his own property or lose it. Mingling of goods.

Contribution.

§ 3065. In cases of joint, or joint and several, or of several liabilities of two or more persons, where all are equally bound to bear the common burden, and one has paid more than his share, he is entitled to contribution from the others; and whenever the circumstances are such that an action at law will not give a complete remedy, equity may entertain jurisdiction.

Discharge of incumbrances.

§ 3066. Where several persons are interested in an estate as tenant for years, or for life, or in remainder or reversion, and incumbrances are to be discharged, the equitable division of the burden, according to the several interests, is a question for equitable interference.

Apportionment.

§ 3067. Apportionment of a contract, or of rent or hire, may, from peculiar circumstances rendering the common law remedy incomplete, become the subject of equitable jurisdiction.

Surcharge and falsify.

§ 3068. A party objecting to a stated account must surcharge and falsify. The former is to allege omissions; the latter is to deny the correctness of certain of the items rendered; one palpably fraudulent item casts suspicion upon the entire account.

Offer to pay balance.

§ 3069. A bill for an account need not offer to pay a balance if found against complainant.

Appointment of auditor.

§ 3070. In all cases involving account, either party, as a matter of right, may apply to the Judge, either in term or vacation, for the appointment of an auditor, who shall, after notice, sit and hear the evidence submitted by either party, investigate their accounts and report the result thereof to the court.

Effect of report.

§ 3071. The report so made may be objected to by either party on the ground of illegal rejection or admission of evidence, or any other ground impeaching its propriety, which objections shall be heard and decided by the court. The report, when finally accepted, shall be admitted as evidence to the jury with such instructions as to the effect to be given to it, as the court shall give under the circumstances of each case.

Equitable set-off.

§ 3072. As to set-off, equity generally follows the law; but if there is an intervening equity not reached by the law, or if the set-off be of an equitable nature, the courts of equity take jurisdiction to enforce the set-off.

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§ 3073. Assets are either legal or equitable; the former are such as may be reached by the ordinary process of law, the latter are such as can be reached only through the intervention of a court of equity. The former, when properly before a court of equity, are distributed according to legal liens and priorities; the latter, according to justice and right in the particular case, the general rule being that equality is equity. Legal and equitable assets.

§ 3074. Sometimes assets are partly legal and partly equitable; in such cases, while the above rule is adhered to, as to the legal assets, equity will so administer the equitable as to produce general equality. Partly legal and partly equitable.

§ 3075. Equity will not interfere with the regular administration of estates, except upon the application of the representative, either, 1, for construction and direction; 2, for marshaling the assets; or, upon the application of any person interested in the estate, where there is danger of loss or other injury to his interests. Interfering with administration.

§ 3076. In cases of difficulty in construing wills, or in distributing estates, in ascertaining the persons entitled, or in determining under what law property should be divided, the representative may ask the direction of the court, but not on imaginary difficulties or from excessive caution. Bills for direction.

§ 3077. In all cases where legal difficulties arise as to the distribution of assets in payment of debts, or where, from any circumstances, the ordinary process of law would interfere with the due administration, without fault on the part of the representative of the estate, a bill to marshal assets will be maintained at his instance. Marshaling assets.

§ 3078. In marshaling assets, the court will look to the equities of creditors, and where cases arise for election will compel the parties to elect. Election.

Creditor's
bills.

§ 3079. Creditor's bills may be filed at the instance of any creditor, the privilege being extended to all to appear and become parties in a reasonable time.

Receiver's
duty.

§ 3080. A court of equity may appoint a receiver to take possession of and hold subject to the direction of the court any assets charged with the payment of debts, where there is manifest danger of loss, or destruction, or material injury to those interested. Under extraordinary circumstances, a receiver may be appointed before, and without notice to the trustee or other person having charge of the assets. The terms on which a receiver is appointed shall be in the discretion of the chancellor.

Must ac-
count to the
court.

§ 3081. The receiver is an officer and servant of the court appointing him, is responsible to no other tribunal than a court of equity, and must in all things obey its direction.

Misapplying
trust funds.

§ 3082. All persons aiding and assisting trustees of any character, with a knowledge of their misconduct in misapplying assets, are directly accountable to the persons injured.

Tracing as-
sets.

§ 3083. When assets are misapplied and can be traced in the hands of persons affected, with notice of the misapplication, the trust attaches still to the assets, and equity will aid in restoring them to their legitimate purpose. A creditor of an estate may follow assets in the hands of legatees or distributees, though they receive them without notice.

Equitable
assets for
creditor.

§ 3084. Equitable assets may be reached by a creditor, in every case, where he shows that there is danger of not being satisfied out of legal assets.

Joint and in-
dividual as-
sets.

§ 3085. Joint assets will be applied to joint debts, and individual assets to individual debts, but when the joint assets are exhausted, the joint debts may come upon individual assets—the individual debts, without regard to relative dignity as compared with the joint debts, being first advanced, the *pro rata* amount received on the joint debts from joint assets.

CHAPTER VII.

OF CHARITIES.

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3089. Right of supervisions.

3090. What is irreligious.

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§ 3086. Equity has jurisdiction to carry into effect the charita-

ble bequest of a testator, or founder, or donor, where the same Charitable bequest. are definite and specific in their objects, and capable of being executed.

§ 3087. If the specific mode of execution be for any cause im- Cypress. possible, and the charitable intent be still manifest and definite, the court may, by approximation, give effect in a manner next most consonant with the specific mode prescribed.

§ 3088. The following subjects are proper matters of charity, Subjects of charity. for the jurisdiction of equity:

1. The relief of aged, impotent, diseased, or poor people.
2. Every educational purpose.
3. Provisions for religious instruction or worship.
4. For the construction or repair of public works, or highways, or other public conveniences.
5. The promotion of any craft or persons engaging therein.
6. For the redemption or relief of prisoners or captives.
7. For the improvement or repair of burying grounds or tomb stones.
8. Other similar subjects, having for their object the relief of human suffering, or the promotion of human civilization.

§ 3089. A charity once inaugurated is always subject to the Right of su-
pervision. supervision and direction of a court of equity, to render effectual its purpose and object.

§ 3090. Nothing shall be deemed religious in its character What is ir-
religious. which affirms doctrines licentious in their tendency, or inconsistent with the peace and safety of the State.

§ 3091. If the terms of the bequest or deed are obscure, doubt- Extraneous
evidence. ful, or equivocal, other evidence may be looked to to ascertain the sense in which particular expressions are used, but not to make definite that which in itself is two indefinite for execution.

CHAPTER VIII.

OF ELECTION.

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3093. By a legatee
3094. By the court.

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3095. Compensation to defeated legatee.
3096. Election under deeds.

§ 3092. A case of election arises whenever a person is entitled Election. to one of two benefits, to each of which he has legal title; but to

enforce both would be unconscientious and inequitable to others having claims upon the same property or fund. In such cases equity has jurisdiction to compel an election.

By a legatee. § 3093. When a testator has affected to give property not his own, and has given a benefit to a person to whom that property belongs, the devisee or legatee must elect either to take under or against the instrument. The rule does not apply if the will itself, from other causes, is not efficient in passing the title to the property of the devisee or legatee, nor if the testator had an interest in such property upon which the will may operate, nor if the bequest shows that the testator intended to bequeath only in the event that his own title was good, nor if the benefit given to the party called upon to elect is not from testator's own property, but by virtue of a power of appointment in him.

By the court. § 3094. If from any cause the legatee is incompetent to elect, the court will, after investigation as to values, elect for him.

Compensation to defeated legatee. § 3095. If the election be made against the will, the defeated legatee or devisee is entitled to compensation out of the property bequeathed to the party electing, to the value of the defeated legacy.

Election under deeds. § 3096. The foregoing principles apply to deeds as well as wills.

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3099. Collusive execution.	3102. In cases of no discretion, &c.
Jurisdiction over powers. § 3097. Powers, especially of appointment, being always founded on trust or confidence, are peculiarly subjects of equitable supervision.	
Discretion. § 3098. Equity cannot compel a party having a discretion, to exercise a power of appointment. But it may relieve against mistaken or defective executions, or collusive or illusory executions.	
Defective execution. § 3099. Every execution is collusive, whereby the person exercising the power, uses it by contrivance for his own benefit, he not being legitimately an intended beneficiary.	
Collusive execution.	

§ 3100. An illusory appointment is one where a nominal benefit only is given to one of a class, to all of whom a substantial benefit was intended. Illusory appointment.

§ 3101. Where marriage is required to be by consent of trustees, and from any corrupt or insufficient motive, such consent is withheld, equity will compel a consent, or give relief as if such consent was had. Consent of trustees.

§ 3102. In all cases where no discretion is allowed, or the discretion allowed is abused, equity has jurisdiction to compel a faithful execution of the power. In cases of no discretion or discretion abused.

CHAPTER X.

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- 3103. Jurisdiction over fraud.
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- 3111. Surprise.
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- 3113. Marriage-brokerage bonds.
- 3114. Contracts in fraud of marital rights.

§ 3103. In all cases of fraud, (except fraud in the execution of a will,) equity has concurrent jurisdiction with the courts of law. Jurisdiction over fraud.

§ 3104. Fraud may be actual or constructive. Actual fraud consists in any kind of artifice by which another is deceived. Constructive fraud consists in any act of omission or commission contrary to legal or equitable duty, trust or confidence justly reposed, which is contrary to good conscience and operates to the injury of another. The former implies moral guilt; the latter may be consistent with innocence. Actual and constructive.

§ 3105. Misrepresentation of a material fact made willfully to deceive, or recklessly without knowledge, and acted on by the opposite party, or if made by mistake, and innocently, and acted on by the opposite party, constitutes legal fraud. Misrepresentation.

§ 3106. Suppression of a fact material to be known, and which the party is under an obligation to communicate, constitutes fraud. The obligation to communicate may arise from the confidential relations of the parties or from the particular circumstances of the case. Suppression of the truth.

Chapter 10.—Of Fraud.

Fraud not in words. § 3107. Fraud may be consummated by signs, or tricks, or through agents employed to deceive, or any other unfair way used to cheat another.

Confidential relations. § 3108. Any relations, shall be deemed confidential arising from nature, or created by law, or resulting from contracts, where one party is so situated as to exercise a controlling influence over the will, conduct and interest of another, or where from similar relations, of mutual confidence, the law requires the utmost good faith, such as partners, principal and agent, &c.

Annulling deeds, judgments, &c. § 3109. Fraud will authorize a court of equity to annul conveyances, however solemnly executed, and to relieve against awards, judgments and decrees obtained by imposition.

Inadequacy of consideration, &c. § 3110. Great inadequacy of consideration, joined with great disparity of mental ability in contracting a bargain, may justify a court of equity in setting aside a sale or other contract.

Surprise. § 3111. Anything which happens without the agency or fault of the party affected by it, tending to disturb and confuse the judgment or to mislead him, and of which the opposite party takes an undue advantage, is in equity a surprise and one species of fraud for which relief is granted.

Fraudulent trade-marks, &c. § 3112 Any attempt to encroach upon the business of a trader, or other person, by the use of similar trade-marks, names, or devices, with the intention of deceiving and misleading the public, is a fraud for which equity grants relief.

Marriage-brokerage bonds. § 3113. The policy of the law being opposed equally to restrictions on marriage, and to marriages not the result of free choice, all contracts or bonds made with a view to trammel or to force marriage, are deemed fraudulent and void.

Contract in fraud of marital rights § 3114. A secret settlement by a wife on the eve of marriage, is a fraud on the marital rights of the husband and void, though the husband had no knowledge of the existence of the property settled.

CHAPTER XI.

OF PARTITION.

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3115. Partition.

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§ 3115. Equity has jurisdiction in cases of partition, whenever

the remedy at law is insufficient, or peculiar circumstances render the proceeding in equity more suitable and just. Partition.

§ 3116. The decree on a proceeding to partition shall pass the title without the execution of any conveyances by the parties. Passing title

§ 3117. The court will mould its decree, in every case, to meet the general justice and equity of each person entitled, and in its discretion may postpone or deny either a partition or a sale, if it shall appear that the present or prospective interest of each tenant may not be protected thereby. Moulding decree.

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- 3118. When decreed.
- 3119. Parol contract to land.
- 3120. Of personalty.
- 3121. Voluntary & gratuitous promise.

SECTION.

- 3122. Inadequacy.
- 3123. Ability of complainant to comply.
- 3124. Damages for breach.

§ 3118. Specific performance of a contract (if within the power of the party) will be decreed, generally, whenever the damages recoverable at law would not be an adequate compensation for the non-performance. When decreed.

§ 3119. The specific performance of a parol contract, as to land, will be decreed if the defendant admits the judgment, or if it be so far executed by the party seeking relief, and at the instance, or by the inducements of the other party, that if the contract be abandoned, he cannot be restored to his former position. Full payment alone accepted by the vendor, or partial payment accompanied with possession, or possession alone, with valuable improvements, if clearly proved in each case to be done with reference to the parol contract, will be sufficient part performance to justify a decree. Parol contract to land.

§ 3120. Any good reason, in equity and good conscience, why the complainant should have the possession of specific personalty to which he has title, will sustain a bill for specific performance or delivery, and, unless rebutted by other equitable reasons, will justify a decree. The jury, in such cases, may decree either damages or specific delivery. Of personalty.

§ 3121. It will not be decreed of a voluntary agreement, or merely gratuitous promise. If, however, possession of lands has been given, under such agreement, upon a meritorious consideration. Voluntary and gratuitous promises.

ation, and valuable improvements made upon the faith thereof, equity will decree the performance of the agreement.

Inadequacy
of price.

§ 3122. Mere inadequacy of price, though not sufficient to rescind a contract, may justify a court in refusing to decree a specific performance; so also any other fact showing the contract to be unfair or unjust, or against good conscience.

Ability of
complainant
to comply.

§ 3123. The vendor seeking specific performance must show an ability to comply substantially with his contract in every part, and as to all the property; but a want of title, or other inability as to part, will not be a good answer to the vendee seeking performance, who is willing to accept title to the part, receiving compensation for the other. If the defects in vendor's title be trifling, or comparatively small, equity will decree, at his instance, granting compensation for such defects.

Damages of
breach.

§ 3124. If, for any cause, the specific performance is impossible, or the vendee declines to accept a performance in part, the court may proceed to assess damages for the breach of the contract.

CHAPTER XIII.

OF TRUST AND TRUSTEES.

SECTION.

3125. Trusts.

3126. Resulting trust.

3127. Court will appoint trustee.

SECTION.

3128. Limitation of actions.

3129. Relief granted.

Trusts.

§ 3125. Trusts of every kind, not generally cognizable at law, are peculiar subjects of equity jurisdiction.

Resulting
trust.

§ 3126. Whenever the circumstances are such that the person taking the legal estate, either from fraud or otherwise, cannot enjoy the beneficial interest without violating some established principle of equity, the court will declare him a trustee for the person beneficially entitled, if such person has not waived his right by subsequent ratification or long acquiescence.

Trustee.

§ 3127. A trust shall never fail for the want of a trustee.

Limitation
of act.

§ 3128. Subsisting trusts, cognizable only in a Court of Equity, are not within the ordinary statutes of limitation, but in all cases equity will consider the lapse of time in decreeing an account, and where, from it and other circumstances, it would be inequitable, any relief will be refused.

§ 3129. The relief granted, in cases of trust, will always be so ^{Relief granted.} moulded and framed as to render the trust effectual, and secure the best interests of all parties.

CHAPTER XIV.

OF EXTRAORDINARY REMEDIES.

ARTICLE 1. Of mandamus, *quo warranto* and prohibition.

ARTICLE 2. Of injunction.

ARTICLE 3. *Ne exeat* and *quia timet*.

ARTICLE 4. Of bills of peace and inter-pleader.

ARTICLE I.

MANDAMUS, *QUO WARRANTO* AND PROHIBITION.

SECTION.

3130. To enforce official duty.

3131. Lies not for private remedy.

3132. When not granted.

3133. Granted in vacation.

SECTION.

3134. Governor not liable.

3135. *Quo warranto*.

3136. Prohibition.

§ 3130. All official duties should be faithfully fulfilled, and whenever, from any cause, a defect of legal justice would ensue from a failure or improper fulfillment, the writ of mandamus may issue to compel a due performance, if there be no other specific legal remedy for the legal rights. ^{To enforce official duty.}

§ 3131. Mandamus does not lie as a private remedy between individuals to enforce private rights, nor to a public officer who has an absolute discretion to act or not, unless there is a gross abuse of such discretion, but it is not confined to the enforcement of mere ministerial duties. ^{Lies not for private remedy. In cases of discretion.}

§ 3132. Mandamus will not be granted when it is manifest that the writ would, for any cause, be nugatory or fruitless, nor will it be granted on a mere suspicion or fear, before a refusal to act or a wrongful act done. ^{When not granted.}

§ 3133. The writs of mandamus, *quo warranto*, and prohibition may be granted at any time, on proper showing made, but the return must be in term time, and any issues of fact made thereon, must be tried as other equity causes. ^{Granted in vacation.}

§ 3134. Neither of these writs, will lie to the duly inaugurated

Article I.—Mandamus, Quo Warranto and Prohibition.

Governor not liable.

Governor of the State, but they do lie to all other executive or military officers.

Quo warranto.

§ 3135. The writs of *quo warranto* may issue to inquire into the rights of any person to any public office, the duties of which he is in fact discharging, but must be granted at the suit of some person, either claiming the office or interested therein.

Prohibition.

§ 3136. The writ of prohibition is the counterpart of mandamus to arrest illegal proceedings by any court officer, where no other legal remedy or relief is given; and the granting or refusal thereof, is governed by the same principles of right, necessity and justice.

ARTICLE II.

OF INJUNCTION.

SECTION.

3137. For what purpose granted.
 3138. Granted *ex parte*.
 3139. Dissolution at chambers.
 3140. Injoining a court of law.
 3141. To restrain a trespass.

SECTION.

3142. Answer of defendant.
 3143. Verdict and appeal.
 3144. Second injunction.
 3145. Cannot compel.
 3146. Perpetual injunction.

For what purpose granted.

§ 3137. Equity by a writ of injunction, may restrain proceedings in another or the same court, or a threatened, or existing tort, or any other act of a private individual or corporation which is illegal or contrary to equity and good conscience, and for which no adequate remedy is provided at law.

Granted *ex parte*.

§ 3138. Injunction may be granted in vacation and upon an *ex parte* showing in the discretion of the Judge, and upon such terms as to the affidavit and giving bond and security, as the Judge may direct. But the Judge may require notice to the party to be enjoined, and appoint a day and place for hearing the application.

Dissolution at chambers.

§ 3139. The defendant may move the dissolution of an injunction, or the revoking of any other extraordinary writ, in vacation, on ten days' notice to the opposite party or his solicitor, and the chancellor shall decide thereon upon the same principles as if presiding in term. The complainant by disclaiming discovery, cannot deprive the defendant of the benefit of his answer on a motion to dissolve the injunction; upon such a motion affidavits of witness may be adduced by either party.

Article 2.—Of Injunction.

§ 3140. Equity will not enjoin the proceedings and processes of a court of law, unless there is some intervening equity, or other proper defence, of which the party, without fault on his part, cannot avail himself at law. Injoining a court of law.

§ 3141. Equity will not interfere to restrain a trespass, unless the injury is irreparable in damages, or the trespasser is insolvent, or there exists other circumstances which, in the discretion of the court, render the interposition of this writ necessary and proper, among which shall be the avoidance of circuitry and multiplicity of actions. The granting and continuing of the injunction must always rest in the sound discretion of the judge, according to the circumstances of each case. To restrain a trespass.
Sound discretion.

§ 3142. The answer of the defendant, so far as the same is founded on his own knowledge and responsive to the allegations of the bill, shall always be considered on a motion to dissolve. Answer of defendant.

§ 3143. An injunction is not dissolved by a verdict, if an appeal be entered in the time allowed by law. Verdict and appeal.

§ 3144. A second injunction may be granted in the discretion of the Judge. Second injunction.

§ 3145. An injunction can only restrain. It cannot compel a party to perform an act. It may restrain until performance. Cannot compel.

§ 3146. A perpetual injunction can be granted only after hearing and upon a final decree. Perpetual injunction.

ARTICLE III.

NE EXEAT AND QUA TIMET.

SECTION.

- 3147. May issue—when.
- 3148. Applicants showing.
- 3149. Defendant may give bond.
- 3150. Discretion of the court.

SECTION.

- 3151. Affidavit and bond of complainant.
- 3152. May issue without sanction—when.
- 3153. *Quia timet* may issue—when.

§ 3147. The writ of *ne exeat* issues to restrain a person from leaving the jurisdiction of the State, and may be granted in the following cases: *Ne exeat.*

1. At the instance of a creditor whose debt is not due, or where from some other cause, the ordinary process is not available or sufficient against his debtor, or against a third person secondarily or otherwise under any circumstances chargeable with the debt. To restrain a debtor.

Article 3.—*Ne Exeat* and *Quia Timet*.

- In favor co-obligor.** 2. In favor of an obligor or promisor, or partner against his co-obligor, or joint promisor, or copartner, equally or partly responsible with him for the debt or duty to be performed.
- Of surety.** 3. In favor of a surety on a debt not due, against his principal or co-surety.
- Of orphan.** 4. Against persons illegally removing the property of a decedent, or of an orphan, or married woman, at the instance of any person interested therein, or of a next friend of such orphan or married woman.
- Remainder-man.** 5. At the instance of a remainder-man or reversioner, against any one attempting to remove the property in which such remainder-man or reversioner exists, or may contingently exist.
- Mortgagee.** 6. At the instance of a mortgagee against a person holding the equity of redemption.
- Generally.** 7. At the instance of any person interested legally or equitably in property about to be removed where no adequate remedy is afforded at law.
- Complainants showing.** § 3148. In every case of application for the writ of *ne exeat*, the party must show that no adequate remedy is afforded at law, and that the defendant is either removing, or about to remove himself or his property, or the specific property to which the complainant claims title or an interest.
- Debts bond.** § 3149. The defendant may in all cases relieve himself or his property, or the specific property from the restraint imposed, by giving bond in double the value of plaintiff's claim, with good security, to the officer serving the process, for the forthcoming of each or either, (according to the tenor of the writ,) to answer to complainant's claim, or abide by the order and decree of the court. The Judge granting the writ may in his discretion require a larger bond. The officer receiving insufficient security shall be held surety himself, and the sureties on his bond may be held responsible therefor.
- Court's discretion.** § 3150. If the defendant fails or refuses to replevy the property, the court may in its discretion make such disposition of it as shall appear most advantageous to all parties.
- Affidavit, and bond of complainant.** § 3151. In every application for a writ of *ne exeat*, the allegations of the bill must be verified by the affidavit of one or more of the complainants. And the judge may in his discretion require the complainant to give bond and security for the payment of any damages which the defendant may recover of him, for suing out the writ before granting an order for the issuing of

Article 3.—*Ne Exeat* and *Quia Timet*.

the same, and may require a verification by all or any of the complainants.

§ 3152. In cases of emergency upon the affidavit of the complainant that he cannot obtain the sanction of the Judge in time to remedy the mischief, the writ of *ne exeat* may issue at once, to continue until the first term of the court to which it is returnable, unless earlier heard by order of the Judge. When issued without sanction.

§ 3153. The proceeding *quia timet* is sustained in equity for the purpose of causing to be delivered up and cancelled; any instrument which has answered the object of its creation, or any forged or other iniquitous deed or other writing, which though not enforced at the time, either casts a cloud over complainant's title, or otherwise subjects him to future liability or present annoyance, and the cancellation of which, is necessary to his perfect protection. Quia timet.

ARTICLE IV.

BILLS OF PEACE AND INTER-PLEADER.

SECTION.

3154. Bill of peace.

3155. Perpetual injunction.

SECTION.

3156. Inter-pleader.

3157. Collateral to other proceedings.

§ 3154. It being the interest of this State that there should be an end of litigation, equity will entertain a bill of peace— Bill of peace

1. To confirm some right which has been previously satisfactorily established by more than one legal trial, and is likely to be again litigated.

2. To avoid a multiplicity of suits by establishing a right, in favor of or against several persons, which is likely to be the subject of legal controversy, or in other similar cases.

§ 3155. As ancillary to this jurisdiction, equity will grant perpetual injunctions. Perpetual injunction.

§ 3156. Wherever a person is possessed of property or funds, or owes a debt or duty to which more than one person lays claim, and the claims are of such a character as to render it doubtful or dangerous for the holder to act, he may apply to equity to compel the claimants to inter-plead. Inter-plead.

§ 3157. If in the progress of any proceeding in equity the court perceives a necessity for parties to inter-plead, it may order

Article 4.—Bills of Peace and Inter-pleader.

Collateral to such inter-pleader as collateral and ancillary to the main case.
 other proceedings. All the extraordinary remedies of equity may be enforced by attachments.

PART III.

THE CODE OF PRACTICE.

TITLE I.

OF THE JUDGES, SESSIONS AND ADJOURNMENTS OF COURTS.

CHAPTER 1. Of the Supreme Court.

CHAPTER 2. Of the Superior and Inferior Courts.

CHAPTER 3. Of the Judges of the Superior Courts.

CHAPTER I.

OF THE SUPREME COURT.

SECTION.

3158. Times and places of holding.

3159. May be adjourned to another time.

SECTION.

3160. May be adjourned to another place.

Times and
places of
holding.

§ 3158. The Supreme Court of the State of Georgia shall be held in the respective districts twice in every year by two or more of the Judges of said court, at the times and places hereinafter mentioned:

1st District.—Eastern, Middle and Brunswick Circuits, at Savannah, on the 2d Mondays in January and June.

2d District.—Macon, South-western, Pataula and Chattahoochee Circuits, at Macon, on the 4th Mondays in January and June.

3d District.—Flint, Coweta, Cherokee, Blue-Ridge and Tallapoosa Circuits, at Atlanta, on the 4th Monday in March, and 2d Monday in August.

4th District.—Western and Northern Circuits, at Athens, on the 4th Mondays in May and November.

5th District.—Ocmulgee and Southern Circuits, at Milledgeville, on the 2d Mondays in May and November.

§ 3159. It shall be the duty of all the Judges of said court to attend each term thereof; but if from Providential cause any one of the Judges cannot attend the court, such court may be held by two Judges, and if only one Judge shall attend, it shall be his duty to open the court, and adjourn from day to day for one week, and if at the expiration of that time, (or sooner if he is fully advised,) one other Judge cannot attend, and no appointment is made by the Governor as hereinbefore provided, he shall adjourn the court until the next regular term, and if no Judge attends, it shall be the duty of the Clerk and Sheriff, or either of them, to adjourn said court as above provided.

§ 3160. When from Providential cause the Supreme Court cannot be held at the time and place designated by law, it may be adjourned by order of the Judges, or any two of them in vacation, to some other convenient time and place, and the session then held shall be valid, and notice shall be given of such adjournment if possible.

CHAPTER II.

OF THE SUPERIOR AND INFERIOR COURTS.

ARTICLE 1. Number and times of sessions.

ARTICLE 2. Adjournments of the Superior and Inferior Courts.

ARTICLE I.

NUMBER AND TIMES OF SESSION.

SECTION.

3161. Superior Courts to be held twice.

3162. Inferior Courts to be held twice.

SECTION.

3163. Times of sessions, &c.

§ 3161. The Superior Courts shall be held in each county in the respective Judicial Circuits twice in every year, by one or more of the Judges of the Superior Courts at the several times hereinafter mentioned.

§ 3162. The Inferior Courts of this State shall be held twice in every year in each county thereof, by the Justices of said court, or a majority of them, at the several times hereinafter mentioned.

Article 1.—Number and Times of Session.

Times of
sessions.

§ 3163. The times of holding the Superior and Inferior Courts are as follows:*

BLUE-RIDGE CIRCUIT.

	SUPERIOR COURTS.	INFERIOR COURTS.
Cherokee,	First Monday in March and September, . .	Second Monday in June and December, . .
Cobb,	Third " " " " " " " " " " " "	Third " " " " " " " " " " " "
Dawson,	Second " " " " " " " " " " " "	First " " " " " " " " " " " "
Fannin,	" " " " " " " " " " " "	Second " " " " " " " " " " " "
Forsyth,	Third " " " " " " " " " " " "	Third " " " " " " " " " " " "
Gilmer,	First " " " " " " " " " " " "	Second " " " " " " " " " " " "
Lumpkin,	Fourth " " " " " " " " " " " "	First " " " " " " " " " " " "
Milton,	First " " " " " " " " " " " "	First " " " " " " " " " " " "
Pickens,	Second " " " " " " " " " " " "	Third " " " " " " " " " " " "
Towns,	Fourth " " " " " " " " " " " "	Third " " " " " " " " " " " "
Union,	Third " " " " " " " " " " " "	Fourth " " " " " " " " " " " "

BRUNSWICK CIRCUIT.

	SUPERIOR COURTS.	INFERIOR COURTS.
Appling,	First Monday in March and September, . .	First Monday in June and December,
Camden,	Friday after the fourth Monday in April and October,	First " " " " " " " " " " " "
Charlton,	Monday after the fourth Monday in April and October,	First " " " " " " " " " " " "
Clinch,	Fourth Monday in March and September, . .	Third " " " " " " " " " " " "
Coffee,	Second " " " " " " " " " " " "	" " " " " " " " " " " "
Echols,	Monday after 4th Monday in March and September,	First " " " " " " " " " " " "
Glynn,	Third Monday in April and October,	Monday after Inferior Court in Clinch, . .
Pierce,	Thursday before the 1st Monday in March and September,	Second Monday in January and June,
Ware,	Third Monday in March and September, . .	Second " " " " " " " " " " " "
Wayne,	Fourth Monday in April and October,	Third " " " " " " " " " " " "

CHATTAHOOCHEE CIRCUIT.

	SUPERIOR COURTS.	INFERIOR COURTS.
Chattahoochee,	Fourth Monday in March and September, . .	Third Monday in June and December,
Harris,	Second " " " " " " " " " " " "	Second " " " " " " " " " " " "
Marion,	First " " " " " " " " " " " "	Third " " " " " " " " " " " "
Muscogee,	Fourth " " " " " " " " " " " "	Second " " " " " " " " " " " "
Schley,	Fourth " " " " " " " " " " " "	Fourth " " " " " " " " " " " "
Talbot,	Third " " " " " " " " " " " "	Third " " " " " " " " " " " "
Taylor,	First " " " " " " " " " " " "	Second " " " " " " " " " " " "

CHEROKEE CIRCUIT.

	SUPERIOR COURTS.	INFERIOR COURTS.
Cass,	Second Monday in March and September, . .	Fourth Monday in May and November, . .
Catoosa,	Second " " " " " " " " " " " "	Second " " " " " " " " " " " "
Chattooga,	First " " " " " " " " " " " "	Fourth " " " " " " " " " " " "
Dade,	Fourth " " " " " " " " " " " "	First " " " " " " " " " " " "
Gordon,	First " " " " " " " " " " " "	Fourth " " " " " " " " " " " "
Murray,	Third " " " " " " " " " " " "	Third " " " " " " " " " " " "
Walker,	Monday before the 1st Monday in March and September,	First " " " " " " " " " " " "
Whitfield,	Fourth Monday in April and October,	First " " " " " " " " " " " "

* As to counties in which the Superior Court sits two or more weeks, see local acts in pamphlets, under appropriate heads.

Article 1.—Number and Times of Session.

COWETA CIRCUIT.

	SUPERIOR COURTS.	INFERIOR COURTS.
Clayton,	First Monday in May and November,....	First Monday in February and July,....
DeKalb,	Fourth " April and October,.....	Third " January
Fayette,	Second " March and September,...	Third " " June,....
Fulton,	First " April and October,.....	Third " June and December,....
Meriwether, ..	Third " February and August,...	Fourth " April and October,....
Troup,.....	Third " May and November,....	First " February and August,...

EASTERN CIRCUIT.

	SUPERIOR COURTS.	INFERIOR COURTS.
Bryan,.....	Fourth Monday in April and on 2d Monday after 4th Monday in November,....	Fourth Monday in January and June,....
Bulloch,	Friday after 3d Monday in March and " 4th " October,...	First " February and July,...
Chatham,	Second Monday in January and May,....	Third " " "
Effingham,.....	Monday after the 4th Monday in March and 2d Monday after 4th Monday in Oct.	Second " " "
Liberty,.....	Third Monday in April and Monday after 4th Monday in November,.....	Second " January and June, ...
McIntosh,.....	Tuesday after 2d Monday in April and Thursday after 4th Monday in Nov....	Third " " "
Montgomery,...	Thursday after the 2d Monday in March and Thursday after 3d Monday in Oct....	First " February and August,...
Tattnall,.....	Third Monday in March and 4th in Oct....	Second " " "

FLINT CIRCUIT.

	SUPERIOR COURTS.	INFERIOR COURTS.
Butts,.....	Second Monday in March and September,...	Second Monday in January and July,....
Henry,.....	Third " April and October,....	Fourth " February and August,...
Monroe,	Fourth " February and August,...	Second " June and December,...
Newton,	Third " March and September,...	Fourth " " "
Pike,.....	First " April and October,....	First " " "
Spalding,.....	Third " May and November,...	Third " February and August,...
Upson,.....	First " " "	First " " "

MACON CIRCUIT.

	SUPERIOR COURTS.	INFERIOR COURTS.
Bibb,	Third Monday in May and November,...	Third Monday in February and August,...
Crawford,.....	First " March and September,...	Third " January and July,....
Dooley,	First " April and October, ...	Third " June and December,...
Houston,	Fourth " " "	Fourth " January and July,....
Macon,	Third " March and September,...	First " February
Twiggs,	Fourth " " "	Fourth " January
Worth,.....	Third " April and October,....	First " June and December,...

MIDDLE CIRCUIT.

	SUPERIOR COURTS.	INFERIOR COURTS.
Burke,.....	Second Monday in May and November,...	First Monday in January and July,.....
Columbia,.....	First " March and September,...	First " February and " "
Emanuel,	Fourth " " "	Second " January and " "
Jefferson,	Third " April and October,....	Third " " "
Johnson,	Second " June and December,...	Second " April and October,.....
Richmond,	Fourth " January and June,....	First " June and December,...
Sheriden,	Second " April and October,....	Second " January and July,.....
Washington,...	Second " March and September,...	Fourth " " "

Article 1.—Number and Times of Session.

NORTHERN CIRCUIT.

	SUPERIOR COURTS.	INFERIOR COURTS.
Elbert,.....	Second Monday in March and September,	Third Monday in January and July,....
Glasscock,...	Third " February and August,	Third " " "
Hancock,.....	Second " April and October,....	First " February and August,
Hart,.....	Third " March and September,	Third " June and December,...
Lincoln,.....	Fourth " April and October,....	First " February and July,....
Madison,.....	First " March and September,	Second " January " "
Oglethorpe,...	Third " April and October,....	Fourth " " June,....
Tallaferro,...	Fourth " February and August,	First " June and December,...
Warren,.....	First " April and October,....	Second " February and August,
Wilkea,.....	Fourth " March and September,	First " May and November,...

OCMULGEE CIRCUIT.

	SUPERIOR COURTS.	INFERIOR COURTS.
Baldwin,.....	Fourth Monday in February and August,	Third Monday in May and November,...
Greene,.....	Second " March and September,	Second " June and December,...
Jasper,.....	Fourth " April and October,....	Fourth " January and July,....
Jones,.....	Third " " "	Fourth " " "
Morgan,.....	First " March and September,	First " June and December,...
Putnam,.....	Third " " "	Third " " "
Wilkinson,...	First " April and October,....	Second " January and July,....

PATAULA CIRCUIT.

	SUPERIOR COURTS.	INFERIOR COURTS.
Clay,.....	Second Monday in June and December,...	Second Monday in March and September,
Early,.....	First " April and October,....	Third " June and December,...
Miller,.....	Second " " "	Fourth " March and September,
Quitman,.....	Third " May and November,...	Second " February and August,
Randolph,.....	First " " "	First " " "
Stewart,.....	Third " April and October,....	First " " June,...
Terrell,.....	Fourth " May and November,...	Fourth " " August,
Webster,.....	Second " March and September,	Second " June and December,...

SOUTHERN CIRCUIT.

	SUPERIOR COURTS.	INFERIOR COURTS.
Berrien,.....	Monday after Irwin Court,.....	Second Monday in January and July,....
Brooks,.....	Second Monday in June and December,...	Third " February and August,
Colquitt,.....	Last Monday in May and 1st Monday after 4th Monday in November,.....	First " January and July,....
Irwin,.....	On Thursday after Telfair Court,.....	Fourth " " "
Laurens,.....	Second Monday in April and October,....	First " June and December,...
Lowndes,.....	First " June and December,...	First " February and August,
Pulaski,.....	Third " April and October,....	Fourth " Jan. and 1st in July,...
Telfair,.....	Friday after 4th Monday in April and October,.....	Fourth " " "
Thomas,.....	Third Monday in June and December,...	Fourth " February and August,
Wilcox,.....	Fourth " April and October,....	Second " January and July,....

SOUTH-WESTERN CIRCUIT.

	SUPERIOR COURTS.	INFERIOR COURTS.
Baker,.....	Second Monday in May and November,...	Tuesday after 1st Monday in Jan. & July,
Calhoun,.....	Third " March and September,	Third Monday in May and November,...
Deatur,.....	Fourth " April and October,....	Second " January and July,....
Dougherty,...	First " June and December,...	First " March and September,...
Lee,.....	Fourth " March and September,	Fourth " January and July,....
Mitchell,.....	Second " May and November,...	Fourth " February and August,...
Sumter,.....	Second " April and October,....	Third " January and July,....

Article 1.—Number and Times of Session.

TALLAPOOSA CIRCUIT.

	SUPERIOR COURTS.	INFERIOR COURTS.
Campbell,	Second Monday in February and August.	Third Monday in June and December, ..
Carroll,	First " April and October,	Fourth " " " "
Coweta,	First " March and September.	First " " " "
Floyd,	Third " January and 1st Monday in July,	Third " May and November, ..
Haralson,	Third Monday in April and October,	Second " January and July,
Heard,	Third " March and September, ..	Second " " " "
Paulding,	Fourth " February and August, ..	Second " June and December, ..
Polk,	Third " " " "	Fourth " " " "

WESTERN CIRCUIT.

	SUPERIOR COURTS.	INFERIOR COURTS.
Banks,	Fourth Monday in April and October,	First Monday in February and August, ..
Clarke,	First " Feb. and 2d in Aug.	Fourth " April and October,
Franklin,	Third " April and October,	Fourth " January and July,
Gwinnett,	First " March and 2d in Sept.	Second " June and December,
Habersham,	Second " April and October,	Second " January and July,
Hall,	Third " March and September, ..	Fourth " " " "
Jackson,	Fourth " February and August, ..	Second " " " "
Eabun,	First " April and Wednesday after 1st Monday in October,	First " " " "
Walton,	Third Monday in February and August, ..	Third " May and November, ..
White,	Fourth " March and September, ..	Fourth " June and December, ..

ARTICLE II.

OF ADJOURNMENTS OF THE SUPERIOR AND INFERIOR COURTS.

SECTION.

SECTION.

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| 3164. Superior Court may be adjourned. | 3167. Adjourned terms. |
| 3165. May be adjourned in vacation. | 3168. Inferior Court may be adjourned. |
| 3166. May be adjourned in term time. | 3169. May be adjourned in term time. |

§ 3164. In case of unavoidable accidents, whereby the Superior Court, in any county, shall not be held at the time appointed for holding the same, the Clerk of such court shall adjourn the same from day to day, not exceeding two days, and unless the presiding Judge shall order to the contrary within the two days aforesaid, the Clerk shall then adjourn said court to the next term.

Adjournment by Clerk from day to day.

§ 3165. When the Clerk of the Superior Court is informed by the presiding Judge, that it is not possible for him to attend the regular term of said court from sickness of himself or his family, or other unavoidable cause, which shall be expressed in the order of adjournment, the Clerk shall adjourn such court to such time

Clerk of Superior Courts, &c.

Article 2.—Of Adjournments of Superior and Inferior Courts.

To be advertised.

as the Judge may direct, and shall advertise the same at the court-house of the county in which said court is to be held, and one or more times in a public gazette.

For Providential cause only, &c.

§ 3166. No Superior Court shall be adjourned by the Judge in vacation, except for the causes above stated, but the Judge may, in term time, adjourn such court to such time as he may think fit.

Judges shall hold adjourned terms, &c.

§ 3167. It shall be the duty of every Judge of the Superior Court to hold an adjourned term in every county within their respective circuits, when the business requires it to clear the dockets.

Adjournment of Inferior Court, &c.

§ 3168. If, from any circumstance, a majority of the Justices of the Inferior Court, in any of the counties of this State, should fail to attend at the regular term of said Inferior Court, or at any adjourned term, it shall, and may be lawful for any one of the Justices of said court, in the county where such failure may take place, together with the Sheriff, or his deputy, Coroner or Constable, and the Clerk of said court, to adjourn said court to such time as they, in their judgment, may think proper; and if no one of said Justices should attend on the first day of any term, their Clerk shall have the same power as the Clerk of the Superior Court in such cases, until one of such Justices shall attend.

May be adjourned by the Clerk.

§ 3169. The Inferior Court may be adjourned in term time, as the Superior Court.

CHAPTER III.

OF THE JUDGES OF THE SUPERIOR COURTS.

SECTION.

3170. Rules of practice, &c.

3171. All other rules void.

SECTION.

3172. Judges must not express opinion.

3173. Must charge the jury specially.

Judges of the Superior Court, &c.

§ 3170. The several Judges of the Superior Courts of this State may convene at the seat of government once in each year at such time as they, or a majority of them may appoint, for the purpose of establishing uniform rules of practice throughout the several circuits of this State, which rules, so established, shall be published immediately after the adjournment of said convention.

Must be published.

All other rules void.

§ 3171. All rules of practice for the Superior or Inferior Courts, prescribed by any other authority than that which has, by the previous section, been deputed to all the Judges of the Superior Courts of Georgia in convention, shall be null and void and inoperative.

Chapter 3.—Of the Judges of the Superior Courts.

§ 3172. It is error for any or either of the Judges of the Superior Courts of this State, in any case, whether civil, or criminal, or in equity, during its progress, or in his charge to the jury, to express or intimate his opinion as to what has or has not been proved, or as to the guilt of the accused; and should any Judge of said court violate the provisions of this section, such violation shall be held, by the Supreme Court, to be error, and the decision in such case reversed, and a new trial granted in the court below, with such directions as the said Supreme Court may lawfully give.

Judge must not express opinion on the facts.

Error.

§ 3173. The Judges of the Superior Courts shall, at the first court in each year, give the law on the subject of educating the poor, specially in charge to the Grand Juries, together with his suggestion and arguments upon their duty and policy in relation to the same, and shall also, at each term of said court in every year, give specially in charge to said Grand Juries the law against gaming and trading with slaves, furnishing slaves or free persons of color with spirituous liquors, gambling with negroes, carrying deadly weapons, and in relation to colored mechanics, furnishing negroes with poisonous drugs, &c.*

Judge must charge the jury, &c.

The law against trading with slaves, &c.

* For further powers and duties of the Judges of the Superior Court, see Part 1, Title 5, Chapter 3.

TITLE II.

OF ACTIONS.

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CHAPTER 2. Of attachments.

CHAPTER 3. Petition and process.

CHAPTER 4. Of the venue.

CHAPTER 5. Bail in civil cases.

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CHAPTER I.

GENERAL PRINCIPLES.

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3179. Demand—when required.

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3181. Parties to actions on contracts.

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3184. Dates & amounts may be in figures.

3185. Different claims may be joined.

3186. When parties must sue separately.

3187. A suit by an infant is not void.

For every
right there
shall be a
remedy.

§ 3174. For every right there shall be a remedy, and every court having jurisdiction of the one, may if necessary frame the other.

An action.

§ 3175. An action is merely the judicial means of enforcing a right.

Distinction
of actions
abolished.

§ 3176. All distinction of actions into real, personal and mixed are abolished. An action may be against the person, or against property, or both. Generally, a proceeding against the person binds the property also, and a proceeding against property, without service on the person, binds only the particular property.

A civil ac-
tion defined.

§ 3177. A civil action is one founded on private rights, arising either from contract or tort.

A penal ac-
tion defined
and parties
provided.

§ 3178. A penal action is one allowed in pursuance of public justice under particular laws. If no special officer is authorized to be the plaintiff therein, the State, or the Governor, or the Attorney or Solicitor General, may be the plaintiff.

No demand
necessary.

§ 3179. No demand is necessary to the commencement of an action, except in such cases as the law or the contract prescribes.

Chapter 1.—General Principles.

§ 3180. Distinct and separate claims of or against different persons cannot be joined in the same action. Against different persons.

§ 3181. As a general rule, the action on a contract whether express or implied, or whether by parol or under seal, or of record, must be brought in the name of the party in whom the legal interest in such contract is vested, and against the party who made it in person or by agent. Parties to actions on contracts.

§ 3182. An action for a tort must, in general, be brought in the name of the person whose legal right has been affected, and who was legally interested in the property at the time the injury thereto was committed, and against the party committing the injury, either by himself, his servant, or agent in his employment. Parties to actions for torts.

§ 3183. A tenant in common need not join his co-tenant, but may sue separately for his interest, and the judgment in such case effects only himself. A tenant in common may sue alone.

§ 3184. Dates and amounts in pleading may be set out in figures or Arabic numerals, and when a party signs a contract with the initials of his christian name only, he may be sued in the same way. Dates and amounts may be set out in figures.

§ 3185. All claims arising *ex contractu* between the same parties may be joined in the same action, and all claims arising *ex delicto* may in like manner be joined. The defendant may also set up as a defence, all claims against the plaintiff of a similar nature with the plaintiff's demand. Different claims may be joined.

§ 3186. Courts will not in one suit take cognizance of distinct and separate claims of different persons, but where the damage, as well as the interest is several, each party injured must, in that case, sue separately. When parties must sue separately.

§ 3187. A suit commenced and prosecuted by an infant alone is not void, and although the suit is defective in wanting a guardian or next friend, the defect is amendable before verdict, and cured by verdict. Suits by an infant not void.

CHAPTER II.

OF ATTACHMENTS.

- ARTICLE 1. Of issuing attachments.
 ARTICLE 2. In what manner, on what property executed, &c.
 ARTICLE 3. Proceedings on garnishments.
 ARTICLE 4. Pleading and defences.
 ARTICLE. 5. Replevy and disposition of property attached.
 ARTICLE 6. Claim and proceedings therein.
 ARTICLE 7. Lien of attachments, judgments and executions.

ARTICLE I.

OF ISSUING ATTACHMENTS.

SECTION.

3188. Grounds of attachment.
 3189. Affidavit.
 3190. Bond to be given.
 3191. Co-partner may make oath &c.
 3192. Issue by a Judge, Justice &c.
 3193. Property in another county.
 3194. When returnable.
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 3196. Issue and levy on Sunday.

SECTION.

3197. When the debt is not due.
 3198. Joint contracts—may be attached.
 3199. Executors, administrators, &c.
 3200. Security or endorsors vs. principal.
 3201. May issue pending suit.
 3202. Foreign incorporations.
 3203. Bail may be attached.
 3204. Not void for want of form.
 3205. Affidavit, bond and attachment.

Grounds of
attachment.

§ 3188. Attachments may issue in the following cases :

1. When the debtor resides out of the State.
2. When he is actually removing, or about to remove without the limits of the county.
3. When he absconds.
4. When he conceals himself.
5. When he resists a legal arrest.
6. When he is causing his property to be removed beyond the limits of the State.

By whom
affidavit
may be
made.

§ 3189. Before process of attachment shall issue, the party seeking the same, his agents or attorney at law, shall make an affidavit before some Judge of the Superior Court, Justice of the Inferior Court, Justice of the Peace, or Notary Public that the debtor has placed himself in some one of the positions enumerated in this Code, and also of the amount of the debt claimed to be due. When the affidavit is made by the attorney at law, or agent

Agent or at-
torney may
swear.

Article 1.—Of Issuing Attachments.

of the party, he may swear that the amount claimed to be due, is due according to the best of his knowledge and belief.

§ 3190. The party seeking the attachment before the same issues, shall also give bond with good security in an amount at least double the debt sworn to, payable to the defendant in attachment, conditioned to pay such defendant all damages that he may sustain, and also all costs that may be incurred by him in consequence of suing out the attachment in the event the plaintiff shall fail to recover in said case; which bond it shall be the duty of the magistrate or other officer before whom the affidavit is made to take, and where the affidavit is made by the agent or attorney at law of the plaintiff, such agent or attorney at law is hereby authorized to sign the name of the principal who shall also be bound thereby in the same manner as though he had signed it himself.

Plaintiff must give bond and security.

Agent or attorney may give bond.

§ 3191. When the debt for the recovery of which the attachment is sought is due to a co-partnership, or is due to several persons jointly, it shall be lawful for any one of the co-partners or joint creditors, his agent or attorney at law, to make the affidavit, and give the bond as prescribed by this Code, and to sign the name of the other co-partners or joint creditors to said bond, and they shall be bound thereby in the same manner as though they had signed it themselves.

Co-partner, agent or attorney may make affidavit.

§ 3192. Affidavit being thus made and bond given, it shall be the duty of the officer, before whom such affidavit is made, and bond given, or any officer authorized so to do, to issue an attachment against the defendant, which may be levied on the property of the defendant, both real and personal, if to be found in this State.

Attachment—who may issue.

§ 3193. When the plaintiff in attachment wishes to levy his attachment upon property in a different county from that in which the same is returnable, it shall be the duty of the magistrate or other officer issuing such attachment, upon the request of the plaintiff, his agent or attorney at law, to make out a copy or copies of the original attachment, bond and affidavit, and certify the same, officially, to be a true copy or copies, and upon such copies being delivered to any officer to whom the same is directed, of the county where the property of the defendant is, it shall be the duty of such officer to levy forthwith the same upon the property of the defendant in such county, and to return the same, with his acings and doings entered thereon, to the court to which the original attachment is returnable.

Property in a different county—how levied upon.

Copies to be sent to the county where the property is.

Officer shall levy and return.

Article 1.—Of Issuing Attachments.

Attachments where returnable.

§ 3194. When the amount sworn to shall exceed the sum of fifty dollars, the attachment shall be made returnable to the next term of the Superior or Inferior Court of the county where the defendant resides, or where he last resided, but if such court shall sit within twenty days next after issuing such attachment, it shall be made returnable to the next term of the Superior or Inferior Court thereafter, and when the debt sworn to does not exceed the sum of fifty dollars, the attachments shall be made returnable to the next Justices' Court of the district in which the debtor resides, or last resided, but if the next Justices' Court, shall sit within ten days next after issuing such attachment, it shall be made returnable to the next Justices' Court thereafter, except when the defendant resides out of the State, and in that case, if the debt sworn to exceeds fifty dollars, the attachment may be made returnable to the Superior or Inferior Court of any county in this State, and if it does not exceed fifty dollars, the attachment may be made returnable to a Justices' Court of any district of any county in this State.

When returnable to a Justice's Court.

When the defendant resides out of the State—how returnable.

To whom directed.

§ 3195. Attachments returnable to the Superior and Inferior Courts shall be directed to all and singular the Sheriffs and Constables of this State, and attachments returnable to the Justices' Courts shall be directed to all and singular the Constables of this State.

May issue on the Sabbath day.

§ 3196. Attachments may issue and be levied on Sunday when the plaintiff, his agent or attorney at law shall swear, in addition to the oath prescribed by this Code, that he has reason to apprehend the loss of the debt, unless process of attachment do issue on Sunday, and shall also comply with the other provisions of this Code in relation to issuing attachments.

Additional oath.

When the debt is not due.

§ 3197. When the debt is not due, the debtor shall be subject to attachment in the same manner and to the same extent as in cases where the debt is due, except that where the debt does not become due before final judgment, execution upon the judgment shall be stayed until the debt is due.

Joint contractors subject to attachment.

§ 3198. In cases of joint contractors and co-partners, where any one of them shall render himself liable to attachment according to law, an attachment may issue against him upon the plaintiff, his agent or attorney at law complying with the previous provisions of this Code in relation to the issuing of attachments, and the proceedings against such joint contractors or co-partner shall be in all respects as in other cases of attachments, except that

Article 1.—Of Issuing Attachments.

such attachment shall be levied only upon the separate property of such joint contractor or co-partner.

To be levied on separate property.

§ 3199. Process of attachment may issue against an administrator on an estate, or the executor of the last will and testament of any deceased person, as in other cases when such administrator or executor shall be actually removing, or about to remove the property of said deceased person without the limits of any county of this State, provided final judgment shall not be entered up against such administrator or executor until after the expiration of two years from the granting of letters of administration, or letters testamentary as the case may be, and in all cases of money demands, whether arising *ex contractu* or *ex delicto*, plaintiff shall have the right to sue out the attachment when the defendant shall have placed himself in such situation as will authorize a plaintiff to sue out attachment upon the plaintiff's complying with the law now of force in relation to issuing attachments.

May issue against an administrator, &c.

Judgment to be stayed.

May issue in all cases of money demands.

§ 3200. In all cases where a person is surety or endorser upon an instrument of writing, and the principal shall become subject to attachment according to the provision of section 3188 of this Code, it shall be lawful for such surety or endorser, upon complying with the provisions of this Code in relation to the issuing of attachments, to have attachment against his principal, and the proceedings shall be in all respects the same as in other cases of attachment, according to the provisions of this Code, and the money raised by such attachments shall be paid to the person holding such instrument of writing. But if the surety or endorser has paid the debt, then the money raised upon such attachment, or so much thereof as will pay the amount the surety or endorser has paid, shall be paid to such surety or endorser, and in case the debt is not due at the time judgment is rendered against the principal, execution shall be stayed until the debt is due.

May be sued out by a security against his principal.

Proceedings.

Money—how paid out.

Stay of execution.

§ 3201. In all cases where the plaintiff has commenced suit for the recovery of a debt, and the defendant, during the pendency of such suit, shall become subject to attachment agreeable to section 3188 of this Code, the plaintiff, upon complying with the provisions of this Code in relation to the issuing of attachments, may have an attachment against the defendant, and all the proceedings in relation to the same shall be as hereinbefore prescribed in relation to attachments where no suit is pending. And a

When suit is pending.

Article 1.—Of Issuing Attachments.

Satisfaction of judgment. satisfaction of the judgment in the common law action shall satisfy the judgment in attachment, and a satisfaction of the judgment in attachment shall satisfy the judgment in the common law action.

Foreign incorporations subject to attachment. § 3202. Attachments may issue against incorporations not incorporated by the laws of this State, who are transacting business within the State, under the same rules and regulations as are by this Code prescribed in relation to issuing attachments and garnishments in other cases.

Attachment may issue against bail in certain cases. § 3203. In all civil suits in which bail has been required, and such bail has been given, and pending the liability of said bail, he shall attempt to remove beyond the State or county in which such bail resided at the time the same was required, it shall be lawful for the party at whose suit bail was required, to attach the property of said bail to answer the suit of the party suing out the same, provided that said bail may discharge his property from said levy by delivering up the body of the principal according to the laws of this State.

A compliance in substance sufficient. § 3204. A substantial compliance in all matters of form shall be held sufficient in all applications for attachment, and in all attachments issued as provided by this Code.

Forms. § 3205. In all cases of attachment the form of the affidavit, bond and attachment may be as follows:

Affidavit.

Affidavit. GEORGIA, }
County. }

Before me the subscriber a _____ in and for said county personally _____ and on oath says, that _____ is indebted to him in the sum of _____, and that the said _____ Sworn to before me _____, this the _____ day of _____ 18 _____.

Bond.

Bond. GEORGIA, }
County. }

We _____ principal and _____ security, acknowledge ourselves bound unto _____ in the sum of _____ dollars subject to the following conditions:

That the said _____ principal is seeking an attachment against the said _____ which is now about to be sued out returnable to the _____ term of the _____ court of the county aforesaid; now if the said _____ shall pay all damages that the said _____ may

Article 2.—In what Manner and on what Property Executed, &c.

bring the property back into the county where the attachment is returnable.

Attachment must be returned.

§ 3207. It shall be the duty of the officer levying such attachment, to return the same, with his actings and doings entered thereon, together with the affidavit and bond, to the court to which the same is made returnable.

Officer must levy, &c.

§ 3208. In all cases it shall be the duty of the officer levying attachments, to levy them in the order in which they came into his hands, and it shall be his duty to enter upon the same the year, month, day of the month, and hour of the day on which he made the levy.

May be levied on the property, &c.

§ 3209. When an attachment has been issued by the proper officer, the same may be levied upon the property of the defendant, both real and personal, which may be found in the county.

May be levied by service of garnishment.

§ 3210. Service of the attachment, by serving process of garnishment, shall be as effectual for all purposes as though the attachment had been served by levying the same upon the property of the defendant.

Shares or interest in any corporation, &c.

§ 3211. When the process of attachment shall issue against a party who shall have or own any interests or an amount of shares in any corporation in this State, the same may be attached in the following manner: the officer in whose hands the attachment is placed, shall endorse an entry thereon of his levy on the corporate shares or interest of the defendant, and shall forthwith serve a copy of the attachment so endorsed upon the President of the corporation, at the office of the company, or by leaving the same at the usual or most notorious place of doing the business of such company, which entry and service shall amount to, and be considered a seizure of said corporate interest or shares, to all intents and purposes, and under an execution issued on such attachment, may be sold as in other cases of ordinary execution.

How levied upon and sold.

§ 3212. Any transfer by the defendant of the stock or interest, so attached after the levy of such attachment, shall be void, and when an execution is issued, the said stock or interest shall be sold by the Sheriff, or his deputy, according to the provisions of this Code, to make bank and other stocks subject to executions.

Transfer after levy is void.

Officer selling must give a certificate.

§ 3213. Certificates of purchase shall be granted by the officer selling, as prescribed in cases of executions, and on presentation of such certificates to the proper officer of said corporation, it shall be his duty to make such transfer on his books, if necessary, and

Transfer.

Article 2.—In what Manner and on what Property Executed, &c.

afford the purchaser such evidence of title to the stock purchased as is usual and necessary with other stockholders. Evidence of title.

§ 3214. In all cases of sale of lands, where the vendor has not executed a deed of conveyance to the purchaser for the same, but has given bond for titles, or other evidence of the contract, and the purchase money has not been paid, and the vendee shall become liable to attachment agreeable to the provisions of section 3188 of this Code, attachment may issue against him at the instance of the vendor, upon complying with the provisions of this Code in relation to attachments, which said attachment shall be levied upon the land described in the bond, or other evidence of contract for titles, and the subsequent proceedings shall be, in all respects, as heretofore prescribed in this Code in relation to attachments, which said attachments shall be levied upon the land described in the bond or other evidence of contract for titles, and the subsequent proceedings shall be, in all respects, as heretofore prescribed in this Code in relation to attachments, and it shall be lawful for the party bound by such bond or other contract for titles, to file in the Clerk's office of the Superior Court of the county where the land is situated, a good and sufficient deed of conveyance of said land to the obligee of said bond or other contract for titles, and when judgment is obtained upon such attachment, the execution issuing thereon may be levied upon said land, and the same be sold, and the money arising from said sale shall be appropriated to the payment of said judgment on the attachment to the exclusion of any other attachment, judgment or other debt of the defendant. Vendor may attach for purchase money.
How levied.
Deed must be filed.
Lien of judgment.

ARTICLE III.

PROCEEDINGS ON GARNISHMENTS.

SECTION.	SECTION.
3215. How issued, directed, served, &c.	3218. Answering and admitting effects.
3216. Garnishee residing out of county.	3219. Plaintiff may traverse the answer.
3217. Garnishee failing to answer.	3220. Issue—how tried, &c.

§ 3215. In all cases where attachment may issue, it shall be the duty of the Magistrate, or other officer issuing the same, at the request of the plaintiff, his agent or attorney at law, to issue summons of garnishment, directed to any person that may be indebted to, or have property or effects of the defendant in their Garnishment—how obtained.

Article 3.—Proceedings on Garnishments.

Garnishee
required to
answer.

hands, requiring them to appear at the court to which the attachment is made returnable, then and there to depose on oath what they were indebted to the defendant at the time of the service of said garnishment, or what property or effects of his they have in their hands, or had at the time of the service of said summons of garnishment, and it shall be the duty of the officer levying such attachment to serve such summons of garnishment.

How served.

When garnishee resides out of the county, &c.

§ 3216. When the plaintiff, his agent or attorney at law, shall desire to garnishee persons not residing in the county in which the attachment issues, it shall be the duty of the Magistrate issuing the same, at the request of the plaintiff, his agent or attorney at law, to make out a copy of the affidavit, bond and attachment, and certify the same to be a true copy, and upon the delivery of such copy to any Magistrate, or other officer who is authorized by law to issue an attachment in the county of which the person sought to be garnisheed resides, it shall be the duty of such Magistrate, or other officer, to make out a summons of garnishment for such persons as he may be requested to do by the plaintiff, his agent or attorney at law, requiring such persons to be an appear at the next Superior or Inferior Court, or Justice's Court of the county in which it issued, and depose in the manner prescribed by law; but if the next court, as aforesaid, shall be held within less than ten days next after the issuing of said summons of garnishment, then the person garnished shall be required to appear and depose at the next court thereafter, which said summons may be served by any officer authorized to levy an attachment by law, who shall return such certified copy, affidavit, bond and attachment, to the court as aforesaid, together with his actings and doings entered thereon.

By whom to be served and returned

If the garnishee fail to answer, &c.

On further failure, &c.

Court may continue the garnishment

§ 3217. When any person summoned as garnishee fails to appear in obedience to the summons, and answer at the first term of the court at which he is required to appear, the case shall stand continued until the next term of the court, and if he should fail to appear and answer by said next term, the plaintiff may on motion, have judgment against him for the amount of the judgment he may have obtained against the defendant in attachment, or for so much thereof as shall remain unpaid at the time the judgment is rendered against the garnishee, and the court may continue the case until final judgment is rendered against the defendant in attachment.

Article 3 —Proceedings on Garnishments.

§ 3218. When the garnishee appears and answers that he is indebted to, or has property or effects in his hands belonging to the defendant in attachment, judgment shall be rendered against him in favor of the plaintiff for such acknowledged indebtedness, and the property and effects whatever they may be, shall be delivered into the hands of the Sheriff or Constable as the case may be, and by order of the court shall be by him sold, and the money arising from such sale, shall be held subject to the order of the court and in case the garnishee fails to deliver over such property or effects to the officer as aforesaid, it shall be lawful for the court to attach him as for contempt; the property and effects so surrendered and delivered into the hands of the officer as aforesaid, shall be sold at such time and place, and after such notice given, as the court ordering the same shall direct.

If the garnishee admits effects.

Property returned.

Failing to deliver property.

§ 3219. When the summons of garnishment is returnable to the Superior or Inferior Court, and the plaintiff in attachment is not content with the answer of the garnishee, he may at the term of the court to which the return is made, traverse the same, and the issue formed upon such traverse shall be tried at the same term by a petit jury, unless cause is shown for a continuance, and either party being dissatisfied with the finding of the said jury, may appeal as in cases at common law, and the same shall be tried and governed by the same rules and regulations as in other appeal cases. On the trial of said issue, it shall be competent for the plaintiff to show the amount of indebtedness of the garnishee and the value of the property and effects not surrendered as aforesaid, and upon final judgment being rendered against said garnishee the plaintiff in attachment shall have execution for the amount of such judgment and cost as at common law.

Plaintiff may traverse the answer of garnishee.

Issue—how tried.

Either party may appeal.

Plaintiff may show indebtedness of garnishee.

Execution.

§ 3220. When the summons of garnishment is returnable to a Justices' Court, the issue formed upon the traverse as aforesaid, shall be tried by a jury in the same manner as appeal cases in a Justices' Court.

If the issue is in a Justices' Court.

ARTICLE IV.

OF PLEADING AND DEFENCES.

SECTION.

3221. Declaration to be filed at first term.
 3222. Plaintiff give defendant notice &c.
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 3224. May plead set-off not due.
 3225. May traverse truth of plff's affidavit.
 3226. Traverse shall not delay judgment.

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3227. Death of plff—parties how made.
 3228. Death of def't—parties how made.
 3229. Pleadings amendable, &c.
 3230. Judgment may be set aside.
 3231. Interrogatories may be sued out.

Declaration shall be filed—when.

§ 3221. When the attachment has been returned to the proper court, the subsequent proceedings shall be in all respects the same as in cases where there is personal service, and when the attachment is returnable to the Superior or Inferior Court, the plaintiff shall file his declaration at the first term.

Ten days' notice to defendant.

§ 3222. The plaintiff, his agent or attorney at law, may give notice in writing to the defendant of the pendency of such attachment and of the proceedings thereon, which shall be served personally on the defendant by the Sheriff, his deputy or a Constable of the county to which said attachment is returnable, by giving him a copy of said notice, at least ten days before final judgment on said attachment, and returning said original notice with his service entered thereon to the court in which said attachment is pending, which being done, the judgment rendered upon such attachment shall have the same force and effect as judgments rendered at common law; and no declaration shall be dismissed because the attachment may have been dismissed or discontinued, but the plaintiff shall be entitled to judgment on the declaration filed, as in other cases at common law, upon the merits of the case.

Judgment shall bind all property of defendant.

No declaration shall be dismissed.

§ 3223. The defendant may appear by himself or attorney at law, and make his defence at any time before final judgment is rendered against him, and either party being dissatisfied with the verdict that may be rendered in the case may enter an appeal.

Defendant may make his defence.

Either party may appeal.

Defendant may plead a set-off not due.

§ 3224. Any defendant against whom an attachment may issue for the recovery of a demand which is not due, under the provisions of Section 3197, Article I, may avail himself in his defence of any set-off pleadable by the laws of this State, notwithstanding such set-off may not be due at the time of suing out such attachment, or at the trial thereof, and if said set-off, so pleaded, shall exceed the plaintiff's demand, the defendant shall have judgment against the plaintiff for such excess as at common law,

Execution to be stayed.

Article 4.—Of Pleading and Defences.

with a stay of execution until the time the said set-off so pleaded shall become due.

§ 3225. In all cases of attachment the defendant may traverse the truth of the affidavit in relation to the ground upon which the attachment issued, at the return term of the attachment, and if said attachment is returnable to the Superior or Inferior Court, the issue formed upon such traverse shall be tried by a jury at the same term, unless good cause is shown for a continuance; and either party being dissatisfied with the verdict of the jury may enter an appeal, and if the final verdict upon such issue, shall be in favor of the defendant, said attachment shall be dismissed at the cost of the plaintiff. And if the attachment is returnable to a Justices' Court, the issue formed upon the traverse aforesaid shall be tried by a jury in the same manner as appeal cases in a Justices' Court.

May traverse the truth of plaintiff's affidavit.

Issue—how tried.

Either party may appeal.

Issue in a Justices' Court—how tried.

§ 3226. No traverse of the plaintiff's attachment, affidavit or other proceedings of the attachment, shall delay judgment on the declaration, where personal service has been perfected, but judgment may be had thereon, subject to the rules of the common law, as well before the trial of the issue made on the attachment proceedings as afterwards.

No traverse shall delay plaintiff.

Judgment may be had on the declaration.

§ 3227. In case either plaintiff or defendant shall die before final judgment is rendered in any case, and there is representation upon the estate of the defendant, parties shall be made in the same manner as in cases where there is personal service. But if there is no known representation upon the estate of the defendant, within this State and the plaintiff shall die, his executor or administrator may at any time after his qualification as such, cause to be issued by the Clerk of the Court or Justice of the Peace, a *scire facias*, returnable to the next term of the court after issuing the same, giving notice to the opposite party of his intention, to be made a party in place of his deceased testator or intestate, which shall be posted up at the door of the court-house where such attachment is pending, at least twenty days before the term at which such *scire facias* is made returnable; and upon affidavit being made by the executor or administrator of this being done, and said affidavit being filed among the papers in the case, said executor or administrator shall, on motion, be made a party and the same proceed in his name.

If either party die.

On the death of plaintiff.

Parties—how made.

§ 3228. When the defendant shall die *scire facias* shall issue in the manner aforesaid after the expiration of twelve months

On the death of defendant

Article 4.—Of Pleading and Defences.

from the death of the defendant, directed to the representative of the deceased defendant, notifying him of the pendency of such attachment, and of the intention of the plaintiff to proceed with the same, which being posted as aforesaid, and affidavit made and filed as aforesaid, it shall be lawful for the plaintiff to proceed in the same manner as though the death of the defendant had not occurred, but the executor or administrator upon the estate, may, at any time before final judgment upon the attachment, come in and be made a party and defend in the same manner as his testator or intestate might have done.

Parties-how made.

Attachments and returns thereon amendable.

§ 3229. The plaintiff in attachment shall have the right to amend his attachment or bond or declaration as in other cases at common law, and the levying officer shall have the right to amend his return by supplying any omissions or errors, and the court before which the attachment shall be returned shall have power to order said amendments.

Judgment may be set aside for fraud.

§ 3230. A judgment in attachment may be set aside in a court of law upon an issue suggesting fraud or want of consideration, tendered by a judgment creditor of the defendant in attachment.

Interrogatories—how sued out.

§ 2231. In cases of attachment and garnishment, interrogatories may be sued out and served as provided in other cases.

ARTICLE V.

REPLEVY AND DISPOSITION OF PROPERTY ATTACHED.

SECTION.

SECTION.

3232. Defendant may replevy property.
3233. Foreign corporation may replevy.

3234. Perishable property not replevied.

Property levied on to be delivered to defendant on his giving bond.

§ 3232. When an attachment has been levied upon the property of a defendant, it shall be the duty of the officer levying the same, to deliver the property so levied upon to the defendant, upon his giving bond with good security, payable to the plaintiff in attachment, obligating themselves to pay the plaintiff the amount of the judgment and costs that he may recover in said case; in case the property levied upon shall be equal to, or exceed the amount of the debt sworn to be due, in double the value of the property levied upon; when the property shall not exceed the amount of the debt claimed to be due, then in double the amount of the debt sworn to be due, and the officer taking said bond shall return the same with said attachment to the court to

The officer taking such bond shall return the same.

Article 5.—Replevy and Disposition of Property Attached.

which the same is made returnable, and it shall be lawful for the plaintiff to take judgment against the defendant and his securities upon said bond for the amount of the judgment he may recover in his said attachment case, in the same manner that by this Code judgment may be entered up in case of securities upon appeals.

§ 3233. When an attachment shall be levied on the property of an incorporation not incorporated by the laws of this State, it shall be lawful for any agent of such incorporation to relieve the property levied on, or discharge the summons of garnishment that may issue, by giving bond to the levying officer, payable to the plaintiff, conditioned to pay the amount that may be recovered in said case; which bond, the levying officer shall return to the court to which the attachment is made returnable, and judgment may be entered up in like manner against the principal and security upon said bond for the amount the plaintiff may recover against such corporation.

§ 3234. When the defendant fails to replevy the property, and the same remains in the hands of the levying officer, and is of a perishable nature, or liable to deteriorate in value from keeping, or there is expense attending the keeping of the same, (the same not being land or negroes,) upon these facts being made plainly to appear to a Judge of the Superior Court, or two Justices of the Inferior Court of the county in which the attachment is returnable, where the same is returnable to the Superior or Inferior Court, or to a Justice of the Peace of the county, where the same is returnable to a Justices' Court, it shall be their duty to order a sale of the property, which shall be at the usual place of holding Sheriff's sales of the county where such property may be when the attachment is returnable to the Superior or Inferior Court, and when the attachment is returnable to a Justices' Court at the usual place of Constable's sales of the district where the property may be, or at such other place as the Magistrate ordering said sale may direct; the time and place of holding such sale, shall be advertised at the court-house, and at two other public places in the county where the same is to take place, at least ten days before the day of sale. And when the attachment is returnable to a Justices' Court, it shall be advertised at the court-house door of the district in which the attachment is returnable, and the money arising from such sale shall be held by the officer making the same, subject to the order of the court to which the attachment is returnable.

Judgment
on bond—
when allowed.

Property of
a foreign corporation,
&c.

Judgment
on bond—
when allowed.

Perishable
property
may be sold.

Sale to be
advertised.

Money held
subject to
order of
court.

ARTICLE VI.

OF CLAIMS AND PROCEEDINGS THEREIN.

SECTION.

3235. How interposed and returned.

3236. Shall be tried as other claims.

3237. Claimant, his agent or attorney, &c.

SECTION.

3238. Suit on forthcoming bond by officer.

3239. Plaintiff *vs.* claimant for damages.

3240. When claim may be interposed.

Claims—
how inter-
posed.Claimant
must make
oath and
give bond.Agent or at-
torney may
give bond.Returns
where made.

How tried.

§ 3235. When property shall be levied on by virtue of an attachment, and the same is claimed by any person not a party to such attachment, it shall be the duty of the person claiming the same, his agent or attorney at law, to make oath before some person authorized by law to administer an oath, that the property levied on is the property of the claimant, and is not subject to such attachment according to the best of his knowledge and belief, and said claimant shall give bond with good security, payable to the plaintiff in attachment, in a sum at least equal to double the value of the property claimed, to be judged of by the levying officer, conditioned to pay the plaintiff all damages which the jury on the trial of the right of property may assess against him; in case it should be made to appear that such claim was made for the purpose of delay, and in case the claim is interposed by the agent or attorney at law of the claimant, such agent or attorney at law shall have power to sign the name of the claimant to the bond, and such claimant shall be bound in the same manner as though he had signed it himself. It shall be the duty of such officer taking such affidavit and bond to return the same to the court to which the attachment is returnable, unless the property levied on should be real estate, in which case it shall be his duty to return the same to the Superior Court of the county where the land lies; and if the attachment is returnable to a Justices' Court and levied upon slaves, the said affidavit and bond shall be returned to the next Superior Court of the county in which the attachment was issued.

§ 3236. If the claim is returned to the Superior or Inferior Court it shall be tried in the same manner, and subject to the same rules and regulations as are prescribed by law for the trial of claims in those courts where the property is levied on by virtue of ordinary executions, and where the claim is returned to a Justices' Court it shall be tried in the same manner, and subject to the same rules and regulations as are by law prescribed for the trial of appeal cases in Justices' Courts.

Article 6.—Of Claims and proceedings therein.

§ 3237. The claimant, his agent or attorney at law, may give bond, with good security, payable to the levying officer, in a sum equal to double the value of the property claimed, the value to be judged of by the levying officer, conditioned to deliver such property at the time and place of sale, provided the same should be found subject to the attachment, and upon the delivery of such bond to the levying officer it shall be his duty to deliver such property to the claimant, his agent or attorney at law, and it shall be the duty of the levying officer to return such bond, together with the affidavit and claim bond, to the court to which such attachment is returnable; and when said claim is interposed by the agent or attorney at law of the claimant, such agent, or attorney at law, shall have power to sign the name of the claimant to the bond, who shall be bound thereby, in the same manner as though he had signed it himself.

The claimant, his agent or attorney, may replevy

§ 3238. Upon the failure of the claimant to deliver such property, according to the conditions of said bond, the levying officer may immediately sue the claimant and security upon the bond, and recover the full value of the property claimed, and also all damages, costs, and charges, that the plaintiff may have sustained in consequence of the failure of the claimant to deliver said property.

On failure of claimant to deliver, &c.

§ 3239. In cases where the claimant shall deliver the property, and upon selling the same a sufficient amount shall not be raised to pay the debt and costs of the plaintiff, it shall be lawful for the plaintiff to institute suit against the claimant and his securities upon his said bond, and to recover the full value of the hire or use of the property while the same has been in the possession of the claimant, and also full damages for any deterioration of the value of the property, by use or otherwise, while the same has been in the possession of the claimant, provided such recovery shall not exceed the amount of the debt that may remain due from the defendant in attachment, to the plaintiff.

May be sued for hire or use of property.

§ 3240. In cases of attachment, a claim may be interposed either before or after judgment.

Claim may be interposed.

ARTICLE VII.

OF LIEN OF ATTACHMENTS, JUDGMENTS, AND EXECUTION.

SECTION.

3241. Defendant's property bound—when
3242. Binds property levied upon only.

SECTION.

3243. Money raised—how appropriated.
3244. Lien of attachments, &c.

When judgment binds defendant's property.

§ 3241. When the defendant has given bond and security, as provided in Sec. 3232 of this Code, or when he has appeared and made defence, by himself or attorney at law, or when he has been cited to appear, as provided in Sec. 3222, of this Code, the judgment rendered against him in such case shall bind all his property, and shall have the same force and effect as when there has been personal service, and execution shall issue accordingly, but it shall be first levied upon the property attached; in all other cases the judgment on the attachment shall only bind the property attached, and the judgment shall be entered only against such property.

Shall only bind property levied on.

Executions must issue on all judgments.

§ 3242. After the judgment has been obtained in any case of attachment, execution shall issue, as in cases at common law, which execution shall be levied in the same manner as executions issuing at common law, and the proceedings, in all respects, shall be the same, except that when the judgment only binds the property levied on by the attachment, as aforesaid, the execution shall be issued against such property only, and that property only shall be levied on and sold.

Money raised—how applied.

§ 3243. All money raised by the sale of defendant's property, or otherwise, by virtue of the provisions of this Code, in relation to attachments, shall be paid over to the creditors of the defendant, according to the priority of the lien of their judgments, saving only that as between attaching creditors, the attachment first levied shall be first satisfied, to the entire exclusion of any attachment of younger levy.

Lien of attachments—how created.

§ 3244. The lien of attachment is created by the levy and not the judgment on the attachment, and in case of a conflict between attachments, the first levied shall be first satisfied, but in a contest between attachments and ordinary judgments, or suits, it is the judgment, and not the levy, which fixes the lien.

Article 1.—General Provisions.

CHAPTER III.

PETITION AND PROCESS.

ARTICLE 1. General provisions.

ARTICLE 2. Particular cases.

ARTICLE I.

GENERAL PROVISIONS.

SECTION.

3245. Suits—how commenced.
 3246. Time filing to be endorsed on writ.
 3247. Process to be attached if not waived
 3248. Appearance and pleading, &c.
 3249. If the Judge be dead or disabled.
 3250. Process and service may be waived.
 3251. Must be filed 20 days before court.
 3252. Must be served fifteen days.

SECTION.

3253. Entry of Sheriff may be traversed.
 3254. Defendants residing out of county.
 3255. If no Sheriff or Clerk be elected.
 3256. If process be delivered too late.
 3257. If the Sheriff is a party.
 3258. Formal defects do not vitiate.
 3259. No special pleadings allowed.

§ 3245. Ordinary suits in the Superior and Inferior Courts shall be by petition to the court, signed by the plaintiff or his counsel, plainly, fully, and distinctly setting forth his charge or demand, and no want of form shall be cause of delay, if this article is substantially complied with. Suits—how commenced.

§ 3246. Upon such petition the Clerk shall endorse the date of its filing in office, which shall be considered the time of the commencement of the suit. Time of filing to be endorsed.

§ 3247. To such petition the Clerk shall annex a process (unless the same is waived) signed by the Clerk or his deputy, and bearing test in the name of a Judge of the court, and directed to the Sheriff, or his deputy, requiring the appearance of the defendant at the return term of the court. Process to be attached, unless waived.

§ 3248. Appearance and pleading shall be a waiver of all irregularities of the process, or of the absence of process, and the service thereof. Appearance and pleading cures defects.

§ 3249. If the Judge in whose name the process bears test is dead, or otherwise disqualified at the time, the process shall be good, and amended on motion. If the Judge be dead, &c.

§ 3250. The defendant may acknowledge service and waive process, provided the same be in writing, signed by the defendant, or some one authorized by him. Process and service may be waived.

Article 1.—General Provisions.

Must be filed
twenty days
before the
sitting of
court.

§ 3251. The original petition shall be deposited in the Clerk's office, at least twenty days before the term to which it is returnable; and if delivered within the twenty days the Clerk shall make the same returnable to the next term thereafter.

Original and
copy to be
delivered to
the Sheriff.

§ 3252. The Clerk shall deliver the original petition, with process annexed, together with a copy of the petition and process for each defendant, to the Sheriff, or his deputy, who shall serve such copy upon each defendant residing in the county, at least fifteen days before the first day of the term, and within five days from the time of receiving the same, and make an entry of such service upon the original petition, and return the same to the Clerk. Leaving a copy at the defendant's residence shall be a sufficient service.

Entry of the
Sheriff may
be traversed

§ 3253. The entry of the Sheriff, or his deputy, may be traversed by the defendant at the first term after notice of such entry is had by him, and before pleading to the merits; but this shall not deprive the defendant of his right of action against the Sheriff for a false return.

When def-
endants re-
side out of
the county.

§ 3254. If any of the defendants reside out of the county, the Clerk shall issue a second original and copy for such other county or counties, and forward the same to the Sheriff, who shall serve the copy and return the second original, with his entry thereon, to the Clerk of the court from which the same issued.

If no Sheriff
or Clerk be
elected.

§ 3255. If any county shall refuse or neglect to elect a Sheriff or Clerk for sixty days after a vacancy shall have occurred, suitors may apply to any Clerk or Sheriff of an adjoining county, and have the requisite duty performed by them, and their acts shall be as valid as if they were officers of such delinquent county.

If process be
delivered
too late.

§ 3256. If the process is delivered to the Sheriff, or his deputy, too late for service within the time specified, he shall return the same with an entry, stating the truth of the case, and if the defendant cannot be found, and does not reside within the county, the Sheriff shall make return of the fact in the same manner.

If the Sher-
iff is a par-
ty, &c.

§ 3257. If the Sheriff is a party to the cause, the process shall be directed to the Coroner of the county, and to the Sheriffs of the adjoining counties, and may be served by either as convenience may suggest.

Petition or
process not
affected by
formal ob-
jections.

§ 3258. No technical or formal objections shall invalidate any petition or process; but if the same substantially conforms to the requisitions of this Code, and the defendant has had notice of the pendency of the cause, all other objections shall be disregarded;

Article 1.—General Provisions.

Provided, there is a legal cause of action set forth as required by this Code.

§ 3259. No special pleadings shall be admitted at law in the Superior or Inferior Courts, and every case shall go to the jury and be tried upon the petition, process and answer alone, and no non-suit shall be awarded when the cause of action is substantially set forth in the declaration for any formal variance between the allegations and the proof.

Special pleadings not admitted

No non-suit shall be allowed.

ARTICLE II.

PARTICULAR CASES.

SECTION 1. Against joint and joint and several contractors.

SECTION 2. In ejectment.

SECTION 3. Against corporations.

SECTION 4. Against trustees.

SECTION 5. Against executors, administrators and guardians.

SECTION 6. Particular forms.

SECTION I.

AGAINST JOINT AND JOINT AND SEVERAL CONTRACTORS.

SECTION.

3260. Joint contractors, &c.
 3261. When a note is signed by two, &c.
 3262. Against co-partners.
 3263. When two or more are sued, &c.

SECTION.

3264. Partnership property, &c.
 3265. If several are sued, &c.
 3266. A maker and endorser, &c.
 3267. Suit on plaintiff's bond.

§ 3260. In all cases where a person desires to institute a suit upon any bond, note, or other written obligation, subscribed by several persons who reside in different counties, such person shall have his option to institute his suit in either of said counties, and the process shall be issued, served and returned as provided in this Code, and on such return the plaintiff may proceed as in other cases.

Joint contractors may be sued in the county where either reside.

§ 3261. Where any person shall be in possession, (in his own right, or in any other capacity,) of any note, bill, bond or other obligation in writing, signed by two or more persons, and one or more of the persons, whose names are so signed as aforesaid, shall die before the payment of the money, or the compliance

Representative of deceased obligor may be sued, &c.

Section 1.—Against Joint and Joint and Several Contractors.

with the conditions of said bond, or obligation in writing, the person holding such bill, bond, note, or other obligation in writing, shall not be compelled to sue the survivors alone, but may at his discretion sue the survivor, or survivors, or the representatives of such deceased person, or persons, or survivor, or survivors, in the same action with the representative, or representatives of such deceased person, or persons; provided nothing herein contained shall authorize the bringing of an action of any kind, whatever, against the representative, or representatives of any estate, or estates, until twelve months after the probate of the will, or the granting of letters of administration on such estate, or estates.

Twelve months allowed.

Includes co-partners.

§ 3262. The preceding section shall be so construed as to embrace debts against co-partners, as well as against joint, or joint and several contractors.

Several joint co-partners sued in the same action, &c.

§ 3263. When two or more joint contractors, or joint and several contractors, or co-partners are sued in the same action, and service shall be perfected on one or more of said contractors or co-partners, and the officer serving the writ shall return that the rest are not to be found, it shall and may be lawful for the plaintiff to proceed to judgment and execution against the defendants who are served with process in the same manner as if they were the only or sole defendants, and if either of the defendants die pending such action, his representative may be made a party, and the case proceed to judgment and execution as in other cases against the representatives of deceased persons.

On the death of one, parties may be made.

Judgments bind co-partnership property, &c.

§ 3264. Judgments so obtained shall bind, and execution may be levied on the joint or co-partnership property, and also the individual property, real and personal, of the defendant or defendants who have been served with a copy of the process, but shall not bind or be levied on the individual property of the defendant or defendants who are not served with a process.

If several are served, the plea of infancy, &c.

§ 3265. In all cases against joint obligors or promisors, any one or more of the parties may plead infancy; if such plea be sustained, the action shall not abate, but the court shall award judgment as in cases of non-suit, in favor of the party or parties so pleading, and permit the plaintiff to proceed against the other defendant or defendants to said suit, without further delay or costs.

§ 3266. In case a maker and endorser of a promissory note reside in different counties, the same may be sued in the same

Section 1—Against Joint and Joint and Several Contractors.

county where the maker resides, and a copy of the petition and process served on the endorser residing out of the county in which the suit may be commenced, as provided in case of joint obligors and promisors shall be deemed sufficient service.

When the maker and endorser of a promissory note reside in different counties, &c.

§ 3267. When a person who has been a defendant in attachment desires to sue the plaintiff for damages, and the plaintiff shall not reside in this State, it shall be sufficient to serve a copy of the petition and process on the security to the bond given by the plaintiff, and said action may proceed against both principal and security.

Suit on attachment bond of plaintiff.

SECTION II.

IN EJECTMENT.

SECTION.

3268. Ejectment for land, &c.
 3269. Mesne profits count for.
 3270. No separate action for.
 3271. Ejectment by one joint owner alone.
 3272. When several claimants, &c.
 3273. True claimant how made, &c.

SECTION.

3274. Defendant in ejectment may, &c.
 3275. Judgment shall be conclusion, &c.
 3276. A previous warrantor may be, &c.
 3277. The consent rule shall be, &c.
 3278. Recovery on prior possession.

§ 3268. In all cases where any person residing in one county whose plantation or land extends over the line into an adjoining county, and there is no one upon whom service in an action of ejectment can be legally perfected in the county where such land may lie, it shall be lawful for the Clerk of the Superior Court of the county wherein such land may lie, to issue process in behalf of the plaintiff against the defendant, which process shall be directed to the Sheriff of the county wherein such land may lie, and such Sheriff shall serve the same, and such service shall be good and valid.

Land divided by county lines, &c.

§ 3269. The plaintiff in ejectment may add a count in his writ or declaration, and submit evidence to the jury, and recover by way of damages all such sums of money, to which he may be entitled by way of mesne profits, together with the premises in dispute. The count for mesne profits may be in the name of the nominal or real plaintiff in the action.

Mesne profits—no separate suit covered.

§ 3270. No plaintiff in ejectment shall have and maintain a separate action in his behalf for the recovery of mesne profits which may have accrued to him from the premises in dispute.

a Mesne profits—no separate suit for.

Section 2.—In Ejectment.

- Joint owner may sue alone.** § 3271. Any joint tenant, tenant in common, or other person having a part interest in lands or tenements, may have and maintain an action of ejectment or trespass for the recovery of such lands or tenements, or for an injury thereto, without joining with him any other person as plaintiff; but the judgment in such case shall not affect the rights of those interested in such lands or tenements who are not parties to the suit.
- Effect of the judgment.**
- When several claimants cannot join.** § 3272. When several persons claim several parcels of land under distinct titles, and do not sustain to each other the relation of landlord and tenant, a joint action of ejectment cannot be maintained against them, nor can a joint or several recovery be had in such action, either for the premises or mesne profits.
- True claimant made defendant.** § 3273. A plaintiff in ejectment may in all cases make the true claimant defendant by serving a copy of the pending action upon him, and the person so notified shall be bound by the judgment.
- Defendant may disclaim.** § 3274. A defendant in ejectment may at the first term come in and disclaim any claim of title, or right of possession; and after such disclaimer is filed, such defendant shall not be liable for any future cost.
- Judgment—conclusive.** § 3275. A judgment in ejectment shall be conclusive as to the title between the parties thereto, unless the jury find for the plaintiff, less than the fee.
- Co-defendant—who may be.** § 3276. A previous warrantor of the title to the land in dispute may be a co-defendant in an action of ejectment, provided he would be answerable in damages in case of eviction.
- The consent rule.** § 3277. The consent rule in ejectment shall always be considered as filed, and admits lease, entry and ouster. The fictitious forms in pleading in ejectment, shall be sufficient.
- Plaintiff may recover on his prior possession—when.** § 3278. A plaintiff in ejectment may recover the premises in dispute upon his prior possession alone, against one who subsequently acquires possession of the land by mere entry, and without any lawful right whatever.

SECTION III.

AGAINST CORPORATIONS.

SECTION.

3279. Members of corporations, &c.
 3280. Railroad companies—liability of.
 3281. Process *vs.* corporations.
 3282. How served by publication.
 3283. Notices to stockholders.

SECTION.

3284. Execution—property subject.
 3285. Presiding officer failing to disclose.
 3286. President or stockholder defend.
 3287. Illegality to execution &c.
 3288. Foregoing provisions cumulative.

Section 3.—Against Corporations.

§ 3279. In all suits against the members of a private association, joint stock company, or the members of existing or dissolved corporations, to recover a debt due by the association, company, or corporation of which they are or have been members, or for the appropriation of money or funds in their hands to the payment of such debt, the plaintiff or complainant in such suit may institute the same, and proceed to judgment therein against all or any one or more of the members of such association, company or corporation or any other person liable, and recover of the member or members sued, the amount of unpaid stock in his hands, or other indebtedness of such member, or members, provided the same does not exceed the amount of the plaintiff's debt against such association, company or corporation, and if it exceed such debt, then so much only as will be sufficient to satisfy such debt.

Members of joint stock companies, corporations &c.—how sued.

§ 3280. In all cases where the person or property of an individual may be injured, or such property destroyed by the carelessness, negligence or improper conduct of any railroad company, or officer, agent or employee of such company, in or by the running of the cars or engines of the same, such company shall be liable to pay damages for the same to any one whose property or person may be so injured or destroyed, notwithstanding any by-laws, rules or regulations, or notice which may be made, passed, or given by such company, limiting its liability.

R. R. companies liable for the misconduct of officers.

§ 3281. Service of all bills, subpoenas, writs, attachments and other original process necessary to the commencement of any suit against any corporation in any court of law or equity, may be perfected by serving any officer or agent of such corporation, or by leaving the same at the place of transacting the usual and ordinary public business of said corporation, if any such place of business then shall be within the jurisdiction of the court in which said suit may be commenced. The officer shall specify the mode of service in his return.

Service of process—how perfected.

Officer must state how served.

§ 3282. In all cases where any corporation shall have no public place for doing business, or shall have no individual in office upon whom service of writs or process may be perfected within the knowledge of any party, complainant either in law or equity, the said complainant may make an affidavit, that the said corporation has no public place of doing business or has no individual in office upon whom service of writs or process may be perfected within the knowledge of said complainant and such affidavit being filed in the Clerk's office of the court to which the said

When and how service may be perfected by publication.

Section 3.—Against Corporations.

writ may be made returnable, the Clerk of the said court shall issue a citation to the said defendants to be and appear at the said court to answer the complaint, which citation shall be published once a week for three weeks prior to the court to which the said complaint may be returnable, in some newspaper published in the county in which suit is brought; if no paper is published therein, then in the one nearest thereto; and such advertisement shall be deemed and held a service upon such corporation for all purposes, either in law or equity, and any copy of the newspaper containing said publication shall be received in any of the courts as sufficient evidence of such service.

Notice to
stockholders
and effect of.

§ 3283. Plaintiffs or complainants within one month after the institution of any suit or suits at law or equity, against any corporation, joint stock, or manufacturing company, may publish once a week for four successive weeks in some public gazette of this State, notice of the commencement of said suit or suits, and said publication shall operate as notice to each stockholder in said corporation, joint stock or manufacturing company, for the purposes hereinafter mentioned.

Judgment or
decree.

§ 3284. When notice has been given as provided in the preceding sections, and a judgment or decree has been obtained against any corporation, joint stock or manufacturing company where the individual or private property of the stockholders is bound for the whole or any part of the debts of said incorporation, joint stock or manufacturing company, execution shall first be issued against the goods and chattels, lands and tenements of said corporation, joint stock or manufacturing company, and upon the return thereof by the proper officer, with the entry thereon of "no property to be found," then and in that case the clerk, or other officer, upon an application of the plaintiff, his agent or attorney accompanied with a certificate as hereinafter directed to be obtained, forthwith shall issue an execution against each of the stockholders (if required) for their rateable part of the said debt, and cost of suit, in proportion to their respective shares or other liabilities under their charter of incorporation.

Execution—
how issued
and property
subject
thereto.

President or
presiding of-
ficer bound
to give the
names, &c.

§ 3285. It shall be the duty of the President or presiding officer of such incorporation, joint stock or manufacturing company, by whatever name he may be designated, upon application of the plaintiff, his agent or attorney, forthwith to give a certificate, under oath, of the stockholders in said company, and the number of shares owned by each at the time of the rendition of judgment

Section 3.—Against Corporations.

against said company; and if upon application by the plaintiff, his agent or attorney, the President, or officer aforesaid, shall refuse to give a certificate aforesaid, or shall abscond or conceal himself to avoid giving the same, the plaintiff, his agent or attorney, may make oath of such refusal, and the clerk, or other officer, shall issue an execution against such President or presiding officer, as aforesaid, for the amount of principal, interest and cost of said suit.

Execution may issue against the President.

§ 3286. If the President or other officers of said corporation, joint stock or manufacturing company, shall fail or refuse to defend said suit or suits brought as aforesaid, any one of the stockholders of the said company shall be permitted to plead to, and defend the same in as full and ample manner as said company in its corporate capacity could or might do.

The President may defend suit.

§ 3287. In a judgment against a corporation, joint stock or manufacturing company, under the provisions of this Code, the defendant or defendants, in execution, shall be entitled to an illegality under the same rules, regulations and restrictions as defendants are in other cases.

Illegality of execution.

§ 3288. The preceding sections in relation to proceedings against corporations, joint stock and manufacturing companies, shall be understood and construed as cumulative of the common law.

Cumulative only.

SECTION IV.

AGAINST TRUSTEES.

SECTION.

3289. Claim *vs.* trust estates.
3290. Sued in Superior Court—when.
3291. Party defendant.

SECTION.

3292. Sued in Justices' Court—when.
3293. The trust estate bound by judgment.
3294. Execution must specify property.

§ 3289. Any person having a claim against any trust estate for services rendered to said estate, or for articles, or property, or money furnished for the use of said estate, or where a court of equity would render said estate liable for the payment of said claims, may collect and enforce the payment of such claim in a court of law.

Claims against a trust estate, &c.

§ 3190. The person having such claim as provided in the previous section, if the same exceeds the sum of fifty dollars, may file his petition, setting forth the grounds of such claim, and also how, and in what manner said estate is liable for the payment of

How and where sued &c.

Section 4.—Against Trustees.

said claims, and also setting forth the name or names of the trustees and the *cestui que trust*, which petition shall be filed in the office of the Clerk of the Superior Court under the same rules and regulations as in ordinary cases at common law, and the subsequent proceedings shall be, in all respects, the same.

Party defendant.

§ 3291. If there is no trustee, or he is a mere naked trustee and non-resident in the county, the *cestui que trust* shall be made the defendant, and the proceedings shall be, in all respects, the same as when the trustee is defendant.

How and where sued, &c.

§ 3292. When the claim does not exceed the sum of fifty dollars, suit may be brought in a Justices' Court under the same rules and regulations as in ordinary suits in those courts, saving only, that the summons shall set forth how, and in what way said trust estate is liable for the payment of said claim; and the judgments rendered in a Justices' Court shall have the same force and effect as is hereinbefore prescribed in relation to judgments rendered in the Superior Court.

Trust estate only bound.

§ 3293. The judgment thus rendered shall impose no personal liability on the trustee, or in any way render his property liable for the payment of the same; but said judgment shall only bind such trust estate, and execution shall issue accordingly.

Execution must specify property.

§ 3294. All executions issued upon judgments rendered under the provisions of the five preceding sections shall specify in the body of the execution the property upon which the same is to be levied, and it shall be levied on no other property.

SECTION V.

AGAINST EXECUTORS, ADMINISTRATORS AND GUARDIANS.

SECTION.

3295. Execution returned *nulla bona*, &c.
 3296. Executor, &c., failing to settle.
 3297. Guardian failing to settle.

SECTION.

3298. One or more sureties may be sued.
 3299. Property of principal to be exhausted.
 3300. Service perfected on execution, &c.

Execution returned *nulla bona*.

§ 3295. Upon the rendition of a judgment in favor of a party against an executor or administrator upon any liability of the deceased, and a return of *nulla bona* by the Sheriff or other officer authorized to make the same, the said party may at once proceed to sue upon the bond of the executor or administrator, and may recover judgment against the principal and his sureties in the same action, and if the principal has removed beyond the limits

Section 5.—Against Executors, Administrators and Guardians.

of this State, or has departed this life, or has no legal representative, then he may sue the sureties on his bond.

§ 3296. When any executor or administrator shall fail to settle an account with any distributee or legatee of the estate he represents, such distributee or legatee may institute his suit upon the bond of such representative in the first instance, and may recover judgment against the principal and his sureties without a suit against the executor or administrator in his representative character.

Principal failing to settle with legatee, &c.

§ 3297. When any guardian shall fail or refuse to settle an account with his ward upon his coming of age, such ward may institute his suit in the first instance against his guardian and sureties without first suing his guardian.

A ward may sue his guardian.

§ 3298. When any executor, administrator or guardian shall remove from this State, or shall place himself in such situation as by the provisions of this Code an attachment would lie against a debtor, or if such executor, administrator or guardian is dead, and his estate unrepresented, it shall, and may be lawful, for any party in interest, or any person having demands against such executor, administrator or guardian in such representative character, to institute his suit against the sureties, or any one or more of them, upon the bond of such executor, administrator or guardian in the first instance without first obtaining a judgment against such executor, administrator or guardian in his representative character.

One or more sureties may be sued in the first instance.

§ 3299. When judgment shall be obtained against principals and sureties, as provided in the four preceding sections, the property of the sureties shall not be levied upon until that of the principal shall be exhausted, which may be evidenced by a return of *nulla bona*.

Property of principal first to be exhausted.

§ 3300. In all cases where there are two or more executors or administrators, and one or more of such executors or administrators shall remove without the limits of this State, service of any writ or process upon those remaining in the State shall be as effectual and complete for all purposes whatever, as though service had been made upon all such executors or administrators.

How service may be perfected on administrator, &c.

SECTION VI.

PARTICULAR FORMS.

SECTION.

3301. Form for the recovery of real estate.
 3302. For recovery of personal property.
 3303. For recovery on a note, &c.
 3304. For recovery on open account.
 3305. Form of an action on a judgment.
 3306. For breach of warranty.

SECTION.

3307. For words.
 3308. All suits for slander, &c.
 3309. May accompany the words, &c.
 3310. Forms apply against executors, &c.
 3311. Actions heretofore commenced.
 3312. Abstract of title.

Form for the
recovery of
real estate.

§ 3301. The form of a declaration for the recovery of real estate and *mesne* profits may be as follows, to wit:

GEORGIA, }
County. } To the Superior Court of said county:

The petition of A. B. showeth that C. D., of said county, is in possession of a certain tract of land in said county, (here describe the land) to which your petitioner claims title; that the said C. D. has received the profits of said land since the day of 18 , of the yearly value of dollars, and refuses to deliver said land to your petitioner, or to pay him the profits thereof, wherefore your petitioner prays process may issue requiring the said C. D. to be and appear at the next Superior Court to be held in and for said county, to answer your petitioners complaint.

For the re-
covery of
personal
property.

§ 3302. The form of a declaration for the recovery of personal property may be as follows, to wit:

GEORGIA, }
County. } To the Court of said county.

The petition of A. B. showeth that C. D. of said county is in possession of a certain (here describe the property) of the value of dollars, to which your petitioner claims title; that the said C. D. refuses to deliver said to your petitioner, or to pay him the profits thereof; wherefore your petitioner prays process may issue requiring the said C. D. to be and appear at the next Court to answer your petitioner's complaint.

In suits brought under this form the verdict and judgments may be the same as in actions of trover.

For the re-
covery of
money on
note, &c.

§ 3303. The form of an action to recover money on a note, bill, bond, receipt, or written promise of any description, by adding a copy of which, with the endorser's name, (if any) and the credits thereon; and when the action is on a bond, the breach from which

Section 6.—Particular Forms.

arises the right of action shall be set out plainly, may be as follows, to wit:

GEORGIA, } To the Court of said county.
County. }

The petition of A. B. showeth that C. D. of said county is indebted to him in the sum of dollars, besides interest, on a , dated , and due , which said C. D. refuses to pay; wherefore your petitioner prays process may issue, requiring the said C. D. to be and appear at the next Court for said county, to answer your petitioner's complaint.

§ 3304. The form of an action on an account may be as follows, For recovery of money on open account
to wit:

GEORGIA, } To the Court of said county.
County. }

The petition of A. B. showeth that C. D. of said county is indebted to your petitioner dollars, on an account, as will fully appear by reference to a bill of particulars hereto annexed, which account the said C. D. refuses to pay; wherefore your petitioner prays process may issue requiring the said C. D. to be and appear at the next Court to answer your petitioner's complaint.

§ 3305. The form of an action to recover money on a judgment may be as follows, On a judgment. to wit:

GEORGIA, } To the Court of said county.
County. }

The petition of A. B. showeth that C. D., of said county, is indebted to your petitioner the sum of dollars, besides interest, on a judgment obtained by your petitioner against the said C. D. at a (name the court) held on the day of 18 , in the (county, district, or town) of , in the State of , as will fully appear by reference to an exemplification of the proceedings in said case; that the said judgment is unsatisfied, and that the said C. D. neglects to pay the same; wherefore your petitioner prays process may issue requiring the said C. D. to be and appear at the next Court to be held for the county of , then and there to answer the plaintiff's complaint.

§ 3306. The form of an action for a breach of warranty in a deed may be as follows, Breach of warranty. to wit:

GEORGIA, } To the Court of said county.
County. }

The petition of A. B. showeth that C. D. of said county is in-

Section 6.—Particular Forms.

debted to him in the sum of dollars for this, that on the
of 18 , the said C. D. executed to your petitioner a
warrantee deed to a certain tract of land (here describe the land)
for the sum of dollars, paid by your petitioner to the said
C. D.; that your petitioner has been evicted from said lot of
land, and that the said C. D. refuses to indemnify your petitioner
for his damages in that behalf; wherefore your petitioner prays
process may issue requiring the said C. D. to be and appear at
the next Court for said county, to answer your petitioner's
complaint.

Form of an
action for
words.

§ 3307. The form of an action for words may be as follows, to
wit:

GEORGIA, }
County. } To the honorable Court of said county.

The petition of A. B. showeth that C. D., of said county, has
injured and damaged your petitioner in the sum of dollars
by falsely and maliciously saying of and concerning your peti-
tioner, on the day of , 18 , the following false and
malicious words, to wit: ; wherefore your petitioner prays
process may assue requiring the said C. D. to be and appear at
the next Court to be held in and for said county, then and
there to answer your petitioner's complaint.

Apply to all
suits for
slander.

§ 3308. All suits for slander may be prosecuted under the last
preceding form of action, and the writ or complaint shall be
deemed and held sufficiently technical and full, if it follows such
form without material variation; everything else material for the
maintenance of the action may be supplied by proof.

May accom-
pany the
words, &c.

§ 3309. When the last preceding form of action is adopted the
plaintiff may accompany the words set forth by such explanatory
inuendoes as will serve to state the cause of action distinctly.

Apply to ex-
ecutors, &c.

§ 3310. The forms of action hereinbefore prescribed may be
used in cases for or against executors, administrators, and other
trustees.

Actions
heretofore
commenced.

§ 3311. In all actions which have been heretofore, or may be
hereafter commenced in the forms prescribed by this Code, the
evidence admissible, and the form of the verdict shall be the
same as though said actions had been commenced and prosecuted
under the forms existing and in use by the common law.

Abstract of
title.

§ 3312. To the declaration prescribed by this Code for the re-
covery of land and mesne profits, the plaintiff shall annex an
abstract of the title, relied on for such recovery.

CHAPTER IV.

OF THE VENUE.

SECTION.

3313. Civil cases at law—where tried.

3314. Land suits—where tried.

3315. Suits against co-obligors, &c.

3316. Against makers and endorsers.

SECTION.

3317. Against railroad companies.

3318. Against non-residents.

3319. *Scire facias* against bail.

§ 3313. All civil cases in law, (except as hereinafter provided,) shall be tried in the county wherein the defendant resides. Civil cases at law.

§ 3314. All suits respecting the title to lands shall be tried in the Superior Court of the county wherein the land lies. Suits respecting titles to land.

§ 3315. Joint, or joint and several obligors or promissors, or joint contractors or co-partners, residing in different counties, may be sued as such in the same action in either county in which one or more of the defendants reside. Joint contractors, partners, &c.

§ 3316. When a maker and endorser of a promissory note reside in different counties, they may all be sued in the same action in the county where the maker resides. Maker and endorser.

§ 3317. All railroad companies shall be liable to be sued in any county in which the cause of action originated by any one whose person or property has been injured by such railroad company, their officers, agent or employees, in or by the running of the cars or engines, for the purpose of recovering damages for such injury. And also on all contracts to be performed in the county where suit is brought. Railroad companies.

§ 3318. A citizen of another State, passing through this State, may be sued in any county thereof in which he may happen to be at the time when sued. Citizens of another State.

§ 3319. *Scire facias* against bail must issue from, and be returnable to the court in which the original judgment was obtained. *Scire facias* vs. bail.

CHAPTER V.

BAIL IN CIVIL CASES.

ARTICLE 1. Bail at the commencement of an action.

ARTICLE 2. Bail *pendente lite*.

ARTICLE 3. Proceedings against bail.

ARTICLE 4. Bail in trover.

ARTICLE I.

BAIL AT THE COMMENCEMENT OF AN ACTION.

SECTION.

3320. Bail affidavit.
 3321. Before whom made.
 3322. Bail for debts not due.
 3323. Cause of action.
 3324. Surety may require bail.
 3325. Bail in suits *ex delicto*.
 3326. Order therefor.
 3327. Contents of affidavit.
 3328. Execution of bail process.

SECTION.

3329. When Sheriff is special bail.
 3330. Defendant failing to give bail.
 3331. Bail against itinerants.
 3332. Security for jail fees.
 3333. Jail fees payable weekly.
 3334. Notice to plaintiff.
 3335. New bail—when taken.
 3336. Service of process on Sabbath.
 3337. Widows, &c., exempt from arrest.

Affidavit to obtain bail

§ 3320. In all cases where bail is requirable, and is required by the plaintiff, except as hereinafter provided, such plaintiff, his agent or attorney, shall make affidavit of the amount claimed by him, and that he has reason to apprehend the loss of said sum, or some part thereof, by reason of the fraud of the defendant, or his non-residence, if the defendant is not held to bail, which affidavit shall be filed in the Clerk's office, and copies thereof affixed to the original petition and process, and to the copy thereof, and the amount sworn to shall be endorsed on the said petition and process.

Sum sworn to must be endorsed on petition.

Affidavit before whom made.

§ 3321. An affidavit to obtain bail may be made before any Judge of the Superior, or Justice of the Inferior Court, Justice of the Peace, Clerk of the Superior or Inferior Court, Ordinary or Notary Public of this State, or before any commissioner duly appointed for this State, resident in any other State or Territory of the Confederate States, or before any Judge or Justice of a Superior Court of any one of the Confederate States, and shall have annexed thereto the seal of the State from which it shall have come, and a certificate of the Governor of such State cer-

Article 1.—Bail at the commencement of an Action.

tifying that the person taking such affidavit is one of the Judges or Justices of a Superior Court of that State.

§ 3322. When the debt is not due, and the creditor, his agent or attorney, shall make affidavit of the amount of the debt to become due, and that the debtor is about to remove, or is moving without the limits of this State, and that he has reason to apprehend the loss of said debt, or some part thereof, if the debtor is not held to bail, the creditor may commence an action or suit at law, and hold such debtor to bail under the same regulations as are prescribed in the preceding sections, and the bail so taken shall in like manner be liable to the creditor, but judgment shall not be rendered in any such case, until after the debt shall become due.

When the debt is not due.

Judgment shall not be rendered until the debt becomes due.

§ 3323. It shall not be necessary in an affidavit to obtain bail to set forth or describe the cause of action, or character of the debt.

Cause of action.

§ 3324. When a security or endorser shall make an affidavit that he is security or endorser upon any promissory note, single bill, due bill or bond, and that he apprehends that the payment of said debt, or some part thereof, will devolve upon himself if the principal is not held to bail, and presents said affidavit to the owner of said note, single bill, due bill or bond, his agent or attorney, it shall be the duty of such owner to commence suit forthwith, and such affidavit shall take the place of the one now required of the plaintiff, upon which bail process shall issue, and all other proceedings shall be the same as are now authorized in other cases of bail, and if the owner of such note, single bill, due bill or bond, fail to sue as hereinbefore prescribed, such security or endorser shall no longer be held liable for the same.

Security may require bail.

Security or endorser discharged if plaintiff fail to sue out bail.

§ 3325. In all cases sounding in damages in which bail may be required, the Judge of the Superior Court may, on an affidavit as hereinbefore prescribed, grant an order requiring bail of the defendant in such amount as he may think proper.

Bail in actions *ex delicto*.

§ 3326. Any Justice of the Inferior Court may grant an order to hold to bail in all cases *ex delicto* for the recovery of damages, whether the case shall be made returnable either to the Superior or Inferior Court of the county in which such Justice may reside, and said order, when so granted, shall have the same force and effect as if granted by a Judge of the Superior Court.

Order for bail by a Justice of the Inferior Court.

§ 3327. In bail cases sounding in damages the sum sworn to need not be endorsed upon the back of the writ, nor is it necessary

Article 1.—Bail at the commencement of an Action.

What the affidavit must contain that the affiant should swear to any particular sum as damages, but must state the facts as to the nature and extent of the injury which he has sustained; but it is no objection that the sum for which the Sheriff is directed to take bail differs from that claimed in the declaration.

How executed and returned. § 3328. When any bail process shall issue out of any of the said courts, whereby bail shall be required of any person to answer any action, in any of said courts, the Sheriff or other arresting officer shall take a bond, payable to the plaintiff with one or more sufficient securities, for double the sum sworn to, and shall return such bond with the petition and process to the court to which it is made returnable.

Officer failing to take bail, &c. § 3329. In case the Sheriff or other officer shall fail to take bail as required by the preceding section, or the bail taken shall be deemed insufficient by the court, on exceptions taken thereto, and an entry made thereof at the first term to which the said petition and process shall be returned, such Sheriff or other officer, and his securities in either case, shall be deemed and stand as special bail, and the plaintiff may proceed to judgment according to the provisions hereinafter mentioned.

Defendant failing to give bail. § 3330. In all cases where any defendant of whom bail shall be required shall fail to give good and sufficient bail, it shall be the duty of the Sheriff or other officer making the arrest, to commit such defendant to the common jail of the county, or if there shall be no jail in the county, or the same shall be insufficient, the said Sheriff, or other arresting officer, shall convey such defendant to the jail of any adjoining county, and deliver such defendant to the keeper of said jail, but such person so arrested and committed to jail shall be allowed all the benefits of appearance and defence, as if he were personally present; and shall not be discharged out of custody but by putting in bail, or by order of court.

May be committed to jail of adjoining county. § 3331. When a bail process is placed in the hands of a Sheriff or his deputy, and the person against whom such process may be, is moving about from one county to another, the said Sheriff or deputy may follow the said person into any county in this State, and serve such process.

Bail against itinerant persons—how served. § 3332. In all cases where a defendant shall be arrested by virtue of any civil process, at the suit of any person residing out of the county or State, or where the arresting officer, for the want of a sufficient jail in the county shall convey such defen-

Non-resident plaintiff must give security.

Article 1.—Bail at the commencement of an Action.

dant to the jail of an adjoining county, as provided in the preceding section, the keeper of such jail shall receive such defendant into his custody, and him safely keep until he is discharged from thence according to law, or by the direction of the plaintiff; provided that the plaintiff, his agent or attorney shall give bond, with sufficient security, to the keeper of such jail, or deposit the money for the maintenance and jail fees of the defendant, to be paid weekly.

§ 3333. If any person be imprisoned in the common jail of any county in this State on mesne or final process for debt and the plaintiff in suit or execution, his agent or attorney shall fail to pay up at the end of each and every week the jail fees which have accrued, then the Inferior Court may discharge the defendant by writ of *habeas corpus* on the application of the jailor.

Jail fees payable weekly.

§ 3334. When any debtor after giving bail or security on any mesne or final process, shall be surrendered by his bail or security, and committed by the Sheriff to jail, it shall not be lawful for any court to discharge such debtor from custody for the non-payment or security of the jail fees, unless the Sheriff or jailor shall have given at least ten days' prior notice in writing, to the plaintiff or his attorney, who shall be allowed that time within which to pay or give security for the jail fees, and thereby prevent such discharge.

Debtor not to be discharged for lack of jail fees, without notice.

§ 3335. Where the bail shall surrender his principal either in open court or in vacation, to the Sheriff of the county in which such principal may reside, and before the principal has been arrested by a *capias ad satisfaciendum*, it shall be the duty of such Sheriff to take new bail, if the bail offered is good for the forthcoming of the principal to be arrested with a *capias ad satisfaciendum* in said case, and in default thereof to pay the debt and costs.

New bail in certain cases.

§ 3336. Bail process may be issued and served on the Sabbath day and in the same manner, and under the same rules, regulations, and restrictions as are provided for the issuing and serving the same on other days, provided the person applying for such bail process, shall in addition to the oath heretofore required to be taken, swear that he apprehends the loss of the debt or some part thereof, unless said bail process shall issue on the Sabbath day.

Bail process may be served on Sabbath.

§ 3337. No widow or *feme sole* shall be arrested, imprisoned

Article 1.—Bail at the commencement of an Action.

Widows and or in any manner restrained or deprived of her liberty for or on
feme soles
 exempt from account of any debt or demand against her.
 arrest.

ARTICLE II.

BAIL PENDENTE LITE.

SECTION.

3338. Bail *pendente lite*—affidavit.

3339. Process—how issued and executed.

3340. Sheriff's duty as to process.

SECTION.

3341. Defendant—how dealt with.

3342. Liability of bail.

3343. No delay—service of process.

Bail *pen-*
dente lite.

§ 3338. In all cases where an action is pending, and no bail shall have been required at the commencement of said action, or having been required, may have been discharged, and the plaintiff, his agent or attorney shall require bail, such plaintiff, his agent or attorney, shall make affidavit as prescribed in sec. 3320, which affidavit shall be filed in the Clerk's office of the court in which such action is pending, and a copy or copies thereof affixed to the process to be issued by the Clerk of said court in which such suit may be pending, and to the copy or copies of such process, and the amount sworn to shall be endorsed on such process, and the copy or copies thereof.

Process—
how issued
and executed.

§ 3339. When an affidavit is made as provided in the preceding section, and filed in the Clerk's office of the court in which such suit is pending, the Clerk thereof shall immediately issue a process in the case with as many copies as there are defendants, annexing a copy of such affidavit to said process and copy process, which process shall be made returnable to the next term of said court after the issuing of the same, and shall be executed and returned into court by the Sheriff, or other proper officer, and when so executed and returned, shall be taken and considered a part of the record in said case.

Sheriff's
duty.

§ 3340. When the said process and copy affidavit, and copy process shall issue as aforesaid, they shall be delivered to the Sheriff, or proper officer, whose duty it shall be to execute the same at any time before the sitting of the court to which the said process may be returnable, under the same directions and provisions as pointed out in section 3328.

Defendant—
how dealt
with.

§ 3341. Any defendant when arrested by virtue of said process shall be dealt with by the officer arresting him in the same manner as would have been done had such defendant been arrested

Article 2.—Bail Pendente Lite.

at the commencement of said action on bail process, and may be discharged in the same manner and not otherwise.

§ 3342. All bail taken pending the action shall be held and bound, and liable in the same manner as he would have been had he become bail at the commencement of the action, and the plaintiff in said action shall be authorized to proceed in the same manner against the defendant and bail, or either of them, as provided in cases of bail at the commencement of the action.

Liability of bail pendentite lite.

§ 3343. A defendant so held to bail pending an action shall not, on account thereof, be entitled to any delay or continuance, but the case shall proceed to trial as though bail had been required and taken at the commencement of the case, and when there are more defendants than one in such suit, some of whom reside out of the county in which such suit is pending, a second original process, and copy or copies may issue, returnable to the court in which such suit or action is pending, which when served by the Sheriff or other proper officer of the county where such defendant or defendants reside, the said defendant or defendants shall be subject and liable to the same provisions as they would have been had the bail process issued at the commencement of the action.

Bail pendentite lite works no delay.

Service of defendants in different counties.

ARTICLE III.

PROCEEDINGS AGAINST BAIL.

SECTION.

3344. Nature of bail.
3345. Enforcement of bail's liability.
3346. Surrender of principal.
3347. *Scire facias*—how directed, &c.

SECTION.

3348. Against whom it may issue.
3349. When it may be returned.
3350. Judgment on *scire facias*.

§ 3344. All bail taken according to the provisions of this Code, shall be deemed, held and taken as special bail, and as such be liable to the recovery of the plaintiff.

Special bail.

§ 3345. The plaintiff, after final judgment, shall not take out execution against the bail until a *capias ad satisfaciendum* shall be first issued thereon, and the principal cannot be found, which process shall issue without any additional oath by the plaintiff. After its return with an entry of "not to be found," a *scire facias* may issue against the bail, which shall be served on the bail at least twenty days before the return thereof. If the bail resides

Co. sa. against principal, and return thereon

Scire facias against bail.

Article 3.—Proceedings against bail.

out of the county or State, *scire facias* may be served by publication as prescribed in cases of *scire facias* to make parties.

Bail may
surrender
the principal

§ 3346. The bail may surrender his principal at any time before final judgment on *sci. fa.*, either in open court or to the Sheriff of the county in which such principal may reside, at any time in vacation, and if surrendered in open court, it shall be the duty of the court to order such principal into the custody of the Sheriff, and if surrendered in vacation, it shall be the duty of the Sheriff to receive such principal into his custody; and in either event to commit him to jail according to the directions of this Code.

Scire facias
—how di-
rected and
served.

§ 3347. All writs of *scire facias* shall be directed to all and singular the Sheriffs of the State of Georgia, and copies thereof issued by the Clerk of the court to which said *scire facias* is returnable, and may be served by the Sheriff of the county in which the party to be notified may reside, and the original returned to the office of the Clerk.

Scire facias
may be is-
sued.

§ 3348. A *scire facias* on a bail bond may issue against the bail alone, or against the principal and bail jointly, and if the Sheriff return *non est inventus* as to the principal, the plaintiff may enter up judgment against the bail.

When re-
turned.

§ 3349. For the purpose of fixing bail the *ca. sa.* against the principal may be returned as soon as the Sheriff or other officer has made due search.

Judgment
on *scire fa-
cias.*

§ 3350. In *scire facias* against bail, if no plea shall be filed, judgment may be rendered upon motion at the return term without the intervention of a jury; but if such bail file an issuable plea, he shall be entitled to a trial by a jury.

ARTICLE IV.

BAIL IN ACTIONS FOR PERSONALTY.

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3351. Bail in trover.

3352. Affidavit and proceedings.

SECTION.

3353 Bail pending the suit, &c.

Bail in tro-
ver.

§ 3351. Where any person who is about to commence an action or suit at law, or in equity, for the recovery of negroes or other personal property, shall require bail, such person, his agent or attorney, shall make affidavit that the property is in the possession, custody or control of the defendant, and that he has reason

Article 4.—Bail in action for Personalty.

to apprehend that the said negroes, or other personal property have been or will be eloiigned or removed away, or will not be forthcoming to answer the judgment, execution or decree that shall be made in the case; and shall also state in his affidavit the value of the same, and the amount of hire claimed, if any, and add that he does verily and *bona fide* claim said negroes or other personal property, or some valuable interest therein.

§ 3352. When such affidavit is made as prescribed in the preceding section, it shall be filed in the Clerk's office of the court to which said petition, bill, or other process may be returnable, and a copy thereof affixed to the original petition, bill or process, and to the copy or copies thereof, and it shall be the duty of the Sheriff, or other lawful officer serving such petition, bill or other process, to take a recognizance payable to the plaintiff or complainant, with good security in double the amount sworn to, for the forthcoming of such negroes or other personal property, to answer such judgment, execution or decree as may be rendered or issued in the case, and such security shall be bound for the payment of the eventual condemnation money, and liable to execution in the same manner as securities upon appeals.

§ 3353. When such affidavit shall be made during the pendency of such suit or action, a copy thereof, and of the process or subpoena, shall be served in like manner by the Sheriff or other lawful officer, and security taken as required in the preceding section, and upon the defendant failing to give such security, whether the affidavit be made at the commencement of the suit or pending the same, the property shall be seized and taken by the Sheriff, or other lawful officer, and delivered over to the plaintiff or complainant, his agent or attorney, upon his entering into like recognizance with security, and if such property is not to be found, and cannot be seized and taken by such Sheriff or other lawful officer, the defendant shall be committed to jail, to be kept in safe and close custody until the said negroes or other personal property shall be produced, or until he shall enter into bond with good security for the eventual condemnation money in the nature of security upon appeals.

Affidavit—
how filed,
and subsequent
proceedings.

Bail pending
the action.

Property—
how replev-
ied.

CHAPTER VI.

OF MAKING PARTIES PENDING ACTION.

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 3356. When executors, &c. die.
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 3358. Appeal when party dies.
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 3367. When both parties die.
 3368. On death of usee.
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Parties
made on mo-
tion.

§ 3354. When a plaintiff or complainant in any cause now or hereafter pending, shall die, the executor or administrator of such plaintiff or complainant, may be made parties on motion to be made in writing, of which the defendants or their counsel shall have notice.

Party defend-
ant—how
and when
made.

§ 3355. In case the defendant shall die pending a suit at law or in equity, the plaintiff may sue out a *scire facias* immediately after the expiration of twelve months from the probate of the will or granting of letters of administration, requiring such executor or administrator to appear and answer to the said cause.

Successor of
executor,
&c. may be
made party.

§ 3356. Upon the death of any executor, administrator or guardian, or upon the revocation of his letters testamentary, of administration, or guardianship as the case may be, pending suits at law or in equity by or against such executor, administrator or guardian as such, and such death or removal being suggested of record, a *scire facias* may issue to make the successors of such deceased or removed person a party at any time after his appointment and qualification, instead of the deceased or removed executor, administrator or guardian.

Parties—
how made in
claim cases.

§ 3357. In all cases where a claim shall be interposed to property levied upon by virtue of a *fieri facias* or attachment from any of the courts of this State, in favor of one or more persons, and pending such claim one of the plaintiffs shall die, the case shall proceed in the name of the survivor, and on the death of the last or only plaintiff, the executor or administrator of such deceased may, on motion, be made a party instanter, and said case shall proceed without further delay.

Appeal
where party
dies before it
is entered.

§ 3358. When either the plaintiff or defendant shall depart this life pending a trial, or after a cause has been tried, and be-

fore the expiration of the time within which such party, if living, might enter an appeal, and no appeal shall have been entered, the legal representatives of such party dying may enter an appeal within thirty days from the time such executor or administrator shall have been qualified. And if such appeal is not entered within the time herein prescribed, judgment may be entered and execution issued as though the deceased party was in life, without making the representative a party.

Judgment where no appeal is entered.

§ 3359. When an appeal shall be entered as provided in the preceding section, it shall not be necessary to revive such suit by *scire facias*, but it shall be revived by the party appealing giving notice to the adverse party within thirty days from the time of entering such appeal, and when a defendant shall appeal, said cause shall stand for trial on the appeal docket at the first term of the court after the expiration of twelve months from the qualification of such executor or administrator.

Appeal revives the suit.

§ 3360. When any person after being summoned as garnishee shall die, either before or after answer, the executor or administrator of such person shall be made a party by *scire facias* in the usual way.

Representatives of guardians may be made parties.

§ 3361. In case of the death or removal from office of any such executor or administrator pending such proceeding as prescribed in the preceding sections, any administrator *de bonis non* may be made a party in like manner.

Administrator *de bonis non* may be made party.

§ 3362. All writs of *scire facias* for the purpose of making parties to any suit at law or in equity pending in the Superior Courts or Inferior Courts of this State, shall be issued by the Clerk of said court, in which it shall be sufficient for such Clerk to state the names of the parties, the term of the court to which said cause was made returnable, and the name of the suit or action, requiring the party to show cause why he should not be made a party to said cause, without setting forth the substance of the bill, or declaration, or the proceedings thereon.

Contents of *scire facias*.

§ 3363. All writs of *scire facias* to make parties shall be issued, directed, and served, and returned as provided in sections 3247 and 3252.

Scire facias—how issued and served.

§ 3364. In cases where there are several parties to be served with *scire facias*, and any one or more of them reside out of the State or county in which the suit is pending, a service upon those residing in the county where the suit is, and a return that the others are not to be found, shall be sufficient to authorize the

Scire facias against parties in different counties.

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making of the representatives of the deceased plaintiff or defendant parties, so as to authorize the original suit, in the name of the parties so made, to proceed to trial and judgment, as though all such parties had been served with *scire facias*.

Representative of non-resident defendants—how made parties.

§ 3365. In all cases where a defendant duly served with process, or subpoena in any case at law or equity, shall reside out of this State, or shall remove therefrom during the pendency of said cause, and the plaintiff or complainant shall die, his legal representatives shall be made parties on motion and without notice.

Husband of female party may be joined on the record.

§ 3366. When a *feme sole*, being plaintiff or defendant, shall marry pending any suit at law, or in equity, the same shall not abate by reason of such intermarriage, but the same being suggested of record, such cause shall proceed in the name of the husband and wife, either as plaintiffs or defendants as the case may be.

Parties—how made when both die.

§ 3367. When both plaintiff and defendant die, before a *scire facias* issues to make parties, the action does not abate, but *scire facias* may issue on the motion of the representative of either party against the representative of the other, and the cause proceed.

Representatives of usee may be made parties.

§ 3368. On the death of the usee his representatives must be made parties as hereinbefore provided, before the cause can proceed, even in a claim case.

Successors of trustees may be made parties.

§ 3369. On the death of a trustee or receiver pending a suit to which he may be a party as such, the same does not abate, but his successor may be made a party thereto by *scire facias* and said cause proceed to judgment.

Execution against female defendants.

§ 3370. On the death or marriage of a female defendant after final judgment, when no execution has been issued previous to such death or marriage, execution may issue as though such marriage or death had not taken place.

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ABATEMENT, RETRAKIT, DISMISSAL AND RENEWAL OF ACTIONS.

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- 3371. Suits not abated by death.
- 3372. Nor removal of executor.
- 3373. Nor death of one administrator.
- 3374. Nor of co-defendant.
- 3375. Nor when some are not liable.

SECTION.

- 3376. Suits against Sheriff survive.
- 3377. Death may be suggested.
- 3378. Retrait defined.
- 3379. Differs from dismissal, &c.
- 3380. Suits may be dismissed.

§ 3371. No suit shall abate by the death of either party, where such cause of action will in any case survive to or against the legal representatives of the deceased party, either in the same or any other form of action.

When action does not abate.

§ 3372. When letters testamentary may be revoked, and an intestacy for any cause declared, no suit by or against the removed executor, shall abate, and the newly appointed administrator can be made a party plaintiff or defendant in his stead.

Suits against removed executor do not abate.

§ 3373. An action against two joint administrators or executors does not abate by the death of one, but proceeds against the survivor.

Death of one of several administrators does not abate suit.

§ 3374. On the death of a co-defendant in an action of ejectment, made such after the commencement thereof, the action may proceed against the surviving defendant without making the representative of the deceased co-defendant a party.

Death of co-defendant.

§ 3375. An action against several persons does not abate where it appears that some of the defendants are not liable, but may proceed against those who are liable.

One of several defendants not being liable.

§ 3376. An action against a Sheriff for an escape out of process shall not abate on the death of such Sheriff, but shall survive against his securities and legal representatives.

Suits against Sheriff survive his death.

§ 3377. In all cases which have been, or may be commenced in any of the courts of this State, at law or in equity, against two or more defendants, one or more of whom have died, or may die pending said case or cases, it shall and may be lawful for the plaintiff or complainants to suggest said death of record, and to proceed in the trial of said case, or cases, against the surviving defendant, to the extent of their respective liabilities.

Death of one of several defendants.

§ 3378. A retraxis is the open, public, and voluntary renunciation by the plaintiff, in open court, of his suit or cause of action; and if this is done by the plaintiff, and a judgment entered up thereon by the defendant, the plaintiff's right of action is forever gone.

Retraxis.

§ 3379. A retraxis differs from a non-suit, dismissal, or discontinuance in this: a retraxis is positive and conclusive of the plaintiff's right of action, while a non-suit, dismissal, or discontinuance, is negative, and the plaintiff may re-commence his suit on the payment of costs.

Differs from dismissal.

§ 3380. The plaintiff, in any action, in any court, may dismiss his action either in vacation or term time, and if done in term time the Clerk or Justice shall enter such dismissal on the docket.

Actions may be dismissed at any time.

TITLE III.

OF DEFENCES AND PROCEEDINGS PENDING ACTION.

- CHAPTER 1. Of defences, pleas, &c.
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CHAPTER I.

DEFENCES, PLEAS, &c.

- ARTICLE 1. General provisions.
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GENERAL PROVISIONS.

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3381. Answer at first term.
 3382. No part to be stricken out.
 3383. Bonds, &c., denied only on oath.
 3384. Petition and answer make issues.

SECTION.

3385. Dilatory pleas must be sworn to.
 3386. Judgment by default.
 3387. General issue—special pleas.
 3388. Patent defects.

Defendant's
answer to be
filed at first
term.

§ 3381. In all cases at law where the defendant has been served with petition and process, as provided by this Code, he shall appear at the court to which such process is made returnable, and on or before the last day of said court, shall make his defence in writing, which shall plainly, fully, and distinctly set forth his defence, and be signed by the defendant or his attorney, which said answer shall contain as many several matters as such defendant may think necessary for his defence.

No part of
answer to be
stricken out.

§ 3382. No part of an answer shall be stricken out or rejected on account of being contradictory to another part of the same, but the court shall suffer the whole answer to remain, if the defendant should desire it, and avail himself of any advantage he can or may have under either or the whole of said answer, and proceed to trial accordingly.

§ 3383. No person shall, in his plea or answer, be permitted to deny any deed, bill, single or penal bond, note, draft, receipt, or

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der, or other instrument in writing, which is the foundation of the action, unless he shall make affidavit of the truth of such plea or answer at the time of filing the same. Instrument sued on denied only on oath.

§ 3384. The petition and answer shall be sufficient to carry the cause to the jury without any replication or other course of proceeding. Petition and answer make the issue.

§ 3385. No dilatory answer shall be received or admitted, unless an affidavit be made to the truth thereof, and must be filed at the first term. Dilatory pleas.

§ 3386. When any defendant shall fail to appear and answer at the return term of the petition and process, the court shall enter default upon the docket, which shall be considered a judgment by default, without a formal entry thereof, and the plaintiff's claim, allegation, or demand, shall be tried, in all cases of default, by a jury, but no such trial shall, in any case, be had at the first term, except specially provided for by law. Default and proceedings thereon.

§ 3387. The general issue is a denial of the allegations in the plaintiff's declaration, and shall be considered as filed, in all cases which are answered to at the first term, and no other evidence is admissible under such plea, except such as disproves the plaintiff's cause of action; all other matters, in satisfaction or avoidance, must be specially pleaded. General issue. Special pleas.

§ 3388. All defects which appear on the face of the pleadings, may be taken advantage of by motion. Patent defects.

Section 1.—To the Jurisdiction.

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SECTION 2. Of set-off.

SECTION 3. Of usury.

SECTION 4. Of failure of consideration.

SECTION 5. Of *non est factum*.

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SECTION I.

TO THE JURISDICTION.

SECTION.

3389. Jurisdiction not given by consent.

3390. When admitted.

3391. Pleas to the jurisdiction.

SECTION.

3392. Contents of the plea.

3393. Must be sworn to.

Jurisdiction
not given by
consent.

§ 3389. Parties, by consent, express or implied, cannot give jurisdiction to the court as to the person or subject matter of the suit; it may, however, be waived, so far as the rights of the parties are concerned, but not so as to prejudice third person.

Jurisdiction
—when ad-
mitted.

§ 3390. If a defendant appear and plead to the merits, without pleading to the jurisdiction, and without excepting thereto, he thereby admits the jurisdiction of the court.

Pleas to the
jurisdiction.

§ 3391. Pleas to the jurisdiction must be pleaded in person, and must, when relied on, be pleaded specially, unless a want of jurisdiction appears on the face of the proceedings, in which case it may be taken advantage of on motion.

Contents of
the plea.

§ 3392. In all pleas to the jurisdiction of the court, it must appear that there is another court in this State which has jurisdiction of the case.

Must be
sworn to.

§ 3393. A plea to the jurisdiction, being a dilatory plea, must be sworn to.

Section 2.—Of Set-off.

SECTION II.

OF SET-OFF.

SECTION.

3394. Pleas of set-off.
 3395. Sets-off against estates.
 3396. Judgments may be set-off.

SECTION.

3397. Set-off of improvements.
 3398. Judgment for excess of set-off.
 3399. Limitations of set-off.

§ 3394. Debts, as a general rule, must be mutual between the same parties at the commencement of the action to be set off against each other; every plea of set-off must set out the demand as plainly as if sued on.

§ 3395. When a defendant pleads a set-off of a larger amount than the demand of the testator or intestate, the plaintiff may reply by showing that the estate is insolvent, and that there are outstanding debts, of higher dignity than the defendant's set-off, sufficient to exhaust the assets, for the purpose of protecting the executor or administrator from an absolute judgment.

§ 3396. One judgment may be set off against another, on motion, whether in the hands of an original party or an assignee.

§ 3397. A trespasser cannot set off improvements in an action brought for mesne profits, except when the value of the premises has been increased by the repairs or improvements which have been made. In that case, the jury may take into consideration the improvement or repairs, and diminish the profits by that amount, but not below the sum which the premises would have been worth without such improvements or repairs.

§ 3398. In all cases of mutual debts and sets-off, where the jury shall find a balance for the defendant, such defendant may enter up judgment for the amount, and take out execution in such manner as plaintiffs may do by this Code; provided such defendant shall, at the time of filing his answer, file therewith a true copy or copies of the subject matter of such sets-off; and where the plaintiff shall be indebted to the defendant on open account for dealings between themselves, and where the defendant shall hold and possess in his own right, by assignment, endorsement, or otherwise, according to law, any bond, note, bill, or other writing for money, or other thing, of the plaintiff's, such defendant may offer the same as set-off, and on due proof shall be allowed the same.

§ 3399. The statute of limitations applies to the subject matter of sets-off as well as the plaintiff's demand.

Section 3.—Usury.

SECTION III.

USURY.

SECTION.

3400. Pleas of usury.

SECTION.

3401. Examination of parties.

Plea of usury.

§ 3400. The plea of usury must set forth the sum upon which it was paid, or to be paid; the time when the contract was made; when payable; and the amount of usury agreed upon, taken or reserved.

Parties may be examined

§ 3401. When the plea of usury is filed the defendant may examine the plaintiff as a witness on the same terms and in the same manner as is prescribed for the examination of parties as witnesses in other cases; and if the plaintiff declines to answer, the defendant himself may be examined as a witness.

SECTION IV.

FAILURE OF CONSIDERATION.

SECTION 3402. Plea of failure of consideration.

Plea of failure of consideration.

§ 3402. Whenever an action shall be commenced at common law, founded upon any contract, the defendant in such action may plead and give in evidence to the jury, upon the trial thereof, that the consideration upon which said contract was founded has totally or partially failed: such plea shall only be pleaded in cases between the original parties to the contract, or their privies or assignees, whose title has been acquired with notice, actual or constructive, or by operation of law.

SECTION V.

NON EST FACTUM.

SECTION 3403. Plea of *non est factum*.Plea of *non est factum*.

§ 3403. The plea of *non est factum* is a denial of the execution of the instrument sued upon, and applies to notes and other instruments as well as deeds, and applies only when the execution of the instrument is alleged to be the act of the party filing the plea, or adopted by him.

SECTION VI.

OF OTHER PLEAS.

SECTION.

3404. Pleas peculiar to executors, &c.

3405. Other pleas by them.

3406. Plea of *nul tiel record*.

SECTION.

3407. Of former recovery, &c.

3408. Plea of coverture.

3409. Defences by Sheriff.

§ 3404. When an executor or administrator is sued as such, he may plead *ne unques* executor, or that no assets have come into his hands, or *plene administravit prator*, a sum not sufficient to satisfy debts of a higher nature against the deceased held by third persons, or *plene administravit*, that he has fully administered the assets that came into his hands, or pending the action his letters testamentary or of administration have been revoked, and the administration committed to another, to whom all the assets which came into his hands have been delivered.

Pleas peculiar to executors and administrators.

§ 3405. An executor or administrator, when the cause of action originated in the life time of the testator or intestate, may plead any plea which such testator or intestate might plead if living, and he may also plead in abatement in all such cases where such plea is applicable.

Other pleas by executors &c.

§ 3406. The plea of *nul tiel record* can only be pleaded to a record which is the gist or foundation of the action, and not to a record which is stated as an inducement only.

Plea of *nul tiel record*.

§ 3407. A former recovery, or the pendency of a former suit for the same cause of action, between the same parties, in the same or any other court that has jurisdiction, shall be a good cause of abatement; but if the first action is so defective that no recovery can be possibly had, the pendency of a former suit will not abate the action.

Pleas of former recovery and pendency of former suit.

§ 3408. When a *feme sole* is sued on a contract made by her while *covert*, and she pleads her *coverture* in bar, it is not a sufficient reply that she promised to pay or perform the contract after she is constituted a free dealer or becomes a *feme sole*, unless it be shown that there was a new consideration, or moral obligation, or separate estate secured to her at the time she made the contract.

Plea of *coverture*.

§ 3409. A Sheriff or other officer cannot defend himself against an action for escape by showing that the process under which the arrest was made was irregular, though he may when the process is void.

Defence by Sheriff.

CHAPTER II.

OF AMENDMENTS.

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ARTICLE I.

GENERAL PRINCIPLES.

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SECTION.

3416. Names of plaintiffs.
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 3418. Omission of jurisdiction.
 3419. *Scire facias* amendable.
 3420. Amendments of process.

Amendments, of pleadings, when allowed.

§ 3410. All parties, whether plaintiffs or defendants in the Superior, Inferior, or other courts, (except the Supreme Court) whether at law or in equity, may, at any stage of the cause, as matter of right, amend their pleadings in all respects, whether in matter of form or of substance, provided there is enough in the pleadings to amend by.

New cause of action, and parties not allowable.

§ 3411. No amendment adding a new and distinct cause of action, or new and distinct parties, shall be allowed unless expressly provided for by law.

Amending party may be put upon terms.

§ 3412. In case the party applying for leave to amend the pleadings or other proceedings shall have been guilty of negligence in respect to the matter of amendment, the court may compel him to pay his adversary the cost of the proceedings for which he moves, and may force reasonable and equitable terms upon him at discretion, not touching the real merits of the cause in controversy.

Misnomers amendable *instanter*.

§ 3413. All misnomers, whether in the christian or sur-name, made in writs, petitions, bills, or other judicial proceeding on the civil side of the court, shall, on motion, be amended and corrected *instanter*, without working unnecessary delay to the party making the same.

Names of partners may be added *instanter*.

§ 3414. In all suits by or against partners, or where any two or more persons sue or are sued in the same action, and the name of any person who ought to be joined in such action as plaintiff

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or defendant is omitted, the omissions shall, on motion, be amended by adding the proper party instanter.

§ 3415. When two or more persons sue or are sued in the same action, either on a contract or for a tort, the plaintiff may amend his declaration by striking out one or more of such defendants and proceed against the remaining defendant or defendants, if there is no other legal difficulty in the case.

Names of one or more defendants may be stricken.

§ 3416. When several plaintiffs sue jointly the declaration may be amended by striking out the name of one or more of such plaintiffs. And when it becomes necessary for the purpose of enforcing the rights of such plaintiff, he may amend by substituting the name of another person in his stead, suing for his use.

Name of one or more plaintiffs may be stricken

§ 3417. In an action by or against an executor, administrator or other representative, the declaration may be amended by striking out the representative character of such plaintiff or defendant. And in an action by or against an individual the pleadings may be amended by inserting his representative character.

Representative character of parties may be changed.

§ 3418. The omission to give the court jurisdiction in the pleadings is amendable.

Omission of jurisdiction amendable.

§ 3419. *Scire facias* is amendable as other pleadings.

Scire facias amendable.

§ 3420. Void process or where there is no process or waiver thereof, cannot be amended, but if service be acknowledged by the defendant, and upon hearing testimony the court becomes satisfied that process was waived by the defendant, and that at the time such service was acknowledged by accident or mistake the entry of such waiver was omitted, such omission may be supplied by amendment *nunc pro tunc*.

Amendment of process.

ARTICLE II.

PARTICULAR CASES.

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SECTION I.

OF AMENDING VERDICTS, JUDGMENTS AND EXECUTIONS.

SECTION.

3421. Amendments of verdicts.

3422. After dispersion of jury.

3423. Where part is legal and part not.

SECTION

3424. Amendments of judgment.

3425. Of executions.

Amendment of verdicts. § 3421. A verdict may be amended so as to make it conform to the declaration, if the error plainly appears upon the face of the record.

After dispersion of jury. § 3422. A verdict may be amended in mere matter of form, after the jury have dispersed; but after it has been received and recorded, and the jury dispersed, it cannot be amended in matter of substance, either by what the jurors say they intended to find, or otherwise.

Where part is legal and part illegal. § 3423. If a part of a verdict be legal and a part illegal, the court will construe such verdict, and order it amended by entering a remitter as to that part which is illegal, and give judgment for the balance.

Amendment of judgments. § 3424. A judgment may be amended by order of the court in conformity to the verdict upon which it is predicated even after an execution issues.

Amendment of executions. § 3425. A *fi. facias* or *capias ad satisfaciendum* may be amended so as to conform to the judgment from which it issued, and also as to the time of its return; but if such *fi. fa.* be levied, or the defendant be under arrest by virtue of such *ca. sa.* at the time of the amendment, such levy or arrest must fall; still the amended *fi. fa.* or *ca. sa.* may be re-executed.

Section 2.—Amending Official Returns.

SECTION II.

AMENDING OFFICIAL RETURNS.

SECTION.

3426. Official returns amendable.

SECTION.

3427. May be made *nunc pro tunc*.

§ 3426. The Sheriff or other executing officer may amend his official entries and returns, so as to make such entries and returns conform to the facts of the case at the time such entry or return was made. Official entries amendable.

§ 3427. If the Sheriff or other executing officer shall fail to make an official return which by law he should have made, such entry or return may be made *nunc pro tunc* by order of the court, so as to make the proceedings conform to the facts at the time the entry should have been made. May be made *nunc pro tunc*

SECTION III.

OF AMENDING RECORDS.

SECTION.

3428. Amendment of records.

SECTION.

3429. Discretion of the court.

§ 3428. It is a power incident to all courts to correct their own proceedings before final judgment. Amendment of records.

§ 3429. In allowing or refusing amendments there is a wide discretion to be exercised by the court, hence no fixed rule can be laid down which would apply to each particular case that might arise, but as a general rule, the court will amend the entries of its orders on the minutes, or the records and other proceedings, *nunc pro tunc*: Discretion of court as to amendments, and rules therefor.

1. When the case is within some statutory provisions.
2. When there is something on the face of the proceedings to amend by, from which what actually took place in the prior proceedings can be clearly ascertained and known.
3. In all cases where such amendment will clearly be in furtherance of justice.

Section 4.—Of Other Amendments.

SECTION IV.

OF OTHER AMENDMENTS.

SECTION.

3430. Affidavits of illegality amendable.
 3431. Also, insolvent's schedule.
 3432. Also, rules for new trial.
 3433. Certain affidavits not amendable.

SECTION.

3434. Appeal bonds amendable.
 3435. Also, affidavits to appeal.
 3436. Also, clerical mistakes.

Affidavits of
 illegality
 amendable.

§ 3430. Affidavits of illegality are upon motion and leave of court amendable *instanter* by the insertion of new and independent grounds; provided the defendant will swear that he did not know of such grounds when the original affidavit was filed.

Insolvent's
 schedule
 amendable.

§ 3431. A schedule filed by an insolvent debtor is amendable, provided he will show to the satisfaction of the court, by affidavit or otherwise, that the omission arose from ignorance, inadvertance, mistake, or inability at the time to make it more perfect; he must, however, amend *instanter*, and will not be permitted to delay a creditor thereby.

Amendment
 of rules for
 new trial.

§ 3432. A rule *ni si* for a new trial may be amended by adding new grounds not taken at the time the application was filed.

Affidavits
 cannot be
 amended.

§ 3433. An affidavit which is the foundation of a legal proceeding cannot be amended except expressly provided for by law.

Amendment
 of appeals
 and other
 bonds.

§ 3434. An appeal bond and all other bonds taken under requisition of law in the course of a judicial proceeding may be amended and new security given if necessary.

Affidavit to
 appeal
 amendable.

§ 3435. Where material words are omitted by accident or mistake in an affidavit to appeal in *forma pauperis*, such omission is amendable.

Clerical mis-
 takes may
 be amended.

§ 3436. The mistake or misprision of a clerk or other ministerial officer shall in no case work to the injury of a party where by an amendment justice may be promoted.

CHAPTER III.

OF THE PRODUCTION OF PAPERS.

SECTION.

3437. Production of books, &c.
 3438. Notice to produce.
 3439. Judgment in case of failure.
 3440. Continuance.
 3441. Affidavit of non-resident.
 3442. Notice—how made available.

SECTION.

3443. Subpœna *duces te cum*.
 3444. Penalties for disobeying.
 3445. Secondary evidence.
 3446. Transcripts of books.
 3447. Examination of books.

§ 3437. The several courts shall have power, on the trial of any cause cognizable before them respectively, on notice and proof thereof being previously given by the opposite party or his attorney, to require either party to produce books, writings and other documents in his possession, power, custody or control, which shall contain evidence pertinent to the cause in question, under circumstances where such party might be compelled to produce the same by the ordinary rules of proceeding in equity.

Production of books, &c. may be compelled.

§ 3438. The notice required by the preceding section shall be in writing, signed by the party seeking the production of the books or other writings, or his attorney, and served on the adverse party or his attorney, ten days before the production of the books, writings or documents shall be required, provided such party resides in the county where the suit is pending; if out of said county and within one hundred miles, fifteen days; if over one hundred miles and less than two hundred, twenty days; and if beyond the limits of this State, sixty days.

Notice to produce papers.

§ 3439. If the plaintiff or his attorney, being so notified, shall fail or refuse to comply with such order, the court shall on motion give judgment against such plaintiff as in case of non-suit, and if the defendant shall fail or refuse to comply therewith, the court, on motion, shall give judgment against such defendant as in case of judgment by default.

Consequences of failure to produce papers.

§ 3440. In case of the service of any notice as aforesaid, when it shall appear to the satisfaction of the court, by an affidavit of the party or otherwise, that such party has used due and proper diligence and cannot procure the books, writings, or other documents required, the cause may be continued at the instance of the party notified.

Continuance.

§ 3441. When the party notified resides without the limits of this State, but in one of the States or Territories of the Confederate States, such party may make the oath required before a commissioner of this State resident in such State or Territory, or before any officer of such State or Territory in which the party notified may reside, who is authorized by the laws of such State or Territory to administer an oath, which shall be sufficient, provided the official character of the officer attesting said affidavit shall be properly proven by the certificate of the Governor, the Secretary of State, the Chancellor, or keeper of the great seal of the State or Territory in which such affidavit is made.

Affidavit of non-resident.

Notice—
how made
available.

§ 3442. Before the notice provided for in the preceding sections shall be available, the party giving it, or his agent, must make oath (or his attorney state in his place) that he has reason to believe that the paper required is or has been in existence, that it is in the possession, power, or control of the person notified and that it is material to the issue.

Subpœna
duces te
cum.

§ 3443. When any deed, bond, note, book, writing or other documents which it may be necessary to use as testimony in any cause pending in any of the courts of this State, may be in the possession of any person resident in any county in this State, and who is not a party to said cause, the Clerk of the Court, or Justice of the Peace, as the case may be, in which said cause is pending, shall, upon application of the party or his attorney, desirous of using such testimony, issue a *subpœna duces tecum* directed to the person having such deed, bond, note, book, writing, or other document in his possession, requiring him to be and appear at the next term of said court, and to bring with him into said court the paper desired to be used as testimony, which said subpœna shall be served thirty days before the court to which it is made returnable by a Sheriff, Constable, or some private person; and the official return of the Sheriff or Constable, or the affidavit of such private person shall be sufficient evidence that the same was duly served.

Penalty for
failure to
obey subpœna
duces tecum.

§ 3444. When a subpœna shall be issued and served as provided in the preceding section, and the person whose attendance is thereby required shall fail to comply with the requisitions thereof, the court shall, on motion, issue an attachment against such defaulting person, returnable to the next term of said court, and shall fine such person in a sum not exceeding three hundred dollars, unless he shall make a sufficient excuse for such failure, to be judged of by the court; but such person shall nevertheless be subject to an action at the instance of the party by whom he was subpœnaed for any damages which such party may have sustained by reason of such failure: *Provided*, that if the person so subpœnaed shall, within ten days after the service of such subpœna, deliver to the party at whose instance the subpœna was sued out, or his attorney, or file in the office of the court, or Justice of the Peace from which such subpœna issued, the paper, the production of which is required by such subpœna, or shall deliver to the said party or his attorney, or shall file in the said office his affidavit that the said paper is not in his power, custo-

Subpœna
duces tecum
—how com-
plied with.

dy, possession or control, and that it was not at the time of serving said subpoena, then such delivery or filing of the paper so sought as aforesaid, or of such affidavit, shall be considered a full and complete compliance with the requisitions of such *subpœna duces tecum*.

§ 3445. In all cases pending in any of said courts where any party, either at law or in equity, shall pursue the course in this chapter pointed out, and is unable thereby to procure such deed, bond, note, book, writing or other document, such party shall be permitted to go into parol evidence of the contents of such deed, bond, note, book, writing or other document. Secondary evidence.

§ 3446. When any person shall be notified or served with *subpœna duces tecum* to produce books in his possession to be used as testimony on the trial of any cause as hereinbefore provided, if such person will make oath that he cannot produce the books required without suffering a material injury in his business, and shall also make, or cause to be made out, a full transcript from such books of all the accounts and dealings with the opposite party, and have such transcript examined and sworn to by an impartial witness, and produce the same in court, it shall be a compliance with the notice, or *subpœna duces tecum*. When transcripts of books may be used.

§ 3447. When the transcript provided for in the preceding section shall be produced in court, if the adverse party is dissatisfied therewith, and will swear that he believes that the books contain entries material to him which do not appear in the transcript, the court will grant him a commission to be directed to certain persons named by the parties and approved by the court, to cause the adverse party to produce the books required, (he being sworn that the books produced are all that he has or had that answer to the description in the notice,) and to examine said books, and to transmit to the court a full and fair statement of the accounts and entries between the parties under their hand, which shall be sealed up and transmitted to the court, as in case of interrogatories, which statement, when received by the court, shall be deemed a compliance with the notice, or *subpœna duces tecum*. When books may be examined by commissioners.

CHAPTER IV.

OF CONTINUANCES.

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3448. One continuance at common law.
 3449. When amending party may continue.
 3450. Continuance for surprise.
 3451. For absence of witnesses.
 3452. Admission of facts.
 3453. Continuance for absence of party.
 3454. For absence of counsel.

SECTION.

3455. When case is not reached.
 3456. Of cases returned from S. Court.
 3457. Diligence required.
 3458. Non-return of interrogatories.
 3459. Continuance on appeal.
 3460. Discretion of the court.

But one continuance at common law

§ 3448. No trial in any civil cause shall be had at the first term, (except expressly provided for by law,) and no cause whatever, depending in any of the courts of this State, shall be continued more than one term at common law, at the instance of the same party for any cause whatever.

Amending party when entitled to continuance.

§ 3449. The party amending pleadings or other proceedings in any of said courts, shall not be entitled to delay or continuance on account of such amendment except by leave of the court to enable him to make such amendment.

Continuance charged to amending party--when

§ 3450. When any amendment shall be made to the pleadings or other proceedings in the cause, if the opposite party will make oath, or his counsel state in his place that he is surprised by such amendment, and that he is less prepared for trial, and how, than he would have been if such amendment had not been made, and that such surprise is not claimed for the purpose of delay, the case may be continued in the discretion of the Judge at the instance of the amending party.

Continuance for absence of witnesses.

§ 3451. In all applications for continuances upon the ground of the absence of a witness, it must be shown to the court that the witness is absent, that he has been subpoenaed, that he resides in the county where the case is pending, that his testimony is material, that such witness is not absent by the permission, directly or indirectly, of such applicant, that he expects he will be able to procure the testimony of such witness at the next term of the court, and that such application is not made for the purpose of delay, but to enable the party to procure the testimony of such absent witness, and must state the facts expected to be proved by such absent witness.

Continuance refused when the facts are admitted.

§ 3452. No continuance shall be allowed in any court on account of the absence of a witness, or for the purpose of procuring testimony, when the opposite party is willing to admit and does

Chapter 4 —Of Continuances.

not contest the truth of the facts expected to be proved, and the court shall order such admission to be reduced to writing.

§ 3453. If either party shall be Providentially prevented from attending at the trial of any cause, and the counsel of such absent party will state in his place that he cannot go safely to trial without the presence of such absent party, such cause shall be continued, provided his continuances are not exhausted.

When absence of party is cause of continuance.

§ 3454. The illness or absence from Providential cause of counsel, where there is but one, or of the leading counsel where there are more than one, shall be a sufficient ground for a continuance, provided the party making the application will swear, that he cannot go safely to trial without the services of such absent counsel, that he expects his services at the next term, and that said application is not made for delay only.

Continuance for absence or illness of counsel.

§ 3455. A cause not reached at the trial term stands over as continued.

When case is not reached.

§ 3456. When any cause shall be sent back to the Superior Court by the Supreme Court, the same shall be in order for trial at the first term of the said Superior Court next after the session of the Supreme Court; and if such case is upon the appeal, and the continuances of either party are exhausted, the said Superior Court may grant one continuance to said party as the ends of justice may require.

Continuance of cases sent back from Supreme Court.

§ 3457. In all cases the party making an application for a continuance must show that he has used due diligence.

Diligence required.

§ 3458. When a commission issues to examine a witness, it not having been returned, shall be no cause of a continuance, unless the party seeking the continuance will make the same oath of the materiality of the testimony as in the case of an absent witness, and the party must show due diligence in suing out and having the same executed.

Continuance for non-return of interrogatories.

§ 3459. No appeal case shall be continued more than twice by the same party except for Providential cause and for which, it may be continued as often as justice may require.

Continuance on the appeal.

§ 3460. All applications for continuances are addressed to the sound legal discretion of the court, and if not expressly provided for, shall be granted or refused as the ends of justice may require.

Discretion of the court.

CHAPTER V.

GARNISHMENTS.

SECTION.	SECTION.
3461. Garnishments at common law.	3470. Garnishce—when to pay interest.
3462. How obtained.	3471. Judgment against garnishce.
3463. Affidavit and bond by agent, &c.	3472. Answer of garnishce.
3464. By one of a firm, &c.	3473. Collateral securities.
3465. How and by whom issued, &c.	3474. Attorney may be garnished.
3466. Against persons out of the county.	3475. Receiver exempt.
3467. How issued, &c.	3476. Laborer's wages exempt.
3468. Garnishments—how dissolved.	3477. Legacies, &c.
3469. Distribution of money.	3478. Garnishment of executors, &c.

Garnish-
ments at
common law

§ 3461. In cases where suit is pending, or where judgment has been obtained, the plaintiff shall be entitled to the process of garnishment under the following regulations :

Garnish-
ments—how
obtained.

§ 3462. The plaintiff, his agent or attorney at law, shall make an affidavit before some officer authorized to issue an attachment by this Code, stating the amount claimed to be due in such action, or on such judgment, and that he has reason to apprehend the loss of the same, or some part thereof, unless the process of garnishment do issue and shall give bond, with good security, in a sum at least equal to double the amount sworn to be due, payable to the defendant in the suit or judgment, as the case may be, conditioned to pay said defendant all costs and damages that he may sustain in consequence of suing out said garnishment, in the event that the plaintiff fails to recover in the suit pending, or it should appear that the amount sworn to be due on such judgment was not due.

Affidavit
and bond, by
agent or at-
torney.

§ 3463. When the affidavit is made by the agent or attorney at law of the plaintiff, he may swear according to the best of his knowledge and belief, and shall have power to sign the name of the plaintiff to such bond, who shall be bound thereby in the same manner as though he had signed it himself.

Affidavit
and bond, by
one of a firm,
&c.

§ 3464. When the debt for the recovery of which the garnishment is sought is due to co-partners, or several persons jointly, any one of said co-partners, or joint creditors, may make the affidavit and give the bond in the name of the plaintiff, as prescribed in cases of attachment.

Garnish-
ment—how
and by
whom is-
sued.

§ 3465. When such affidavit has been made, and bond given, it shall be the duty of the officer before whom the same is made, or any other officer authorized by this Code to issue attachments,

Chapter 5.—Garnishments.

to whom the said bond and affidavit may be delivered, upon the request of the plaintiff, his agent or attorney at law, to issue a summons of garnishment ^{to the person sought to be garnished} ~~(to such person)~~ directed ~~as aforesaid~~, requiring him to appear at the next term of the Court where such suit is pending, or where such judgment was obtained, but if the next Superior or Inferior Court shall be held within less than twenty days, or the next Justices' Court shall be held within less than ten days from the time such summons shall issue, then the garnishee shall be required to appear at the next court thereafter, then and there, or before that time, to depose on oath what he is indebted to, or what property or effects he has in his hands belonging to the defendant, or had at the time of the service of the summons of garnishment, and upon such affidavit, bond, and summons of garnishment, being delivered to any officer authorized by law to levy an attachment, it shall be his duty to serve such summons of garnishment upon the person to whom it is directed, if to be found in his county, and to make an entry of such service, and of his actings and doings in the premises, upon the affidavit and bond, and return the same to the court to which the person summoned as garnishee is required to appear, and all subsequent proceedings shall be the same as in this Code prescribed in relation to garnishment in cases of attachment.

§ 3466. When any of the persons sought to be garnisheed reside in a different county from the one where suit is pending, or in which judgment was obtained, it shall be the duty of the officer taking such affidavit and bond, or any other officer of the county where such suit is pending, or where such judgment was obtained, authorized by this Code to issue an attachment, to whom said bond and affidavit may be delivered, to make out a copy thereof, and certify the same to be true, and shall deliver said certified copy to the plaintiff, his agent, or attorney at law, and upon such certified copy being delivered to any officer authorized to issue an attachment of the county where the person sought to be garnisheed resides, it shall be the duty of such officer to issue summons of garnishment for such person as he may be directed by the plaintiff, his agent, or attorney at law, requiring him to appear at the next Superior, Inferior, or Justices' Court of said county, according as such suit is pending, or judgment was obtained in the Superior, Inferior, or Justices' Court, then and there to depose according to the provisions of the previous sections; but if the said Superior or Inferior Court shall be held within less than

Garnishment against persons residing out of the county.

twenty days, or said Justices' Court shall be held within less than ten days from the time such garnishment issues, the garnishee shall be required to appear at the next court thereafter.

How issued,
served and
returned, &c

§ 3467. Upon such certified copy of affidavit, bond and summons of garnishment being delivered to any officer authorized by law to levy an attachment, it shall be his duty to serve the summons upon the person to whom it is directed, and to return the said copy affidavit and bond to the court where such person is summoned to appear, together with his actings and doings entered thereon, and all subsequent proceedings shall be the same as is prescribed by this Code in relation to garnishment in cases of attachment where the garnishee resides out of the county in which the attachment is returnable.

Garnish-
ments—how
dissolved.

§ 3468. In cases where garnishments are issued when suit is pending, or judgment has been obtained, the defendant may dissolve such garnishment, and have the same dismissed upon filing in the Clerk's office of the court where suit is pending or judgment was obtained, or with the Justice of the Peace where suit is pending, or judgment was obtained in such court, a bond with security, payable to the plaintiff, for the payment of the amount due on such judgment, or which may be recovered in said action, and the costs thereon, and the plaintiff may enter up judgment upon such bond against the principal and securities, as judgment may be entered against securities upon appeal.

Money raised
by garnish-
ment—how
distributed.

§ 3469. All money raised by virtue of the process of garnishment under this Code shall be paid over to the creditors of the defendant, according to the priorities now established by law—the expenses of the moving creditors being first paid *pro rata*, by the judgment creditors receiving the benefit of his diligence.

Garnishee
liable for in-
terest—when.

§ 3470. As a general rule, a party who is prevented from paying over money by process of law is not liable for interest, but if a garnishee resists the payment of the fund in his hands, or controverts his indebtedness, he is liable for interest thereon, but he may relieve himself from interest by paying the fund into court.

Judgment.

§ 3471. The plaintiff shall not have judgment against the garnishee until he has obtained judgment against the defendant.

Answer of
garnishee.

§ 3472. The garnishee must, in his answer, admit or deny his indebtedness, or that he has, or had effects in his hands belonging to defendant, and if he is unable to do so, his inability must appear in his answer, together with all the facts plainly,

fully and distinctly set forth, so as to enable the court to give judgment thereon.

§ 3473. Collateral securities in the hands of a creditor shall not be the subject of garnishment at the instance of other creditors. Collaterals not subject to garnishment.

§ 3474. An attorney at law who has money or other effects in his hands belonging to the defendant shall be subject to be garnisheed. Attorney at law is subject to garnishment.

§ 3475. A receiver appointed by a court of equity shall not be subject to the process of garnishment. Receivers not subject to garnishment.

§ 3476. All journeymen, mechanics and day laborers shall be exempt from the process and liabilities of garnishment on their daily, weekly, or monthly wages, whether in the hands of their employers or others. Laborer's wages exempt from garnishment.

§ 3477. As a general rule, the interest of a legatee or distributee is not the subject of garnishment issued against an executor or administrator, but if the legacy has been assented to by the executor, and such legacy is not defeated by debts against the estate, and when there has been a final settlement by the administrator, and there remains in his hands a fixed balance, such legacy or the interest of the distributee, or heir, may be reached by the process of garnishment, at the instance of a creditor of such legatee, distributee, or heir at law, as the case may be. When legacies, &c., are subject to garnishment.

§ 3478. In every case a garnishment may be issued against an executor or administrator for a legacy or distributive share, if the creditor will swear—in addition to the oath required in ordinary cases—that his debtor resides without the State, or is insolvent. In such cases the executor or administrator shall not be compelled to answer the garnishment until the estate in his hands is sufficiently administered to enable him safely to answer the same. Executors, &c., may be garnisheed—when.

TITLE IV.

OF THE VERDICT AND JUDGMENT.

CHAPTER I.

VERDICT AND JUDGMENT.

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ARTICLE 2. Entering judgment.

ARTICLE 3. Effect and lien of judgment.

ARTICLE 4. Of attacking judgments.

ARTICLE 5. Transfer of judgments.

ARTICLE 6. Confession of judgments.

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ARTICLE I.

OF THE VERDICT AND ITS RECEPTION.

SECTION.

3479. Verdict must cover the issues.

3480. Must show on what plea found.

3481. Construction of verdicts.

3482. Moulding verdicts.

SECTION.

3483. Verdicts in trover.

3484. For a total divorce.

3485. For a partial divorce.

3486. Reception of verdicts.

Verdicts
must cover
the issues.

§ 3479. The verdict must cover the issues made by the pleadings, and must be for the plaintiff or defendant.

Must show
upon what
plea it is
found.

§ 3480. If there are several pleas filed by the defendant, a verdict for the defendant must show upon which of the pleas the verdict is rendered. The jury may render such verdict upon all the pleas if they see proper so to do.

Construction
of ver-
dicts.

§ 3481. Verdicts are to have a reasonable intendment, and are to receive a reasonable construction, and are not to be avoided unless from necessity.

Moulding
verdicts.

§ 3482. It shall be within the power of the Superior Court, in a proper case, to mould the verdict at law so as to do full justice to the parties, and in the same manner as a decree in equity, and the judgment and execution shall conform to the verdict.

Verdict in
trover.

§ 3483. In an action of trover the verdict may be in the alternative: that is, it must be for the value of the property sued for, which may be discharged by the return of the property within a given time specified in the verdict.

Article 1.—Of the Verdict and its Reception.

§ 3484. The form of a verdict in case of a total divorce may be as follows, to wit: We, the jury, find that sufficient proofs have been submitted to our consideration to authorize a total divorce, that is to say, a divorce *a vinculo matrimonii* upon legal principles between the parties in this case. Verdict for total divorce

§ 3485. In cases of a partial divorce the form of a verdict may be as follows, to wit: We, the jury, find that sufficient proofs have been submitted to our consideration to authorize a partial divorce between the parties, that is to say, a divorce *a mensa et thoro* upon legal principles. That the plaintiff shall pay on the _____ day of _____ to the defendant during her natural life the sum of _____ dollars for the support and maintenance of the issue of such marriage during their natural lives. Verdict for partial divorce.

§ 3486. Verdicts shall not be received except in open court, unless by agreement of the parties. Verdicts—how received.

ARTICLE II.

OF ENTERING JUDGMENT.

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3487. Judgments, when to be entered.
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SECTION.

3492. Against executors, &c.
3493. Costs against executors, &c.
3494. Judgments on bonds.
3495. In favor of, and against partners, &c.

§ 3487. In all cases when a verdict shall be rendered, the party in whose favor it may be, or his attorney, shall be allowed to enter and sign up judgment thereon at any time within four days after the adjournment of the court at which such verdict was rendered, for the amount thereof and all costs recoverable thereon, and no execution shall issue on any verdict until such judgment shall be entered up and signed by the party or his attorney. Judgment—how and when signed up.

§ 3488. If a judgment be entered within the time allowed for entering an appeal, and such appeal be entered, the judgment will be suspended. Appeal suspends judgments.

§ 3489. In all cases where judgment may be obtained, such judgment shall be entered up for the principal sum due, with interest; *Provided* the claim upon which it was obtained draws interest, but no part of such judgment shall bear interest except the principal, which may be due on the original debt. Judgment for principal and interest.

Article 2.—Of Entering Judgment.

Judgment
on appeals.

§ 3490. In all cases of appeal, where security has been given, the plaintiff, or his attorney, may enter up judgment against the principal and surety jointly and severally, and execution shall issue accordingly, and proceed against either or both, at the option of the plaintiff, until his debt is satisfied.

Judgment
against sure-
ties and en-
dorsers.

§ 3491. In all judgments against sureties or endorsers on any bill of exchange, promissory note, or other instrument in writing, the plaintiff or his attorney shall designate and identify the relation of the parties under the contract on which such judgment is rendered, and execution shall issue accordingly.

Judgment
against exec-
utors and
administra-
tors.

§ 3492. In a suit against an executor or administrator in his representative character, the judgment must be *de bonis testatoris*, except when he pleads *ne unquam executor*, or a release to *himself*, or *plene administravit*, or *plene administravit prater*, and his plea is found against him in which case the judgment is, that the plaintiff recover both the debt and costs, in the first place to be levied of the goods and chattels lands and tenements of the deceased if to be found, and if not to be found, then to be levied of the personal goods and chattels, lands and tenements of the defendant.

Judgment
for cost
against exec-
utors, &c.

§ 3493. When the verdict of a jury is against an executor or administrator, or other trustee in his representative character, a judgment for costs should be entered against him in the same character.

Judgment
on bonds.

§ 3494. All judgments rendered against the obligors of any bond, whether official or voluntary, shall be for the amount of damnification found by the verdict of a jury, and not for the penalty thereof.

Judgments
in favor of,
or against
firms.

§ 3495. Judgments entered up, or executions issued in favor of or against co-partners, when the partnership style is used therein instead of the individual names of such persons comprising said firm, shall be good.

ARTICLE III.

OF THE EFFECT AND LIEN OF JUDGMENTS.

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3496. Conclusiveness of judgment.
3497. Judgments at same term equal.
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3505. Sale of land—purchase money.

Article 3.—Of the Effect and Lien of Judgments.

§ 3496. The judgment of a court of competent jurisdiction is Conclusive- conclusive between parties and privies as to the facts which it ness of judg- decides until reversed or set aside. ments.

§ 3497. All judgments signed on verdicts rendered at the same Judgments term of the court shall be considered held and taken to be of at same term equal date, and no execution shall be entitled to any preference of equal date. by reason of being first placed in the hands of the levying officer.

§ 3498. A judgment in the Superior Court, which is taken to Rank of the Supreme Court and affirmed, loses no lien or priority by the judgments proceeding in the Supreme Court, but takes effect from the first affirmed by judgment. Supreme Court.

§ 3499. All judgments obtained in the Superior, Inferior, Jus- Dignity and tices', or other Courts of this State shall be of equal dignity and binding ef- shall bind all the property of the defendant, both real and per- fect of judg- sonal from the date of such judgment, except as otherwise provi- ments. ded in this Code.

§ 3500. In all cases where a verdict shall be rendered and judg- First judg- ment signed up thereon, and an appeal shall be entered from ments pre- such verdict, the property of the defendant shall not be bound by vents aliena- the first verdict and judgment, except so far as to prevent the tion, in cases alienation by the defendant of his property between the signing of appeal. of the first judgment, and the signing of the judgment on the appeal, but shall be bound from the signing of such judgment on the appeal.

§ 3501. A judgment has no lien upon promissory notes in the Judgments hands of the defendant, nor are choses in action liable to be seized do not bind and sold under execution, unless made so specially by statute. choses in ac- tion.

§ 3502. When any person has *bona fide*, and for a valuable con- Lien of sideration purchased real or personal property, and has been in judgment on the possession of such real property for four years, or of such transferred personal property two years, the same shall be discharged from property— the lien of any judgment against the person from whom he pur- when dis- chased. charged.

§ 3503. When a judgment lien has attached on personal prop- Lien of erty which is removed to another State and sold, if brought back judgments again to this State it will be subject to the judgment lien. on property removed

§ 3504. When a verdict for damages shall be rendered in favor Lien of of a plaintiff in trover or trespass, and a judgment signed there- judgments on, the said verdict and judgment shall not have the effect to in trover and change the property which is the subject matter of the suit, or trespass.

Article 3.—Of the Effect and Lien of Judgments.

to vest the same in the defendant in said suit until after the damages and costs recovered by the plaintiff in such action are paid off and discharged; except so far as to subject such property to be sold under and by virtue of an execution issuing from such judgment in such action of trespass or trover, and to make the same liable to the payment of the damages and costs recovered in said action in preference to any other judgment, order or decree, against the said defendant in said action of trespass or trover.

Sale of lands where purchase money is partially paid.

§ 3505. When a person holds property under a bond for titles, and the purchase money has been partially paid, the same may be levied on under judgments against such person, and the entire interest stipulated in the bond shall be sold. The proceeds of the sale shall be appropriated first to the payment of the balance of the purchase money, and the remainder to the judgment liens according to date. In all such cases notice of the levy shall be given by the levying officer to the holder of the bond for titles.

ARTICLE IV.

HOW ATTACKED, AND HEREIN OF MOTIONS IN ARREST OF JUDGMENT.

SECTION.

- 3506. Arrest of judgments.
- 3507. Nature of the motion.
- 3508. On account of defective pleadings.
- 3509. Where defects are amendable.
- 3510. When set aside for perjury.

SECTION.

- 3511. Jurisdiction of the motion.
- 3512. Judgments—where attacked.
- 3513. Void judgments.
- 3514. Judgments set aside in equity.
- 3515. How attacked by creditors, &c.

Motion in arrest of judgment.

§ 3506. When a judgment has been rendered, either party may move in arrest thereof, or to set it aside for any defect not amendable which appears on the face of the record or pleadings.

Nature of motion in arrest of judgment.

§ 3507. A motion in arrest of judgment differs from a motion for a new trial in this: the former must be predicated on some defect which appears on the face of the record or pleadings, while the latter must be predicated on some extrinsic matter not so appearing. It also differs from a motion to set aside a judgment in this: the motion, in arrest of judgment, must be made during the term at which such judgment was obtained, while a motion to set it aside may be made at any time within the statute of limitations.

Article 4.—How Attacked, &c.

§ 3508. If the pleadings are so defective that no legal judgment can be rendered, the judgment will be arrested or set aside. For defects in the pleadings.

§ 3509. A judgment cannot be arrested or set aside for any defect in the pleadings or record, that is aided by verdict, or amendable as matter of form. Amendable defects, no ground of motion.

§ 3510. Any judgment, or verdict, rule or order of court, which may have been obtained, or entered up, shall be set aside, and be of no effect if it shall appear that the same was entered up in consequence of corrupt and willful perjury; and it shall be the duty of the court, in which such verdict, judgment, rule or order, was obtained or entered up, to cause the same to be set aside, upon motion and notice to the adverse party; but it shall not be lawful for the said court to do so, unless the person charged with such perjury shall have been thereof duly convicted, and unless it shall appear to the said court, that the said verdict, judgment, rule or order, could not have been obtained and entered up, without the evidence of such perjured person, saving always to third persons, innocent of such perjury, the right which they may lawfully have acquired under such verdict, judgment, rule or order, before the same shall have been actually vacated and set aside. Judgments obtained by perjury will be set aside.

§ 3511. All motions to arrest or set aside a judgment, must be made to the court by whom such judgment was rendered, and of which motion the opposite party must have reasonable notice. Jurisdiction of the motion to arrest.

§ 3512. The judgment of a court of competent jurisdiction cannot be collaterally attacked in any other court for irregularity, but shall be taken and held as a valid judgment until it is reversed or set aside. Judgments cannot be collaterally attacked.

§ 3513. The judgment of a court having no jurisdiction of the person and subject matter, or void for any other cause, is a mere nullity, and may be so held in any court when it becomes material to the interest of the parties to consider it. Judgments—when void

§ 3514. The judgment of a court of competent jurisdiction may be set aside by a decree in chancery, for fraud, accident, or mistake, or the acts of the adverse party unmixed with the negligence or fault of the complainant. Equity may set aside judgments.

§ 3515. Creditors, or *bona fide* purchasers, may attack a judgment for any defect appearing on the face of the record, or pleadings, or for fraud, or collusion, whenever and wherever it interferes with their rights, either at law or in equity. Judgments may be attacked by creditors, &c

ARTICLE V.

OF THE TRANSFER OF JUDGMENTS.

SECTION.

3516. Judgments transferable.

SECTION.

3517. Transfer by attorney of record.

Judgments
may be
transferred.

§ 3516. Any plaintiff or transferee may *bona fide*, and for a valuable consideration, transfer any judgment or execution to a third person, and in all cases the transferee of any judgment or execution shall have the same rights, and be liable to the same equities, and subject to the same defences as the original plaintiff in judgment was.

Transfer by
attorney of
record.

§ 3517. The transfer of a judgment or execution, by the attorney of record, shall be good to pass the title thereto as against every person, except the plaintiff, or his assignee, without notice. The ratification by the plaintiff shall estop him also from denying the transfer. The receiving of the money shall be such a ratification.

ARTICLE VI.

OF CONFESSION OF JUDGMENT.

SECTION.

3518. Confession—when allowed.

3519. Judge may confess in his court.

SECTION.

3520. Right of confession and appeal.

Confession
of judgment
—where and
when al-
lowed.

§ 3518. No confession of judgment shall be entered up but in the county where the defendant resided at the commencement of the action, except expressly provided for by law, nor unless the cause has been regularly sued out and docketed as in other cases.

Judge may
confess judg-
ment in his
own court.

§ 3519. A Judge of the Superior Court, Justice of the Inferior Court, or Justice of the Peace, may confess a judgment in his own court.

Right of
confession,
and appeal
therefrom.

§ 3520. Either party has a right to confess a judgment without the consent of his adversary, and appeal from such confession without reserving the right so to do.

ARTICLE VII.

OF DORMANT JUDGMENTS AND REVIVAL THEREOF.

SECTION.

3521. Judgments need no renewal.
 3522. Revival of dormant judgments.
 3523. Debt on dormant judgments.
 3524. *Scire facias* to revive.

SECTION.

3525. From whence issued.
 3526. Revival against non-residents.
 3527. Judgment—when taken.
 3528. *Scire facias* in favor of assignee.

§ 3521. Judgments need not be renewed on the court roll.

Need not be renewed.
 Dormant judgments may be revived.

§ 3522. When any judgment obtained in any court of this State is or shall become dormant, the same may be renewed by action of debt or *scire facias* at the option of the plaintiff.

§ 3523. If the action of debt be adopted, it must be brought in the county where the defendant resides at the commencement of the action.

Debt on judgments—where to be brought.

§ 3524. *Scire facias* to revive a judgment is not an original action, but the continuation of the suit in which the judgment was obtained.

Scire facias

§ 3525. A *scire facias* to revive a dormant judgment in the Superior or Inferior Courts, must issue from and be returnable to the court of the county in which the judgment was obtained, shall be directed to all and singular the Sheriffs of this State, and signed by the Clerk of such court, who shall make out copies thereof, which shall be served by the Sheriff of the county in which the party to be notified may reside, twenty days before the sitting of the court to which it is made returnable, and the original returned to the Clerk of the court from which it issued and an original and copy shall issue for each county in which any party to be notified may reside.

Scire facias to revive—where to issue from, &c

§ 3526. If the defendant, or party to be notified, resides out of this State, a dormant judgment may be revived against such defendant or his representative, by such process as is now issued in cases where the defendant resides in this State; *Provided*, the defendant or party to be notified be served with *scire facias*, by publication in some public gazette of this State, once a month for four months previous to the term of the court at which it is intended to revive said judgment; which service shall be as effectual in all cases as if the defendant or person to be notified had been personally served.

Revival of judgments against non-residents.

§ 3527. In all cases of *scire facias* to revive a judgment, when service has been perfected as herein provided, such judgment

Article 7.—Of Dormant Judgments and Revival thereof.

Judgment of revival—when to be taken.

may be revived, on motion, at the first term without the intervention of a jury, unless the defendant shall put in an issuable plea, in which case the defendant shall be entitled to a trial by a jury as in other cases.

Scire facias in favor of assignee.

§ 3528. The *scire facias*, when the judgment has been transferred, shall issue in the name of the original plaintiff for the use of the transferee.

TITLE V.

OF APPEALS.

CHAPTER I.

OF APPEALS.

ARTICLE 1. In what cases allowed.

ARTICLE 2. When, by whom, and how entered.

ARTICLE 3. Effect of appeals.

ARTICLE 4. How and when tried.

ARTICLE I.

IN WHAT CASES ALLOWED.

SECTION.

3529. When either party may appeal.

3530. Appeal from Court of Ordinary.

SECTION.

3531. No appeal on collateral issues.

3532. How collateral issues tried.

Either party may appeal.

§ 3529. In all civil cases (except as hereinafter provided) when a verdict is rendered in the Inferior Court, or by a petit jury in the Superior Court, and on all confessions of judgments in either of said courts, either party may, as a matter of right, enter an appeal.

An appeal lies from decision of Ordinary.

§ 3530. An appeal lies to the Superior Court from any decision made by the Court of Ordinary, except an order appointing a temporary administrator.

No appeal shall be allowed on collateral issues.

§ 3531. No appeal shall be allowed in collateral issues ordered by the court; but the Superior Court may, in its discretion, grant a new trial upon such terms as shall appear reasonable and just; and when such collateral issue is tried in the Inferior Court, if said court is dissatisfied with the verdict, they may permit an appeal to the Superior Court, at their discretion.

Article 1.—In what cases allowed.

§ 3532. All collateral issues in the Superior Court, unless otherwise directed by law, shall be tried by a special jury. How such issues shall be tried. No appeal shall be allowed on a verdict rendered on a dilatory plea filed, unless by express leave of the court, granted on motion.

ARTICLE II.

WHEN, BY WHOM AND HOW ENTERED.

SECTION.

3533. When appeal shall be entered.
 3534. Sundays and holidays not counted.
 3535. By whom appeal may be entered.
 3536. Cost must be paid and bond given.
 3537. Attorney may sign for principal.
 3538. By joint contractors & corporations.
 3539. One or more may appeal.
 3540. Who and how liable on appeal.

SECTION.

3541. Security paying debt has recourse.
 3542. Executors, &c. need not pay costs.
 3543. Insolvent may appeal by affidavit.
 3544. Appeals from Ordinary, costs paid.
 3545. Ordinary to send up proceedings.
 3546. Application made to Clerks.
 3547. Appeals from Inferior Court.

§ 3533. Appeals to the Superior Court must be entered within four days after the adjournment of the Court in which the verdict or judgment was rendered. Must be entered within four days.

§ 3534. Sundays and holidays shall in no case be included in the computation of the time within which an appeal shall be entered. Sundays, &c. excepted.

§ 3535. An appeal may be entered by the plaintiff or defendant in person, or by his attorney at law or in fact, and if by the latter, he must be authorized in writing, which authority shall be filed in the court in which the case is pending at the time such appeal is entered; but if it is shown to the court that such authority exists, such court may allow a reasonable time to file the same, and such appeal shall be dismissed and execution issue without further order; if such authority is not filed within the time allowed, a ratification of an appeal, unauthorized, if made in writing, and filed in the Clerk's office before the next term of the Court, shall render the appeal valid.

§ 3536. The appellant (except as hereinafter provided) shall, previous to obtaining such appeal, pay all costs which may have accrued in the case up to the time of entering such appeal, and give bond and security for the eventual condemnation money. Appellant must pay cost.

§ 3537. If such appeal shall be entered by the attorney at law or in fact, he may sign the name of the principal to said appeal. Attorney may sign for principal.

Article 2.—When, by whom and how Entered.

bond, and the principal shall be bound thereby as though he had signed it himself.

Any partner
or joint con-
tractor may
appeal.

§ 3538. When several partners or joint contractors sue or are sued as such, any one of said partners or joint contractors may enter an appeal in the name of such firm or joint contractors, and sign the name of such firm or joint contractors to the bond required by law, which shall be binding on the firm, and such joint contractors, as though they had signed it themselves; and in case of corporations, the appeal may be entered by the President or any agent thereof managing the case, or by the attorney of record.

Corporations
may appeal
by President
&c.

One or more
may appeal.

§ 3539. When there shall be more than one party, plaintiff or defendant, and one or more of said parties, plaintiff or defendant, desires to appeal, and the others refuse or fail to appeal, such party, plaintiff or defendant, desiring to appeal may enter an appeal under such rules and regulations as are provided in this Code.

All shall be
bound by fi-
nal judg-
ment.

§ 3540. Upon the appeal of either party, plaintiff or defendant, as provided in the previous section, the whole record shall be taken up and all shall be bound by the final judgment, but in case damages shall be awarded upon such appeal, such damages shall only be recovered against the party appealing and his security, and not against the party failing or refusing to appeal.

Security has
recourse
against the
party.

§ 3541. Such security shall be bound for the judgment on the appeal, and in case any such security shall be compelled to pay off the debt or damages for which judgment may be entered in the cause, he shall have recourse only against the party for whom he became security.

Executors,
&c. may ap-
peal without
paying costs,
&c.

§ 3542. Executors, administrators, and other trustees, when sued as such, or defending solely the title of the estate, may enter an appeal without paying costs and giving bond and security as hereinbefore required; but if a judgment should be obtained against such executor, administrator or other trustee, and not the assets of the estate, he must pay costs and give security as in other cases.

When party
is unable to
pay cost, &c.

§ 3543. When any party, plaintiff or defendant, in any suit at law, or in equity, shall be unable to pay costs and give security as hereinbefore required, if such party will make and file an affidavit in writing that he is advised and believes that he has good cause of appeal, and that owing to his poverty he is unable to pay the costs and give the security required by law in cases of appeal,

Article 2.—When, by whom and how Entered.

such party shall be permitted to enter an appeal without the payment of costs or giving security as hereinbefore required.

§ 3544. In all cases in the Court of Ordinary, the party desiring to appeal, his attorney at law or in fact, shall pay all costs that may have accrued and give bond and security to the Ordinary for such further costs as may accrue by reason of such appeal; this being done, the appeal shall be entered.

From Ordinary costs must be paid, &c.

§ 3545. When an appeal has been entered in the Court of Ordinary, it shall be the duty of such Ordinary to transmit the same to the Clerk of the Superior Court of the county in which such proceedings may have been had, at least ten days before the next Superior Court of said county, to be there tried as other appeals.

Must be transmitted ten days before court.

§ 3546. All applications to enter an appeal in the Superior or Inferior Courts shall be made to the Clerks respectively, except in collateral issues tried in the Inferior Court by order of the court, in which case the application must be made to said court.

Application must be made to the Clerk.

§ 3547. When an appeal shall be entered from a verdict in the Inferior Court, it shall be the duty of the Clerk thereof to transmit the same to the Clerk of the Superior Court of the county in which the verdict was obtained, by whom it shall be entered on the appeal docket and there tried as other appeals.

How transmitted from Inferior to Superior Ct.

ARTICLE III.

EFFECT OF APPEAL.

SECTION.

3548. Investigation on appeal.

3549. Appeal suspends judgment.

SECTION.

3550. Appeals—how withdrawn.

§ 3548. An appeal to the Superior Court is a *de novo* investigation. It brings up the whole record from the court below, and all competent evidence is admissible on the trial thereof, whether adduced on a former trial or not; either party is entitled to be heard on the whole merits of the case.

Appeal *de novo* investigation of whole case.

§ 3549. An appeal suspends, but does not vacate judgment, and if dismissed or withdrawn, the rights of all the parties are the same as if no appeal had been entered.

Effects of appeal.

§ 3550. No person shall be allowed to withdraw an appeal after it shall be entered, but by the consent of the adverse party.

Cannot be withdrawn.

ARTICLE IV.

HOW AND WHEN TRIED.

SECTION.

3551. Trial of appeals.

SECTION.

3552. Frivolous appeals.

Tried by
special jury.

§ 3551. All appeals to the Superior Courts shall be tried by a special jury at the first term after the appeal has been entered, unless good cause be shown for a continuance.

Damages for
frivolous ap-
peals.

§ 3552. If upon the trial of any appeal it shall appear to the jury that the appeal was frivolous and intended for delay only, they shall assess damages against the appellant and his security, (if any) in favor of the respondent for such delay, not exceeding twenty-five per cent. on the principal sum which they shall find due, which damages shall be specially noted in their verdict.

TITLE VI.

OF EXECUTIONS.

CHAPTER 1. Of Different kind of executions.

CHAPTER 2. Of the stay of executions.

CHAPTER 3. Of the illegality of executions.

CHAPTER 4. Of forthcoming bonds.

CHAPTER I.

OF DIFFERENT KINDS OF EXECUTIONS.

ARTICLE 1. When and how issued and returned.

ARTICLE 2. Of the levy and proceedings thereon.

ARTICLE 3. Of sales under execution—when and how made.

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ARTICLE I.

WHEN AND HOW ISSUED AND RETURNED.

SECTION.

3553. How issued and on what levied.

3554. When Sheriff is a party.

3555. Affidavit to obtain *ca. sa.*3556. When *fi. fa.* or *ca. sa.* may issue.

3557. Returnable to next term.

SECTION.

3558. Must follow the judgment.

3559. Ejectment—writ of possession.

3560. Not to issue against 3d persons.

3561. Judge may frame executions.

Article 1.—When and how Issued and Returned.

§ 3553. Executions (except as hereinafter provided) shall be issued by the Clerks of the several courts in which judgment shall be obtained, and bear test in the name of one of the Judges or presiding Justices of such court, and shall bear date from the time of their issuing, and, (except as hereinafter provided,) shall be directed “to all and singular the Sheriffs of this State and their lawful deputies,” and may be levied on all the estate, both real and personal, of the defendant, subject to levy and sale, or they may issue against the body of such defendant at the option of the plaintiff or his attorney.

Executions must be issued by the clerks, bear test in the name of Judge or Justice, and be directed to the Sheriffs.

On what to be levied.

May issue against the body.

§ 3554. All executions, orders, decrees, attachments for contempt and final process, to be issued by the Clerks of the Superior or Inferior Courts in favor of or against any Sheriff of this State, shall be directed to the Coroner of the county in which said Sheriff may reside, and to all and singular the Sheriffs of the State, except the Sheriff of the county in which the interested Sheriff may reside, which may be levied, served and returned by the Coroner or other Sheriff, or a Constable of the county, at the option of the plaintiff or the party seeking the remedy.

When Sheriff is a party to be directed to Coroner and all other Sheriffs.

May be served by a Constable.

§ 3555. When the plaintiff, or his attorney, desires an execution against the body of a defendant, the plaintiff shall file with the Clerk of such court or with the Justice of the Peace, as the case may be, an affidavit stating that he has just cause to believe that the defendant has money or property of his own, within his power or control, which cannot be reached by *fi. fa.* (other than that allowed by law,) or that the defendant has property beyond the jurisdiction of the court in which the judgment was obtained, or that the defendant is able, out of his own property, to pay the plaintiff's debt, and willfully refuses so to do, and in every case the affidavit must state of what the property consists, and particularly describe the same.

Affidavit to obtain execution against the body.

§ 3556. A *fi. fa.* or *ca. sa.* may issue at any time after a verdict is rendered and judgment entered thereon, but if it is issued before the expiration of the time allowed for entering an appeal, the same will be suspended on the entering of an appeal by either party.

Fi. fa. or ca. sa. may issue at any time, but will be suspended by appeal.

§ 3557. All executions, except as otherwise provided by this Code, shall be made returnable to the next term of the court from which they issued respectively.

Returnable next term.

Article 1.—When and how Issued and Returned.

Must follow the judgment.

§ 3558. All executions must follow the judgment from which they issued, and describe the parties thereto as described in such judgment.

Upon judgment in ejectment cases, writ of possession issues with a clause to collect mesne profits and costs.

§ 3559. When a verdict in ejectment shall be rendered in favor of the plaintiff, and a judgment entered thereon, the Clerk of such court shall issue a writ of possession, in which the Clerk shall incorporate a clause directing the Sheriff to collect, by levy and sale of the defendant's property, all such sums of money as by the finding of the jury shall have been awarded to such plaintiff in ejectment as mesne profits and costs.

Writs of possession not to issue against 3d persons.

§ 3560. The writ of possession shall not issue against third persons not known in the suit on which such writ of possession is founded, nor put in possession by, nor claiming under or by virtue of, any conveyance from the defendant in such suit.

The Judge may frame executions.

§ 3561. The Judge of any Superior Court may frame and cause to be issued by the Clerk, any writ of execution to carry into effect any lawful judgment or decree rendered in his court.

ARTICLE II.

OF *CA. SA'S*.—HOW EXECUTED, AND PROCEEDINGS THEREON.

SECTION.

3562. *Ca. sa.* returned, *fi. fa.* may issue.
 3563. Defendant may be released—how.
 3564. Discharge of person no satisfact'n.
 3565. When defendant escapes.

SECTION.

3566. Place of arrest and imprisonment.
 3567. Damages for escapes.
 3568. From insufficient jail, Co. liable.

Ca. sa. may be returned and *fi. fa.* issued.

§ 3562. When a *ca. sa.* shall have issued, and the same shall not have been executed, an execution may issue against the property of the defendant on the return of said *ca. sa.*

When defendant is arrested, he may be released on delivering property to the officer, sufficient to pay the debt and costs.

§ 3563. When a *ca. sa.* shall have been served, the party on whom the same shall have been served, shall be released, provided he shall deliver to the officer serving the same, property which will, in the opinion of such officer, be sufficient to satisfy the debt and all costs, and give bond and sufficient security to the officer making the arrest, that the property so delivered is *bona fide* the property of the defendant and subject to no prior lien to the discharge of the said debt and costs; in which case the officer shall return the *ca. sa.* so issued, and take out an execution against the property of such defendant and advertise and sell the property so delivered up, to satisfy such execution and all costs.

Officer to take out *fi. fa.* and sell the property.

Article 2.—Of Ca. Sa's.—how Executed and Proceedings thereon.

§ 3564. In all cases where a debtor may have been arrested under a *ca. sa.* and is afterwards discharged from such arrest, either by the authority of the plaintiff or otherwise, without the debt being paid, such arrest and discharge shall not operate as a satisfaction of the debt, but the debtor's property shall still be liable to the judgment as though no arrest had been made; *Provided*, the officer making such arrest shall endorse on such *ca. sa.* that the defendant was discharged from arrest without paying the amount due on such *ca. sa.* The plaintiff cannot release a defendant arrested under *ca. sa.* so as to proceed against his property without the consent of such defendant.

Arrest and discharge—without payment—is not a satisfaction of the debt.

Officer shall make entry on *ca. sa.*

Plaintiff cannot release without consent.

§ 3565. Whenever any officer shall arrest a defendant on a *ca. sa.* and such defendant shall make his escape, and said officer shall be compelled to pay the amount due on said *ca. sa.* by reason of said escape, such officer shall have the control of the *fi. facias* issued, or to be issued on the judgment upon which said *ca. sa.* is founded, for the purpose of re-imbursing himself out of the property of the defendant, and the said arresting officer shall control said *fi. facias* in as full and ample a manner as the plaintiff in said *fi. facias* might or could have done, had said *ca. sa.* never issued, or had the money due on said judgment not have been paid by such officer; *Provided*, that the court, by whose order or judgment such officer shall be required to pay the amount due, shall pass an order giving such control.

If defendant escapes and officer pays the money, he shall have control of the *fi. fa.*

By order of Court.

§ 3566. Whenever any decree, order, *ca. sa.*, attachment for contempt or other final process, directed as required by this Code, shall be placed in the hands of any Sheriff or other arresting officer, and under and by virtue of said process it shall become the duty, under the laws of this State, for said Sheriff or other officer to imprison any defendant or other delinquent, it shall be the duty of such Sheriff or other officer to arrest such delinquent wherever found, and it shall be his duty to imprison him in the county where such arrest was made, or in the county where the arresting officer may reside, at the option of the party requiring the services of such Sheriff or other officer. If there is no jail, or the jail is insufficient, the person arrested may be imprisoned in the jail of an adjoining county.

Officer may arrest wherever defendant can be found.

And imprison in that county or the county of the arresting officer.

§ 3567. In all cases of escape of persons arrested for debt, by a Sheriff or other officer, the measure of damages for the plaintiff against the officer, shall be the actual loss sustained by the plaintiff, unless it shall appear that the officer voluntarily permitted

In cases of escape the measure of damages against the officer is the actual loss.

Article 2.—Of Ca. Sa's.—how Executed and Proceedings thereon.

the escape, or connived at it, or was guilty of great negligence, in which case he shall pay the full amount due to the plaintiff.

Escape by reason of insufficiency of jail, county liable.

§ 3568. If the escape was effected by reason of the insufficiency of the jail, the creditor may recover of the county the same amount which he could have recovered of the Sheriff for an involuntary escape.

ARTICLE III.

OF FL. FA'S.—HOW LEVIED AND PROCEEDINGS THEREON.

SECTION.

- 3569. What levy must contain.
- 3570. On what to be levied first.
- 3571. Growing crops exempt—exceptions.

SECTION.

- 3572. Notice of levy on land.
- 3573. Land where sold exception.
- 3574. Constable levying on land, &c.

Levy must describe property, &c.

§ 3569. The officer making a levy shall always enter the same on the process by virtue of which such levy is made, and in such entry shall plainly describe the property levied on, and the amount of the interest of defendant therein.

Property in possession of defendant first levied on.

§ 3570. When a defendant in *f. fa.* shall point out any property on which to levy the execution, such property being in the hands or possession of a person not a party to the judgment from which such execution issued, the Sheriff or other officer shall not levy thereon, but shall proceed to levy on such property as may be found in the hands and possession of the defendant, who shall nevertheless be at liberty to point out what part of his property he may think proper, which the Sheriff or other officer shall be bound to take and sell first, if the same is, in the opinion of such levying officer, sufficient to satisfy such judgment and costs.

Defendant may point out.

Growing crop not to be levied on until matured.

§ 3571. No Sheriff or other officer shall levy on any growing crop of corn, wheat, oats, rye, rice, cotton, potatoes, or any other crop usually raised or cultivated by the planters or farmers of this State, nor sell the same until such crop shall be matured and fit to be gathered; *Provided*, this provision shall not prevent any levying officer from levying on and selling crops as heretofore practiced in cases where the debtor absconds, or removes from the county or State, or from selling growing crops with the land.

Exceptions.

Levying on land must give notice in five days.

§ 3572. The officer levying on land under an execution, shall within five days thereafter leave a written notice of such levy with the tenant in possession of the land, if any, or with the defendant if in the county, or transmit such notice by mail to the defendant within the time aforesaid.

Article 3.—Fi. Fa's.—how Levied and Proceedings thereon.

§ 3573. A Sheriff or other levying officer shall not sell land out of the county in which he is Sheriff, or such officer, except when the defendant in execution shall own a tract or tracts of land divided by the line of the county of his residence, in which case it may be sold in the county of his residence, or if such tract of land is in other than that of the defendant's residence, it may be levied on and sold in either county; and in all cases of levying on land, written notice of such levy must be given to the tenant in possession, and to the defendant if not in possession.

Officer not to sell land out of his county

Notice of levy must be given.

§ 3574. No Constable (except as provided by this Code) shall be authorized to levy on any real estate or negroes, unless there is no other personal estate to be found sufficient to satisfy the debt, or such real estate or negroes being in the possession of the defendant, were pointed out by such defendant, which he has a right to do, and then such Constable is authorized to levy on such real estate or negroes, if to be found in his county, and deliver over the execution to the Sheriff of the county, with a return of the property levied upon, who shall proceed to advertise and sell the same as in case of levies made by himself.

When real estate or negroes shall not be levied on.

Must return execution to Sheriff.

ARTICLE IV.

OF SALES UNDER EXECUTION—WHEN AND WHERE MADE.

SECTION.

3575. Place, time, and manner of sales.
 3576. Notice of Sheriff's sales.
 3577. Change of advertising.
 3578. Purchaser to be put in possession.
 3579. May be obtained by order of court.

SECTION.

3580. Widow claiming dower and lessee.
 3581. Execution for purchase money.
 3582. Purchaser failing to comply.
 3583. Action against purchaser.

§ 3575. No sales shall be made by Sheriffs or Coroners, of property taken under execution, but at the court-house of the county where such levy was made, on the first Tuesday in each month, and between the hours of ten A. M., and four P. M., and at public outcry.

Place, time and manner of sales.

§ 3576. It shall be the duty of the Sheriff and Coroners to give thirty days' notice in some newspaper published in their counties respectively, and if there be no such paper published in the county, then in the nearest newspaper having the largest, or a general circulation in such county, of all such sales of land and other property executed by him, in which advertisement he shall give a full and complete description of the property to be sold,

Thirty days' notice of Sheriff's sales to be given.

Article 4.—Of Sales under Execution—when and how made.

What cattle may be sold after ten days' notice.

making known the name of the plaintiff and defendant, and the person who may be in the possession of such property; except horses, hogs and cattle, which may be sold at any time by the consent of the defendant. In which case it shall be the duty of such officer to give the plaintiff ten days' notice thereof, and also to advertise the same at three or more public places in the county where such property may be, at least ten days before the sale.

Notice of change must be given.

§ 3577. No Sheriff, Coroner, or other officer shall change the advertising connected with his office from one paper to another, without first giving notice of his intention to do so in the paper in which his advertisements may have been published.

Officer selling real estate shall put purchasers in possession.

§ 3578. When any Sheriff or other officer shall sell any real estate, by virtue of, and under any execution, it shall be the duty of such Sheriff, or other levying officer, upon application, to put the purchaser, his agent or attorney in possession of the real estate sold; *Provided*, that the provisions of this Code shall not authorize the officer to turn out any other person than the defendant, his heirs or their tenants or assignees since the judgment.

Possession can be obtained by order of Superior Court.

§ 3579. If the purchaser of real estate at Sheriff's and other sales under execution, shall fail to make application for possession thereof until the next term of the Superior Court after such sale takes place, or until the officer making such sale goes out of office, such possession can only be obtained under an order of said Superior Court.

Widow and lessee cannot be dispossessed.

§ 3580. The widow of the defendant claiming dower cannot be dispossessed of the mansion, nor can a lessee whose lease is older than the judgment under which the sale was made, be dispossessed under the provisions of the two preceding sections.

When judgment has been obtained for the purchase money for land, where bond for titles has been given, deed may be filed in Superior Court Clerk's office, and the land sold.

§ 3581. When any judgment shall be rendered in any of the courts of this State upon any note, or other evidence of debt given for the purchase money of land, when titles have not been made but a bond for titles given, it shall and may be lawful for the obligor in said bond to make and file, and have recorded in the Clerk's office of the Superior Court of the county wherein the land lies, a good and sufficient deed of conveyance to the defendant for said land, and if the said obligor be dead, then his executor or administrator may, in like manner, make and file such deed, without obtaining an order of the court for that purpose; whereupon the same may be levied on and sold under said judgment as in other cases; *Provided*, that the said judgment shall take lien upon the

Article 4.—Of Sales under Execution—when and how made.

land prior to any other judgment or incumbrance against the defendant. This judgment takes prior lien.

§ 3582. Any person who may become the purchaser of any real or personal estate at any sale which may be made at public outcry by any Sheriff or other officer, under and by virtue of any execution or other legal process, and shall fail or refuse to comply with the terms of such sale when requested so to do, shall be liable for the amount of such purchase money, and it shall be at the option of such Sheriff or other officer, either to proceed against such purchaser for the full amount of the purchase money, or to re-sell such real or personal estate and then proceed against the first purchaser for the deficiency arising from such sale. Purchaser at sale under execution failing to comply is liable for the full amount of purchase, or the deficiency on a re-sale at option of officer.

§ 3583. The action provided for in the preceding section may be brought in the name of the Sheriff or other officer making the sale, for the use of the plaintiff or defendant in execution, or any other person in interest as the case may be. Form of action against such purchaser.

ARTICLE V.

OF THE SATISFACTION OF EXECUTIONS.

SECTION.

3584. Levy on personalty unexplained.

3585. Release of property subject.

SECTION.

3586. Fund applied to younger *fi. fa.*

3587. Agreement not to enforce judgment

§ 3584. A levy upon personal property sufficient to pay the debt unaccounted for, is *prima facie* evidence of satisfaction to the extent of the value of such property, and the dismissal of such levy unexplained is an abandonment of the lien so far as third persons are concerned. A levy on personalty is *prima facie* satisfaction, unless explained.

§ 3585. If the plaintiff in execution for a valuable consideration releases property which is subject thereto, it is a satisfaction of such execution to the extent of the value of the property so released, so far as purchasers and creditors are concerned. A release of property subject is satisfaction of *fi. fa.*

§ 3586. If an execution creditor, having the older lien on a fund in the hands of the Sheriff or other officer, allows such fund by his consent to be applied to a younger *fi. fa.*, it shall be considered an extinguishment *pro tanto* of such creditor's lien so far as third persons may be concerned. Allowing fund to be applied to younger is extinguishment of older *fi. fa.*

§ 3587. An agreement for a valuable consideration never to enforce a judgment or execution, releases the judgment or execution. Agreement not to enforce, releases judgment or *fi. fa.*

CHAPTER II.

OF THE STAY OF EXECUTIONS.

SECTION.

3588. Defendant may stay execution.

3589. *Fi. fa.* to be stayed 60 days.

SECTION.

3590. Security to have control—when.

Defendant may give bond and security to pay in 60 days.

§ 3588. In all cases in the Superior or Inferior Court where a verdict shall be rendered, the party against whom the same may be, may, either in open court or in the Clerk's office, within four days after the adjournment thereof, enter into bond with good and sufficient security, for the payment of such verdict or judgment and costs within sixty days.

Bond and security being given, execution to be stayed.

§ 3589. Bond and security being given as provided in the preceding section, the verdict and judgment, or the execution thereon, shall be suspended for the said sixty days, and if the party shall fail to pay the said verdict or judgment within that time, execution shall then issue against such party and his security without farther proceedings thereon.

Security to have control.

§ 3590. The security paying off such judgment or execution, shall have control thereof.

CHAPTER III.

OF THE ILLEGALITY OF EXECUTIONS.

SECTION.

3591. Illegality—how taken.

3592. No illegality before levy and arrest.

3593. Proceedings stayed, and returned.

3594. Damages if for delay only.

SECTION.

3595. May be sold under other *ji. fas.*

3596. Who may file affidavit.

3597. Illegality not to go behind judgment

Execution proceeding illegally may be stopped by affidavit in writing stating cause; bond to be given.

§ 3591. When an execution against the property or against the body of any person shall issue illegally, or shall be proceeding illegally, and such execution shall be levied on property or the body of the defendant shall be arrested by virtue thereof, such person may make oath in writing, and shall state the cause of such illegality and deliver the same to the Sheriff or other executing officer, as the case may be, together with bond and good security for the forthcoming of such property as provided by this Code, or for the appearance of the defendant as provided in cases of insolvent debtors.

§ 3592. No affidavit of illegality shall be received by any

Chapter 3.—Of the Illegality of Executions.

Sheriff or other executing officer until a levy or an arrest has been made, as the case may be.

No affidavit of illegality —when.

§ 3593. When the levy or arrest shall have been made, and affidavit and bond delivered to the officer, as herein provided, it shall be the duty of such officer to suspend further proceedings on such execution, and return the said execution, affidavit and bond, to the next term of the court from which the execution issued, and it shall be the duty of said court to determine thereon, at the first term thereof, unless the plaintiff, or his attorney, desire to controvert the facts contained in said affidavit, in which case an issue shall be joined, which issue shall be tried by a jury at the same term, unless good cause is shown for a continuance.

Proceedings to be stayed and papers returned to court.

Facts may be controverted.

Continuance

§ 3594. Upon the trial of an issue formed on an affidavit of illegality, filed in the Superior or Inferior Courts, the jury trying the case shall have power to assess such damages, not exceeding twenty-five per cent., as may seem reasonable and just, upon the principal debt, provided it shall be made to appear that such illegality was interposed for delay only.

Damages if interposed for delay only.

§ 3595. When an execution has been levied on property, and an affidavit of illegality filed, to stay proceedings thereon, the property so levied on, shall be subject to levy and sale under other executions, and the officer making the first levy shall claim, receive, hold and retain, such amount of the proceeds of the sale, as the court shall deem sufficient to pay the execution first levied, including interest up to the time of the court at which said illegality shall be determined; and any bond given by the defendant, on filing such affidavit, shall be released and discharged, so far as relates to the property sold.

Property may be sold under other executions.

Proceeds to be retained.

Security released.

§ 3596. An affidavit, of illegality, may be filed by an attorney in fact, or an executor, administrator, or other trustee.

By whom affidavit may be filed.

§ 3597. If the defendant has not been served, and does not appear, he may take advantage of the defect, by affidavit of illegality; but if he has had his day in court, he cannot go behind the judgment, by an affidavit of illegality.

When illegality cannot go behind judgment.

CHAPTER IV.

OF FORTHCOMING BONDS.

SECTION.

3598. Forthcoming bonds may be taken.

3599. All bonds to officers, good.

SECTION.

3600. Shall not prejudice plaintiffs.

When forthcoming bond may be given.

§ 3598. When an execution shall be levied on personal property, and an illegality filed thereto, as provided by this Code, and the party filing such illegality desires to take or keep possession of such property, he shall deliver to the Sheriff, or other levying officer, a bond, payable to the levying officer, with good security, in a sum equal to double the value of the property so levied upon, to be judged of by the levying officer, conditioned for the delivery of the property levied upon at the time and place of sale, in the event that such illegality shall be dismissed by the court, or withdrawn, which bond shall be recoverable in any court having cognizance thereof.

Bonds taken by executing officers shall be good.

§ 3599. All bonds taken by the Sheriff, or other executing officers, from the defendants in execution, for the delivery of property on the day of sale, or at any other time, which they may have levied on, by virtue of any *fi. fa.*, or other legal process, from any court, shall be good and valid in law, and recoverable in any court in this State having jurisdiction thereof.

The rights of plaintiffs in *fi. fa.* not prejudiced.

§ 3600. No bond, taken in conformity with the previous section shall, in any case, prejudice or affect the rights of plaintiff in execution, but shall relate to, and have effect alone, between the officer to whom it is given and the defendant in execution; and such officer shall, in no case, excuse himself for not having made the money on an execution, by having taken such bond, but shall be liable to be ruled, as now prescribed by law.

TITLE VII.

COSTS IN CIVIL CASES.

CHAPTER 1. Costs in civil cases.

CHAPTER 2. Fees of officers of court.

CHAPTER I.

OF COSTS IN CIVIL CASES.

ARTICLE 1. How taxed.

ARTICLE 2. How collected.

ARTICLE I.

HOW TAXED.

SECTION.

3601. Party failing liable for costs.

3602. Attorney liable for neglect.

3603. When liable in other cases.

3604. Cost. when recovery less than \$50.

SECTION.

3605. When costs to be paid in advance.

3606. Costs in slander cases.

3607. Costs in personal actions.

3608. Costs of witnesses.

§ 3601. In all civil cases, in any of the courts of this State, Party failing liable for costs. (except as provided for by this Code,) the party who shall discontinue, fail or be cast in such suit, shall be liable for the costs thereof.

§ 3602. If any plaintiff shall be non-suited, or cast, by reason Attorney liable for costs for willful neglect. of the willful neglect or misconduct of his attorney, such attorney shall be liable for the costs which may have accrued in such case; and in like manner, if any defendant shall be cast, by reason of the willful neglect or misconduct of his attorney, such attorney shall be liable for the costs thereof.

§ 3603. When any attorney shall institute a suit in any of the Attorney liable for costs—when courts of this State, for any person who resides out of this State, such attorney shall be liable to pay all costs of the officers of court, in case such suit shall be dismissed, or the plaintiff be cast in his suit.

§ 3604. When any action *ex contractu*, shall be brought to the When recovery is less than \$50 Superior or Inferior Courts, and the verdict of the jury unreduced, by matter of set-off, or payment pending the action, shall be for a sum under fifty dollars, the defendant shall not be charged with more costs than would have necessarily accrued, if

Article 1.—How Taxed.

such case had been before a Justice of the Peace, and the remainder of the court charges shall be paid by the plaintiff, and may be retained out of the sum recovered by the plaintiff, and, if that is insufficient, judgment shall be entered by the court against such plaintiff, for the balance.

Costs may be demanded in advance.

§ 3605. When the plaintiff and his attorney both reside out of the limits of this State, the proper officers may demand their full costs before they shall be bound to perform any service, in any cause about to be commenced by such non-resident attorney or plaintiff.

No more costs than damages—when.

§ 3606. In all actions upon the case for slanderous words, in any court having jurisdiction of the same, if the jury shall render a verdict under ten dollars, then the plaintiff in such action shall have and recover no more costs than damages.

Costs in personal actions.

Exception.

§ 3607. In actions of assault and battery, and in all other personal actions, wherein the jury upon the trial thereof shall find the damages to be less than ten dollars, the plaintiff shall recover no more costs than damages, unless the Judge at the trial thereof, shall find and certify on the record, that an aggravated assault and battery was proved.

Costs of witnesses of adverse party.

§ 3608. No party, plaintiff or defendant, shall be liable for the costs of any witness of the adverse party, unless such witness was subpoenaed, sworn and examined on the trial of said cause, (or the plaintiff voluntarily dismisses his cause before trial) and no party shall be liable for the costs of more than two witnesses to the same point, unless the court shall certify that the question at issue was of such a character as rendered a greater number of witnesses necessary to a single point.

Two witnesses to a point.

ARTICLE II.

HOW COLLECTED.

SECTION.

3609. When cost demandable.
3610. Costs included in judgment.

SECTION.

3611. Plaintiff liable—attorney liable.
3612. Judgment against attorney for cost.

Costs not demandable till after judgment.

§ 3609. The manner of collecting costs in all civil cases in any of the courts in this State (except as otherwise provided in this Code) shall be as follows: The several officers of courts are hereby prohibited from demanding the costs in any civil case, or any

Article 2.—How Collected.

part thereof, until after judgment in the same, except as provided in the case of non-resident plaintiffs and attorneys.

§ 3610. When a case is disposed of, the costs of the same, including fees of witnesses, shall be included in the judgment against the party dismissing, being non-suited or cast. Costs—how taxed.

§ 3611. If the plaintiff should recover a judgment against the defendant, and execution issue thereon, and the executing officer shall return the same “no property to be found,” a *fi. fa.* or *ca. sa.* may issue against such plaintiff for the purpose of making said cost out of him; and if the plaintiff resides out of the State, the *fi. fa.* shall issue against the attorney also. On return of nulla bona.

§ 3612. In all cases in which it is made to appear that an attorney is liable for costs by the provisions of this Code, the court shall, on motion, order a judgment and execution against him for the same. Execution against Attorney for costs.

CHAPTER II.

FEEs OF OFFICERS OF COURT.

SECTION.	SECTION.
3613. Fees of Clerk of Supreme Court.	3624. Fees of Constables.
3614. Judges may increase or diminish.	3625. Fees of Coroners.
3615. Fees of Sheriff of Supreme Court.	3626. Fees of County Surveyors.
3616. Contingent expenses of Sup'e. Ct.	3627. Fees of County Treasurers.
3617. Contingent expenses of Sup'r. Ct.	3628. Fees of Notaries Public.
3618. Fees of Ordinary.	3629. Fees not to be charged to the State.
3619. Fees of Clerks of Superior Courts.	3630. Statement of fees may be demanded.
3620. Fees of Clerks of Inferior Courts.	3631. Charging fees unlawfully.
3621. Fees of Sheriffs.	3632. Table of fees to be kept in office.
3622. Fees of Jailors.	3633. Treble costs—suits vs. officers.
3623. Fees of Justices of the Peace.	3634. Dismissal from office.

§ 3613. The Clerk of the Supreme Court is entitled to the following fees, to wit: Fees of Clerk of Sup. Ct.

For each case entered and carried to judgment.....	\$3 75
For recording bills of exception, for every 100 words..	12½
For recording opinion.....	3 50
For remitter, including certificate and seal.....	1 25

§ 3614. The Judges of the Supreme Court may, on application of any practicing attorney of the court, decrease such bill of costs, or, on the application of the Clerk, increase it, or add other items thereto. Due notice in writing must be given of the grounds of the motion, and the decision announced by one of the Judges in open court. Judges may diminish or increase costs. Notice must be given.

Chapter 2.—Fees of Officers of Court.

Fees of Sheriff Sup. Ct.	§ 3615. The Sheriff of the Supreme Court is entitled to the fees following, to wit :	
Mode of collecting.	For each case entered and carried to judgement.	\$1 25
	Such fee must be charged in the bill of costs, collected by the Clerk and paid to the Sheriff.	
Contingent expenses of Sup. Court.	§ 3616. Any contingent expenses incurred in holding the several sessions of the Supreme Court, for lights, fuel, rent, and stationery, &c., shall be paid to the Clerk of said court, out of the State Treasury, on the certificate of the Judges thereof, as to the necessity and fact of such expenditure.	
Contingent expenses of Sup ^r Court.	§ 3617. Any contingent expenses incurred in holding any session of the Superior Court, including the above, and similar items, such as taking down testimony in cases of felony, &c., shall be paid out of the county treasury of such county, upon the certificate of the Judge of the Superior Court, and without further order.	
Fees of Ordinary.	§ 3618. The Ordinaries are entitled to the following fees, to wit :	
	For receiving application, and granting citation.	\$1 25
	For taking and recording administrators' or guardians' bond.	1 00
	For issuing letters of administration or letters testamentary.	1 50
	For recording the same.	50
	For copying the same.	50
	For signing warrant of appraisement.	50
	For receiving an appraisement or sale bill, and recording the same, if under five hundred dollars.	1 00
	If above five hundred dollars, and under two thousand	1 25
	If above two thousand, and under ten thousand dollars	1 50
	If above ten thousand and under twenty thousand dollars	1 75
	If above twenty thousand, and under fifty thousand dollars	2 00
	If above fifty thousand dollars	2 50
	For receiving application and granting letters dismissory, whole service	5 00
	For granting citation to show cause why administration should not be set aside or repealed.	2 00
Caveat.	For entering a <i>caveat</i> against administration being granted or will proven.	1 25
	For each copy of <i>caveat</i>	50

Chapter 2.—Fees of Officers of Court.

For every marriage license.....	1 50	
For every order for sale of land, negroes, or other prop- erty.....	50	
For each copy of the same.....	25	
For issuing letters of guardianship.....	1 00	
For recording the same.....	50	
For rule ni si, in each case.....	50	Rule ni si.
For copy.....	25	
For issuing process against a person for not making re- turns.....	50	
For each additional copy.....	25	
For each subpoena.....	15	Subpœna.
For examining and recording returns on all estates not worth more than two thousand dollars.....	1 00	
For all estates worth more than two, and not more than five thousand dollars.....	1 25	
For all estates worth more than five and not over ten thousand dollars.....	1 40	
For all estates worth more than ten thousand dollars..	1 60	
For recording all vouchers accompanying returns of ad- ministrators, executors, and guardians, per 100 words	12	
For recording any instrument of writing not mentioned, per 100 words.....	12	
For proceedings to authorize titles to be made to lands of deceased persons, to be paid out of the estate of the deceased.....	5 00	
For commission to free holders to divide estate.....	1 25	
For each certificate and seal.....	60	Certificate and seal. Appeal.
For entering an appeal and transmitting the proceedings to the Superior Court.....	1 50	
For registration of every free person of color, every legal requirement included.....	1 00	
For filing and recording an official bond.....	1 00	
For services as treasurer of the school fund and secretary of the board of education not exceeding 5 per cent.		
For services in making settlement of accounts of any executors, administrator or guardian as prescribed in this Code.....	10 00	
For each <i>fi. fa.</i> issued by him.....	60	

§ 3619. The Clerks of the Superior Courts are entitled to the following fees, to wit:

Fees of
Clerks of
Superior
Courts in
civil cases.

1. In civil cases—		
For every suit settled by the parties in vacation.....		\$2 00
If settled at court or non-suited, and the recording on minutes.....		3 00
For every writ where there is more than one defendant, after first copy.....		60
For every suit commenced, and prosecuted to judgment including service for recording petition, process and judgment.....		6 00
For every subpoena ticket.....		15
For writ of partition of land and recording proceedings		5 00
For recording proceedings in civil cases, per hundred words.....		15
For every exemplification, per 100 words.....		10
For recording articles of partnership under the law regulating limited partnerships.....		5 00
For recording incorporation of joint stock and other incorporated companies.....		5 00
For recording incorporation of charitable or religious associations.....		5 00
For proceedings to forfeit a charter.....		10 00
For recording proceedings in change of name.....		1 00
For furnishing and certifying any bill, process, order, &c. in equity, for publication..		1 00
For recording notice of carpenters' and masons' liens....		1 00
In trials of nuisance and recording proceedings.....		5 00
For rule <i>vs.</i> garnishee.....		1 00
For issuing commission to examine witness.....		1 00
For recording deeds.....		50
For every hundred words over 300 words thereof.....		15
For recording any instrument of writing not specified, per 100 words.....		15
For every foreclosure of any mortgage of personalty, including execution and recording proceedings.....		3 00
For every foreclosure of any mortgage of realty, including execution and recording proceedings.....		5 00
For every claim case.....		2 50
For every affidavit to hold to bail.....		50
For recording and copying proceedings in chancery and bills of exception and transcript to the Supreme Court, per 100 words.....		15

Chapter 2.—Fees of Officers of Court.

For recording remitter, order and judgment of the Supreme Court on minutes.....	1 00
For issuing <i>fi. fa.</i> or <i>ca. sa.</i> , each.....	50
For certificate and seal, each.....	50
For <i>scire facias</i> to make parties, original.....	1 50
For copies of each.....	1 00
For recording order on minutes.....	75
For issuing jury script, each.....	10
For inspection of books where their aid is required.....	25
For examination of books and abstract of result.....	1 00
For each appeal if settled before verdict.....	1 25
For each appeal if prosecuted to verdict.....	2 50
For entering every motion on the minutes.....	1 00

Whenever services are required by the law of any officer of the court, and no fee for such service is prescribed, the court shall tax in the bill of costs a reasonable charge therefor.

2. In criminal cases—

For all bills of indictment, if settled by the parties or <i>not pros'd</i> , including service for docketing and recording on the minutes and all other service.....	\$3 00	Fees in criminal cases.
For every bill of indictment, when the defendant is arraigned, tried and found guilty, including all services	5 00	
For transcribing record and evidence in State cases, per 100 words.....	15	
For recording forfeiture of bond on minutes.....	1 00	
For issuing <i>scire facias</i> after forfeiture (original).....	1 50	
For each copy.....	1 00	
For issuing subpoenas in State cases, each.....	15	

§3620. The Clerks of the Inferior Courts are entitled to the following fees, to wit:

For each appeal to the Superior Court.....	\$2 00	Fees of Clerk of the Inferior Court.
For every stray horse, mule, or ass, for every legal service required.....	2 00	
For every bull, ox, or cow, for all service required.....	1 25	
For every goat, hog or sheep.....	30	
For retailer's bond.....	1 00	
For retailer's license.....	1 00	
For copying and administering oath to retailer.....	50	
For each peddler's license.....	1 25	
For filing and recording each bond the law requires...	1 00	
For recording mark and brands.....	50	

Chapter 2.—Fees of Officers of Court.

Fees of
Sheriff in
civil cases.

For comparing and testing weights and measures and stamping or marking each.....	10
For all the proceedings for making a Notary Public....	5 00
For any service lawfully performed that is also performable, by the Clerks of the Superior Courts, the same fees as said Clerks.	
§ 3621. The Sheriffs are entitled to the fees following, to-wit:	
1. In civil cases—	
For serving a copy of a process and returning original per copy.....	\$2 00
If suit from another county.....	2 00
For summoning each witness.....	50
For summoning jury and attending trial to assess damages for right of way.....	5 00
For service in every case before a special jury.....	1 25
For each levy on single <i>f. fa.</i>	2 00
For each levy if more than one, on each levied.....	1 00
For search and return of <i>nulla bona</i>	1 00
For conducting a debtor under confinement before a judge or court.....	1 00
For serving rule <i>vs.</i> garnishee.....	1 00
If more than one, for each additional copy.....	1 00
For summoning jury to try case of nuisance.....	3 00
For removing nuisances, such fees as the court may deem reasonable.	
For summoning the juries to each term to be paid by the county.....	5 00
All sums when the amount collected on execution by sale of property does not exceed fifty dollars and under, 5 per cent.	
For all sums above fifty dollars and not exceeding \$500, 2½ per cent.	
For all sums exceeding five hundred dollars, 1¼ per cent.	
No commissions shall be charged unless the property is actually sold.	
For making out and executing titles to land.....	3 50
If presented by the purchaser.....	1 00
For making out and signing bill of sale of property....	1 25
Provided no fee shall be allowed but for one bill of sale, when it will be sufficient to convey the property to the purchasers, unless they should otherwise require.	

Chapter 2.—Fees of Officers of Court.

For taking bail bonds.....	1 00
For forthcoming bonds.....	1 00
In issues on application of insolvent debtors for service not in term time.....	5 00
For executing process, dispossessing tenant holding under plea of rent.....	3 50
For settling execution, if property be levied on and money paid before sale.....	2 00
For keeping a horse, mare, mule or ox, per day.....	25
For keeping each head of neat cattle per day.....	5
For keeping sheep, goats or hogs, per day.....	4
For following property, with attachment, out of the county, going and returning, per mile.....	5
2. In criminal cases—	
For re-committing any prisoner when a <i>habeas corpus</i> is sought for his relief.....	1 25
For every mile a prisoner may be removed under a <i>habeas corpus</i>	25
For removing a prisoner by <i>habeas corpus</i> , when no mileage is paid, per day.....	2 00
For attending a person taken by warrant to the Judge's chamber.....	1 00
For conducting a prisoner before a Judge, or court, to and from jail.....	1 25
For executing warrant of escape.....	1 00
For executing and returning a bench warrant.....	1 25
For apprehending a person suspected, if committed or held to bail.....	1 25
For each person, not exceeding two, who may be employed to guard a prisoner to jail, per day.....	1 50
For executing a criminal.....	10 00
For whipping, cropping or branding a criminal.....	5 00
§ 3622. Jailors are entitled to the following fees, to wit:	
For receiving prisoner or debtor.....	60
For turning the key or discharging the prisoner, by virtue of <i>habeas corpus</i> , by order of the court, Judges or Justice.....	60

Fees in criminal cases.

Fees of Jailors.

Chapter 2.—Fees of Officers of Court.

For dieting a white person, per day, allowing two pounds of bread, half pound beef, or one pound pork, or half pound bacon, with sufficiency of coffee and water.....	50
For dieting negro criminal, per day, allowing one quart cooked rice, or half pound bread, and half pound of bacon, or half pound beef, with sufficiency of water, &c.....	30
For dieting runaway negro, per day, allowing one pound corn bread, one pound pork, or one-half pound bacon, with sufficiency of water.....	30
For dieting person confined for debt, per day, allowing a sufficiency of wholesome provisions, water, &c.....	50
For turning key on commitment of a prisoner.....	60
For whipping negro with consent of owner, or without, if necessary to his behavior or safety.....	1 00
Not more than thirty-nine lashes at any one whipping nor inhumanly with those, and not more than two such whippings without the consent of the owner.	
For dieting and keeping an insane slave, per month, giving what is given a runaway slave.....	10 00
Or per day.....	40
Whenever jail fees are chargeable to the county, the same shall be paid monthly.	

County to pay monthly

Fees of Justices of the Peace in civil cases.

§ 3623. Justices of the Peace shall have the following fees, to wit:

1. In civil cases—	
For each case tried by said Justices.....	35
For a warrant or summons.....	35
For affidavit to obtain an attachment or to hold to bail, and taking the bond.....	75
For entering a judgment.....	35
For each execution, <i>ca. sa.</i> , or attachment.....	35
For drawing jury and making out list.....	30
For each cause tried by said jury.....	30
For affidavit to obtain a possessory warrant and making out the same.....	75
For trying the same.....	60
For making out interrogatories and certifying the same	1 25
For making out recognizance and returning the same to court.....	35

Chapter 2.—Fees of Officers of Court.

For each subpoena for witness.....	15
For each affidavit, when there is no cause pending.....	30
For every writ of <i>certiorari</i> to the Superior Court.....	60
For presiding at trial of forcible entry, or detained, or both—each trial.....	1 00
For presiding at each trial of right of way.....	1 00
For issuing rule to establish lost paper.....	35
For trying the same.....	35
For presiding at trial of nuisance.....	1 00
For witnessing any paper.....	25

2. In criminal cases—

For taking examination of a person charged with a criminal offence.....	50
For examining each witness in criminal cases.....	30
For making out a commitment.....	35
For trying slaves and free persons of color—for each offence, and for all the court costs.....	3 00

\$1.25 Fees in criminal cases.
\$1.25

§ 3624. Constables' fees shall be as follows, to wit:

For serving a warrant, summons, or attachment.....	35
For each additional copy of summons, warrant, or attachment.....	30
For summoning every witness.....	30
For each cause tried by a Justice or jury.....	30
For attending each trial in Justice court.....	35
For summoning a jury.....	75
For levying a <i>ca. sa.</i> or <i>fi. fa.</i> , and advertising.....	35
For settling <i>fi. fa.</i> when the property is not sold.....	30
For return <i>nulla bona</i>	30
For conveying negro under execution, to and from jail, per day.....	5
For attending Superior Court, per mile.....	1 00
For summoning jury on inquest.....	1 00
For collecting execution issued by Coroner.....	75
For keeping a horse, mule, ass, or ox, per day.....	25
For each head of neat cattle.....	5
For sheep, goats, or hogs, per day.....	4

Fees of Constables.

On all sales made by him, 6¼ per centum on amounts sold.

For attending a grand jury, per day.....	1 00
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Chapter 2.—Fees of Officers of Court.

For attending grand jury, for each bill found, to be paid by delinquent.....	30
For serving a warrant in criminal cases.....	1 25
For keeping and maintaining a prisoner before examination, not exceeding twenty-four hours.....	75
For serving rule to establish lost paper.....	35
For every additional copy.....	30
For following property with attachment out of county, going and returning, per mile.....	5
For whipping a negro by judgment of a court.....	1 00
§ 3625. Coroners' fees are as follows to wit:	
For summoning an inquest on a dead body and returning the inquisition.....	\$10 00
For furnishing coffin and burial expenses.....	15 00
When performing the duties of a Sheriff, his fees are the same as the Sheriff.	
§ 3626. County Surveyors' fees are as follows, to wit:	
For surveying a town lot and returning a certificate thereof.....	\$1 25
For surveying a tract of land of or under 100 acres.....	3 50
For each hundred acres after the first.....	1 00
For making a plat, recording, advertising and transmitting the same to the Surveyor General's office....	1 25
For entering a caveat, advertising and giving a certified copy thereof....	2 00
For attending trial of the same.....	1 00
For each postponement to be paid by the postponing party.....	60
For recording judgment and giving certified copy thereof	60
For entering an appeal and giving certified copy thereof	1 25
For a re-survey of land by order of court, of or under 100 acres, for the first 100 acres.....	3 50
For every hundred acres after the first.....	1 00
For every other re-survey of the same.....	1 00
For making and certifying a plat thereof and transmitting the same.....	1 25
Running line between counties, districts, or making new lines, per day, he furnishing the chainbearer and provisions.....	\$8 00

Fees of Coroner.

Fees of County Surveyors.

Chapter 2.—Fees of Officers of Court.

§ 3627. County Treasurers' fees are as follows, to wit:
 Upon all amounts received, and paid out by him $2\frac{1}{2}$ per cent.

Fees of County Treasurers.

For making his returns to the grand jury 1 00
 For making his returns to Justices of the Inferior Court. 1 00

§ 3628. The fees of Notaries Public are as follows, to wit :

Fees of Notaries Public.

For every protest, oath included 2 00
 For noting a protest, 1 00
 For registering a protest, per copy sheet 10
 For copy of a protest, per copy sheet 10
 For administering an oath in any case 30
 For each attendance on any person, to make proof as a Notary Public, and certifying the same 1 00
 For every other certificate 50

The cost of registering is likewise a charge against the party noted and protested, and must be charged in the costs at the same time, and paid to the Notary by the party for whose benefit the noting and protesting was done. All other registering must be paid for by the party who has the service performed. The fees for all official acts, which the Notary is allowed to perform, are the same as those prescribed for any other officers who are likewise permitted to perform them.

Fees for other acts, the same as other officers.

§ 3629. None of the fees hereinbefore expressed shall be charged to the State for failure to collect out of the person charged, unless otherwise expressly declared, or in their nature must necessarily be so paid.

Fees not to be charged to State.

§ 3630. Every public officer and person herein mentioned, their deputy or agent, shall, when required, give a statement of the fees demanded, and a receipt for the same to any person paying any lawful or pretended fees of office, on pain of ten dollars for every such neglect or refusal, to be sued for within twelve months and recovered by the person paying the fees and making the demand.

Statement of fees demanded to be given.

§ 3631. If such officers or person shall take or demand any greater fee than the law allows, or fee for services not performed, he forfeits fifty dollars, to be sued for and recovered as prescribed in the preceding section.

Forfeit for excessive charges.

§ 3632. Every public officer must constantly keep in a conspicuous place in his office, or place where he usually executes the business thereof, a table of his fees in fair words and figures, and on failure to do so, he forfeits one dollar per day for every

Table of fees to be kept in office

day he so neglects, to be recovered at the suit of any informer, to whom the whole recovery shall go.

Treble costs
—when.

§ 3633. When public officers are sued on account of the provisions of this chapter, and there is a verdict in their favor, the persons suing shall pay three times the ordinary costs.

Penalty for
improper
charges.

§ 3634. Any public officer who shall charge or take fees not allowed by law, or for service not performed, shall, on conviction or proof thereof, be dismissed from office.

TITLE VIII.

OF NEW TRIALS.

CHAPTER I.

OF NEW TRIALS.

ARTICLE 1. By whom, and for what causes allowed.

ARTICLE 2. When, where and how tried.

ARTICLE 1.

BY WHOM, AND FOR WHAT CAUSES ALLOWED.

SECTION.

3635. What court may grant new trials.
3636. Sup'r. Courts may correct errors, &c.
3637. Verdict contrary to evidence.
3638. Evidence illegally admitted, &c.
3639. Erroneous charge of the court.
3640. Newly discovered evidence.

SECTION.

3641. Verdict against evidence.
3642. Judge may grant on other grounds.
3643. Application—when made.
3644. Another Judge may grant.
3645. Motion after adjournment. Notice.

Sup'r Court
only can
grant.

§ 3635. New trials can be granted by the Superior Courts only ; the Inferior Courts have no such power.

Sup'r Court
may correct
errors, &c.

§ 3636. The several Superior Courts of this State shall have power to correct errors, and grant new trials in any cause depending in any of the said Superior Courts, in such manner and under such rules and regulations as they may establish according to law and the usages and customs of courts.

When ver-
dict is con-
trary to evi-
dence.

§ 3637. In any case when the verdict of a special jury is found contrary to evidence and the principles of justice and equity, the presiding Judge may grant a new trial before another special jury.

Article 1.—By whom and for what causes allowed.

§ 3638. The Superior Courts may grant new trials in all cases, when any material evidence may be illegally admitted to, or illegally withheld from the jury, against the demand of the applicant. When evidence is illegally admitted or excluded.

§ 3639. A new trial may be granted in all cases when the presiding Judge may deliver an erroneous charge to the jury against such applicant on a material point, or refuse to give a pertinent legal charge in the language requested, when the charge so requested is submitted in writing. For erroneous charge to jury, &c.

§ 3640. A new trial may be granted in all cases, when any material evidence, not merely cumulative in its character, but relating to new and material facts, shall be discovered by the applicant after the rendition of a verdict against him, and shall be brought to the notice of the court within the time now allowed by law for entering a motion for a new trial. On account of new evidence.

§ 3641. The presiding Judge may exercise a sound discretion in granting or refusing new trials in cases where the verdict may be decidedly and strongly against the weight of evidence, although there may appear to be some slight evidence in favor of the finding. When the verdict is against evidence.

§ 3642. In all applications for a new trial on other grounds, not provided for in this Code, the presiding Judge must exercise a sound legal discretion in granting or refusing the same, according to the provisions of the common law and practice of the courts. Judge may grant on other grounds.

§ 3643. All applications for a new trial, except in extraordinary cases, must be made during the term at which the trial was had, but may be heard, determined, and returned in vacation. Application to be made during term.

§ 3644. A Judge may decide a motion for a new trial who did not try the case, either when he is presiding in the court in which the motion is pending, or when he is named in the rule. Another Judge may grant new trial.

§ 3645. In case a motion for a new trial made after the adjournment of the court, some good reason must be shown why the motion was not made during the term, which shall be judged of by the court. In all such cases, twenty days' notice shall be given to the opposite party. Motion made after adjournment of court.

ARTICLE II.

WHEN, WHERE AND HOW TRIED.

SECTION.

3646. Triable at next term.

3647. By a special jury.

SECTION.

3648. Copy rule *ni si* to be served.

3649. Superseadeas by order.

Time of new trial.

§ 3646. When a new trial has been granted by the Superior Court, the case shall stand upon the docket for trial at the next term as though no trial was had, and if said new trial is ordered by the Supreme Court, said case shall stand for trial at the next term of said Superior Court after the *remitter* is returned from the Supreme Court, and in like manner subject to the rules for continuances provided in this Code.

By special jury.

§ 3647. All new trials shall be had by a special jury as provided in cases of appeals.

Rule *ni si* must be served.

§ 3648. In all applications for a new trial the opposite party shall be served with a copy of the rule *ni si*, unless such copy is waived.

Not a *superseadeas*.

§ 3649. A rule *ni si* for a new trial shall not operate as a *superseadeas*, unless so ordered by the court. In which case the court may demand bond and security for the eventual condemnation money, when the exigency of the case requires it.

TITLE IX.

OF CLAIMS.

CHAPTER 1. Of claims to property in execution.

CHAPTER 2. At other judicial sales.

CHAPTER I.

OF CLAIMS TO PROPERTY IN EXECUTION.

ARTICLE 1. How and by whom interposed.

ARTICLE 2. When, where and how tried.

ARTICLE I.

HOW AND BY WHOM INTERPOSED.

SECTION.

3650. Claims to be made an oath.
 3651. Bond and security.
 3652. Officer must postpone sale.
 3653. Claimant give forthcoming bond.

SECTION.

3654. To whom bonds payable.
 3655. Bond recoverable—when & where.
 3656. Partners, &c., claiming.
 3657. Tax *fi. fu.* claim—where tried.

§ 3650. When any Sheriff or other officer shall levy an execution on property claimed by a third person, not a party to such execution, such person, his agent or attorney, shall make oath to such property.

Claim must be made on oath.

§ 3651. The person claiming such property, or his agent or attorney, shall give bond to the Sheriff or other officer, as the case may be, with good and sufficient security, in a sum equal to double the amount of the property levied upon, at a reasonable valuation, to be judged by the levying officer, conditioned to pay the plaintiff all damages which the jury on the trial of the right of property may assess against him in case it should appear that said claim was made for the purpose of delay only.

Bond and security for damages.

§ 3652. Affidavit and bond being made and delivered as required in the preceding section, it shall be the duty of the Sheriff or other levying officer to postpone the sale of said property until otherwise ordered.

Sale must be postponed—when.

§ 3653. In all cases where a levy is made upon property that is claimed by a third person, and such person shall desire the possession thereof, it shall be the duty of the Sheriff or other levying

Forthcoming bond may be given, &c.

Article 1.—How and by whom Interposed.

officer to take bond with good security, for a sum equal to double the value of the property levied on, to be estimated by the levying officer for the delivery of such property at the time and place of sale, provided the property so levied upon shall be found subject to such execution.

Bonds made payable—to whom.

§ 3654. The claim bond shall be made payable to the plaintiff in execution, and the forthcoming bond shall be made payable to the Sheriff.

Bond recoverable on failure.

§ 3655. Bond and security being given as provided in the previous section, it shall be the duty of the Sheriff or other levying officer to leave such property in the possession of such claimant, and in case the said claimant or his security should fail to deliver said property, said bond shall be made recoverable in any court having cognizance of the same.

Partner or joint owner may claim for all.

§ 3656. One of several partners or persons jointly interested, may make the affidavit and execute the bond in the name of the firm or persons jointly interested, who shall be bound thereby as though each individual had signed it himself.

Tax *fr. fa's.* levied, &c.

§ 3657. When any execution may be issued against any Tax Collector or tax payer for taxes due the State, or any county thereof, and the Sheriff or other officer shall levy the same on property claimed by a person not a party to such execution, such claimant shall make oath as herein provided in the case of other claims, and give bond as provided in section 818, and the same proceedings shall be had thereon as provided for the trial of the right of property, except that such trials shall be had in the county wherein the levy was made.

ARTICLE II.

WHEN, WHERE AND HOW TRIED.

SECTION.

3658. To what court claim is returnable.
3659. Levy on slaves by Justices' Court.
3660. Tried by petit jury.
3661. Damages, if for delay only.

SECTION.

3662. Burden of proof.
3663. Withdrawal of claim.
3664. Assessment of damages.
3665. Either party may appeal.

Where claim to be returned.

§ 3658. When an execution issued from the Superior or Inferior Courts shall be levied upon personal property, and claimed by a person not a party to such execution, as provided in this Code, it shall be the duty of the levying officer to return the same, together with the execution, to the next term of the court from

Article 2.—When, where and how Tried.

which said execution issued; but should such execution be levied upon real property, and the same shall be claimed in manner aforesaid, it shall be the duty of the officer making the levy to return the same, together with the execution and claim, to the next term of the Superior Court of the county in which the land so levied upon shall lie.

§ 3659. When an execution from a Justices' Court shall have been levied on one or more slaves, and a claim to such slaves have been interposed as provided by this Code, such execution and claim shall be returned to the Superior or Inferior Court, whichever may first sit in the county in which such execution issued.

Justices' Ct.
f. fr. on
slave.

§ 3660. The court to which a claim shall be returned, shall cause the right of property to be decided on by a petit jury at the first term thereof, unless continued as other cases at common law.

Tried by
petit jury.

§ 3661. Every juror on the trial of the claim of property, either real or personal, except jurors in Justices' Court, shall be sworn, in addition to the oath usually administered, to give such damages, not less than ten per cent., as may seem reasonable and just, to the plaintiff against the claimant, in case it shall be sufficiently shown that such claim was made for delay only, and such jury may give a verdict in manner aforesaid, by virtue whereof judgment may be entered up against the claimant and his security for the damages so assessed by the jury and the costs of the trial of the right of property.

Damages
for delay
only.

Security lia-
ble.

§ 3662. Upon the trial of all claims provided for in this chapter, the burden of proof shall lie upon the plaintiff in execution in all cases where the property levied on is, at the the time of such levy, not in possession of the defendant in execution.

Burden of
proof on
plaintiff.

§ 3663. Whenever a claim of property is made in terms of this Code, and returned to the proper court by the Sheriff, or other levying officer, the claimant shall not be permitted to withdraw or discontinue his said claim more than once, without the consent of the plaintiff in execution, or some person duly authorized to represent such plaintiff; but such court shall proceed to the trial of the claim of such property, and it shall be the duty of the jury to assess damages accordingly.

Claim not to
be with-
drawn.

§ 3664. Upon the trial of claims to property which may be pending in the Superior or Inferior Courts, when damages shall be found by the jury, the said damages shall be assessed upon the whole amount then due upon the execution, provided the

How dama-
ges are to be
assessed.

Article 1.—When, where and how Tried.

value of the property in dispute exceeds the amount of said execution, and upon the value of the property, when the value of the property is less than the execution levied.

§ 3665. Either party in claim cases may appeal as in cases at common law.

Either party may appeal.

CHAPTER II.

OF CLAIMS AT OTHER SALES.

SECTION.

3666. Land—how claimed, at ex'rs sale.

3667. Where tried.

SECTION.

3668. Personalty—claim of.

3669. Claim postpones sale.

Claims at executor's sale.

§ 3666. When an executor, or administrator, guardian, or other trustee, shall advertise that it is his intention to apply for leave to sell any real estate, as the property of his testator, intestate, ward, or *cestui que trust*, or having obtained such order, it may be lawful for any person claiming such real estate, either by himself, his agent or attorney, to file in the Court of Ordinary an affidavit claim to said property, a copy whereof shall be served on such executor, administrator, guardian, or trustee, as the case may be, previous to the day of sale.

Affidavit must be filed and copy served.

Tried by Superior Court in county where land lies.

§ 3667. Affidavit having been made and filed, and notice having been given, as required in the preceding section, it shall be the duty of the Ordinary to transmit such claim affidavit to the next term of the Superior Court, of the county where the land lies, and the right of property shall be there tried, upon an issue made up in the same manner, and under the same regulations, restrictions, and penalties, as are provided for the trial of claims to property levied on by execution.

Claim to personalty—where tried.

§ 3668. When any executor, administrator, guardian, or other trustee, shall advertise to sell any personal property, as the property of his testator, intestate, ward, or *cestui que trust*, and the same shall be claimed on oath, and the claim affidavit shall have been filed and served, as required in the first section of this chapter, it shall be the duty of the Ordinary to transmit such claim affidavit to the Superior or Inferior Court next to be held after such claim is filed, in the county where such executor, administrator, guardian, or trustee, resides.

Claim postpones sale.

§ 3669. When a claim has been interposed, as provided in the preceding sections, the sale of the property advertised and claimed shall be postponed until after the termination of the claim case.

Chapter 1.—General Principles.

TITLE X.

OF EVIDENCE.

CHAPTER 1. General principles.

CHAPTER 2. Of the rules governing the admission of testimony.

CHAPTER 3. Of discovery from the parties.

CHAPTER 4. Of records and other written evidence.

CHAPTER 5. Of oral testimony.

CHAPTER 6. Of interrogatories and depositions.

CHAPTER 7. Of perpetuating testimony.

CHAPTER I.

GENERAL PRINCIPLES.

SECTION.

3670. Object of evidence.

3671. Sundry definitions.

3672. Mental conviction.

3673. Same rules in all courts and cases.

3674. Matters judicially recognized.

SECTION.

3675. Presumptions of law and facts.

3676. Estoppels.

3677. *Prima facie* presumptions.

3678. Number of witnesses necessary.

§ 3670. The object of all legal investigation is the discovery of truth. The rules of evidence are framed with a view to this prominent end—seeking always for pure sources and the highest evidence. Object of evidence.

§ 3671. *Competent* evidence is that which is admissible. *Sufficient* evidence is that which is satisfactory for the purpose. *Cumulative* evidence is that which is additional to other already obtained. *Direct* evidence is that which immediately points to the question at issue. *Indirect*, or *circumstantial* evidence is that which only tends to establish the issue, by proof of various facts, sustaining by their consistency, the hypothesis claimed. *Presumptive* evidence consists of inferences drawn by human experience from the connection of cause and effect, and observations of human conduct. Sundry definitions.

§ 3672. Moral and reasonable certainty is all that can be expected in legal investigation. In all civil cases the preponderance of testimony is considered sufficient to produce mental conviction. In criminal cases a greater strength of mental conviction is held necessary to justify a verdict of guilty. Amount of mental conviction.

Same rules
in all courts
and cases.

§ 3673. Generally, the rules of evidence are the same in all the courts of this State, and upon every trial the exceptions exist only by express statute.

Matters judi-
cially rec-
ognized.

§ 3674. The existence and territorial extent of States, their form of government, and symbols of nationality, the laws of nations and general customs of merchants, the admiralty and maritime courts of the world and their seals, the political constitution and history of our own Government, as well as the local divisions of our own State, the seals of the several departments of the Government of the Confederate States, and of the several States of the Confederacy, and all similar matters of public knowledge are judicially recognized without the introduction of proof.

Presump-
tions of law
and fact.

§ 3675. Presumptions are either of law or of fact. The former are conclusions and inferences which the law draws from given facts. The latter are exclusively questions for the jury, to be decided by the ordinary test of human experience.

Estoppels

§ 3676. Presumptions of law are sometimes conclusive, and an averment to the contrary will not be allowed. These are termed estoppels, and are not generally favored. Among these are the presumptions in favor of a record or judgment unreversed, of the proper conduct of courts and judicial officers acting within their legitimate sphere. Of other officers of the law after lapse of time has rendered it dangerous to open the investigation of their acts in regard to mere formalities of the law. Of ancient deeds, and other instruments more than thirty years old, when they come from the proper custody, and possession has been held in accordance with them. Recitals in deeds, except payment of purchase money as against the grantor acting in his own right, and *sui juris* and his privies in estate, blood and in law. The landlord's title, as against his tenant, while tenant in possession. Solemn admissions made *in judicio*, and other admissions, upon which other parties have acted, either to their own injury or the benefit of the persons making the admissions, and similar cases where it would be more unjust and productive of more evil to hear the truth than to bear the investigation.

Examples.

*Prima fa-
cie* pre-
sumptions.

§ 3677. Other presumptions of law, such as of innocence, and in some cases of guilt—of continuance of life for seven years, of a mental state once proved to exist, and all similar presumptions may be rebutted by proof.

§ 3678. The testimony of a single witness is generally sufficient to establish a fact. Exceptions to this rule are made in specified

cases: such as to convict of treason or perjury; in any case of felony, where the only witness is an accomplice; and to rebut a responsive statement in an answer in equity—in these cases (except in treason) corroborating circumstances may dispense with another witness.

CHAPTER II.

OF RULES GOVERNING THE ADMISSION OF TESTIMONY.

ARTICLE 1. General rules.

ARTICLE 2. Of hearsay.

ARTICLE 3. Of admissions and confessions.

ARTICLE 4. Of parol evidence to effect written.

ARTICLE I.

GENERAL RULES.

SECTION.

- 3679. Must be relevant.
- 3680. Character and conduct of parties.
- 3681. Burden of proof.
- 3682. Changing *onus*.
- 3683. Best evidence.
- 3684. Primary and secondary evidence.
- 3685. Written evidence.

SECTION.

- 3686. Copies of wills and records.
- 3687. Officers *de facto*.
- 3688. Inscriptions on monuments, &c.
- 3689. Other exceptions.
- 3690. Secondary evidence.
- 3691. Degrees therein.
- 3692. Existence of original.

§ 3679. The evidence must relate to the questions being tried by the jury, and bear upon them either directly or indirectly. Irrelevant matter should be excluded. Must be relevant.

§ 3680. The general character of the parties, and especially their conduct in other transactions, are irrelevant matter, unless the nature of the action involves such character and renders necessary or proper the investigation of such conduct. Character and conduct of parties.

§ 3681. The burden of proof generally lies upon the party asserting or affirming a fact, and to the existence of whose case or defence the proof of such fact is essential. If a negation or negative affirmation be so essential, the proof of such negative lies on the party so affirming it. Burden of proof.

§ 3682. What amount of evidence will change the *onus* or burden of proof, is a question to be decided in each case by the sound discretion of the court. Changing *onus*.

Article 1.—General Rules.

Best evi-
dence.

§ 3683. The best evidence which exists of the fact sought to be proved must be produced, unless its absence is satisfactorily accounted for.

Primary and
secondary
evidence.

§ 3684. *Primary* evidence is such as in itself does not indicate the existence of other and better proof. *Secondary* evidence is such as from necessity in some cases is substituted for stronger and better proof.

Written evi-
dence.

§ 3685. Written evidence is considered of higher proof than oral, and in all cases where the parties have reduced their contract, agreement or stipulation to writing, and assented thereto, it is the best evidence of the same.

Wills and
records.

§ 3686. Copies of records of judicial proceedings, and wills admitted to probate, are admitted as primary evidence, when properly authenticated. In all other cases, a copy is secondary evidence.

Officer *de*
facto.

§ 3687. An officer *de facto* may be proved by his acts, without the production of his commission or appointment.

Inscriptions
on monu-
ments, &c.

§ 3688. Inscriptions on walls, monuments, and other fixed objects, may be proved by copies established as such.

Other excep-
tions.

§ 3689. Other cases of necessity, or manifest convenience, resting on like principles of reason and justice, may be made exceptions to the general rule.

Secondary
evidence—
when ad-
mitted.

§ 3690. In order to admit secondary evidence, it must appear that the primary evidence, for some sufficient cause, is not accessible to the diligence of the party. This showing is made to the court who will hear the party himself, on the question of diligence, and the inaccessibility of the *primary* evidence.

Degrees
therein.

§ 3691. There are degrees in secondary evidence, and the best should always be produced. Thus, a duplicate is better than a copy, and an examined copy than oral evidence.

Original ex-
istence of.

§ 3692. The existence of a genuine original, is essential to the admissibility of a copy. The amount of evidence to show such existence, must vary with the circumstances of each case. Where no direct issue is made upon this fact, slight evidence would be sufficient.

Article 2.—Of Hearsay.

ARTICLE II.

OF HEARSAY.

SECTION.

3693. Hearsay evidence.
 3694. Sometimes original evidence.
 3695. Pedigree.
 3696. *Res gesta*.
 3697. Declarations of persons in possession
 3698. Declarations of conspirators.
 3699. Of deceased persons.

SECTION.

3700. Books of account.
 3701. Matters of public interest.
 3702. Ancient documents.
 3703. Ancient boundaries and landmarks
 3704. Dying declarations.
 3705. Testimony of witnesses.

§ 3693. Hearsay evidence is that which does not derive its value solely from the credit of the witness, but rests mainly on the veracity and competency of other persons. The very nature of the evidence shows its weakness, and it is admitted only in specified cases from necessity. Hearsay evidence.

§ 3694. When in a legal investigation, information, conversations, letters, and replies, and similar evidence, are facts to explain conduct and ascertain motives, they are admitted in evidence not as hearsay, but as original evidence. Sometimes original evidence.

§ 3695. Pedigree, including descent, relationship, birth, marriage, and death, may be proved either by the declarations of deceased persons related by blood or marriage, or by general repate in the family, or by genealogies, inscriptions, "family trees," and similar evidence. Pedigree.

§ 3696. Declarations accompanying an act, or so nearly connected therewith in time as to be free from all suspicions of device or after-thought, are admissible in evidence as part of *res gesta*. *Res gesta*.

§ 3697. Declarations of a person in possession of property in disparagement of his own title, are admissible in evidence, in favor of any one, and against privies. Declarations in favor of his own title are admissible to prove his adverse possession. Declarations of persons in possession.

§ 3698. After the fact of conspiracy is proved, the declarations of any one of the conspirators during the pendency of the criminal project, are admissible against all. Declarations of conspirators.

§ 3699. The declarations and entries of a person, since deceased, against his interest, and not made with a view to pending litigation, are admissible in evidence in any case. Of deceased persons.

§ 3700. The books of account of any merchant, shop-keeper, physician, blacksmith, or other person doing a regular business Books of account.

Article 2.—Of Hearsay.

and keeping daily entries thereof, may be admitted in evidence, as proof of such accounts, upon the following conditions:

1. That he kept no clerk, or else the clerk is dead, or otherwise inaccessible.

2. Upon proof, (the party's oath being sufficient,) that the book tendered is his book of original entries.

3. Upon proof, (by his customers,) that he usually kept correct books.

4. Upon inspection by the court, to see if the books are free from any suspicion of fraud.

Matters of public interest.

§ 3701. Hearsay evidence as to declarations of deceased persons as to ancient rights, and made before the litigation arose, are admissible to prove matters of public interest, in which the whole community are supposed to take interest, and to have knowledge.

Ancient documents.

§ 3702. Ancient documents purporting to be a part of the transaction to which they relate, are admissible in evidence.

Ancient boundaries and landmarks.

§ 3703. Traditionary evidence, as to ancient boundaries and landmarks, is admissible in evidence, the weight to be determined by the jury, according to the source whence it comes.

Dying declarations.

§ 3704. Dying declarations made by any person in the article of death, who is conscious of his condition, as to the cause of his death, and the person who killed him, are admissible in evidence, in a prosecution for the homicide.

Testimony of witness on former trial.

§ 3705. The testimony of a witness, since deceased, or disqualified, or inaccessible for any cause, given under oath on a former trial, upon substantially the same issue, and between substantially the same parties, may be proved by any one who heard it, and who professes to remember the substance of the entire testimony, as to the particular matter about which he testifies.

ARTICLE III.

OF ADMISSIONS AND CONFESSIONS.

SECTION.

3706. Definition.
 3707. Parties to record.
 3708. Real parties in interest.
 3709. Of strangers.
 3710. Of agents
 3711. Of privies.
 3712. Admissions improperly obtained.
 3713. Effect of silence.
 3714. Entire conversation.

SECTION.

3715. Weight of such evidence.
 3716. Confessions must be voluntary.
 3717. Under promise of secrecy, &c.
 3718. Material facts discovered.
 3719. Confession of conspirators.
 3720. Confidential communications, &c.
 3721. Attorney and client.
 3722. When grand juror may disclose.

§ 3706. Admissions usually refer to civil cases; confessions to Definition.
 criminal.

§ 3707. The admission of a party to the record is admissible in Parties to record.
 evidence when offered by the other side, except in the following
 cases:

1. In case of a mere nominal party or naked trustee.
2. Where there are several parties with no joint interest, the admissions of one cannot be received unless the issue is of such a character that the effect of the admission can be restrained to him alone.
3. The admissions of any trustee before he is clothed with the trust.
4. Defendants in *fi. fa.* in claim cases after the pendency of litigation.

§ 3708. The admission of the real party in interest is admissi- Real parties in interest.
 ble though he be not of record, subject to the exceptions stated
 above.

§ 3709. The admissions of third persons strangers to the suit Of strangers.
 are received in evidence—

1. When the party refers to such third person for information.
2. Admissions made by a third person against his interest as to a fact collateral to the main issue between the litigants, but essential to the adjudication of the cause.

3. Statements of an interpreter where from any cause he cannot be sworn.

§ 3710. The admissions of an agent or attorney in fact, during Of agents.
 the existence and in pursuance of his power, are evidence against
 the principal.

Article 3.—Of Admissions and Confessions.

- Of privies. § 3711. The admissions of privies in blood, privies in estate, and privies in law, are admissible as against the parties themselves, but declarations of privies in estate, after the title has passed out of them, cannot be received.
- Admissions improperly obtained. § 3712. Admissions obtained by constraint, or by fraud, or by drunkenness induced for the purpose; or admissions or propositions made with a view to a compromise are not proper evidence.
- Effect of silence. § 3713. Acquiescence, or silence when the circumstances require an answer or denial, or other conduct may amount to an admission.
- Entire conversation. § 3714. When an admission is given in evidence it is the right of the other party to have the whole admission and all the conversation connected therewith.
- Weight of such evidence. § 3715. All admissions should be scanned with care and confessions of guilt should be received with great caution. A confession alone, uncorroborated by other evidence, will not justify a conviction.
- Confessions must be voluntary. § 3716. To make a confession admissible, it must have been made voluntarily without being induced by another, by the slightest hope of benefit or remotest fear of injury.
- Under promise of secrecy, &c. § 3717. The fact that a confession is made under a spiritual exhortation, or a promise of secrecy, or a promise of collateral benefit shall not exclude it.
- Material facts discovered. § 3718. Any material facts discovered by a confession by a prisoner may be proved, and the fact of its discovery, by reason of such information, though the confession is rejected.
- Confession of conspirators. § 3719. The confession of one joint offender or conspirator, made after the enterprise is ended, is admissible only against himself.
- Confidential communications, &c. § 3720. There are certain admissions and communications excluded from public policy; among these are—
1. Communications between husband and wife.
 2. Between attorney or counsellor and client.
 3. Among grand jurors.
 4. Secrets of State.
- Attorney and client. § 3721. Communications to any attorney or his clerk to be transmitted to the attorney pending his employment, or in anticipation thereof should never be heard by the court. So the attorney cannot be compelled to disclose the advice or counsel he may give to his client, nor to produce or deliver up title deeds, or other papers, except evidences of debt, left in his possession by his client. This rule does not exclude the attorney as a wit-

Article 3.—Of Admissions and Confessions.

ness to any facts which may transpire in connection with his employment.

§ 3722. Grand jurors shall disclose everything which occurs in their service whenever it becomes necessary, in any court of record in this State. When grand jurors may disclose.

ARTICLE IV.

OF PAROL EVIDENCE TO AFFECT WRITTEN.

SECTION.

3723. General rule.

3724. Contemporaneous writings.

3725. Void instruments.

3726. Where part only is in writing.

3727. Surrounding circumstances.

SECTION.

3728. Usage.

3729. Other cases.

3730. Receipts.

3731. Blank endorsements.

3732. Reducing deed to mortgage.

§ 3723. Parol contemporaneous evidence is admissible generally to contradict or vary the terms of a valid written instrument. General rule

§ 3724. All contemporaneous writings are admissible to explain each other, and parol evidence is admissible to explain all ambiguities both latent and patent. Contemporaneous writings ambiguities.

§ 3725. Parol evidence is admissible to show that the writing was either originally void or has subsequently become so. Void instruments.

§ 3726. If the writing does not purport to contain all the stipulations of the contract, parol evidence is admissible to prove other portions thereof not inconsistent with the writing, so collateral undertakings between parties of the same part among themselves would not properly be looked for in the writing. Where part only is in writing.

§ 3727. The surrounding circumstances are always proper subjects of proof to aid in the construction of contracts. Surrounding circumstances.

§ 3728. In like manner evidence of known and established usage is admissible for the same purpose as well as to annex incidents. Usage.

§ 3729. Parol evidence is also admissible to rebut an equity, to discharge the entire contract, to prove a new and distinct subsequent agreement, to enlarge the time or change the place of performance. Other cases

§ 3730. Receipts for money are always only *prima facie* evidence of payment and may be denied or explained by parol. Receipts.

§ 3731. Blank endorsements of negotiable paper may always be explained between the parties themselves, or those taking with notice of dishonor or of the actual facts of such endorsements. Blank endorsements

Article 4.—Of Parol Evidence to Affect Written.

Reducing
deed to
mortgage.

§ 3732. A deed or bill of sale, absolute on its face and accompanied with possession of the property, shall not be proved (at the instance of the parties) by parol evidence to be a mortgage only, unless fraud in its procurement is the issue to be tried.

CHAPTER III.

OF DISCOVERY FROM THE PARTIES.

SECTION.

3733. Discovery at law.

3734. Just as other witnesses.

3735. Privilege of oral examination.

SECTION.

3736. Failing to answer, or evading.

3737. Privileged matters.

Discovery
at law.

§ 3733. Discovery may be had from the opposite party, either nominal or real, in any case pending in any court in this State.

Just as other
witnesses

§ 3734. The party seeking the discovery may either subpoena the other party as a witness, or else file interrogatories, and sue out a commission, as in cases provided for other witnesses. In the latter event the right of cross examination exists as in other cases.

Privilege of
oral exami-
nation.

§ 3735. When interrogatories are filed in office, and notice given thereof, it shall be the duty of the party sought to be examined, to see to the execution and return of the same before the return term thereof.

Failing to
answer or
answering
evasively.

§ 3736. A party failing to appear, without sufficient excuse, when properly subpoenaed, or failing or refusing to answer, either orally or to the interrogatories filed, or answering evasively, shall be subject to attachment for contempt, and the court may also dismiss his case, if he be plaintiff, or strike out his pleas, if he be defendant, or give such other direction to the cause as is consistent with justice and equity.

Privileged
matters.

§ 3737. No party shall be required to testify as to any matter which may criminate or tend to criminate himself, or which shall tend to work a forfeiture of his estate, or which shall tend to bring infamy, or disgrace, or public contempt upon himself, or any member of his family.

CHAPTER IV.

OF RECORDS AND OTHER WRITTEN EVIDENCE.

ARTICLE 1. Of records and public documents.

ARTICLE 2. Of private writings.

ARTICLE I.

OF RECORDS AND PUBLIC DOCUMENTS.

SECTION.

SECTION.

- 3738. Laws and resolutions.
- 3739. Exemptions.
- 3740. When primary evidence.
- 3741. Records lost or destroyed.
- 3742. Proof of registry.
- 3743. Certified copy.
- 3744. If registry is destroyed.
- 3745. Presumption of proper probate.

- 3746. Former acts continued in force.
- 3747. Laws of C. S. and several States.
- 3748. Foreign laws.
- 3749. Effects of judgments as evidence.
- 3750. Judgment *in rem*.
- 3751. Not evidence for witness.
- 3752. How attacked.
- 3753. Notarial acts.

§ 3738. All laws and resolutions of the General Assembly, as published by authority, shall be held, deemed, and considered public laws, and recognized, judicially, without proof. The journals of each branch of the General Assembly, as published, shall in like manner, recognized without proof.

Laws and resolutions.

§ 3739. The certificate, or attestation, of any public officer, either of this State, or any county thereof, shall give sufficient validity or authenticity to any copy or transcript of any record, document, paper of file, or other matter or thing in their respective offices, or pertaining thereto, to admit the same in evidence in any court of this State.

Exemptions

§ 3740. Such exemptions shall be primary evidence as to all records, or other things required by law to remain in such offices, but only secondary evidence as to such documents as by law properly remain in the possession of the party.

When primary evidence.

§ 3741. When a record has been burned, or otherwise destroyed, its contents may be proved by any secondary evidence, which does not disclose the existence of other and better evidence.

Records lost or destroyed

§ 3742. The official entry of the proper officer on a paper, shall be sufficient evidence of its registry.

Proof of registry.

§ 3743. If the original of any paper, properly registered, is

Article 1.—Of Records and Public Documents.

- Certified copy. lost or destroyed, a certified copy, from the registry, shall be deemed good secondary evidence.
- If registry is destroyed. § 3744. If the registry has also been destroyed, before a copy has been made and certified, any secondary evidence is admissible to prove the original, and its registry, which does not disclose the existence of other and better evidence.
- Presumption of proper probate. § 3745. If the original is found to have been recorded, and it does not appear whether it was done on proper probate, the court shall presume, until the contrary appears, that the same was done on proper probate.
- Former acts continued in force. § 3746. All the acts heretofore passed, allowing papers improperly registered, and their copies, when lost, to be admitted in evidence, shall be continued in force.
- Laws of C. S. and several States. § 3747. The public laws of the Confederate States, and of the several States thereof, as published by authority, shall be judicially recognized, without proof.
- Foreign laws. § 3748. Foreign laws and judgments must be authenticated under the great seal of their respective States.
- Effect of judgments as evidence. § 3749. A judgment is admissible between any parties, to show the fact of the rendition thereof, but between parties and privies it is conclusive as to the matter directly in issue, until reversed or set aside.
- Judgments *in rem*. § 3750. A judgment *in rem* is conclusive upon everybody.
- Not evidence for witness. § 3751. A judgment is inadmissible for any purpose in favor of a party upon whose testimony, in whole, or in part, it was rendered, except judgment from Justices' Court.
- How attacked. § 3752. A judgment that is void, may be attacked in any court, and by anybody. In all other cases judgments cannot be impeached collaterally, but must be set aside by the court rendering them.
- Notarial acts. § 3753. All notarial acts, of Notaries Public, in relation to bills of exchange, drafts, and promissory notes, required to be done by the laws of this State, may be proved by the certificate of such Notary, under his hand and seal; *Provided*, such certificate is filed in the court at its first term, and permitted there to remain until the trial.

The following acts of Congress, being frequently needed for reference, are here inserted:

Act of Congress of May 26, 1790. 1 Gray; Digest 272.

The acts of the Legislatures of the several States, shall be au-

Article 1.—Of Records and Public Documents.

authenticated by having the seal of their respective States affixed thereto. The records and judicial proceedings of the courts of any State shall be proved, or admitted, in any other court within the United States, by the attestation of the Clerk, and the seal of the court annexed, if there be a seal, together with the certificate of the Judge, Chief Justice, or Presiding Magistrate, as the case may be, that the said attestation is in due form. And the said records and judicial proceedings, authenticated as aforesaid, shall have such faith and credit given to them in every court within the United States, as they have by law or usage in the courts of the State from whence the said records are, or shall be taken.

Act of Congress of March 27, 1804. Sec. 2, Gray; Digest 180.

“From and after the passage of this act, all records and exemplifications of office books, which are, or may be kept in any public office of any State, not appertaining to a court, shall be proved or admitted in any other court or office in any other State, by the attestation of the keeper of the said records or books, and the seal of his office thereunto annexed, if there be a seal, together with a certificate of the presiding justice of the court of the county or district, as the case may be, in which such office is, or may be kept; or of the Governor, the Secretary of State, the chancellor or the keeper of the great seal of the State, that the said attestation is in due form, and by the proper officer, and the said certificate, if given by the presiding justice of a court, shall be further authenticated by the clerk or prothonotary, of the said court, who shall certify under his hand and the seal of his office, that the said presiding justice is duly commissioned and qualified; or if the said certificate be given by the Governor, the Secretary of State, the chancellor or keeper of the great seal, it shall be under the great seal of the State, in which the certificate is made. And the same records and exemplifications, authenticated as aforesaid, shall have such faith and credit given to them in every court and office within the United States, as they have by law or usage in the courts or offices of the State from whence the same are, or shall be taken.”

Article 2.—Of Private Writings.

ARTICLE I'.

OF PRIVATE WRITINGS.

SECTION.

3754. Production of proof.
 3755. In case of loss.
 3756. Production in court.
 3757. When notice unnecessary.
 3758. Explaining alteration.

SECTION.

3759. Producing dispenses with proof.
 3760. Subscribing witness.
 3761. Other proof.
 3762. Handwriting.
 3763. Comparison of hands.

Production of proof.

§ 3754. Generally the original writing must be produced, and its execution proved. The excepted cases are prescribed by law.

In case of loss.

§ 3755. If the paper is lost or destroyed, proof of the fact to the court will admit secondary evidence. The party is a competent witness to this point. The question of diligence is one of sound discretion in the court.

Production in court.

§ 3756. The production of such private writing is provided for in another part of this Code.

When notice unnecessary.

§ 3757. Notice to produce is not necessary when the action is brought to recover the paper or to set it aside.

Explain alteration.

§ 3758. If the paper appears to have been materially altered, unless it is the cause of action, and no plea of *non est factum* is filed, the party offering it in evidence must explain the alteration unless the paper comes from the custody of the opposite party.

Producing dispenses with proof.

§ 3759. The production of the paper by the opposite party (if he claims any benefit under it) dispenses with the necessity of proof, and the notice to produce dispenses with proof as against the party giving the notice.

Subscribing witness.

§ 3760. The subscribing witness must be produced in all cases, except the following: 1st. Ancient writings which prove themselves. 2d. If from any cause the witness cannot be produced or sworn. 3d. Office bonds required by law to be approved or tested by a particular functionary. 4th. If the paper is only incidentally or collaterally material to the case.

Other proof.

§ 3761. If the witness is not produced, or being produced, cannot recollect the transaction, the court may hear any other evidence to prove its execution.

Handwriting.

§ 3762. Proof of handwriting may be resorted to in the absence of direct evidence of execution. In such case, any witness is competent to testify as to his belief, who will swear that he knows or would recognize the handwriting. The source of his knowledge is a question for investigation, and goes entirely to the credit and weight of his evidence.

Article 2.—Of Private Writings.

§ 3763. Other writings, proved or acknowledged to be genuine, may be admitted in evidence for the purpose of comparison by the jury. Such other new papers, when intended to be introduced, shall be submitted to the opposite party before he announces himself ready for trial.

Comparison of hands.

CHAPTER V.

OF ORAL TESTIMONY.

ARTICLE 1. Of witnesses—their attendance and fees.

ARTICLE 2. Of their competency.

ARTICLE 3. Of their examination.

ARTICLE I.

OF WITNESSES—THEIR ATTENDANCE AND FEES.

SECTION.

- 3764. Subpœnas.
- 3765. Payment of fees.
- 3766. Excessive claim.
- 3767. Failure to attend.

SECTION.

- 3768. State's witnesses from other co's.
- 3769. Witnesses in imprisonment.
- 3770. Freedom from arrest.
- 3771. No fees in certain cases.

§ 3764. When the attendance of any person resident in the county is required as a witness in any court, the clerk of such court (or if there be no clerk, the presiding judge or justice) shall, on application, issue a writ of *subpœna*, directed to such person, requiring him to appear and testify in the case stated, and at the time stated. Such *subpœna* shall be served on the witness personally, by any person capable of proving the same, at least five days before the term of the court. The witness so summoned shall attend the court from term to term until the case is tried. And if there be an appeal or new trial, notice of the fact, without a new *subpœna*, shall be sufficient to require the attendance of the witness. The witness fee shall be seventy-five cents per diem.

Subpœna.

§ 3765. The payment of the fees of a witness shall not be demanded as a condition precedent to an attendance. But at the close of each term, or any term, the witness may make affidavit before any Justice of the Peace, or clerk of the court, of the number of days he has attended on such *subpœna* for which his fees are due, which affidavit, when countersigned by the clerk (or if no clerk, the Judge) and attached to the *subpœna*, shall have the

Payment of fees.

Mode of collection.

Article 1.—Of Witnesses—their Attendance and Fees.

force and effect of an execution against the property of the party at whose instance he was *subpœnaed* (unless in behalf the State.)

Excessive claim.

§ 3766. A witness who shall claim more than is due to him, forfeits all his fees, and shall pay to the injured party, in addition thereto, four times the amount so unjustly claimed.

Failure to attend.

§ 3767. The court may proceed by attachment to compel the attendance of a witness who fails to obey the precept, and also to punish him by a fine not exceeding three hundred dollars. In addition thereto such a witness shall be liable in damages to the person causing him to be subpœnaed, for his failure to attend.

States' witnesses from other counties.

§ 3768. Witnesses for the State in a criminal prosecution in the Superior Courts, attending in a different county from that of their residence, shall receive each, two dollars per day during their attendance, and two dollars for each thirty miles traveled in going and returning, which shall be paid on the subpœna, verified as in ordinary cases, by the County Treasurer, out of the county funds. In case of conviction the amount paid by the county shall be taxed in the bill of costs.

Witnesses in imprisonment.

§ 3769. The writ of *habeas corpus ad testificandum* may be issued by the Superior Court to cause the production in court of any witness under legal imprisonment.

Freedom from arrest.

§ 3770. Witnesses are protected from arrest on any civil process while going to or returning from and attending on any court, and the officer who shall hold him imprisoned, after seeing his subpœna or being satisfied of the fact, shall be liable for a false imprisonment.

No fees in certain cases

§ 3771. A witness shall not receive any fees whatever for attendance on a subpœna if the cause at any time is continued for his absence, or if he is absent at the trial; *Provided*, such absence in neither case arose from Providential causes. Nor shall any witness receive fees from both parties in the same case, but shall be paid equally by each, unless one shall be cast in all the cost. A prosecutor shall in no case receive fees as a witness.

Article 2.—Of the Competency of Witnesses.

ARTICLE II.

OF THE COMPETENCY OF WITNESSES.

SECTION.

3772. Ground of incompetency.
 3773. Children.
 3774. Mutes, &c.
 3775. Drunkenness.
 3776. Idiots and insane.
 3777. Persons infamous.
 3778. Persons interested.

SECTION.

3779. Interest not disqualifying.
 3780. Exceptional cases.
 3781. Release.
 3782. Husband and wife.
 3783. Parties own oath.
 3784. Time of objecting & mode of proof
 3785. Restoration of competency.

§ 3772. The competency of a witness must be decided by the court. Witnesses are incompetent—

1. Who are deficient in understanding.
2. Who are infamous by reason of crime.
3. Who are interested in the event of the suit.
4. Who are related as husband and wife.
5. By reason of their ignoble status—such as slaves and free persons of color. Religions belief goes only to the credit.

§ 3773. At fourteen years of age, the law presumes a child to have sufficient understanding to testify. Prior to that age, the court must decide upon examination.

§ 3774. No physical defects in any of the senses incapacitates a witness. An interpreter may explain his evidence.

§ 3775. Drunkenness which dethrones reason and memory, incapacitates during its continuance.

§ 3776. The court must by examination decide upon the capacity of one alleged to be incompetent from idiocy, lunacy, or insanity, or drunkenness.

§ 3777. Persons convicted of treason or any felony are incompetent to testify in any cause after sentence passed and pending execution thereof, except on criminal prosecutions for escape or rescue. If he be a party to a case, necessary affidavits to obtain his civil rights, may be made by him.

§ 3778. Every person is incompetent, unless called by the opposite party, whether a party to the record or not, who has a direct legal interest in the event of the suit, or for or against whom the record might be legal evidence in some subsequent suit.

§ 3779. An interest in the question, an honorary obligation, an imaginary interest, or a remote, contingent or uncertain interest, will not disqualify, but goes to the credit.

Ground of incompetency.

Children

Mutes, &c.

Drunkenness.

Idiots and insane.

Persons infamous.

Persons interested.

Interest not disqualifying.

Article 2.—Of the Competency of Witnesses.

Exceptional cases. § 3780. The following also are exceptions to the general rule in reference to interest :

1. Persons declared competent by statute, notwithstanding their interest.
2. Persons entitled to rewards on conviction in criminal prosecutions.
3. Agents or bailees called to prove facts done for their principals in the course of their employment.
4. Witnesses whose interest is balanced on either side.
5. Interest acquired by a witness subsequent to his being subpoenaed either willfully to render himself incompetent, or fraudulently by the other party.
6. Nominal parties to the record, liable only for cost.

Release. § 3781. An interested witness may be rendered competent at any time before examination, by a release, either made to or by him. Neither he, nor the party, by refusing to accept the release can continue his incompetency.

Husband and wife. § 3782. Husband and wife, lawfully married, cannot be witnesses for or against each other, nor can the wife be a witness for a third person, where her testimony may indirectly affect her husband. The objection exists after the dissolution of the marriage, by death or otherwise, as to all knowledge acquired by either party by reason of the marriage relation. An exception to this general rule exists in all criminal or *quasi* criminal proceedings against either party for offences upon the person of the other.

Party's own oath. § 3783. An exception to the rule excluding interested parties exists in all cases where, from necessity or convenience, the oath of the party is received by the court in proof of facts preliminary to other evidence, or in the conduct of a cause. The evidence of the party is also received in *odium spoliatoris* when after proof of the tort, the extent of the injury may be proved by him, and against a bailor guilty of negligence, to show the extent of the loss, there being no other evidence within the party's power: and in certain Inferior Courts where by law this evidence is admitted.

Time of objecting and mode of proof. § 3784. The objection to competency, if known, must be taken before the witness is examined at all. It may be proved by the witness himself, or by other testimony; if proved by other testimony, the witness is incompetent to explain it away.

Restoration of competency. § 3785. A deposit of money to cover all costs, or any other act which, in the judgment of the court, relieves the witness

Article 2.—Of the Competency of Witnesses.

from his interest, or other ground of incompetency, will restore his competency.

ARTICLE III.

OF THE EXAMINATION OF WITNESSES.

SECTION.

- 3786. Oath or affirmation
- 3787. Separate examination
- 3788. Cross examination.
- 3789. Leading questions.
- 3790. Memorandum in aid of witness.
- 3791. Opinions of witness.
- 3792. Of experts.
- 3793. Impeaching one's own witness.

SECTION.

- 3794. Privilege of witness.
- 3795. Impeaching a witness.
- 3796. Laying the foundation.
- 3797. General character.
- 3798. Sustaining witness.
- 3799. If impeached by cont'y statements.
- 3800. State of feeling and relationship.

§ 3786. The sanction of an oath, or affirmation equivalent thereto, is necessary to the reception of any oral evidence. The court may frame such affirmation according to the religious faith of the witness. Oath or affirmation.

§ 3787. In all cases either party has the right to have the witnesses of the other party examined, out of the hearing of each other. The court will take proper care to effect this object, as far as practicable and convenient, but any mere irregularity shall not exclude the witness. Separate examination

§ 3788. The right of cross examination, thorough and sifting, belongs to every party as to the witnesses called against him. If several parties to the same case have distinct interests, each may exercise this right. Cross examination of witnesses.

§ 3789. Leading questions are generally allowed in cross examinations, and only in these; but the court may exercise a discretion in granting the right to the party calling the witness, and in refusing it to the opposite party when, from the conduct of the witness, or other reason, justice requires it. Leading questions.

§ 3790. A witness may refresh and assist his memory by the use of any written instrument, or memorandum, provided he finally speaks from his recollection, thus refreshed, or is willing to swear positively from the paper. Memorandum in aid of witness memory.

§ 3791. Where the question under examination, and to be decided by the jury is one of opinion, any witness may swear to his opinion or belief, giving his reasons therefor; but, if the issue is as to the existence of a fact, the opinions of witnesses, generally, are inadmissible. Opinions of witness.

Article 3.—Of the Examination of Witnesses.

Experts. § 3792. The opinions of experts, on any question of science, skill, trade, or like questions, are always admissible; and such opinions may be given on the facts as proved by other witnesses.

Impeaching one's own witness. § 3793. A party may not impeach a witness, voluntarily called by him, except where he can show to the court that he has been entrapped by the witness, by a previous contradictory statement.

Privilege of witnesses. § 3794. A witness is relieved from testifying, as to the same matters hereinbefore specified in relation to a party making discovery.

Impeaching a witness. § 3795. A witness may be impeached—
 1. By disproving the facts testified to by him.
 2. By proof of contradictory statements previously made by him as to matters relevant to his testimony and to the case.
 3. By evidence as to his general bad character.

Laying the foundation. § 3796. Before contradictory statements of the witness can be proved against him, (unless they are written statements, made under oath, in connection with some judicial proceedings,) the mind of the witness himself, should be called with as much certainty as possible to the time, place, person, and circumstances attending the former statement; and if in writing, the same should be shown to the witness, or read in his hearing, if in existence; and to lay this foundation, the witness may be recalled at any time.

General character. § 3797. To prove general bad character, the impeaching witness should be first asked as to his knowledge of the general character of the witness; and next as to what that character is, and lastly, he may be asked, if, from that character, he would believe him on his oath.

Sustaining witness. § 3798. The witness may be sustained by similar proof of character. But the particular transactions, or the opinions of single individuals, cannot be inquired of on either side, except upon cross examination, in seeking for the extent and foundation of the witness' knowledge.

If impeached by contradictory statements. § 3799. A witness, impeached by proof of contradictory statements, may be sustained by proof of general good character—the effect of the evidence to be determined by the jury.

State of feeling and relationship. § 3800. The state of the witness' feelings to the parties, and his relationship, may always be proved for the consideration of the jury.

CHAPTER VI.

OF INTERROGATORIES AND DEPOSITIONS

SECTION.

3801. Who may be examined on int'rgr's
 3802. If the facts cease to exist.
 3803. Mode of obtaining commission
 3804. Without service.
 3805. If there are several parties.
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 3807. Who may act as commissioners.
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SECTION.

3809. Compelling witness to answer.
 3810. Where to be examined.
 3811. Writing out their own answer.
 3812. Duty of commissioners.
 3813. How received and disposed of.
 3814. Failing to return a contempt.
 3815. Exceptions—when taken.

§ 3801. A witness may be examined on interrogatories, by commission, at the instance of either party, in any civil cause pending in any court in this State, when either of the following state of facts exist:

Who may be examined on interrogatories.

1. Where the witness resides out of the county.
2. Where, from the condition of his health, from age, or otherwise, he cannot attend the court, or from the nature of his business or occupation, it is not possible to secure his personal attendance without manifest inconvenience to the public or to third persons, (such as Post Masters, Public Carriers, Physicians, &c.)
3. Where the witness is about to remove from the county, or is about to leave home on business, for a sojourn, or tour, which will extend beyond the term of the court.
4. All female witnesses.
5. Where he is the only witness to a material point in the case.

§ 3802. If the state of facts, on which the commission issued ceases to exist before the trial of the cause, and the witness is then accessible by subpoena, the testimony taken on interrogatories cannot be used.

If the fact ceases to exist.

§ 3803. The party seeking to examine a witness by commission, must prepare written interrogatories sufficiently explicit to inform the other party of the nature of the testimony sought and expected, and yet not liable to the objection of being leading questions, which must also state the residence of the witness, if known, and must serve a copy of such interrogatories on the opposite party, or his attorney, with a notice of the time of filing. The original interrogatories shall be then filed in office, and there remain for ten days, during which time cross interrogatories may

Mode of obtaining commission.

Chapter 6.—Of Interrogatories and Depositions.

be filed. At the expiration of ten days, a commission shall issue by the clerk (or presiding judge if no clerk) for the examination of such witness upon the interrogatories.

Without ser-
vice.

§ 3804. If in any case the opposite party is beyond the jurisdiction of the court, or cannot be found, and is not represented by attorney, a notice at the court-house door for ten days, of the filing of the interrogatories, shall authorize a commission to issue.

If there are
several par-
ties.

§ 3805. If there are more than one party opposing, and they have not a joint interest, but several independent interests are represented by different attorneys, copies must be served upon each, and the right to file cross interrogatories belongs to each. In every case the court should see that the party really to be effected by the evidence has an opportunity of cross examination.

Appoint-
ment of
commission-
ers.

§ 3806. Commissions shall issue generally in blank, allowing the party to select his commissioners; but in any case, the opposite party shall have the privilege of naming two competent commissioners, whose names shall be inserted in the commission, and one of whom shall act in the execution thereof, unless a good and sufficient reason be shown for his failure:

Who may
act.

§ 3807. No person is competent to act as commissioner, who would be incompetent as a juror on account of relationship, or as a witness on account of interest, nor will the attorney of the party or his clerk, or an agent paid to discharge this duty, be a competent commissioner. A commissioner, like a judge, should stand perfectly impartial between the parties. Two dollars per day shall be allowed commissioners for their services, to be paid by the party, and taxed with other costs.

Fees.

How execu-
ted.

§ 3808. No party, or his counsel, or agent, or other person on his behalf should be present at the execution of the commission, and everything attending the execution should show a perfect impartiality and freedom from bias.

Compelling
witnesses to
answer.

§ 3809. If a witness refuses to appear before the commissioners, or to answer the interrogatories, upon the certificate of one of the commissioners, or the affidavit of the party or his attorney to the fact, presented to a Judge of the Superior or Justice of the Inferior Court, it shall be his duty to issue an order to the Sheriff, his deputy, or any constable, to arrest the witness and bring him before such Judge or Justice, and after hearing his excuse and examining the interrogatories, to see that the same are legal, he shall order the said witness to be lodged in jail until he answers

the same. This provision shall extend to commissions sent from the courts of other States or the Confederate States.

§ 3810. No female witness shall be required to leave her home to appear before commissioners; nor shall any witness be required to go out of the county, or more than ten miles from his residence, and any witness leaving his home to be examined, shall have the fees of a witness subpoenaed and attending the court.

Where to be examined.

§ 3811. Witnesses may write out their own answers in the presence of the commissioners, and by their consent, but in no other way shall they prepare the same, and if the witnesses answer from written memoranda, such memoranda shall be sent with the commission, and the fact certified by the commissioners.

Writing out their own answers.

§ 3812. The answers should be under oath, and certified to be so taken. They should be written out plainly, and be full and explicit to all the direct and cross interrogatories, they should be signed by the witness, and attested officially by the commissioners named in the commission, and the place of execution should also appear. The interrogatories, answers and commissions should be then sealed up in envelope, with the names of the commissioners written across the seal, and directed to the officer of the court whence the commission issued. The package can be sent by mail or intrusted to the party or some private hand. In the former case, the postmaster receiving it from the commissioner must certify to the fact, and the postmaster delivering it to the court must certify to its reception by due course of mail. In the latter case, the person receiving and delivering it in court, must make affidavit of the fact, and of its freedom from alteration.

Duty of commissioners.

§ 3813. The package thus forwarded must be received in open court, and opened only by its leave or the consent of parties, and when thus received, shall become an office paper, to be used by either party under the direction of the court.

How received and disposed of.

§ 3814. A commission once executed must be returned, and a party failing to return or willfully abstracting such, shall be attached for contempt, and otherwise dealt with until the same is produced.

a Failing to return, a contempt.

§ 3815. All exceptions to the execution and return of commissions must be made in writing, and notice thereof given to the opposite party before the case is submitted to the jury; *Provided*, the same have been in the clerk's office for twenty-four hours

Exceptions — when taken.

prior to the trial. Depositions read on the first trial shall not be subject to formal exceptions on the appeal.

CHAPTER VII.

PERPETUATING TESTIMONY.

SECTION.

3816. Application and order.

3817. Deposition and filing.

3818. Application recorded.

SECTION.

3819. Effect of testimony.

3820. Fees.

Application
and order.

§ 3816. If any person desires to perpetuate the testimony of a witness, in anticipation of litigation, not yet pending, and which it is not in his power to commence, he may make written application to the Judge of the Superior Court of the county where the witness resides, or if a non-resident, where he may be temporarily, stating the facts, the proof expected, and the parties probably interested on the other side, accompanying such application with the written interrogatories to be propounded to the witness, whereupon the Judge shall pass an order requiring some disinterested attorney of the court to act as commissioner and take such testimony, providing in such order for the most effectual notice to the opposite parties, and for any cross interrogatories which may be filed.

Depositions
and filing.

§ 3817. Such commissioner, after executing the commission in the same manner as in ordinary cases, shall file the package with the Clerk of the Superior Court, with his endorsement of the fact thereon, which package shall be safely kept, until produced by him for publication under the order of the court.

Application
recorded.

§ 3818. The application for the order, and the order, shall be entered on the minutes before delivery to the commissioner for execution.

Effect of
testimony.

§ 3819. Testimony thus taken shall be used *de bene esse* if, at the time the litigation arises, no more satisfactory examination of the witness may be had.

Fees.

§ 3820. The court granting the order shall prescribe the fees to be paid to the commissioner and Clerk.

TITLE XI.

OF JURIES

CHAPTER 1. Of grand juries.

CHAPTER 2. Of special juries.

CHAPTER 3. Of petit juries.

CHAPTER 4. Of juries in the Inferior Court.

CHAPTER 5. Special provisions.

CHAPTER I.

OF GRAND JURIES.

ARTICLE 1. Of the qualification of grand juries.

ARTICLE 2. How selected, drawn and summoned.

ARTICLE 3. Oath of the grand jury.

ARTICLE 4. Of the power and duty of a grand jury.

ARTICLE I.

OF QUALIFICATION OF GRAND JURORS.

SECTION 3821. Qualification of grand jurors.

§ 3821. All free white male citizens of this State, above the age of twenty-one years, and under the age of sixty years, being ^{Qualification of grand jurors.} neither idiots, lunatics, nor insane, who have resided in the county for six months preceding the time of serving, and who are deemed fit and proper persons, as hereinafter provided, are hereby declared qualified and liable to serve as grand jurors, unless exempted by law.

ARTICLE II.

HOW SELECTED, DRAWN AND SUMMONED.

SECTION.

3822. How selected and drawn.

3823. Number to be drawn.

3824. Number to be impannelled.

SECTION.

3825. Precept to the Sheriff.

3826. How summoned.

§ 3822. The Justices of the Inferior Court of each county, or a majority of them, together with the Sheriff and Clerk of the ^{How selected.}

Article 2.—How Selected, Drawn and Summoned.

Superior Court, shall convene at the court-house, in their respective counties, on the first Monday in June next, after the adoption of this Code, and biennially on the first Monday in June thereafter, and shall select from the books of the Receiver of Tax Returns for their respective counties, the names of such able, discreet, and qualified citizens of the county as, in their judgment, are fit and proper persons to serve as grand jurors, and shall make a list of the names of the persons so selected, and transmit it under their hands to the next Superior Court of their respective counties, and the Clerk of said Superior Court shall immediately, after receiving such list, fairly enter the same in a book for that purpose, provided at his own expense; and the Judge then presiding shall cause the Clerk of said Superior Court to make out tickets, with the names of the persons so selected written thereon; which tickets shall be put in a box, to be provided by the Clerk at the public expense—the box to have two apartments, marked number *one* and *two*; the Judge shall then lock and seal up the box, and place it in the care of the Clerk, and the key in the care of the Sheriff, and no grand jury shall be drawn and impanelled, but in the presence of the Judge in open court, except as hereinafter provided; nor shall any Clerk or other person, having the custody of the jury box, presume, under any pretence whatever, to open said box, or transpose, or alter the names, unless it be by the direction of the Judge in open court, attending for the purpose of drawing a jury, except as hereinafter excepted.

A list of names to be made out.

Clerk keeps box, Sheriff key, grand jury to be drawn in open court.

How drawn.

Number to be drawn.

§ 3823. The Judge in open court shall break the seal and unlock the box, and cause to be drawn from the apartment of the same marked number *one*, not less than twenty-three nor more than thirty-six names, unless otherwise directed by law, to serve as grand jurors, which names, so drawn out shall, after an account is taken of them at each time of drawing, be carefully deposited in the other apartment of said box marked number *two*; and when all the names shall have been drawn out of apartment number one, the drawing shall commence from apartment number two, and the tickets be returned to number one, and so on alternately; and no name so deposited shall, on any pretence, be thrown out or destroyed, except when it is satisfactorily shown to the Judge that the juror is either dead, removed out of the county, or is otherwise disqualified by law.

Article 2.—How Selected, Drawn and Summoned.

§ 3824. No grand jury shall consist of less than eighteen or Number to serve. more than twenty-three.

§ 3825. Within thirty days after the grand jury is drawn, as here- Precept to the Sheriff. inbefore provided, the Clerk of the said Superior Court shall issue and deliver to the Sheriff, or his lawful deputy, a precept for summoning the same, to which he shall annex a pannel containing the names of the persons drawn as aforesaid, exactly transcribed from the minute book, and in the mandatory part of the precept, the following words shall be written, viz: "The several persons named in the pannel hereunto annexed."

§ 3826. Upon receipt of the precept mentioned in the prece- How served. ding section, the Sheriff, or his deputy, shall cause the persons whose names are written in the pannel annexed to the precept, to be served personally, or by leaving the same at his residence, with a summons, at least ten days before the sitting of the court for which they are drawn, which summons shall be in substance as follows, to wit: "By virtue of the precept to me directed, Form of notice. you are hereby comanded to appear before the presiding Judge, at the next Superior Court to be held at the court-house, in and for the county of _____ on the _____ day of _____ at ten o'clock in the forenoon of that day, to be sworn as a grand juror;" which summons shall be signed by the Sheriff, or his lawful deputy, who shall make due return of such precept, setting forth the names of all persons served as aforesaid, and also the names of those not served, together with the reasons why they were not served.

ARTICLE III.

OATH OF THE GRAND JURY.

SECTION 3827. Oath of the grand jury.

§ 3827. The following oath shall be administered to the fore- Oath of the grand jury. man of all grand juries, viz: "You, as foreman of the grand jury for the county of _____ shall diligently inquire and true presentments make of all such matters and things as shall be given you in charge, or shall come to your knowledge, touching the present service, the State's counsel, your fellows and your own, you shall keep secret, unless called upon to give evidence thereof in some court of law in this State; you shall present no one from envy, hatred or malice, nor shall you leave any one unrepresented from fear, favor, affection, reward, or the hope thereof, but you

Article 3.—Oath of the Grand Jury.

shall present all things truly, and as they come to your knowledge; so help you God." And the same oath thus taken by the foreman, shall be taken by each and every member of any and all grand juries in this State.

ARTICLE IV.

OF THE POWER AND DUTY OF A GRAND JURY.

SECTION.

3828. When bound to present.

3829. Foreman may swear witnesses.

3830. Power as to errors in tax books.

SECTION.

3831. Shall examine county offices.

3832. Shall examine the list of voters.

When bound
to notice of
offences.

§ 3828. Whilst grand jurors are bound only to notice or make presentments of such offences as may or shall come to their knowledge or observation after they shall have been sworn, yet, they have the right and power, and it is their duty, as jurors, to make presentments of any violations of the laws which they may know to have been committed at any previous time, which are not barred by the statute of limitations.

Foreman
may swear
witnesses.

§ 3829. The foreman of each grand jury in this State may administer the oath prescribed by law to all witnesses required to testify before such grand jury, and may also examine such witnesses.

Mistake of
Tax Receiver.

§ 3830. Whenever it shall satisfactorily appear to the grand jury of any county in this State, that the Receiver of Tax Returns has committed an error in making an entry in his digest, of either quantity or quality of property returned in such digest, or in the amount of taxes assessed, such grand jury may recommend the Inferior Court of their county and the Comptroller General of the State, to cause such error (particularly specifying the same) to be corrected.

Shall examine
the offices,
books,
and records
of each term.

§ 3831. In addition to the duties of the grand jury, as indicated in the oath administered to them, and as required by law, it shall be their special duty, from term to term of the Superior Court, to inspect and examine the offices, papers, books and records, of the Clerks of the Superior and Inferior Courts, and also the books, papers, records, accounts, and vouchers of the County Treasurer, and cause any such Clerk or County Treasurer, who shall have failed or neglected to do his duty as required by law, to be presented for non-performance of official duty.

Shall examine
a list of
the voters.

§ 3832. It shall also be the duty of the grand juries of the several counties in this State to carefully examine the list of voters

Article 4.—Of the Power and Duty of a Grand Jury.

required by law to be laid before them, and if there be found on such list any voter not entitled to vote according to the provisions of this Code, to present such voter for such violation of law.*

CHAPTER II.

OF SPECIAL JURIES.

SECTION.

3833. How selected and sworn.

3834. Oath of special jury.

SECTION.

3835. No other oath in divorce cases.

§ 3833. All special juries shall be taken from the grand jury, and shall be stricken in the presence of the court in the following manner: the Clerk shall furnish a list of the grand jurors present and then impanelled, from which the parties or their attorneys may strike out one alternately, until there shall be but twelve left, who shall be forthwith empanelled and sworn as special jurors; in cases of appeal by consent the plaintiff shall strike first, and in all other cases the appellant shall strike first, and should either party fail or refuse to strike such special jury, after being notified or required so to do, the presiding Judge shall, in behalf of the party so failing or refusing to strike, proceed in the same way and manner as if the party failing or refusing were striking said special jury in person, or consenting to the same.

§ 3834. The following shall be the oath of all special juries, to wit: "You shall well and truly try each cause submitted to you during the present term, and a true verdict give, according to the law as given you in charge, and the opinion you entertain of the evidence produced to you, to the best of your skill and knowledge, without favor or affection to either party, provided you are not discharged from the consideration of the case submitted. So help you God"

§ 3835. No additional oath shall hereafter be necessary in cases of divorce.

* NOTE.—In addition to the foregoing provisions, the following note may aid grand juries in the discharge of their official duties.

1. They may recommend extraordinary tax for county purposes.
2. May examine and allow Tax Collector's insolvent list.
3. May examine and recommend abatement in certain cases. See "tax."
4. Every fall term examine Clerk's account of sales of estrays.
5. At spring term may recommend a tax for educational purposes. See appropriate heads.

Article 1.—Qualification of Petit Jurors.

CHAPTER III.

OF PETIT JURIES.

ARTICLE 1. Qualification of petit jurors.

ARTICLE 2. How selected, drawn, summoned, and sworn.

ARTICLE I.

QUALIFICATIONS OF PETIT JURORS.

SECTION 3836. Qualification of petit jurors.

Qualification § 3836. All free white male citizens of this State, above the age of twenty-one years and under the age of sixty years, who are neither idiots nor lunatics, and who have resided in the county for six months immediately preceding the time at which they are called upon to serve, are hereby declared competent, qualified and liable to serve as petit jurors.

ARTICLE II.

HOW SELECTED, DRAWN, SUMMONED AND SWORN.

SECTION.

3837. Selected, drawn, and summoned.

SECTION.

3838. Oath of petit jurors.

How selected.

§ 3837. The citizens of the county whose names remain on the books of the Receiver of Tax Returns, after the grand jurors have been selected, and who possess the qualifications prescribed in the preceding section, shall constitute the body of petit jurors for service in the Superior Courts; and a list of their names shall be made out and returned, written upon tickets, and placed in a box in the same manner as required in cases of grand jurors; and from the box there shall be drawn a pannel of persons, consisting of not less than thirty-six nor more than forty-eight names, unless otherwise directed by law, who shall be summoned in the same manner and under the same regulations which are prescribed for drawing and summoning grand jurors.

How drawn.

How summoned.

NOTE.—For special provisions in relation to drawing grand and petit jurors in counties in which the Superior Court sits two or more weeks, see special acts not included in this Code or repealed by it.

 Article 2.—How Selected, Drawn, Summoned, &c

§ 3838. The following oath shall be administered to petit jurors Their oath. in all civil cases, viz: "You shall well and truly try the causes depending between the parties at variance, and a true verdict give according to evidence. So help you God."

 CHAPTER IV.

OF JURIES IN THE INFERIOR COURT.

ARTICLE 1. Qualifications of jurors in the Inferior Court.

ARTICLE 2. How selected, drawn, summoned and sworn.

 ARTICLE I.

OF THE QUALIFICATIONS OF JURORS IN THE INFERIOR COURT.

SECTION 3839. Qualifications.

§ 3839. The qualifications of jurors to try causes in the Inferior Courts of this State shall be the same as those prescribed by law Qualification of jurors. for petit jurors in the Superior Courts.

 ARTICLE II.

HOW SELECTED, DRAWN, SUMMONED AND SWORN.

SECTION.

3840. Selected, drawn and summoned.

SECTION.

3841. How sworn.

§ 3840. At each and every meeting held for the purpose of ar- How selected ranging or revising the jury boxes of the Superior Court, the Justices of the Inferior Court present at such meeting, shall cause an exact copy of the petit jury list of the Superior Court to be made out and delivered to the Clerk of the Inferior Court, who shall immediately enter the same in a book to be provided by him for that purpose; and the persons whose names are on such list shall constitute the body of jurors for the trial of causes in the Inferior Court, and the said Justices with said Clerk shall write said names on tickets, and arrange them in a box in the same manner as is required in the Superior Court, and the Inferior Court in term time (except as hereinafter excepted) shall draw from said How drawn. box a pannel of jurors consisting of not less than twenty-four nor more than thirty-six names, to serve at the term of said Inferior

Article 2.—How Selected, Drawn, Summoned and Sworn.

How summoned. Court next succeeding the term at which such drawing takes place, and the jurors thus drawn shall be summoned by the Sheriff or his Deputy, by virtue of a precept issued by such Clerk of the Inferior Court, under the same regulations as those prescribed in this Code for drawing and summoning petit jurors in the Superior Court.

How sworn. § 3841. The same oath which is required to be administered to petit jurors in the Superior Court, shall be administered to jurors empanelled to try causes in the Inferior Court.

CHAPTER V.

SPECIAL PROVISIONS.

SECTION.

- 3842. When Judge fails to draw a jury.
- 3843. Juries may be made by talesman.
- 3844. Jury box destroyed—how replaced.
- 3845. Persons exempt from jury duty.
- 3846. May recommend extra tax.

SECTION.

- 3847. Oath of jury in claim cases.
- 3848. Failure of court, jury stands over.
- 3849. When jury lists, &c., may be made.
- 3850. May be fined for contempt.
- 3851. May have refreshments.

Upon failure of the Judge to draw.

§ 3842. If from any cause, the Judge of the Superior Courts shall fail to draw grand and petit juries, as hereinbefore required, the Justices of the Inferior Court, or a majority of them, together with the Sheriff and Clerk of the Superior Court of the county in which such failure occurs, shall assemble at the court-house in such county at least sixty days previous to the sitting of the court at which the jurors are required to serve, and proceed to open their jury boxes, and draw therefrom the required number of names to serve as grand and petit jurors at their next depending Superior Court, and the juries being so drawn, the boxes shall be again sealed up, and with the key, delivered to the custody of the proper officer; and if the Inferior Court from any cause shall fail to draw a jury, at the time hereinbefore prescribed, to serve in their said Inferior Court, the Justices of said Inferior Court, or a majority of them, together with their Clerk and the Sheriff, shall meet at the court-house at least forty days before the sitting of the court at which the jurors are to serve, and draw a jury for said Inferior Court, under the same regulations that they ought to have been done in term time.

How drawn for Inferior Court.

Jurors summoned fail ing to attend

§ 3843. When from any cause there shall not be present a sufficient number of persons drawn and summoned as hereinbefore required to make up a grand jury, or the petit juries, or a jury

Chapter 5.—Special Provisions.

to try causes in the Inferior Court, the court may order the Sheriff, his Deputy, the Coroner, or any other disinterested person, to summon by-standers or others qualified as hereinbefore prescribed, until the pannel shall be complete.

May be made up from by-standers.

§ 3844. When the jury list and jury boxes of any county in this State shall be destroyed, the Justices of the Inferior Court, or a majority of them, together with the Clerk of the Superior Court and the Sheriff, shall, as soon thereafter as practicable, meet at the court-house, and make out jury lists and arrange the names in boxes as hereinbefore directed.

If the jury box should be destroyed

How supplied.

§ 3845. All the Justices of the Inferior Court and clergymen of this State, may at their own option be exempt from the service and duties of a grand juror.

Persons exempt from jury duty.

§ 3846. Upon the recommendation of the grand jury, the Justices of the Inferior Court of the several counties in this State, may assess and raise a tax for the reasonable compensation of grand and petit jurors, or either of them, and at their pleasure and discretion discontinue such tax, and again resume and re-assess and raise it upon the recommendation aforesaid; the jury and confession fees in such case to be paid into the County Treasury as a part of the fund for that purpose; and when such tax is raised, the Clerk of the Superior Court shall issue to the jurors whose compensation is provided for as aforesaid, a certificate which shall be deemed and held a warrant on the County Treasury for the amount of the money due such juror, according to the *per diem* pay fixed by the Inferior Court, and the County Treasurer shall pay the same out of the fund so raised by taxation as aforesaid, and the Tax Collector shall collect the tax and pay it over as county tax.

The grand jury may recommend an extra tax.

How paid out.

§ 3847. The following oath shall be administered to all juries empannelled to try claim cases, whether at common law or on the appeal, to wit: "In addition to the oath you have already taken, you do further swear that you will give such damages not less than *ten per cent.* as may seem reasonable and just to the plaintiff against the claimant in case it shall be sufficiently shown to you that such claim was made for delay only. So help you God."

Oath of the jury in claim cases.

§ 3848. Whenever there shall be a failure of the Superior Court or Inferior Court, in consequence of the non-attendance of the Judge or Justices, or other cause, the jurors summoned for such

On failure of the Court.

Chapter 5.—Special Provisions.

court shall stand over to the next succeeding term in the same manner as suitors and witnesses do.

When list is not made.

§ 3849. Whenever the proper officers in any county in this State shall fail to meet and make out jury lists and arrange jury boxes for their respective counties at the time directed in this Code, the same may be done at any time before the next term of the Superior Court to be held in the county after the time at which the lists should have been made out.

May be fined for contempt

§ 3850. If any jury shall commit a contempt of court, or shall break up before giving in their verdict in any civil case without leave of the court, the court may declare a mistrial in the case, and shall fine each of the offending jurors in a sum not exceeding one hundred dollars.

May have refreshments.

§ 3851. When any jury is confined in the investigation of a case for a length of time which exposes them to hunger and cold, the Court may, on application from such jury, direct them to be furnished with such refreshments as the presiding Judge may deem meet and proper, and the said Judge shall have full power to draw his warrant on the County Treasurer of the county where the investigation is had, for the payment of the same, which the said Treasurer shall pay out of any funds on hand. The Judge may also allow the jury fire if the circumstances require it.

TITLE XII.

PROCEEDINGS AGAINST OFFICERS OF COURT.

CHAPTER I.

PROCEEDINGS AGAINST OFFICERS OF COURT.

SECTION.

- 3852. Officers subject to suit. &c.
- 3853. Liability of Sheriffs.
- 3854. Demand of money collected.
- 3855. Service of demand—how proved.
- 3856. Retired officers may be ruled.
- 3857. Rules *ni si* against officers.
- 3858. Answer and proceedings.

SECTION.

- 3859. When ruled without notice.
- 3860. Judgment on rule.
- 3861. Defaulting officers—how punished.
- 3862. Delinquent attorneys.
- 3863. Rule against Deputy Sheriff.
- 3864. Service of rule against Sheriff.
- 3865. Rule *vs.* J. P. and Constables.

Officers of court liable to suits, &c.

§ 3852. All Sheriffs, under Sheriffs, Coroners, Jailors and Constables and other officers of court shall be liable to all actions, suits and disabilities whatever, which they, or either of them, may or shall

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incur for or on account of the escape of prisoners, or for or in respect of any other matter or thing whatever, relating to, or concerning their respective offices.

§ 3853. The Sheriffs of this State shall be liable to an action on the case, or an attachment for contempt of court, at the option of the party, wherever it appears that such Sheriffs have injured such party, either by a false return, or by neglecting to arrest a defendant, or to levy on the property of the defendant, or to pay over to the plaintiff, or his attorney, any monies collected by such Sheriffs by virtue of any *fi. fa.* or other legal process, or to make a proper return of any writ, execution, or other process put into the hands of such Sheriff. Liability of Sheriffs.

§ 3854. If any Sheriff, Coroner, Justice of the Peace, Constable, Clerk of the Superior, or Inferior Court, or attorney at law, shall fail, upon application, to pay to the proper person, or his attorney, any money they may have in their hands, which they may have collected by virtue of their office, the party entitled thereto, or his attorney, may serve said officer with a written demand for the same, and if not then paid, for such neglect or refusal, the said officer shall be compelled to pay at the rate of twenty per cent. per annum, upon the sum he has in his hands, from the date of such demand, unless good cause be shown to the contrary. Money collected by officers may be demanded, &c.

§ 3855. A copy of said demand produced in court, verified by affidavit, stating when and where the original was served upon the officer, shall be *prima facie* evidence of the date and service thereof. Service of demand—how proved.

§ 3856. Sheriffs, Deputy Sheriffs, Coroners, Clerks of the Superior and Inferior Courts, Justices of the Peace and Constables, shall at any and all times be subject to the rule and order of the courts after they have retired from their respective offices, in such cases and in like manner as they would have been had they remained in office. Officers may be ruled after going out of office.

§ 3857. The Judges of the Superior Court, Justices of the Inferior Court and Justices of the Peace, respectively, upon application, may grant rules *ni si* against all officers subject thereto in vacation, or in term time, which rule *ni si* shall contain a full statement of the case in which the officer is called upon to show cause, and also the time and place of hearing, and, if granted in vacation, the officer called on shall be served with a copy thereof before the sitting of the court to which it is made returnable, and Rules ni si against officers.

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if granted in term time, such service shall be perfected before the case is called for hearing.

Answer to rule *ni si*, and subsequent proceedings.

§ 3858. The officer called on by rule *ni si*, as provided in the preceding section, shall fully respond in writing to said rule, which answer shall be under oath, taken at the time the answer is filed; and if the answer is not denied, the rule shall be discharged, or made absolute, according as the court may deem the answer sufficient or not. The movant of the rule, however, may traverse the truth of such answer, in which case an issue shall be made up and tried by a jury at the same term, unless good cause of continuance be shown, which may be done once only by either party. Upon the trial of such issue, the court shall discharge the rule or make the same absolute, according as the verdict of the jury may be for or against the officer.

When officers may be ruled without notice.

§ 3859. If a Sheriff or other officer shall designedly absent himself from his court, the presiding Judge or Justices, in all such instances, when required by plaintiffs in execution, or their attorneys, shall grant a rule absolute against such Sheriff without the notice aforesaid, unless it is proven at such term of the court, that the said Sheriff, from sickness, is not able to attend said court.

Lien of rule absolute.

§ 3860. When a rule absolute has been obtained against any officer for the payment of money as provided in this chapter, such rule shall have the same lien upon the property, both real and personal, of such officer as an ordinary judgment at law, and if not punctually paid, such demand shall thereafter draw an interest at the rate of twenty per cent. per annum, and the plaintiff may have either an attachment or an execution issued from said rule absolute, and may have either of said processes returned, and the other issued at pleasure.

Default of officers—how punished.

§ 3861. If any Sheriff or Coroner shall fail to make a proper return of all writs, executions, and other processes put into his hands, or shall fail to pay over all monies received on such executions, on his being required so to do by the court, he shall be liable to an action as for contempt, and may be fined, imprisoned, or removed from office, in the manner prescribed by the constitution and laws.

Delinquent attorney to be stricken from the roll.

§ 3862. If any attorney shall retain in his hands any money received by him for any client, after being ordered by the court to pay over the same to the principal, he shall be stricken from the list of attorneys.

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§ 3863. All Deputy Sheriffs shall be liable to be ruled and attached in the same way and manner as Sheriffs; but the liability of the Sheriff shall not be affected by any such proceeding against his deputy, when the same is not effective.

Deputy Sheriffs subject to rule, &c.

§ 3864. Whenever the Sheriff or his deputy is a party to said rule, or interested therein, and there be no Coroner, or other lawful officer of said county to execute the same, it shall be the duty of the Judge, or Justice, or Justices of said court, to appoint, *pro tempore*, a special officer to carry out and effectuate the order of said court, which said officer so, appointed, shall be allowed the usual fees of Sheriffs for like service.

Rule against Sheriff and deputy—by whom served.

§ 3865. Justices of the Peace and Constables shall be so far considered officers of the Superior Court, as to be subject to be ruled under similar regulations as are herein provided in relation to any other officer of said court, and shall be subject to all the pains and penalties herein provided, in case of a rule absolute against Sheriffs and other officers of said court, when they, or either of them, shall refuse or neglect to pay over any money which they may have received or collected in their official capacity.

Justices of the Peace and Constables—where ruled.

Article 1.—Application to Foreclose, &c.

TITLE XIII.

OF PROCEEDINGS TO FORECLOSE MORTGAGES.

CHAPTER 1. Of mortgages on real estate—how foreclosed.

CHAPTER 2. Of mortgage on personalty—how foreclosed.

CHAPTER I.

MORTGAGES ON REAL ESTATE—HOW FORECLOSED.

ARTICLE 1. Of the application—when and how made.

ARTICLE 2. Defences, pleas—when and how made.

ARTICLE 3. Of the judgment, disposition of property, &c.

ARTICLE 4. Of the proceeds of sale—how appropriated.

ARTICLE I.

APPLICATION TO FORECLOSE—WHEN, WHERE, AND HOW MADE, AND PROCEEDINGS THEREON.

SECTION.

3866. Mortgage on land—how foreclosed.

SECTION.

3867. Executors, &c. may foreclose.

Foreclosure
of mortgage
on realty.

§ 3866. Mortgages on real estate in Georgia, shall be foreclosed in the following manner, to wit: any person applying and entitled to foreclose such mortgage shall, by himself, or his attorney, petition the Superior Court of the county wherein the mortgaged property may be, which petition shall contain a statement of the case, the amount of the petitioner's demand, and a description of the property mortgaged; whereupon the court shall grant a rule, directing the principal, interests and costs, to be paid into court, on or before the first day of the next term immediately succeeding the one at which such rule is granted: which rule shall be published once a month, for four months, or served on the mortgagor, or his special agent or attorney, at least three months previous to the time at which the money is directed to be paid into court, as aforesaid.

By represen-
tative of
deceased
mortgagee.

§ 3867. If the person entitled to foreclose the mortgage on real estate be dead, the application and proceeding to foreclose may be made and prosecuted by his executor or administrator.

Article 2.—Of Pleas, Defences, &c.

ARTICLE II.

OF PLEAS, DEFENCES, &c.—WHEN AND HOW MADE.

SECTION.

3868. Defences against foreclosure.

3869. Third persons cannot defend.

SECTION.

3870. Proceedings against executors, &c.

3871. Issue—how tried.

§ 3868. When a rule *ni si* to foreclose a mortgage on real estate has been granted, and the same has been published or served, as hereinbefore required, the mortgagor, or his special agent or attorney, may appear at the term of the court at which the money is directed to be paid, and file his objections to the foreclosure of such mortgage, and may set up and avail himself of any defence which he might lawfully set up in an ordinary suit, instituted on the debt or demand secured by such mortgage, and which goes to show that the applicant is not entitled to the foreclosure sought, or that the amount claimed is not due; *Provided*, that the facts of such defence are verified by the affidavit of such mortgagor, or special agent or attorney, at the time of filing the same.

Defence against foreclosure of mortgage on realty.

§ 3869. If the mortgagor, or his special agent or attorney, fail to set up the defence provided for in the preceding section, it is not competent for any third person to interpose; neither will the court itself, of its own motion do so.

Third persons cannot defend.

§ 3870. When the mortgagor is dead, the proceeding to foreclose the mortgage on real estate may be instituted against his executor or administrator.

Proceeding against representative of mortgagor.

§ 3871. When proceedings to foreclose a mortgage are instituted, and a defence is set up thereto, as hereinbefore provided, the issue shall be submitted to and tried by a special jury, as in appeal cases.

Issue—how tried.

ARTICLE III.

OF THE JUDGMENT AND DISPOSITION OF MORTGAGE PROPERTY.

SECTION 3872. Judgment of foreclosure and sale.

3872. When the mortgagor, after being directed so to do, fails to pay the principal, interest and cost, as hereinbefore required; and also fails to set up and sustain his defence against the foreclosure of the mortgage, the court shall give judgment

Judgment of foreclosure and sale of mortgaged property.

Article 3.—Of the Judgment and Disposition of Mortgaged Property.

for the amount which may be due on such mortgage, and shall order the mortgaged property to be sold in the manner, and under the same regulations which govern Sheriffs' sales under execution.

ARTICLE IV.

PROCEEDS OF SALE OF MORTGAGED PROPERTY—HOW APPROPRIATED.

SECTION.

3873. Disposition of proceeds.

SECTION.

3874. When proceeds may be retained.

Proceeds of
sale—how
disposed of.

§ 3873. The money arising from the sale of mortgaged property, brought to sale under the regulations hereinbefore prescribed, shall be paid to the person foreclosing the mortgage, unless claimed by some other lien in the hands of the officer, which in law has priority of payment over the mortgage; and when there shall be any surplus after paying off such mortgage or other liens, the same shall be paid to the mortgagor or his agent.

When pro-
ceeds may
be retained
by the court.

§ 3874. If the mortgage is given to secure a debt due by instalments, and is foreclosed before any one of the instalments falls due, and there is a surplus of funds, as above stated, the court may retain the funds, or order the same invested to meet the instalment still unpaid.

CHAPTER II.

OF MORTGAGES ON PERSONAL PROPERTY—HOW FORECLOSED.

ARTICLE 1. Of the application—by whom and how made.

ARTICLE 2. Of the defences—when and how made.

ARTICLE I.

OF THE APPLICATION TO FORECLOSURE—BY WHOM AND HOW MADE.

SECTION.

3875. On personalty—how foreclosed.

3876. Levy and sale of property.

3877. When the *fi. fa.* may claim money.

3878. Property may be sold by consent.

3879. Affidavit of illegality.

SECTION.

3880. Proceedings thereon.

3881. Sale, and disposition of proceeds.

3882. Executors, &c., may foreclose.

3883. Contest of lien by third persons.

§ 3875. Mortgages on personal property shall be foreclosed in the following manner, to wit: Any person holding a mortgage on

Article 1.—Of the Application to Foreclosure.

personal property, and wishing to foreclose the same, shall, either in person, or by his agent or attorney in fact or at law, go before some officer of this State who is authorized by law to administer oaths, or a commissioner for this State residing in some other State, and make affidavit of the amount of principal and interest due on such mortgage, which affidavit shall be annexed to such mortgage, and when such mortgage, with such affidavit annexed thereto, shall be produced to the Judge of the Superior Court, whose circuit embraces the county wherein the mortgagor resides at the date of the foreclosure, if a resident of this State, or where he resided at the date of the mortgage, if not a resident of this State, or to any one of the Justices of the Inferior Court of such county, it shall be the duty of such Judge or Justice to pass an order declaring such mortgage foreclosed, and directing the Clerk of the Superior Court (if the order is passed by the Judge) or the Clerk of the Inferior Court of said county (if the order is passed by the Justice) to issue an execution for such principal and interest, and for the sale of the mortgaged property, as on a judgment, which order shall also be annexed to the mortgage; and when the mortgage, with the affidavit and order aforesaid annexed thereto, are delivered to the said Clerk of the Superior or Clerk of the Inferior Court as the order may be passed by the Judge or Justice as aforesaid, it shall be the duty of such Clerk to issue an execution, directed to all and singular the Sheriff's and Coroners of this State, commanding a sale of the mortgaged property to satisfy the said principal and interest, together with the costs of the proceedings to foreclose the said mortgage.

Foreclosure of mortgages on personalty.

Affidavit.

Order of Judge.

Execution.

§ 3876. When the execution mentioned in the preceding section shall be delivered to the Sheriff or Coroner, as the case may be, it shall be his duty to levy on the mortgaged property wheresoever the same may be found, and after advertising the same in one or more of the public gazettes of this State, at least sixty days before the day of sale, the said Sheriff or Coroner shall put up and expose said property to sale at the time and place, and in the same manner as govern in case of Sheriff's sales.

Levy and sale of mortgaged property.

§ 3877. If other *fi. fas.* are levied on the mortgaged property, and the same is sold after an advertisement of only thirty days, the mortgage *fi. fa.* may, nevertheless, claim the proceeds of the sale, if its lien is superior.

Mortgage *fi. fa.* may claim money when.

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Mortgaged property may be sold without foreclosure.

§ 3878. If a mortgage on realty or personalty is not foreclosed, and the equity of redemption is levied on by other *fi. fas.*, by consent of the mortgagor and mortgagee, and the plaintiff in the *fi. fa.* levied, the entire estate may be sold, and the mortgagee claim under his lien, in the same manner as if his mortgage was foreclosed.

ARTICLE II.

OF THE DEFENCES—WHEN AND HOW MADE.

SECTION.

3879. Affidavit of illegality.

3880. Proceedings thereon.

3881. Sale and disposition of proceeds.

SECTION.

3882. Executors, &c., may foreclose.

3883. Contest of lien by third persons.

Affidavit of illegality to mortgage *fi. fa.*

§ 3879. When an execution shall issue upon the foreclosure of a mortgage on personal property, as hereinbefore directed, the mortgagor, or his special agent, may file his affidavit of illegality to such execution, in which affidavit he may set up and avail himself of any defence which he might have set up according to law, in an ordinary suit upon the demand secured by the mortgage, and which goes to show that the amount claimed is not due.

Proceedings when illegality is filed.

§ 3880. When an affidavit of illegality shall be filed to a mortgage execution, as provided for in the preceding section, the Judge or Justice who passed the order of the foreclosure, may order the levying officer to postpone the sale of the mortgaged property upon the mortgagor, or his special agent or attorney, giving bond with good and sufficient security, in double the amount of such execution, conditioned for the return of such property when called for by the levying officer, which bond shall be made payable to the plaintiff, who may sue and recover thereon when the condition is broken; and when such affidavit of illegality is filed, and such order of postponement is passed, and such bond has been given, the levying officer shall postpone the sale of said property and return all the proceedings and papers to the next term of the court whose Clerk issued the execution, where the questions and issues shall be tried as other cases of illegality; and the jury shall be sworn to give at least twenty-five per cent. damages to the plaintiff on the principal sum, in case it shall appear that the affidavit of illegality was filed for a delay only.

Article 2.—Of the Defences.

§ 3881. If the mortgagor fails to set up and sustain his defence as hereinbefore authorized, the mortgaged property shall be sold, and the proceeds of the sale shall be applied to the judgment of said mortgage execution, unless such proceeds are claimed by some other lien in the hands of the officer, entitled in law to priority of payment; and if, after the satisfaction of such *fi. fa.* or other lien, there may be any surplus, the same shall be paid to the mortgagor or his agent.

Sale of mortgaged property, and disposition of proceeds.

§ 3882. When the holder of a mortgage on personal property is dead, the affidavit and proceedings to foreclose may be made and prosecuted by his executor or administrator; and if the mortgagor be dead, his legal representative may set up the same defences which he could do if living.

Representative of deceased mortgagor may foreclose.

§ 3883. If any creditor of the mortgagor, whether his debt be in judgment or not, desires to contest the validity or fairness of the mortgage lien or debt, he may make an affidavit of the grounds upon which he relies to defeat such mortgage, and upon filing the same with the levying officer, together with a bond and good security, payable to the mortgagee, and conditioned to pay all costs and damages incurred by the delay, if the issue be found against the contestant, it shall be the duty of such officer to return the same to the court to which the mortgage *fi. fa.* is returnable, to be tried in the manner prescribed above for an affidavit of illegality by the mortgagor.

How third persons may contest mortgage lien.

Article 1.—Establishment of Lost Papers in Superior and Inferior Courts.

TITLE XIV.

OF PROCEEDINGS TO ESTABLISH LOST PAPERS.

CHAPTER I.

LOST PAPERS—WHEN, WHERE, AND HOW ESTABLISHED.

ARTICLE 1. Establishment of lost papers—in what courts.

ARTICLE 2. Establishment of lost papers in Justices' Court.

ARTICLE I.

ESTABLISHMENT OF LOST PAPERS IN SUPERIOR AND INFERIOR COURTS.

SECTION.	SECTION.
3884. Office papers establis'd on motion.	3889. Certified endorsement of copy.
3885. Papers sued on, office p'p's—when	3890. Suits on lost papers.
3886. Other papers—how established.	3891. Oyer cannot be demanded.
3887. Continuance—when granted.	3892. Lost executions—how established
3888. Rule absolute.	

Office papers may be established instanter.

§3884. Upon the loss of any original bill in equity, answer, replication, declaration, plea, bill of indictment, special presentment, or other office paper, a copy may be established instanter on motion.

Papers sued on are office papers—when.

§3885. The instrument sued on shall be deemed an office paper, after the case of which it is the foundation has gone to the appeal.

How other papers are established.

§3886. The owner of a paper, (other than an office paper, and which can not be sued on and collected in a Justices' Court,) lost or destroyed, desiring to establish the same, shall present to the Clerk of the Superior or Inferior Court of the county where the maker of the paper resides, if a resident of this State, a petition in writing, together with a copy, in substance, of the paper lost or destroyed, as near as he can recollect, which copy shall be sworn to by the petitioner, his agent or attorney; whereupon the clerk shall issue a rule *ni si* in the name of the Judge of the Superior Court, if the application be made to the Clerk of such Superior Court, and in the name of one of the Justices of the Inferior Court, if the application be made to the Clerk of such Inferior Court, calling upon the opposite party to show cause, if any he has, why the copy sworn to should not be established in lieu of the lost or destroyed original; which rule shall be served by the Sheriff, his deputy, or any Constable of

Petition.

Rule *ni si*.

Article 1.—Establishment of Lost Papers in Superior and Inferior Courts.

this State, personally, upon the party, if to be found in this State, twenty days before the sitting of the Court to which the rule *ni si* is made returnable; and if the party cannot be found in this State, then the rule shall be published in some public gazette of this State for the space of three months before the final hearing of the rule.

Rule *ni si*—
how served.

§ 3887. In a proceeding to establish lost papers under the provisions of the preceding section, no continuance shall be granted, unless it appear reasonable and just to the court; nor shall a continuance be allowed to the same party more than once, except for Providential cause.

Continuance
—when
granted.

§ 3888. When the rule *ni si* has been duly served, as hereinbefore provided, the court shall grant a rule absolute establishing the copy of the lost or destroyed paper sworn to, unless good and sufficient cause be shown why such rule absolute should not be granted.

Rule absolute.

§ 3889. When the copy is established, the Clerk of the court in which it is done shall furnish the copy to the party who had it established, with a certified endorsement thereon of the day and term of the court when the rule absolute was granted; *Provided*, all costs of the proceeding are paid.

Certified endorsement
of copy.

§ 3890. If the paper lost or destroyed be a note, bill, bond, or other instrument upon which suit may be brought, the owner thereof may institute suit thereon so soon as the rule *ni si* has been issued as hereinbefore provided for, and it shall be set forth in the declaration that the paper sued on is lost or destroyed; and in no case shall there be a judgment had in such suit until it shall be determined whether the application to establish the paper be granted or not; and if granted, then judgment shall be had as in other cases.

Suit on lost
paper.

§ 3891. In a suit, such as provided for in the preceding section, oyer of the paper sued on shall not be demanded until at the time of the rendition of judgment in such suit, and then if the plaintiff produce a copy of the paper, with a certified endorsement thereon by the Clerk of the Court in which it was established, as hereinbefore directed, it shall be taken and considered as the original.

Oyer of lost
paper shall
not be demanded.

§ 3892. When any execution which shall have been regularly issued from the Superior or Inferior Courts of this State shall be lost or destroyed, the Judge or either of the Justices of the court from which the same issued, may at any time, either in open

When execution is lost
alias may issue at any
time.

Article 1.—Establishment of Lost Papers in Superior and Inferior Courts.

court or vacation, upon proper application being made and the facts proven by the affidavit of the applicant, his agent or attorney, or by any other satisfactory proof, grant an order for the issuing of an alias execution in lieu of the lost original execution.

ARTICLE II.

ESTABLISHMENT OF LOST PAPERS IN THE JUSTICES' COURT.

SECTION.

3893. Of papers belonging to a suit
3894. Establishment of other papers.

SECTION.

3895. Establishment of lost executions.

Papers belonging to suits when lost may be established at once.

§ 3893. When any bond, bill, note, or other evidence of debt, or any summons, execution, or any other paper belonging or appertaining to any suit or other proceeding in any Justices' Court of this State shall be lost, destroyed, or mislaid from the hands of the Justice of the Peace, such Justice may, by reason and virtue of his office, establish instantler, a copy in substance of such paper in lieu of the original so lost; and if any such paper be lost, destroyed, or mislaid from the hands of any person other than the Justice of the Peace, the party, plaintiff or defendant, or any one interested wishing to use such lost paper, shall be permitted to establish and use in lieu of the original, a substantial copy of the same, by making affidavit of the loss of the original, and that the copy proposed to be used is a copy in substance of the lost original.

Other lost papers may be established by rule.

§ 3894. The owner of a lost paper, which may according to law be sued on and collected in a Justices' Court, who wishes to establish the same, may present to one of the Justices of the Peace of the district in which the maker resides, if a resident of this State, a copy in substance of the paper lost as nearly as he can recollect, which copy shall be sworn to by the applicant, his agent or attorney, or be proved by other evidence; whereupon such Justice of the Peace shall issue a rule *ni si*, calling upon the opposite party to show cause, if any he has, why the copy should not be established in lieu of the original so lost or destroyed; which rule shall be served upon the party personally, if to be found, ten days before the sitting of the court to which he is called upon to show cause, by any Constable of the State, and if the party is not to be found then the rule may be published in a public gazette of this State for one month, before the final hearing of the rule; and

Rule—how to be served.

Article 2.—Establishment of Lost Papers in the Justices' Court.

if no sufficient cause be shown, the Justice shall give judgment establishing the copy in lieu of the original so lost or destroyed; and the copy so established shall be certified to by the Justice of the Court in which it was established and shall have all the force and effect of the original.

§ 3895. Executions issued from the Justices' Courts of this State, when lost or destroyed, may be supplied by an alias execution, to be issued by the Justice of the Peace, under the same rules and regulations as those which prevail in the Superior Court on the subject of issuing alias executions.

Alias executions from Justices Court may issue.

TITLE XV.

OF PROCEEDING TO OBTAIN PARTITION.

CHAPTER 1. Partition of land—how obtained.

CHAPTER 2. Partition of personal property—how obtained.

CHAPTER I.

PARTITION OF LAND—HOW OBTAINED.

ARTICLE 1. Where, how and by whom application must be made.

ARTICLE 2. Notice to parties—how given and upon whom served.

ARTICLE 3. Of issuing, execution and return of writ of partition.

ARTICLE 4. Defences—how and when made.

ARTICLE 5. Of the judgment.

ARTICLE 6. Remedy of parties absent from the State.

ARTICLE I.

WHERE, HOW AND BY WHOM THE APPLICATION FOR PARTITION
MUST BE MADE.

SECTION.

3896. Proceedings to obtain partition.

SECTION.

3897. By whom application may be made

§ 3896. In all cases where two or more persons are common owners of lands and tenements in this State, whether by descent, purchase or otherwise, and no provision is made by will or otherwise as to how such lands and tenements are to be divided, any one of such common owners may apply to the Superior Court of

Proceedings to partition.

Article 1.—Where, how and by whom Application must be made.

the county in which such lands and tenements are situated, for a writ of partition, which application shall be by petition setting forth plainly and distinctly the facts and circumstances of the case, describing the premises to be partitioned and defining the share and interest of each of the parties therein.

Application
—by whom
made.

§ 3897. If the party desiring the writ of partition be of full age, and free from disability, he may make the application either in person or by his agent or attorney in fact or at law, and if the application is for the benefit of a minor, a lunatic, *feme covert* or *cestui que trust*, it may be made by the guardian of such minor or lunatic, by the husband of such *feme covert*, or the trustee of such *cestui que trust*, as the case may be.

ARTICLE II.

NOTICE TO THE PARTIES—HOW GIVEN AND ON WHOM SERVED.

SECTION. 3898. Twenty days' notice of the application.

Twenty
days' notice.

§ 3898. The party applying for the writ of partition, shall give to the other parties concerned at least twenty days' notice of his intention to make application, and if any of such other parties concerned be a minor, a lunatic, a *cestui que trust* or *feme covert* said twenty days' notice may be served on the guardian of such minor or lunatic, or on the trustee of such *cestui que trust*, or on the husband of such *feme covert*, and if any of the parties reside without the limits of this State, the court may order service by publication, as in its judgment is right in each case.

Service by
publication.

ARTICLE III.

OF ISSUING, EXECUTION AND RETURN OF THE WRIT OF PARTITION.

SECTION.

3899. Five partitioners—how appointed.

SECTION.

3900. Power and duty of partitioners.

Five parti-
tioners.

§ 3899. When the application for partition is made, and when due proof is made that the notice hereinbefore required has been given, the court shall examine the petitioner's title, and part or share of the premises to be partitioned, and shall thereupon pass an order directing the Clerk of such court to issue a writ of partition, framed according to the nature of the case, directed to five freeholders of the county in which the lands are situated, who shall execute and return the writ as hereinafter provided.

Must be free
holders of
the county.

Article 3.—Of Issuing, Execution and Return of the Writ of Partition.

§ 3900. The partitioners, or persons to whom the writ is directed, shall have power to select a surveyor to aid them in the discharge of their duties, and after giving all the parties, if possible, at least eight days' notice of the time of executing the writ, and after being sworn before some officer authorized by law to administer such oath, duly and impartially to execute such writ, the said partitioners, or a majority of them, shall proceed to make a just and equal partition and division of all such lands and tenements, either in entire tracts or parcels as they shall judge to be in proportion to the shares claimed, and most beneficial to the several common owners of said lands and tenements, according to the best of their skill, ability and knowledge, and they shall return said writ, with their actings and doings thereon, under their hands and seals, to the said Superior Court within three months after the issuing of said writ, which return shall be filed and kept by the said Clerk until the next term of said court after the filing of the same.

Surveyor to be selected.

Eight days' notice.

Lands—how divided.

ARTICLE IV.

DEFENCES—HOW AND WHEN MADE.

SECTION 3901. Defences—how and when made.

§ 3901. At the term of the court when the application is made—or at the term next after said partitioners have made their return, any of the defendants or persons concerned, against whom or whose right or title a judgment is sought may file objections to the right of the applicant and the writ of partition, or to the return of the partitioners, and may, by way of defence, show any good and probable matter in bar of the partition asked for, or may show that the demandant has not title to so much as is allowed and awarded to him by the said partitioners, or to any part of the land, whereupon an issue shall be made up and tried by a special jury, as in appeal cases.

Defences—when, by whom and how made.

ARTICLE V.

OF THE JUDGMENT.

SECTION.

3902. The return of the partitioners.

3903. If lands cannot be divided.

3904. Proceeds of sale—how disposed of.

SECTION.

3905. Titles to property sold.

3906. Cases not provided for.

When re-
turn shall be
made the
judgment.

§ 3902. If no objection be filed by any of the parties to the return of the partitioners, or if being filed, the jury, on the trial, shall find a verdict against the party setting up such objections, the said return of the partitioners shall be made the judgment of the court, and shall be final and conclusive as to all the parties concerned who were notified of the application for partition, and of the time of executing the writ, as hereinbefore required, and a writ of possession shall issue accordingly; but if objections to said returns be filed and sustained by the jury trying the case, or if it shall appear to the court that there is injustice or inequality in the division made by the partitioners, said court shall award a new partition, to be made in the presence of the parties concerned, (if they will appear) which second partition, when returned, shall be firm, good, and conclusive forever against all parties notified as aforesaid.

A new par-
tition may
be awarded.

If lands can-
not be di-
vided they
must be sold

§ 3903. Whenever application is made for partition of lands and tenements as hereinbefore provided for, and either of the parties in interest shall make it satisfactorily appear to the court that a fair and equitable division of the lands and tenements cannot be made by means of metes and bounds, by reason of improvements made thereon, or by reason of the premises being valuable for mining purposes, or for the erection of mills or other machinery, or that the value of the entire lands and tenements will be depreciated by the partition applied for, then and in that case the court shall order a sale of such lands and tenements, and shall appoint three discreet persons to conduct such sale under such regulations, and upon such just and equitable terms as said court may prescribe: which sale shall take place on the first Tuesday in the month, at the court-house of the county in which the land is situated, after an advertisement of such sale in some public gazette of this State for at least thirty days.

Three super-
intendents of
sale.

Thirty day s
notice.

Proceeds of
sale—how
disposed of.

§ 3904. After the sale of any lands and tenements, as provided for in the preceding section, the commissioners conducting the sale shall return their proceedings to the next term of the court

Article 5.—Of the Judgment.

ordering such sale, at which term the said court shall order the proceeds of the sale to be divided among the several claimants ratably in proportion to their respective interests after deducting the expenses of the proceedings.

§ 3905. Upon the sale of lands and tenements as aforesaid, the parties in interest shall execute a title to the purchaser, and if any of them fail or refuse to do so, the said commissioners, so appointed as aforesaid, or any two of them, shall execute a deed of conveyance to said lands and tenements to the purchaser at such sale, which deed shall be valid and binding in law and equity as if made by the parties themselves.

§ 3906. In any extraordinary case, not covered by the foregoing provisions, the court may frame its proceeding and order so as to meet the exigency of the case without forcing the parties into a court of equity, and the court may deny a sale or partition altogether, if it is manifest that the interest of each party will not be fully protected.

ARTICLE VI.

REMEDY OF PARTY ABSENT, UNDER DISABILITY, OR NOT NOTIFIED.

SECTION 3907. Parties laboring under disabilities.

§ 3907. When proceedings have been instituted, and judgment of partition had thereon, according to the regulations prescribed in this Code, and any one of the parties in interest is a minor, or a lunatic who has no guardian, or is absent from the State during such proceeding, or has not been notified thereof, such minor or lunatic may, within twelve months after coming of age, or restoration of mind, or having a guardian appointed; and such absent or unnotified party may, at any time within twelve months after rendition of the judgment, move the court to set aside such judgment on any of the grounds upon which a party notified and free from disabilities might have resisted the judgment upon the hearing, as hereinbefore authorized, and the issue shall be tried, and the subsequent proceedings shall be the same as pointed out in cases of objections filed to the return of the partitioners before judgment; and if such motion to set aside the judgment be not made within the time aforesaid, such judgment shall be as binding and conclusive upon such minor, lunatic, absent or unnotified party, as if he had been notified, present or free from

Article 6.—Remedy of Party Absent, &c.

The right of third persons protected.

disability. But in no event shall such subsequent proceedings affect the title of a *bona fide* purchaser under a sale ordered by the court.

CHAPTER II.

PARTITION OF PERSONAL PROPERTY—HOW OBTAINED.

SECTION 3908. Personal property may be partitioned.

Personal property may be partitioned.

§ 3908. Application may be made, and partition of personal property may be obtained, in the same manner and under the same regulations as are prescribed in this Code for obtaining partition of lands and tenements.

TITLE XVI.

PROCEEDINGS ON APPLICATION FOR *HABEAS CORPUS*.

CHAPTER I.

PROCEEDINGS ON APPLICATION FOR *HABEAS CORPUS*.

SECTION.

- 3909. *Habeas corpus*, &c., may issue.
- 3910. Application—how made, &c.
- 3911. How verified, and to whom made.
- 3912. When the writ must be granted.
- 3913. Form of the writ.
- 3914. Return day of the writ.
- 3915. Service of the writ
- 3916. Arrest of the party detained.
- 3917. What time return must be made.
- 3918. Return sworn to—produc'n of body.
- 3919. Process must be produced
- 3920. Return must state the transfer, &c.

SECTION.

- 3921. A majority must hear the return.
- 3922. Return may be traversed.
- 3923. Attachment for disobedience.
- 3924. When party cannot be discharged.
- 3925. Wife and child may be disposed of.
- 3926. Defect in warrant, &c.
- 3927. Powers of the court in other cases.
- 3928. Imprisoned witnesses, &c.
- 3929. Discretion of court as to costs.
- 3930. Proceedings to be recorded.
- 3931. Notice of the hearing.

When writ of *habeas corpus* may issue.

§ 3909. Any person restrained of his liberty, under any pretext whatever, in this State, or any person alleging that another in whom for any cause he is interested is restrained of his liberty, or kept illegally from the custody of the applicant, may sue out a writ of *habeas corpus*, to inquire into the legality of such restraint. And this right shall be suspended or denied only in times of existing war, and then only as to such persons as shall be in military confinement.

Chapter 1.—Proceedings on Application for Habeas Corpus.

Return day of the writ. § 3914. The return day of such writ shall always be within twenty days after the presentation of the petition therefor.

How and by whom the writ may be served. § 3915. Such writ shall be served, by delivering a copy of the same, by any officer authorized to make a return of any process, or by any other citizen, and the entry of such officer or the affidavit of such citizen, shall be sufficient evidence of such service. The person serving the writ shall exhibit the original if required so to do. If personal service cannot be effected, the writ may be served by leaving a copy at the house, jail, or other place in which the party in whose behalf the writ issues is detained.

When and how the party detained may be arrested. § 3916. If with the petition there shall be filed the affidavit of the applicant, that he has reason to apprehend that the party detaining or holding the other in custody will remove him beyond the limits of the county, or conceal him from the officers of the law, such Judge or Justice granting the writ, shall at the same time issue his precept directed to the Sheriff, Deputy Sheriff, Coroner or any lawful Constable of the county, requiring them to search for and arrest the body of the person detained, and bring him before such Judge or Justice to be disposed of as he may direct.

Within what time the return to the writ must be made. § 3917. The return of the party served with the writ, shall be made at the time and place specified; *Provided*, two days from the time of service shall be allowed, for every twenty miles which such party has to travel from the place of detention, to the place appointed for the hearing, and if the service has not been made a sufficient time before the hearing, to cover the time allowed in this section to reach the place of hearing, such return shall be made within the time so allowed, immediately after the service.

Return to be under oath, &c. § 3918. Every return to a writ of *habeas corpus* shall be under oath, and if the custody or detention of the party in whose behalf the writ issues be admitted, his body shall be produced, unless prevented by Providential cause, or prohibited by the law of the land.

When process must be produced. § 3919. In every case where the detention is justified under legal process, such legal process shall be produced and submitted to the Judge or Justices at the hearing of the return.

Transfer of custody must be stated in return. § 3920. If the return denies the custody or detention of the party, it shall further state, distinctly, the latest date at which the custody was had, and when and to whom transferred, and if it shall appear that such transfer of custody was made to avoid the

Chapter 1.—Proceedings an Application for Habeas Corpus.

writ of *habeas corpus*, the party making the return may be imprisoned in the discretion of the Judge or Justices hearing the same, until the body of the party kept or detained shall be produced.

§ 3921. If the writ be issued by a Justice of the Inferior Court, the return shall be heard by at least a majority of the Justices of such court. If J. I. C. issues writ who must hear it.

§ 3922. If the return denies any of the material facts stated in the petition, or alleges others upon which issue is taken, the Judge or Justices hearing the return, may, in a summary manner, hear testimony as to such issue, and to that end may compel the attendance of witnesses, the production of papers, or may adjourn the examination of the question, or exercise any other power of a court which the principles of justice may require. Return traversed.

§ 3923. Any person disregarding the writ of *habeas corpus* in any manner whatever, shall be liable to attachment for contempt, issued by the Judge or Justice granting the writ, under which attachment such person may be imprisoned until he shall comply with the legal requirements of the writ. Disobedience of the writ—how punished.

§ 3924. No person shall be discharged upon the hearing of a writ of *habeas corpus* in the following cases, to wit: When a party cannot be discharged.

1. Where he is imprisoned under lawful process, issued from a court of competent jurisdiction, unless in cases where bail is allowed and proper bail is tendered.

2. When the return is heard by the Justices of the Inferior Court, and the party is imprisoned under final process, or order issued from the Superior Court.

3. In no case on account of non-payment of jail fees, unless the application is made by the person to whom the fees are due, and at least ten days' notice has been given to the person from whom the fees are due, his agent or attorney, prior to the application for the writ.

4. By reason of any irregularity in the warrant or commitment, where the same substantially conforms to the requirements of this Code—nor for want of bond to prosecute.

5. Where the party is imprisoned under a bench warrant regular upon its face.

6. By reason of any misnomer in the warrant or commitment, where the court is satisfied that the party detained is the party charged with the offence.

7. Where the party is in custody for a contempt of court, and

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the court has not exceeded its jurisdiction in the length of the imprisonment imposed.

8. In no other case where it appears that the detention is authorized by law.

How wife or child may be disposed of.

§ 3925. In all writs of *habeas corpus* sued out on account of the detention of a wife or child, the court, on hearing all the facts, may exercise its discretion as to whom the custody of such wife or child shall be given, and shall have power to give such custody of a child to a third person.

No discharge for defect in proceedings.

§ 3926. If the party is detained upon a criminal charge, and it appears to the court that there is probable cause for his detention, he shall not be discharged for any defect in the affidavit, warrant, or commitment, until a reasonable time has been given to the prosecutor to remedy the defect by a new proceeding, if the charge is for an offence committed in another State, and he is arrested on suspicion, he shall not be discharged if the suspicion is reasonable, until a sufficient time be given for a demand to be made on the Governor for his rendition.

Powers of court in other cases.

§ 3927. In all other cases, the Judge or Justice hearing the return shall discharge, remand or admit the party to bail, or deliver him to the custody of the officer or person entitled thereto, as the principles of law and justice may require.

How imprisoned witnesses may be brought up.

§ 3928. Any Judge of the Superior Court may issue his order to any officer having any person in his custody, lawfully imprisoned, to produce such person before his court for the purpose of giving evidence in any criminal cause pending therein, without any formal application or writ of *habeas corpus* for that purpose.

Costs.

§ 3929. The Judge or Justices hearing the return to a writ of *habeas corpus*, may, in their discretion, award the costs of the proceeding against either party, and may order execution to issue therefor by the Clerks of the Superior or Inferior Courts respectively.

Proceedings must be recorded.

§ 3930. The proceedings in all cases of *habeas corpus* shall be returned to the Clerk of the Superior or Inferior Court of the county whose Judge or Justices may have heard the same, and shall be by such Clerk recorded, as in other cases, for which he shall receive the like fees as in other cases recorded by him.

Notice of the hearing.

§ 3931. If the person is detained upon a criminal charge, and the Solicitor General is in the county, he shall be notified of the hearing; if he is not, the notice shall be given to the prosecutor.

Article 1.—By whom and on what grounds the Warrant may issue.

TITLE XVII.

POSSESSORY WARRANTS AND PROCEEDINGS THEREON.

CHAPTER I.

POSSESSORY WARRANTS AND THE PROCEEDINGS THEREON.

ARTICLE 1. By whom and on what grounds warrant may issue.

ARTICLE 2. How the warrant must be executed and returned.

ARTICLE 3. The trial, judgment, and subsequent proceedings.

ARTICLE I.

BY WHOM AND ON WHAT GROUNDS THE WARRANT MAY ISSUE.

SECTION 3932. Who may issue—grounds of.

§ 3932. Upon complaint being made on oath by the party injured, his agent, or attorney in fact or at law, to any Judge of the Superior, Justice of the Inferior Court, or Justice of the Peace of the county in which the property in controversy may be, that any negro or other personal chattel has been taken, enticed, or carried away, either by fraud, violence, seduction, or other means from the possession of the party complaining, or that such negro or other personal chattel having recently been in the quiet, peaceable, and legally acquired possession of such complaining party, has absconded or disappeared without his consent, and, as he believes, has been received, harbored or taken possession of by the party complained against, under some pretended claim, and without lawful warrant or authority, and that the party complaining does in good faith claim a title to, or interest in the negro or other personal chattel, or the possession thereof, it shall be the duty of such Judge or Justice to issue a warrant, as well for the apprehension of the party against whom the complaint is made, as for the seizure of the property in controversy, which warrant shall be directed to the Sheriff, his deputy or any lawful Constable of the county aforesaid.

Possessory
warrant—by
whom, and
on what
grounds is-
sued.

How direc-
ted.

ARTICLE II.

HOW THE WARRANT MUST BE EXECUTED AND RETURNED.

SECTION 3933. Warrant—how executed.

Warrant—
how execu-
ted.

§ 3933. The officer in whose hands the possessory warrant is placed shall forthwith proceed to apprehend and arrest the body of the defendant, or party against whom the warrant is issued, and also to seize the property described in the warrant, if the same are to be found in his county, and carry the said defendant and said property, together with the warrant, before the Judge or Justice issuing the same, or before any other Judge or Justice of said county.

ARTICLE III.

THE TRIAL, JUDGMENT, AND SUBSEQUENT PROCEEDINGS.

SECTION.

3934. Hearing—continuance.
3935. Issue—judgments, &c.
3936. Bonds—where returned.

SECTION.

3937. Imprisonment of defendant.
3938. *Certiorari* and trial thereon.
3939. Judgment on *certiorari*.

Trial.

Continuance

§ 3934. The Judge or Justice before whom a warrant for the restoration of personal property may be returned shall, if the parties are ready, proceed with the hearing forthwith; but if either of the parties are not ready, the hearing shall be postponed to some subsequent time, to be fixed by the said Judge or Justice, so as to allow the parties a reasonable opportunity to procure their testimony, and at the same time to insure a trial with as little delay as possible.

Possession.
the only is-
sue to be
tried.

Judgment.

Bond of the
successful
party.

§ 3935. When the day set apart for the trial arrives, the Judge or Justice shall proceed to hear evidence as to the question of possession in a summary way, without investigating the title to the property, and shall cause the property to be delivered to the party from whose possession the same was violently or fraudulently taken or enticed away, or from whom the same absconded, or in whose peaceable and lawful possession it last was; *Provided*, such party shall then and there enter into a recognizance, with good and sufficient security, in double the amount of the value of such property, and the hire claimed, if any, to cause the said property to be produced and forthcoming to answer any judgment, execution or

Article 3.—Trial, Judgment and Subsequent Proceedings.

decree that may be had, issued or made upon such suit or action, at law or in equity, as the opposite party may commence or prosecute within the next four years touching the same; *Provided*, also, that when the party taking out the warrant shall refuse or fail to give such security, then the Judge or Justice may, in his discretion, deliver over the property to the opposite party upon his entering into a like recognizance, with security of the same nature and effect.

If plaintiff fails to give bond property may be delivered to defendant on his giving bond.

§ 3936. The Judge or Justice shall return any recognizance taken as provided in the preceding section to the next Superior Court of the county where the same is taken, to be transmitted to the court where any suit or action may be commenced touching said property, and the securities on such recognizance shall be bound and liable for the eventual condemnation money in such suit or action, and execution shall issue against them in the same manner as against security on appeals.

Bond—where returned.

§ 3937. Upon the return of a possessory warrant, if it shall appear that the officer cannot find, or was unable to seize the property described in the warrant, and that such property is in the possession, power, custody or control of the defendant, or any agent or friend of his, or any one acting for or intrusted with the same for him, and the said defendant doth not produce or cause said property to be forthcoming to be dealt with as the law directs, and as the judgment of the said Judge or Justice awards, the said defendant shall be committed to jail, there to remain in safe and close custody without bail or main-prize until such property shall be produced or forthcoming, to be disposed of as aforesaid; *Provided, always*, that no person shall be so committed to jail for such failure to produce property if he can satisfactorily prove to the Judge or Justice trying the case, that such property has been in his quiet and peaceable possession for four years next immediately preceding the issuing of the said warrant, but upon such proof being made, the warrant shall be dismissed; *And provided, further*, that no person shall be imprisoned as aforesaid pending an application for a *certiorari* before the Superior Court, who shall give bond and security to abide by the final decision of the cause.

Defendant may be imprisoned—when.

Proviso.

§ 3938. The writ of *certiorari* lies to every decision of a court upon a possessory warrant, to be sued out as in other cases; and upon the hearing of such writ in the Superior Court, if the liberty of the party is endangered by the decision of the court below, he

Certiorari lies to judgment on a possessory warrant.

Article 3.—Trial, Judgment and Subsequent Proceedings.

may demand a trial before a jury empannelled as in criminal cases, upon the issue of fact as to the alleged property being in his possession, power, custody, or control, or that of his agent, friend or any other person for him, and the verdict of such jury shall be conclusive on the question.

Judgment
on the
certiorari.

§ 3939. Upon hearing the *certiorari* the Judge may remand the case or give final judgment and direction therein as he may see fit.

TITLE XVIII.

OF PROCEEDINGS ON TRIAL OF CITIZENSHIP.

CHAPTER I.

OF THE PROCEEDINGS ON THE TRIAL OF CITIZENSHIP.

SECTION.

3940. Citizenship—how disputed.
3941. Any citizen may be made party.
3942. Trial and judgment.

SECTION.

3943. Evidence of the plaintiff.
3944. Damages—when given to defendant.

Claim to citizenship
may be dis-
puted.

§ 3940. Every citizen of this State, of full age and laboring under no disability, has the right to dispute and have investigated by process of law, the claim to citizenship set up by any other person in the following manner, to wit: He shall file his petition in the Superior Court of the county, against any person resident thereof, who may claim to exercise and enjoy the rights and privileges of a free white citizen, of this State, in which he shall distinctly allege that such person so claiming to exercise and enjoy the rights and privileges aforesaid, is of mixed blood, and not a free white citizen, to which the Clerk of said court shall annex a process, and a copy thereof shall be served on the defendant, in the manner as now provided for in cases on the common law side of said court; *Provided*, that before filing such petition, the person filing the same shall make oath that the facts set forth in such petition are true, according to the best of his knowledge and belief.

Allegation.

Process served.

Oath.

Parties.

§ 3941. Pending any suit as provided in the preceding section, it shall be lawful for any white citizen to make himself a party thereto, and prosecute the same, subject to all the liabilities, as though he had commenced such suit.

Chapter 1.—Proceedings on the Trial of Citizenship.

§ 3942. All suits instituted as provided in this chapter, shall be tried by a special jury at the first term of the court to which the same may be returnable, unless continued as provided by this Code in cases of appeal; and final judgment shall not be rendered, either for or against the defendant, until there shall be two concurring verdicts, as in cases of divorce, as provided by this Code; and the final judgment so rendered shall be deemed and held by all the courts of this State, as conclusive upon the rights and privileges of said defendant.

Trial by
special jury.

Must be two
concurrent
verdicts.

§ 3943. On the trial of any suit instituted by the authority of this chapter, it shall be lawful for the plaintiff to prove that the defendant is descended from, and stands in the third degree or generation to him or her who was or is not a free white citizen of this State, or of any other State whose constitution and laws tolerate involuntary slavery, or that said defendant has one-eighth of negro or African blood in his or her veins.

Evidence.

§ 3944. Upon the trial of the case, as hereinbefore provided, if the jury should be of opinion, from the evidence, that the proceeding is malicious and without probable cause, they may find in favor of the defendant, against the plaintiff, such damages as they may deem reasonable and just, under all the circumstances of the case; and should they so find, one verdict shall be sufficient, and said defendant may enter judgment and have execution thereon, as in other cases at law.

Damages for
defendant.

One verdict
sufficient.

TITLE XIX.

OF PROCEEDINGS IN SUITS FOR FREEDOM.

CHAPTER I.

PROCEEDINGS IN SUITS FOR FREEDOM.

ARTICLE 1. Preliminary proceedings.

ARTICLE 2. Proceedings on the trial.

ARTICLE I.

PRELIMINARY PROCEEDINGS.

SECTION.

3945. Affidavit, bond and warrant.

3946. Hearing before the Justice.

3947. Bond of the pretended owner.

SECTION.

3948. Bond of complainant.

3949. Return of the proceeding.

Affidavit
and bond of
movant.

§ 3945. When any free white citizen of this State shall appear before any one of the Justices of the Inferior Court of any county in this State, in which a person of color is held in slavery, and make oath that he has good reason to believe, and does believe, that such person of color is free, and is illegally and wrongfully held in slavery, and shall also give bond and good security, payable to the pretended owner of such person of color, in a sum equal to the value of such person of color, conditioned to pay all damages that may be sustained by the said pretended owner, by reason of the proceedings to try the question of the freedom or slavery of such person of color, together with all costs that may accrue thereon, in the event that it shall appear, by the result of the trial of such question, that such person of color is not entitled to his freedom, and is a slave, it shall be the duty of such Justice of the Inferior Court to issue a warrant, directed to the Sheriff, his deputy, or any Constable of said county, commanding them, or either of them, forthwith to arrest both the pretended owner of the person of color, and the person of color himself, and bring them before such Justice, to the end that inquiry may be had into the facts and circumstances of the case.

Warrant.

Examina-
tion before
the Justice.

§ 3946. If, upon a full examination into all the facts and circumstances of the case, it shall appear to the Justice that the complaint is unfounded, the warrant shall be dismissed, and the party

Article 1.—Preliminary Proceedings.

complained against shall be discharged, and permitted to retain the custody and dominion of such person of color; but if, upon such examination, said justice shall be satisfied that there is probable ground to believe that such person of color is improperly and illegally held in such state of slavery, he shall give judgment accordingly, and reduce the entire examination to writing.

§ 3947. If the examination shall satisfy the said Justice of the Inferior Court that there is probable ground to believe that such person of color is improperly and illegally held in a state of slavery, he shall require the party complained against to enter into bond, with two or more good securities, payable to the complainant, as the next friend of such person of color, in double the amount that said person would be worth if a slave, conditioned that such person of color shall not be removed beyond the limits of this State; and that said person of color shall be produced and forthcoming subject to the order of the court; and that the final order and decree of the court shall be complied with in any suit that may be prosecuted for the freedom of said person of color.

When the defendant shall give bond.

§ 3948. If the party complained against shall fail to give the bond provided for in the preceding section, the said Justice of the Inferior Court shall cause the said person of color to be delivered to the party making the affidavit and complaint, upon his giving bond, with good security, payable to the party complained against, in a sum equal to what said person of color would be worth if he were a slave, conditioned for the delivery of the person of color, and the payment of his hire to the pretended owner; *Provided*, it shall appear upon the trial of the suit for freedom, that such person is a slave, and is not illegally held in slavery.

Failure of defendant to give bond.

§ 3949. The Justice of the Inferior Court before whom the same are had and taken, shall return the affidavit, warrant, bond and written examination, and all other papers and proceedings touching the same, as hereinbefore provided for, to the Clerk of the Superior Court of the county in which the examination and proceedings are had, and said Clerk shall docket the case, stating the names of the parties, and the party making the affidavit shall be plaintiff, and the party charged with holding the person of color in slavery illegally shall be defendant.

Proceedings to be returned to Superior Court.

ARTICLE II.

PROCEEDINGS ON THE TRIAL.

SECTION.

3950. Petition of the plaintiff.
 3951. Amendment of the pleadings.
 3952. Burden of proof—presumption.
 3953. Trial and appeal.

SECTION.

3954. Final judgment.
 3955. Expenses of next friend—how paid.
 3956. Court may frame writ, &c.

What the plaintiff's petition must contain.

§ 3950. When the preliminary proceedings are returned, and the case docketed, as provided in the first article of this chapter, the plaintiff shall file his petition, setting forth the grounds upon which the person of color claims his right of freedom, and said petition shall also embody the facts contained in the preliminary examination before the Justice of the Inferior Court, and the case shall stand for trial as other cases at common law.

Pleadings may be amended.

§ 3951. The plaintiff shall be at liberty to assume any new grounds in his petition, and the pleadings in the case shall be subject to amendment under the same rules as govern in other cases in the Superior Court.

Burden of proof on the plaintiff and slavery always presumed.

§ 3952. In suit for freedom the burden of proof shall always lie on the plaintiff, and it shall be always presumed that every negro, Indian, mulatto or mustizoe, (except free Indians in amity with this State, and negroes, mulattoes, and mustizoes, who now are or may hereafter become free) is a slave, unless the contrary can be made to appear.

Appeal allowed.

§ 3953. The issues in a suit for freedom shall be made up and tried by a jury, as at common law trials in other cases, and either party being dissatisfied with the verdict, may enter an appeal under the rules and regulations which prevail in other cases, without giving bond and security, or making affidavit of inability so to do.

Final judgment.

§ 3954. If it shall appear at the final trial of such case that the person of color is free, the court shall order him to be set at liberty, and a guardian to be appointed for him according to law, and the court shall also give judgment against the defendant for damages for the full value of the hire and services of such person of color, during the time he was illegally held in slavery by such defendant, unless the jury trying the case is satisfied that the claim of the defendant was *bona fide*, under the belief that the person of color was his slave.

Article 2.—Proceedings on the Trial.

§ 3955. The *prochein ami* of such person of color shall be his guardian until the legitimate expenses of the litigation have been repaid to him by the labor of his ward, and until a new guardian is appointed. Expenses of next friend—how paid.

§ 3956. If any case should arise where the proceedings authorized by this Code will not prove an efficient remedy for a free person of color held in bondage, the Superior Court shall have power to frame a writ and mould the proceedings to meet the exigencies of the case. Court may frame writ, &c.

TITLE XX.

OF THE WRIT OF *CERTIORARI*.

CHAPTER I.

OF THE WRIT OF *CERTIORARI*.

ARTICLE 1. In what cases the writ of *certiorari* lies.

ARTICLE 2. How obtained, and proceeding thereon.

ARTICLE 3. Of the answer, hearing, judgment, and costs.

ARTICLE I.

IN WHAT CASES THE WRIT OF *CERTIORARI* LIES.SECTION 3957. When a writ *certiorari* will lie.

§ 3957. The writ of *certiorari* will lie for the correction of errors committed by the Inferior Court, or the Justices thereof, Justices of the Peace, Corporation Courts, or Councils, or any inferior judicatory or any person exercising judicial powers, including the Ordinary, except in cases touching the probate of wills, granting letters testamentary, and of administration. When a *certiorari* will lie.

ARTICLE II.

HOW OBTAINED, AND PROCEEDINGS THEREON.

SECTION.

3958. To the Inferior or Court of Ordinary.
 3959. Judge may grant out of his circuit.
 3960. Justices and other inferior judic'rs
 3961. Affidavit to petition.
 3962. Bond & security must be given, &c.
 3963. Security compelled to justify.

SECTION.

3964. Affidavit in lieu of bonds and costs.
 3965. Must be applied for in 3 months.
 3966. Must be docketed & served 15 days.
 3967. Ten days' notice to adverse party.
 3968. Shall operate as a supersedeas.

From the In-
 ferior or
 Court of
 Ordinary.

§ 3958. When either party in any cause, in any Inferior Court or Court of Ordinary, shall take exceptions to any proceeding or decision in any cause, affecting the real merits of such cause, the party making the same shall offer such exceptions in writing, which shall be signed by himself or his attorney, and if the same shall be overruled by the court, such party may petition the Judge of the Superior Court for a writ of *certiorari*, in which petition he shall plainly, fully, and distinctly set forth the errors complained of, and if such Judge shall deem the objections to be sufficient, he shall forthwith issue a writ of *certiorari*, directed to the Clerk of such Inferior Court or to the Ordinary, requiring him to certify and send up to the Superior Court at the time specified in said writ all the proceedings in said cause.

Of the return

When Judge
 may grant
 out of his
 circuit.

§ 3959. No Judge of the Superior Court shall grant or issue any writ of *certiorari* out of his judicial circuit, unless there shall be a vacancy in any of the other circuits, or the Judge thereof be indisposed, or be absent therefrom, so that the business of granting *certioraris* cannot be speedily done.

For Justices
 and other in-
 ferior judi-
 catories.

§ 3960. When either party in any cause in a Justices' Court, Corporation Court, Council, or any inferior judicatory, or before any person exercising judicial powers, shall be dissatisfied with the decision or judgment in such cause, such party may apply for and obtain a writ of *certiorari* by petition to the Superior Court, in which petition he shall plainly and distinctly set forth the errors complained of. And on such petition being filed in the office of the Clerk of the Superior Court, together with the bond or affidavit as hereinafter provided, it shall be the duty of such Clerk to issue a writ of *certiorari*, directed to the Justice of the Peace of the district where the decision complained of was made, or other tribunal or person whose decision or judgment is the subject matter of complaint, requiring such Justice of the

Must be
 sanctioned
 by Judge.

Shall be is-
 sued by
 Clerk.

How Direc-
 ted.

Article 2.—How obtained and Proceedings thereon.

Peace, or other tribunal, or person, to certify and send up all the proceedings in said cause to the Superior Court as directed in said writ of *certiorari*.

§ 3961. No writ of *certiorari* shall be granted or issued, (except to the Inferior or Court of Ordinary,) unless the party applying for the same, his agent or attorney shall make and file with his petition the following affidavit, to wit: Affidavit to be made.

GEORGIA,)
County.)

I, A. B., do solemnly swear that the petition for *certiorari* is Form of. not filed in the case for the purpose of delay only, and I verily believe I have good cause for *certiorari*, and that the facts stated in the foregoing petition, so far as they come within my own knowledge are true, and so far as derived from the knowledge of others, I believe them to be true.

Sworn to and subscribed before me, this day of
18 .

§ 3962. Before any writ of *certiorari* shall issue, (except as hereinafter provided,) the party applying for the same, his agent or attorney shall give bond and good security, conditioned to pay the adverse party in the cause the eventual condemnation money, together with all future costs, and shall also produce a certificate from the clerk of the Inferior Court, or the officer whose decision or judgment is the subject matter of complaint, that all costs which may have accrued on the trial below have been paid, which bond and certificate shall be filed with the petition for *certiorari*, and the security on said bond shall be liable as securities on appeal. Bond and security to be given. Costs must be paid, &c.

§ 3963. The party authorized to take said bond and security may compel the security tendered to justify upon oath, and such justification shall amount to such sufficiency as to exonerate the party taking the same from any liability. Security may be made to justify.

§ 3964. If the party applying for the writ of *certiorari* will make and file with his petition an affidavit in writing that he is advised and believes that he has good cause for *certioraring* the proceedings to the Superior Court, and that owing to his poverty he is unable to pay the cost and give security as required in the preceding section, such affidavit shall in every respect answer instead of the certificate and bond above mentioned. Affidavit in lieu of bond.

§ 3965. All writs of *certiorari* shall be applied for within three months after the final determination of the case in which the er-

Article 2.—How obtained and Proceedings thereon.

Must be applied for in 3 months.

Returnable to next term.

Must be served 15 days.

May be served by party.

Ten days notice to the adverse party.

Shall operate as a supersedeas.

ror is alleged to have been committed, and not after ; and shall be made returnable to the next Superior Court after the issuing of the same, unless said Superior Court shall sit within twenty days after the issuing of said writ, in which case said writ shall be made returnable to the next succeeding Court.

§ 3966. When the foregoing provisions have been complied with and the writ of *certiorari* shall have been issued, the Clerk of the Superior Court shall place the same on the *certiorari* docket, which writ, together with the petition, shall be delivered to the party to whom it is directed by the party applying for the *certiorari*, his agent or attorney, or the Sheriff, Deputy Sheriff, or any Constable at least fifteen days previous to the court to which the return is to be made.

§ 3967. The plaintiff in *certiorari* shall cause written notice to be given to the opposite party in interest, his agent or attorney, of the sanction of the writ of *certiorari*, and also the time and place of hearing, at least ten days before the sitting of the court to which the same shall be returnable, and in default of such notice, (unless prevented by unavoidable cause) the *certiorari* shall be dismissed.

§ 3968. The writ of *certiorari*, when granted, shall operate as a supersedeas of the judgment until the final hearing in the Superior Court.

ARTICLE III.

OF THE ANSWER, HEARING, JUDGMENT AND COSTS.

SECTION 1. Of the answer.

SECTION 2. Of the hearing.

SECTION 3. Of the judgment and costs.

SECTION I.

OF THE ANSWER.

SECTION.

3969. Answer filed on first day.

3970. Exceptions must be in writing.

SECTION.

3971. Not written by interested party.

Answer filed on first day of term.

§ 3969. The answer to the writ of *certiorari* shall be filed on the first day of the term to which it is returnable, unless further time be given, and shall reply specifically to the allegations in the petition.

Section 1.—Of the Answer.

§ 3970. Exceptions to the answer shall be filed in writing, specifying the defects, and notice thereof given to the opposite party before the case is called in its order for hearing; and if such exceptions be sustained, the answer shall be perfected, as directed by the court.

Exceptions to answer.

How perfected.

§ 3971. The answer shall not be written or dictated by either of the parties, or their attorneys, or any other person interested in the cause, and if made after the party making the same has retired from office, it shall be verified by affidavit.

Must not be written by party interested.

SECTION II.

OF THE HEARING.

SECTION.

3972. Stands for trial—first term.
3973. Errors must be set forth.

SECTION.

3974. Answer may be traversed.

§ 3972. *Certiorari* causes shall stand for trial at the return term, and the Judge shall take up the docket and dispose of the same in its order unless continued for good cause.

Stands for trial at first term.

§ 3973. No ground of error shall be insisted upon on the hearing, which is not distinctly set forth in the petition.

Errors must be set forth.

§ 3974. The plaintiff in *certiorari* may, at the first term, and before the hearing, traverse the truth of the answer or return, which traverse shall be in writing, specifying the portion of the answer or return intended to be controverted, and verified by affidavit, and the issue formed upon such traverse shall be tried by a special jury at the same term, unless good cause is shown for a continuance, and their verdict shall be final as to the facts, upon which the court shall pronounce the law.

Answer may be traversed at first term.

Tried by special jury.

SECTION III.

OF THE JUDGMENT AND COSTS.

SECTION.

3975. May be dismissed or returned.
3976. Damages may be awarded.

SECTION.

3977. Of the judgment for plaintiff.
3978. Of the judgment for defendant.

§ 3975. Upon the hearing of the writ of *certiorari* the Superior Court may order the same to be dismissed, or return the same to the court from which it came, with instructions, and in all cases when the error complained of is an error in law which

Certiorari may be dismissed or returned.

Section 3.—Of the Judgment and Costs.

Final judgment may be given.

must finally govern the case, and the court shall be satisfied there is no question of fact involved, which makes it necessary to send the case back for a new hearing before the tribunal below, it shall be the duty of the said Judge to make a final decision in said case without sending it back to the tribunal below.

Damage may be awarded.

§ 3976. The presiding Judge before whom any writ of *certiorari* may be heard, on motion of the opposite party, may order that damages, not more than twenty per cent., be recovered by the defendant against the plaintiff in *certiorari* and his security, in case it shall be made to appear that the said *certiorari* was frivolous, and applied for without good cause, or for the purpose of delay only, and judgment may be entered up and execution issued accordingly.

If the certiorari is sustained, judgment for plaintiff.

§ 3977. If, on the hearing, the *certiorari* shall be sustained, and a final decision thereon shall be made by the Superior Court, the plaintiff may sign up judgment for the amount by him recovered in the court below, and the costs paid to obtain the *certiorari*, and also the costs in said Superior Court; but if the *certiorari* shall be returned to the court below for a new hearing, the plaintiff shall sign up judgment for the costs in said Superior Court only, leaving the costs paid to obtain the *certiorari* to abide the final trial below.

If the certiorari is dismissed, judgment for defendant.

§ 3978. If the *certiorari* shall be dismissed, and a final decision made in the cause by the Superior Court, the defendant in *certiorari* may sign up judgment in said Superior Court against the plaintiff and his security for the sum recovered by him, together with the costs in said Superior Court, and if said case be sent back to the court below, and there be a judgment in said case in favor of said defendant in the court below, the security on the *certiorari* bond shall then be included as in case of security on appeal.

PT. 3.—TIT. 21.—CHAP. 1.—TRESPASSERS.

Article 1.—Proceedings against intruders.

TITLE XXI.

PROCEEDINGS AGAINST TRESPASSERS ON LAND AND TENANTS HOLDING OVER.

CHAPTER 1. Proceedings against intruders—tenants holding over.

CHAPTER 2. Forcible entry and detainer.

CHAPTER I.

PROCEEDINGS AGAINST INTRUDERS ON LAND AND TENANTS HOLDING OVER.

ARTICLE 1. Proceedings against intruders.

ARTICLE 2. Proceedings against tenants.

ARTICLE I.

PROCEEDINGS AGAINST INTRUDERS.

SECTION.

3979. Affidavit of land owner.

3980. Intruders may make a counter affi't.

SECTION.

3981. How issue shall be tried.

3982. A writ of possession shall issue.

§ 3979. Intruders may be ejected from the possession of lands and tenements in the following manner to wit: When any person, either by himself, his agent or attorney in fact, shall take and subscribe an affidavit in writing before any officer authorized to administer an oath, setting forth that he does in good faith claim the right of possession to any land or tenement, (describing the same) and that such land or tenement is in the hands of another person, (naming the person) who does not in good faith claim a right to such possession, and yet refuses to abandon the same; and when such affidavit shall be placed in the hands of the Sheriff of the county where the land or tenement is situated, it shall be the duty of such Sheriff, at the earliest practicable day, to exhibit such affidavit to the person described as being in possession of such land or tenement, and to turn such person out of possession, unless the person so in possession shall at once tender to the Sheriff a counter affidavit, stating that he does in good faith claim a legal right to the possession of said land or tenement.

Claimant may make oath and deliver affidavit to Sheriff.

Proceedings of Sheriff.

Article 1.—Proceedings against Intruders.

Sheriff must administer oath.

§ 3980. The Sheriff shall be a competent officer to administer the oath to the person in possession, in case he tenders the counter affidavit provided for in the preceding section.

Where affidavit shall be returned, and issue tried.

§ 3981. If a counter affidavit be tendered, as hereinbefore provided for, the Sheriff shall not turn the party out of possession, but the contending parties shall be remitted to their respective rights, and the Sheriff shall return both affidavits, and deposit them in the office of the Clerk of the Superior Court of the county in which the land lies, upon which an issue shall be made up and tried by a jury, according to the laws of this State.

If verdict be for movant, writ of possession shall issue.

§ 3982. If the finding of the jury upon the trial of the issue provided for in the preceding section shall be for the plaintiff, or movant, the Clerk shall issue upon the judgment a writ of *habere facias possessionem* including a *feri facias* for the costs.

ARTICLE II.

PROCEEDINGS AGAINST TENANTS.

SECTION.

3983. Affidavit of the landlord.
3984. Warrant against the tenant.
3985. Tenant may arrest proceedings.

SECTION.

3986. How issue shall be tried.
3987. Judgment and writ of possession.

Where a tenant holds over, &c.

§ 3983. In all cases where a tenant shall hold possession of lands or tenements, over and beyond the term for which the same were rented or leased to him, and in all cases where lands or tenements shall be held and occupied by any tenant at will or sufferance, whether under contract of rent or not, and the owner of the lands or tenements shall desire the possession of the same, such owner may, by himself, his agent or attorney in fact, or attorney at law, demand the possession of the property so rented, leased, held, or occupied, and if the tenant refuses or omits to deliver possession when so demanded, the owner, his agent, or attorney at law, or attorney in fact, may go before the Judge of the Superior Court, or any one of the Justices of the Inferior Court, or any Justice of the Peace, and make oath of the facts.

Warrant shall issue for the tenants removal

§ 3984. When the affidavit provided for in the preceding section shall be made, the officer before whom it is made shall grant and issue a warrant, or process, directed to the Sheriff of the county where the land lies, or his deputy, commanding and requiring him to deliver to the owner, or his representative, full

Article 2.—Proceedings against Tenants.

and quiet possession of the lands or tenements mentioned in the affidavit, removing the tenant, with his property found thereon, away from the premises.

§ 3985. The tenant may arrest the proceedings and prevent the removal of himself and goods from the land, by declaring on oath that his lease or term of rent has not expired, and that he is not holding possession of the premises over and beyond his term; or that he does not hold the premises, either by lease, or rent, or at will, or by sufferance, or otherwise, from the person who made the affidavit on which the warrant issued, or from any one under whom he claims the premises, or from any one claiming the premises under him.

Tenant may arrest proceedings by counter affidavit.

Arrested in Superior Court

§ 3986. If the counter affidavit provided for in the preceding section is made and delivered to the Sheriff or Deputy Sheriff, the tenant shall not be removed; but such Sheriff or deputy shall return the proceedings to the next Superior Court of the county where the land lies, and the fact in issue shall be there tried by a special jury as in cases of appeal.

Issue tried in Superior Court.

§ 3987. If the issue specified in the preceding section shall be determined against the tenant, judgment shall go against him for double the rent reserved or stipulated to be paid; or if he be a tenant at will or sufferance, then for double what the rent of the premises are shown to be worth, and the movant or plaintiff shall have a writ of possession, and be by the Sheriff placed in full possession of the premises.

Double rent and writ of possession—when.

CHAPTER II.

FORCIBLE ENTRY AND DETAINER.

SECTION.

- 3988. Fact to be tried by jury.
- 3989. If all do not attend.
- 3990. Possession and force submitted.
- 3991. Oath of jury.

SECTION.

- 3992. Restitution to be made.
- 3993. Service on non-residents.
- 3994. No bar to indictment.

§ 3988. Any one or more Justice of the Peace, upon complaint made on oath of any entry into lands or tenements, or of any forcible detainer of the same, shall have power to draw a jury of twelve men from the jury box of the district in which the lands and tenements so alleged to be forcibly entered or detained are situated, and cause the Sheriff of the county, or the Constable of the district, to summon them to be and appear at the usual

Justice to try the fact by a jury.

Justice to draw jury from other district if one cannot be had in his own

Chapter 2.—Forcible Entry and Detainer.

How summoned.

place of holding court in the said district on a certain day, to be appointed by the said Justice or Justices, for the purpose of trying the fact of such forcible entry or detainer. And the said Justice or Justices shall also issue a summons to be directed to the person or persons charged with such forcible entry or detainer, and cause the same to be served on him by the Sheriff or Constable at least five days before the time appointed for trial, requiring him to appear and defend the charge alleged against him.

Notice to defendant.

If all the jurors do not attend.

§ 3989. If all the jurors should not attend, or if there should be a legal objection to any of them, then the Justice or Justices may cause the jury to be completed by *tales* jurors.

Possession and force only to be submitted.

§ 3990. Upon the trial the only facts which the jury shall inquire into, shall be the possession and the force, but they shall have no power to inquire into the merits of the title on either side.

Oath of jury

§ 3991. The following oath shall be administered to the jurors, viz: "You shall well and truly inquire whether A. B. has made any forcible entry into the lands or tenements of C. D., and him ejected therefrom, or forcibly detained the lands or tenements of the said C. D., and a true verdict give according to the facts as they may appear to you in evidence. So help you God."

Restitution to be made.

§ 3992. If upon the trial of such case the jury shall find such forcible entry or forcible detainer, or both, then the said Justice or Justices shall give judgment accordingly, and cause the Sheriff to make restitution of possession of the premises to the party aggrieved: *Provided*, that if the person charged with such forcible entry or detainer, or those under whom he claims, shall have been in peaceable possession of the premises for the space of three years or more as aforesaid, immediately preceding the date of such warrant, then no restitution of possession shall be made.

But not against 3 years possession.

Service on non-residents.

§ 3993. If the defendant charged with a forcible entry or detainer is not a resident of the county where the land or tenement is situated, service of the summons may nevertheless be perfected on him or his tenant, by the Sheriff or Constable, as though he resided in the county.

No bar to indictment.

§ 3994. No proceedings under the provisions of this chapter shall exempt any person guilty of a forcible entry or detainer from indictment and punishment, under and by virtue of the provisions in this Code.

TITLE XXII.

PROCEEDINGS FOR THE ABATEMENT OF NUISANCES.

CHAPTER I.

PROCEEDINGS FOR THE ABATEMENT OF NUISANCES.

SECTION.

3995. Nuisance—how removed.
 3996. When in a town or city.
 3997. Notice to parties.
 3998. When it is a grist or saw mill.

SECTION.

3999. Application—by whom made.
 4000. Fees of Clerk—witness and jurors.
 4001. Fees of the Sheriff.

§ 3995. Any nuisance which tends to the immediate annoyance of the citizens in general, is manifestly injurious to the public health and safety, or tends greatly to corrupt the manners and morals of the people, may be abated and suppressed by the order of any two or more Justices of the Peace of the county, founded upon the opinion of twelve freeholders of the same county, who shall be summoned, sworn and empannelled for that purpose; which order shall be directed to and served by the Sheriff of the county, or his Deputy.

May be removed, and how.

§ 3996. If the nuisance complained of exists in a town or city, under the government of a Mayor, Intendant, Alderman, Wardens, or a Common Council, or Commissioners, such nuisance, by and with the advice of said Aldermen, Wardens, Council, or Commissioners may be abated and removed by order of said Mayor, Intendant, or Commissioners, which order shall be directed to and executed by the Sheriff or the Marshal of said town or city, or their Deputy.

When in town or city.

§ 3997. Reasonable notice shall be given to the parties interested of the time and place of the meeting of such Justices and freeholders, or of such Mayor, Intendant and Alderman, Wardens, Council, or Commissioners.

Notice.

§ 3998. If the nuisance complained of is a grist or saw mill, or other water machinery of valuable consideration, the same shall not be destroyed or abated except upon the affidavit of two or more freeholders, before one or more of the Justices of the Inferior Court of the county in which the nuisance complained of may exist, testifying that the health of the neighborhood, according to their opinion and belief, is materially injured by such mill-dam or other obstruction to a water course by other machinery

Grist, Saw mill, or other water machinery.

Chapter 1.—Proceedings for the Abatement of Nuisances.

Jury—how drawn.

as may be complained of; whereupon it shall be the duty of such Inferior Court, as soon as practicable, to cause a jury of twelve men to be drawn from the jury box of the Inferior Court, and summoned by the Sheriff or his Deputy for the trial of the cause, who, together with the said court shall attend at the court-house of said county to adjudge the case of nuisance complained of; and all parties shall have a reasonable time allowed them to summon their witnesses and procure their attendance.

By whom the application may be made.

§ 3999. A public nuisance may be abated on the application of any citizen of the district, and a private nuisance on the application of the party injured.

Fees of the Clerk, witnesses and jury.

§ 4000. When it may become necessary for the Justice of the Inferior Court, or other tribunal authorized by this Code so to do, to cause a jury to be summoned and empannelled to try a cause of nuisance arising from water-machinery, mill-dam, or otherwise, the Clerk, witnesses and jurors shall be allowed such fees in said causes as are allowed by law in the Inferior Courts of this State.

Fees for summoning jury.

§ 4001. The Sheriff, or other officer, for summoning such jury, shall receive the sum of three dollars, and when acting under the order of said Inferior Court or other tribunal, shall remove any nuisance, machinery or mill-dams, for which he shall be allowed such fees as the court may deem reasonable and just.

TITLE XXIII.

OF INQUESTS AND PROCEEDINGS THEREON.

CHAPTER I.

INQUESTS AND PROCEEDINGS THEREON.

SECTION.

4002. Jury—how summoned.
4003. Defaulting jurors may be fined.
4004. Number of jury, &c.
4005. Jury—how sworn.
4006. Oath of the jury.

SECTION.

4007. Coroner's charge to the jury, &c.
4008. Witness—how summoned, &c.
4009. Witness may be recognized.
4010. Inquests to be returned to Sup'r Ct.

Coroner must issue precept for summoning jury.

§ 4002. Whenever a Coroner of any county in this State shall have notice or be certified of the death of any person within the limits of the county of which he is Coroner, occurring under circumstances which make it his duty, under the laws of this State,

Chapter 1.—Inquests and proceedings thereon.

to hold an inquest, he shall make out a precept, directed to any Constable of the county where the dead body is found or lying, requiring him to summon a jury of inquest composed of good and lawful men of such county, to appear before such Coroner at the time and place mentioned in the precept; which precept may be in the form following—that is to say :

STATE OF GEORGIA, {
County. }

Form of the precept.

To any lawful Constable of said county greeting :

“ You are required immediately to summon eighteen good and lawful men of said county to be and appear before me, the undersigned, Coroner of the county aforesaid, at _____ in said county, on the _____ day of _____ at _____ o’clock of that same day, then and there to inquire of, do and execute all such things as in behalf of the State shall be given them in charge touching the death of _____ (or a person unknown, as the case may be,) and be you then and there with this precept to certify what you have done in the premises, and further to do whatsoever else may in behalf of the State, be enjoined upon you.

“ Given under my hand and seal this the _____ day of _____ in the year of our Lord _____ .”

Coroner. [L. S.]

which precept shall be forthwith executed by the Constable in whose hands it may be placed; and if the services of a Constable cannot be conveniently obtained, the Coroner may summon the jury himself.

Constable or Coroner may summon the jury.

§ 4003. Any juror failing to attend and serve on such Coroner’s inquest, after being duly summoned, may be fined by the Coroner in a sum not exceeding ten dollars, to be levied and collected by execution issued by the Coroner, unless such defaulting juror shall file in the Clerk’s office of the Inferior Court a good and sufficient excuse for the default, to be judged of by the next Inferior Court held thereafter.

Defaulting jurors may be fined.

§ 4004. Every Coroner’s jury shall be composed of twelve jurors, seven of whom shall be competent to return a verdict.

Number of jury, &c.

§ 4005. The following oath shall be administered to the foreman of the jury by the Coroner, to wit: “ You, as foreman of the inquest, shall diligently inquire, and true presentment make, on behalf of the State of Georgia, how and in what manner C. D., (or a person deceased, unknown, as the case may be,) now here

Oath of foreman and jury.

lying dead, came to his death, and of such other matters relating to the same as shall be lawfully required of you according to evidence," and the remainder of the jury in convenient numbers at a time shall be sworn by the Coroner as follows, to wit: "the same oath which the foreman of this inquest has taken on his part, you and each of you shall observe and keep upon your part. So help you God."

Charge of
Coroner and
powers of
jury.

§ 4006. The Coroner shall charge the jurors to declare of the death of the person upon whose body the inquest is held, whether such person died by murder, manslaughter, misadventure, misfortune, accident, or otherwise; and who, and when, and by what means, and in what manner; and if by murder, who were principals and who were accessories; and if by manslaughter, who were the perpetrators, and with what instrument the stroke or wound was in either case given; and so of all the prevailing circumstances which may come by presumption. And if by misadventure, misfortune, accident, or otherwise, whether by the act of God or man; and whether by hurt, fall, stroke, drowning, or in any other way; also what person was present at the death; also from whence the deceased came, and who he was, and who are his parents, relations and neighbors; also who were the finders of the body; also whether he died in the same place the body was found or elsewhere; and if elsewhere, who moved the body; and also of all the circumstances relating to said death; and if the deceased died in prison, the Coroner shall further charge the jury to inquire whether he died by hard usage there or not, and if so by whom; and if the deceased put an end to his life, to inquire of the manner, means used, or instrument employed, and of the circumstances concerning it; and the jury shall have full and unrestricted powers to inquire and pass upon all the matters and things thus given them in charge, and they shall have this power even if the whole or a part of the charge be omitted.

Witness—
how sum-
moned and
sworn.

§ 4007. The Coroner shall have full power to issue subpoenas to, or otherwise to compel the attendance of witnesses upon such inquests, to declare their knowledge touching the matters of inquiry before the inquest, and the Coroner shall administer to such witnesses the following oath to wit: "The evidence that you shall give this inquest on behalf of the State touching the death of C. D., (or a person unknown, as the case may be.) shall be the truth, the whole truth, and nothing but the truth. So help you God."

Chapter 1.—Inquests and proceedings thereon.

§ 4008. If the inquest discloses facts which lead or may lead to the prosecution of any person for the homicide of the person upon whose body the inquest is held it shall be the duty of the Coroner to require all witnesses who testify to facts material to the issues involved in such prosecution, to enter into a recognizance to appear and give evidence in the Superior Court of the county in which the inquest is taken, against the defendant in such prosecution; and shall also issue a warrant for the arrest of the person suspected of the homicide returnable as other warrants.

Witnesses to be recognized to appear and give evidence.

§ 4009. The Coroner shall commit to writing the substance of the testimony delivered before the inquest, and shall return all the papers and proceedings touching the inquisition to the Superior Court of the county in which it is taken, held next after such inquest.

Inquisition to be returned to Superior Court.

§ 4010. If the verdict of the jury suggests that the death was caused by poison, the Coroner shall have power to cause an accurate examination of the contents of the stomach and intestines, by skillful physicians, and the reasonable expenses of such examination shall be paid out of the County Treasury.

TITLE XXIV.

PROCEEDINGS IN COURTS OF ORDINARY.

CHAPTER I.

PROCEEDINGS IN COURTS OF ORDINARY.

ARTICLE 1. Sessions and adjournments of the Court of Ordinary.

ARTICLE 2. Practice in the Court of Ordinary.

ARTICLE I.

SESSIONS AND ADJOURNMENTS OF THE COURT OF ORDINARY.

SECTION.

4011. When held.

4012. Office—where kept.

SECTION.

4013. May be adjourned.

§ 4011. The several Courts of Ordinary shall be held in each county in this State, by the Ordinary thereof, on the first Monday in each month except January, in which it shall be held on the second Monday thereof.

When held.

Article 1.—Sessions and Adjournments of the Court of Ordinary.

Office—
where kept.

§ 4012. The said Ordinary shall keep his office at the county site, or such other place as may be authorized by law; which office shall be open for the transaction of all business, at all times except Sundays and holidays, but no will shall be admitted to record, or letters testamentary of administration or guardianship, or letters dismissory, nor shall any order for the sale of real estate or negroes be granted, except at a regular term of said court.

When open.

May be ad-
journed.

§ 4013. If, from any circumstance, the Ordinary should fail to hold said court at the regular term, or at any adjourned term, or the business of the court requires it, said Ordinary, or his deputy clerk, may adjourn said court to such times as he may think proper; *Provided*, such adjournment shall be entered on the minutes of the court.

ARTICLE II.

OF THE PRACTICE IN THE COURT OF ORDINARY.

SECTION.

4014. Applications and proceedings.
4015. The order—what it must contain.
4016. Objections must be in writing.
4017. Proceedings must be filed.

SECTION.

4018. Minutes of proceedings.
4019. Docket of applications.
4020. Docket of executors and adm'rs.
4021. May attach for contempt.

Applications
must be in
writing.

§ 4014. Every application made to the Ordinary for the granting of any order, shall be by petition in writing, stating the grounds of such application, and the order sought. If notice of such application, other than by published citation, is necessary under the law or in the judgment of the Ordinary, he shall cause a copy of such application, together with a notice of the time of hearing, to be served by the Sheriff, or some lawful officer, upon the party or parties to be notified, at least ten days before the hearing, and an entry of such service made on the original. In extraordinary cases, where it is necessary to act before such notice can be given, the Ordinary shall so direct the proceedings as to make no final order until such notice has been given.

Notice of
proceedings
—on whom
and how
made.Order—
what it must
contain.

§ 4015. The order of the Ordinary shall always recite the names of the persons so notified, and the compliance with the provisions required.

Objections
must be in
writing.

§ 4016. All objections or caveats to an order sought shall also be in writing, setting forth the grounds of such caveat. The petition and caveat shall be amendable at all times and in every particular.

Article 2.—Of the Practice in the Court of Ordinary.

§ 4017. The proceedings shall be always kept of file, and when-^{Proceedings must be filed.} over the order is granted the proceedings shall be recorded in a book to be kept for that purpose, for which the Ordinary shall receive the same fees as are allowed Clerks of the Superior Court for similar services.

§ 4018. The Ordinary shall keep a regular book of minutes of^{Minutes of proceedings.} the proceedings of his court, on which he shall enter all the applications refused as well as those granted.

§ 4019. He shall keep a docket of all applications and causes^{Docket of applications.} pending in his court, which shall be regularly continued from term to term until the final disposition thereof.

§ 4020. He shall also keep a docket of all the executors, ad-^{Docket of Executors &c.} ministrators, guardians and trustees who are liable to make returns in his court, with regular entries of their returns, and of such as have failed to make returns as required by law and the order of the court.

§ 4021. The Ordinary shall have power to enforce obedience^{May attach for contempt} to all lawful orders of his court, by attachment for contempt, in the same manner as a court of equity may do.

TITLE XXV.

PROCEEDINGS OF THE INFERIOR COURT SITTING FOR COUNTY PURPOSES.

CHAPTER I.

PROCEEDINGS OF THE INFERIOR COURT SITTING FOR COUNTY PURPOSES.

ARTICLE 1. Sessions and adjournments.

ARTICLE 2. Proceedings therein.

ARTICLE I.

SESSIONS AND ADJOURNMENTS.

SECTION.

4022. When held, and by whom.
4023. May adjourn.
4024. May hold special meetings.

SECTION.

4025. Sheriff shall attend.
4026. The Clerk and his duty.
4027. Jurisdiction of said Court.

§ 4022. The Justices of the Inferior Court (or a majority of

Article 1.—Sessions and Adjournments.

By whom,
and when,
and where
held.

them,) in the several counties in this State, shall meet at the court-house of their respective counties on the first Tuesday in every month, for the purpose of hearing such matters as may be brought before them within their jurisdiction, and when so assembled and organized, they shall be known as the Inferior Court sitting for county purposes.

May adjourn

§ 4023. Such court may adjourn to such other time as will best promote the ends of justice.

Special meet-
ing.

§ 4024. Any one of said Justices may call a special meeting of said court for county purposes, at any time when the ends of justice may require such meeting, and in such case the Justice making the call shall notify the other Justices of the time of such meeting.

The Sheriff
shall attend.

§ 4025. The Sheriff of the county shall attend all meetings of said court, when sitting for county purposes, and be subject to the order thereof, in like manner as he is to the Inferior Court.

The Clerk.

§ 4026. The Clerk of the Inferior Court shall by virtue of his office be clerk of said court when sitting for county purposes, and subject to the order thereof.

Jurisdiction.

§ 4027. Said court may hear and determine all matters over which the law gives the Justices jurisdiction, and which is not required to be heard and determined by the Inferior Court in term time.

ARTICLE II.

PROCEEDINGS THEREIN.

SECTION.

- 4028. Application to said court.
- 4029. Docket must be kept.
- 4030. Notice of proceedings.
- 4031. Minutes of proceedings.

SECTION.

- 4032. Jury fees when paid to Treasurer.
- 4033. May punish contempts.
- 4034. Amendments.

Petition or
application
must be in
writing.

§ 4028. All applications for proceedings before the Inferior Court sitting for county purposes shall be by petition in writing, which shall plainly and distinctly set forth the grounds of the proceedings desired, and in like manner, all objections to said proceedings shall be in writing, which shall fully set forth the grounds of objection.

Article 2.—Proceedings therein.

§ 4029. Said court shall cause a docket to be kept, in which shall be entered all motions and applications, which shall be called and disposed of in the order in which they stand upon the docket, unless the ends of justice require a different course. Docket must be kept.

§ 4030. When individuals are to be affected by any order, or judgment of said court, such individuals shall have reasonable notice of the time and place of hearing. Notice of proceedings.

§ 4031. Said court shall cause to be kept a minute of its proceedings. Minutes of proceedings.

§ 4032. For each decree or verdict, whether in the Superior or Inferior Court, the jury fee shall be three dollars, and for each confession of judgment, one dollar, to be taxed in the bill of cost and collected as provided in Part 3, Title 7, Chapter 1, Article 2; and if the Justices of the Inferior Court, should assess and raise a tax for the compensation of grand and petit jurors, and fix their per diem pay, as provided in section 3846, then the said tax and jury fees, when collected, shall be paid into the County Treasuries respectively. But in the event the Justices of the Inferior Court of any county should fail to assess a tax and fix the per diem pay of the grand and petit jurors as above specified, then the jury fees in such county shall be paid by plaintiffs, complainants, and appellants, directly to the Clerk, and by him to the juries under the direction of the court. Jury fees—how collected and disposed of.

§ 4033. The said court shall have power to punish for contempts, under the same rules and regulations as are provided for the Inferior Courts. Contempts—how punished.

§ 4034. Amendments shall be allowed as provided in other courts. Amendments.

NOTE—As to other powers and duties of the Justices of the Inferior Court, see Part 1, Title 5, Chapter 4, Article 1, and Part 1, Title 6, Chapters 1, 2, and 3.

TITLE XXVI.

OF PROCEEDINGS IN JUSTICES' COURTS.

CHAPTER I.

OF PROCEEDINGS IN JUSTICES' COURTS.

- ARTICLE 1. Justices' Court when and where held.
 ARTICLE 2. Jurisdiction of Justices' Court.
 ARTICLE 3. Commencement of suits—service of summons.
 ARTICLE 4. Pleas and defences.
 ARTICLE 5. Evidence—witnesses—interrogatories.
 ARTICLE 6. Trial and judgment.
 ARTICLE 7. Appeals.
 ARTICLE 8. Claims and trial thereof.
 ARTICLE 9. Final judgment and execution.
 ARTICLE 10. Justices' Courts may rule Constables, &c.
 ARTICLE 11. Levy and sale under *f. fas.* from a Justices' Court.

ARTICLE I.

JUSTICES' COURT—WHEN AND WHERE HELD.

SECTION.

4035. When held.

SECTION.

4036. Where held.

Court—
when held.

§4035. The Justices' Courts of this State shall be held once a month in each militia or company district, on a day to be fixed and appointed by the Justices of the Peace of the district; and whenever the business requires it, the term may continue for two or more days.

Court—
where held.

§4036. The Justices' Court shall be held at a place in each militia district as nearly central as convenience will admit.

Article 2.—Jurisdiction of the Justices' Court

ARTICLE II.

JURISDICTION OF THE JUSTICES' COURT.

SECTION.

4037. Shall not try actions for damages.

4038. Notes for the same consideration.

4039. Jurisdiction as to amount.

4040. Residence necessary for jurisdiction

SECTION.

4041. Co-obligors in different districts, &c.

4042. Justice being a party—how sued.

4043. When suit is in adjoining district.

4044. Maker and endorser—how sued.

§ 4037. The Justices' Court shall try no action to recover damages. Cannot try cases for damages.

§ 4038. The Justices' Court shall have jurisdiction of all suits brought on two or more promissory notes or other evidences of debt not exceeding fifty dollars each, although given between the same parties, for one and the same debt or consideration. Suits on several notes for same debt.

§ 4039. The Justices' Court shall have jurisdiction to hear and determine all suits on promissory notes, accounts, due bills, and other evidences of debt, where the principal sum sued for does not exceed fifty dollars. Suits not over fifty dollars principal.

§ 4040. Ten days residence of a party within a Militia District shall be sufficient to give the Justices' Court of such district jurisdiction of suits against him. Ten days residence gives jurisdiction.

§ 4041. When a bond, note, bill, open account, or other evidence of debt shall be against several persons residing in different counties or districts, the plaintiff shall have his option to bring suit on such demand in either of such counties or districts. Co-obligors sued in either district.

§ 4042. In all cases in which a Justice of the Peace is a party, the suit may be brought in the Justices' Court nearest to the residence of the defendant in the county, or in the district where the defendant resides, at the option of the plaintiff. If J. P. is a party.

§ 4043. In cases provided for in section 4042, the Justice of the Peace in the adjoining district may issue summons, and proceed against the defendant in the same manner as if the defendant were a resident of such adjoining district. When adjoining district has jurisdiction.

§ 4044. The maker and endorser of a promissory note or other evidence of debt, not exceeding fifty dollars principal, may be sued in the district of the maker's residence, and the endorser may be served with process in the same manner as that prescribed in the case of joint contractors. Suit vs. maker and endorser, to be in district of maker.

ARTICLE III.

COMMENCEMENT OF SUITS, SERVICE, &c.

SECTION.

4045. Summons—how issued and direct'd
 4046. Must specify time and place.
 4047. Must be served nine days before c't.
 4048. Who may serve the summons.
 4049. What officer may serve co-obligors.
 4050. How summons is to be returned.

SECTION.

4051. Proceedings uniform.
 4052. Appearance term of cases.
 4053. Bail in Justices' Courts.
 4054. Parties may settle cases.
 4055. Justices and Constables give receipt

Summons—
 how issued
 and signed.

§ 4045. All suits in the Justices' Courts of this State shall be commenced by warrant or summons, which shall be issued and signed by the Justice of the Peace of the district in which the suit is brought, and shall be directed to the defendant, commanding him to appear at the court to which the summons is returnable, to answer the plaintiff's demand, which summons shall bear date ten days before the return term of the court.

Time and
 place must
 be specified.

§ 4046. The time and place of holding the court must be specified in the summons.

Summons—
 how and
 where serv-
 ed.

§ 4047. The summons or warrant shall be served upon the defendant either by giving him a copy of the same in person, or by leaving such copy at his usual and most notorious place of abode, at least nine days before the sitting of the court to which the summons is returnable.

Who may
 serve the
 summons.

§ 4048. The summons may be served by the Constable of the district in which the suit is commenced, or if there be no such Constable, or he be a party to or interested in the case, such summons may be served by any Constable of the county.

In case of
 co-obligors.

§ 4049. In cases where suit is brought against joint obligors or joint promissors, or other joint debtors, and in cases where the Justice of the Peace is a party, and in cases where there is no Justice in the district of the defendant's residence—in all these and like cases, the Constable of the district in which suit is brought may serve all processes, on all the parties, and do all other legal acts required of him in the progress of such suit, in any district of the county.

Summons
 must be
 filed and
 kept.

§ 4050. The officer serving the summons shall return the original, with his entry of service thereon, to the Justice of the Peace before whose court the suit is pending, and the Justice shall file and preserve the said original summons with the other papers appertaining to his office.

Article 3.—Commencement of Suits, Service, &c.

§ 4051. The proceedings of the Justices' Courts shall be uniform throughout the State, unless otherwise provided for, and each Justice of the Peace shall keep a fair and legible book of entry of all civil proceedings had before him for the recovery of debts.

Proceedings to be uniform.

§ 4052. The term of the court to which the summons is made returnable shall be deemed and considered the appearance term, when the case shall be docketed on what shall be called the appearance docket, unless the demand sued on be for rent, in which case it shall stand regularly for trial at the first, or appearance term.

Appearance term.

§ 4053. The Justices' Court shall have power and authority to hold to bail for all debts within their jurisdiction, and to enforce the liability of bail under the same rules and regulations as those which prevail on that subject in the Superior Courts; and when a bail process is placed in the hands of a Constable against one who is moving about from one district to another, such Constable may follow such itinerant defendant and serve the process in any district in the county.

Bail in Justices Court.

§ 4054. Any case in the Justices' Court may be settled at any time by the parties, upon payment of the costs which have accrued up to the time of such settlement.

Parties may settle cases.

§ 4055. Whenever any claim is given to a Justice of the Peace or Constable for collection, such Justice or Constable shall give a receipt therefor, and when the money is collected such Justice or Constable shall pay the same to the plaintiff, his agent or attorney, unless there be conflicting claims for the money, in which case the question shall be decided at the first court, unless a continuance be had according to law.

Justices and Constables must give receipts for claims.

ARTICLE IV.

PLEAS AND DEFENCES.

SECTION.

SECTION.

4056. Defences same as in Superior Co'ts.

4057. *Non est factum* and dilatory pleas.

§ 4056. At the appearance term the defendant may plead any matter of defence to a suit in the Justices' Court, which would be allowable to suits in the Superior and Inferior Courts.

What defences may be set up.

§ 4057. All dilatory pleas must be filed at the first term of the court, unless the failure to do so is shown to be the result of un-

Article 4.—Pleas and Defences.

What pleas to be filed under oath. avoidable cause; and all dilatory pleas, and pleas of *non est factum*, must be verified by the affidavit of the defendant at the time of filing the same.

ARTICLE V.

EVIDENCE.

SECTION.

4058. Best evidence must be produced.
 4059. Party may prove account—when.
 4060. Account against removing party.
 4061. Defendant pleading usury.

SECTION.

4062. If plaintiff fails to answer.
 4063. The party subject to cross-examination.
 4064. Witnesses compelled to attendance.
 4065. Testimony taken by commission.

Best evidence required.

§ 4058. In all cases in the Justices' Court of this State, the best evidence the nature of the case will admit of shall be required.

When a party may prove his account by his own oath.

§ 4059. Either party in a case in the Justices' Court may prove his account, (not exceeding fifty dollars,) by his own oath; *Provided*, he will first make oath in writing that he has no other evidence in his power to procure, whereby to establish such account; but the party, after making such affidavit, may nevertheless be sworn and examined like any other witness.

Accounts against removing or non-resident party may be proved by affidavit.

§ 4060. Where suit is brought upon an open account, against a party who has removed from the county in which the debt was contracted, or who resides out of the county in which the debt was contracted, such account must be proved by the written affidavit of the plaintiff; and when so proved shall be received in evidence as if it was proved in open court. Nevertheless, if the defendant will file his written affidavit denying the justice and fairness of the whole or any part of such account, the court shall not give judgment in favor of the plaintiff for that part of the account so denied and controverted, unless supported by other proof.

How defendant pleading usury may obtain discovery.

§ 4061. When a plea of usury is filed in the Justices' Court, the defendant may give the plaintiff ten days' notice of the plea accompanied with a copy of the same, and this notice shall entitle the defendant to the written affidavit of the plaintiff, as to whether or not the facts of the plea are true as to the usury, and whether or not the contract sued on was usurious, and such affidavit may be read on the trial as evidence by either party.

If the plaintiff fails to answer.

§ 4062. If the plaintiff, after being notified of the plea, fails to make the affidavit provided for in the preceding section, the

Article 5.—Evidence.

defendant shall be permitted to verify the facts of his plea by a written affidavit, which affidavit may be read in evidence on the trial by either party.

§ 4063. Either party making an affidavit under the provisions of the two preceding sections shall, nevertheless, be sworn and examined by the adverse party as any other witness; and in every case where one party offers himself as a witness, the other party shall have the privilege of being heard also on his own motion.

§ 4064. Either one of the Justices of the Peace of the district in which a suit is pending, may issue a subpoena, directed to any witness whose testimony may be desired by either party in any case, which subpoena shall be served on the witness three days before the day of trial.

§ 4065. Testimony may be taken, and brought into court by interrogatories and commission, in any case pending in the Justices' Court, under the same rules and regulations which prevail on that subject in the Superior Court, except that the interrogatories shall be filed with the Justice of the Peace instead of the Clerk, and the notice required shall be five days instead of ten, after the expiration of which the Justice shall issue a commission, which shall be executed as provided for in the Superior and Inferior Courts.

ARTICLE VI.

TRIAL AND JUDGMENT.

SECTION.

4066. The second term shall be trial term.
4067. Cases may be continued three terms

SECTION.

4068. Justices to give judgment.

§ 4066. The second term shall be deemed and considered the trial term of all suits for the recovery of debts, (except for rent) at which term the case shall be tried, unless the same be continued according to law.

§ 4067. Cases in the Justices' Courts may be continued three times, under the same rules which govern continuances in the Superior Courts.

§ 4068. When cases are tried, the Justices of the Peace shall render judgment therein according to the law and the facts of each case, and such judgment shall be enforced by execution, unless prevented by appeal or other lawful means.

ARTICLE VII.

APPEALS.

SECTION.

4069. Appeals—when and how entered.

SECTION.

4070. Appeals—how tried—juries.

Appeals—
how and
when enter-
ed.

§ 4069. Either party, being dissatisfied with the judgment of the Justice of the Peace may, as matter of right, enter an appeal from such judgment, within three days (exclusive of Sundays) after the adjournment of the court, under the same rules, regulations, restrictions and liabilities (except as to damages for a frivolous appeal) which prevail on the subject of appeals in the Superior Courts.

Appeals—
how tried.

§ 4070. All appeals in the Justices' Courts shall be tried before one or both of the Justices of the Peace presiding therein, by five jurors drawn, empannelled and sworn as follows, to wit: The Justices of the Peace in each district shall, once in every two years, make out or procure a list of all persons liable to serve as jurors in the Superior Court, who may reside in their respective districts, and shall write the names of every person so liable on a separate piece of paper, or ticket, which ticket shall be deposited in a box in an apartment marked No. 1, and the said Justices, or one of them, in public, on a court day, in the presence of, and in conjunction with two freeholders, shall draw from said box not less than five nor more than seven of the names so deposited, from time to time, to try the causes depending on the appeal in said court; which names, when so drawn, shall be entered in a book by the Justice who presides at such drawing, and the tickets so drawn shall be deposited in another apartment of the box marked No. 2. After all the names shall be drawn from apartment No. 1, the drawing of names shall commence from apartment No. 2, and so on alternately. The jurors drawn as aforesaid shall be summoned by the Constable of the district five days before the court at which they are called upon to serve. If there be a deficiency of jurors, the Constable, by direction of the presiding Justice, shall complete the jury by talesmen from the bystanders; *Provided*, at least three of the persons drawn as aforesaid shall be present. The following oath shall be administered to the jury, to wit: "You shall well and truly try the causes depending between the parties at variance, and true verdicts give, according to equity and the opinion you entertain of the evidence

Jurors—
how drawn
and sworn.

Article 7.—Appeals.

produced to you, to the best of your skill and knowledge, without favor or affection to either of the parties; *Provided*, the case or cases submitted shall not be withdrawn from your consideration. So help you God."

ARTICLE VIII.

CLAIMS IN THE JUSTICES' COURT.

SECTION.

4071. Claim, affidavit and bond.

4072. Claim—where and when tried.

SECTION.

4073. Continuance of claim cases.

§ 4071. When an execution issued from a Justices' Court shall be levied on property claimed by any person not a party to the execution, the claimant, his agent or attorney, shall make oath that the property levied on is the right and property of the claimant, and shall also give bond and security in double the amount of the execution, which bond the levying officer is empowered to take, payable to the plaintiff or assignee of the execution, as the case may be, with condition to pay all costs and damages which the said plaintiff or assignee may sustain, in case it shall appear that such claim was frivolous, and intended for delay only; which bond, on breach of the condition thereof, shall be recoverable in any court having cognizance of the same.

§ 4072. When the claim affidavit is made, and the bond given, as directed in the preceding section, the Constable shall postpone the sale of the property, and return the papers to the next Justices' Court from which the *fi. fa.* issued, (unless the property levied on be land or negroes) and it shall be the duty of said court to direct an issue to be made up, and to cause the right of property to be tried at the first term by five jurors empannelled and sworn as in cases of appeal.

§ 4073. Upon good cause, shown on oath, a claim case may be continued for one term by each party, and no longer.

ARTICLE IX.

FINAL JUDGMENT AND EXECUTION.

SECTION.

4074. Dignity and lien of judgments.
 4075. Judgment against securities as such
 4076. Judgment in cases of set-off.

SECTION.

4077. Stay of execution.
 4078. If defendant be insolvent.

Dignity and
 lien of judg-
 ments.

§ 4074. All judgments that may be obtained in, and executions issued from the Justices' Courts, shall bear equal dignity with judgments obtained in, and executions issued from the Superior and Inferior Courts, and shall bind all the property of the defendant and his securities, if any, (except such as is exempt by law) from the date of such judgment, until the same is fully satisfied.

Judgment
 and execu-
 tion to go
 against se-
 curities as
 such.

§ 4075. Where suit is brought against joint obligors and joint promissors, and any one or more of them shall make it satisfactorily appear to the court that he signed the contract sued on, as security only, and was not interested in the consideration thereof, the court shall enter up judgment and award execution against such party as security; and when the execution shall be satisfied by such security out of his own money or property, he shall have the right to control such judgment and execution, for the purpose of remunerating himself out of the property of the principal in the same manner that securities on stay of execution may do; *Provided*, the judgment and execution shall also be against such principal.

Judgment
 for defen-
 dant in cases
 of set-off.

§ 4076. When the defendant pleads and establishes a set-off greater than the demand of the plaintiff, the court shall render judgment in favor of the defendant against the plaintiff, for the excess or balance over and above the demands of the plaintiff, unless such balance exceeds the sum of fifty dollars principal, in which event the set-off of the defendant shall be, by the judgment of the court, credited with the amount of the demand established and proven by the plaintiff, and the plaintiff in such case shall pay the costs.

How execu-
 tion may be
 stayed.

§ 4077. When final judgment is rendered in the Justices' Court, either without an appeal or after a trial on the appeal, the party against whom the judgment is rendered, at any time within four days after the adjournment of the court, shall have the right, by paying all the costs which have accrued, and giving good and sufficient security for the principal and interest involved in the case, to stay the execution for sixty days if the

Article 9.—Final Judgment and Execution.

judgment is for more than thirty dollars principal; and if the judgment be for thirty dollars principal, or under that sum, the execution shall be stayed for forty days, and when the time for which the execution is so stayed has expired, execution shall issue against the party and his security on stay for the amount of the judgment. In case any person, after being summoned on any complaint for debt in a Justices' Court shall, before the sitting of such court, remove out of the district, such court may, nevertheless, give judgment against him; and if any person shall, after judgment of such court, remove out of the district or county, or holds property in a different district or county, before satisfaction is made, such Justice may, in either case, issue execution against such person; which execution being backed by any Justice of the county where such person resides, or where his property may be found, may be levied by any Constable of said county, and the after proceedings shall be the same as provided in other cases of levy and sale, by virtue of executions from Justices' Court.

§ 4078. When an execution issued from a Justices' Court shall be returned by the proper officer, with an entry thereon that there is no property of the defendant out of which satisfaction of the execution can be made, the plaintiff in execution shall be bound and liable for the costs due thereon; and if the plaintiff, upon being notified of the return and the costs being demanded of him, shall fail or refuse to pay such cost, execution therefor may issue against such plaintiff.

When plaintiff liable for costs.

ARTICLE X.

JUSTICES' COURTS MAY RULE THEIR CONSTABLES, PUNISH DEFAULTING JURORS AND WITNESSES, AND PUNISH CONTEMPTS.

SECTION.

4079. Liability of Constable for misc'd't.
4080. Constable may be ruled.

SECTION.

4081. Witnesses failing to attend.
4082. Jurors may be fined for default.

§ 4079. If any Constable shall fail to execute and return any process placed in his hands, or shall fail to account with and pay over to the person entitled thereto any money which he has received on any note, execution, or other paper placed in his hands as such Constable, within ten days after the money is received, the person injured by such failure may apply to the Justice of the Peace of the district in which the defaulting Constable is acting as such, or in which he did act as such if he has gone out of of-

Liability of Constable for misconduct—how enforced.

Article 10.—Justices' Courts may rule Constables, &c.

fi ce, (and if there be no Justice in such district the party injured may apply to the Justice of any adjacent district,) and obtain a warrant against such Constable; and upon satisfactory proofs of the facts the Justice to whom the application is made may, either in term time or vacation, award judgment and execution against the Constable for the full amount of the money collected and withheld, or which might have been collected, and the Justice may also fine the Constable for such default in a sum not exceeding ten per cent. on the amount of said money so collected, or which might have been collected.

Constables
may be
ruled.

§ 4080. Constables may be ruled by their respective Justices' Courts and compelled to give an account of their actings and doings, or to pay over money received or collected by them in their official capacity, under the same rules and regulations as are pursued in the Superior Court in relation to officers of said Superior Court.

Witnesses
failing to at-
tend may be
fined.

§ 4081. Any witness failing to attend the Justices' Court, after being duly served with a subpoena, shall be subject to a fine not exceeding ten dollars, which may be collected by execution, unless good excuse be shown for such failure at or before the next court day after the default; and such witness shall also be liable to a suit for damages at the instance of the party injured by his default, in any court having cognizance of the same.

Defaulting
jurors may
be fined.

§ 4082. Any juror drawn and summoned, who shall neglect to appear and serve as such, shall be fined by the Justice of the Peace in a sum not exceeding three dollars, unless such juror shall show sufficient excuse for his default at the next court thereafter, which fine may be collected by execution, or imprisonment until it is paid, unless discharged by law.

ARTICLE XI.

LEVY AND SALE UNDER *FI. FA.* FROM JUSTICES' COURT.

SECTION.

4083. Levy and advertisement.

4084. Land and negroes—when subject.

SECTION.

4085. Bank and other stock.

4086. Compensation of Constables.

Time and
place of sale.

§ 4083. All Constables shall advertise all intended sales, to be made by them under execution, at three or more of the most public places in their respective districts, (unless otherwise provided) at least fifteen days before any sale shall be made, and shall give

Article 11.—Levy and Sale under Fi. Fa. from Justices' Court.

a full and clear description of the property to be sold, and all Constables' sales shall be at the place of holding Justices' Courts in the several company districts, and on a court day, and that between the hours of ten o'clock, A. M., and four o'clock, P. M.

§ 4084. No Constable shall levy on any land or negroes unless there is no other personal property to be found sufficient to satisfy the debt, which fact must appear by an entry on the execution, to be levied by a Constable of the county where such execution was issued, or where the property to be levied upon may be found; *Provided*, that the defendant shall have the right in all cases to point out any portion of his property in his possession he may think proper, and should he point out land and negroes to be levied upon, the above entry of no other personal property may be omitted.

§ 4085. When any Constable shall have any execution placed in his hands against any person who is the owner of any shares or stock in any bank, or other corporation or joint stock company in this State, he shall, on the application of the plaintiff, his agent or attorney, endorse a levy on said execution of the number of shares belonging to the defendant, and make a return of the same to the Sheriff of the county in which he lives, which said Sheriff shall proceed to advertise and sell the same, as required by law. When the Constable levies an execution in which the Sheriff is a party, or in which he is interested, he may proceed to sell the property, as a Sheriff is authorized to do.

§ 4086. A reasonable compensation shall be allowed to Constables for carrying property levied upon to the place of sale, when there appears to be an absolute necessity for doing so, to be judged of by the Justices of the district.

NOTE.—For other powers and duties of Justices of the Peace and Constables, see Part 1, Title 5, Chapter 8, Articles 1 and 2. As to levies on land or negroes, see section 3574. When the Sheriff is a party, see section 3554.

TITLE XXVII.

EQUITY PLEADING AND PRACTICE.

- CHAPTER 1. Of the bill and subpœna and service thereof.
 CHAPTER 2. Of demurrers, pleas and answers.
 CHAPTER 3. Of interlocutory decrees, receivers, masters, &c.
 CHAPTER 4. Of the trial and its incidents.
 CHAPTER 5. Of the decree and its enforcement.
 CHAPTER 6. Of other proceedings in chancery.

CHAPTER I.

OF THE BILL AND SUBPœNA AND SERVICE THEREOF.

SECTION.	SECTION.
4087. Proceedings by bill.	4094. Discovery & perpetuating testimony
4088. Discovery—interrogatories.	4095. Venue.
4089. Amendments.	4096. Manner and time of filing.
4090. Who may sue.	4097. Subpœna and service thereof.
4091. Persons laboring under disability.	4098. Sanction of the Judge—when.
4092. Parties defendant.	4099. Duty of the Clerk.
4093. Bills—different kinds of.	4100. Dismissal of bill.

Proceedings
by bill.

§ 4087. The ordinary proceeding in chancery shall be by bill, which shall be addressed to the Superior Court, or the Judge presiding therein, and shall plainly set forth the ground of complaint, and the persons against whom a subpœna is prayed.

Discovery—
interrogatories.

§ 4088. If discovery is sought of one or more of the defendants it shall be specially prayed, and interrogatories regularly numbered, shall be embodied in the bill, as to every point on which discovery is sought, and the names of the defendants from whom answers under oath or affirmation are required.

Formality &
amendment.

§ 4089. No mere formality or omission of a formality shall viti-ate or delay a proceeding in equity, but the same liberality as to amendment shall be allowed therein as in a proceeding at law.

Who may
sue.

§ 4090. Any person who cannot sue at law, may complain in equity, and every person who is remediless elsewhere, may claim the protection and assistance of a court of equity to enforce any right recognized by the law.

Persons under
disability.

§ 4091. Persons not *sui juris* may appear, either by guardian or next friend, or guardian *ad litem* appointed by the court. In the latter two cases the court may require such bond as shall protect the interest of the person under disability.

§ 4092. Generally, all persons interested in the litigation should be parties to a bill, but legatees, distributees and wards suing executors, administrators, and guardians need not join others interested in such estate as parties, complainant or defendant, unless some special adverse claim is set up as against such co-distributees or legatees.

Parties defendant.

Distributee &c., suing alone.

§ 4093. A bill is either original or in the nature of original. Every bill is original which commences a proceeding for relief or discovery, or both. Bills for the review, or avoidance, or injunction, or execution of a former decree are in the nature of original bills. A cross bill need not be filed in this State. The defendant in every case may set up any matter in his answer, which under the English practice should be the subject of a cross bill, and may require therein any discovery from the complaint he may desire. No supplemental bill need be filed in this State. All such matter shall be allowed by way of amendment. If new parties are necessary, by reason of any matter thus set up in the answer or by way of amendment, the court shall give such direction to the cause, to secure a hearing to such parties, as if a cross bill or supplemental bill had been filed. Bills of revivor are abolished.

Division of bills.

Cross bill.

Supplemental bill.

Bill of revivor.

§ 4094. A bill for discovery merely, or to perpetuate testimony, shall not be sustained unless some reason is shown why the proceeding at law is inadequate.

Discovery & perpetuating testimony.

§ 4095. All bills shall be filed in the county of the residence of one of the defendants, against whom a substantial relief is prayed, except in cases of injunctions to stay pending proceedings, when the bill may be filed in the county where the proceedings are pending, provided no relief is prayed as to matters not included in such litigation.

Venue.

§ 4096. No bill shall require the sanction of the Judge before its filing unless it prays some extraordinary remedy. Each bill shall be filed in the Clerk's office, at least thirty days before the term to which it is returnable, and shall be served on the defendant at least twenty-five days before such term.

Mode & time of filing.

§ 4097. It shall be the duty of the Clerk to annex to each bill a subpoena directed to the defendant, and requiring his appearance at the term of the court to which the bill is returnable; and also, to make out and hand to the Sheriff, or his Deputy, a copy of the bill and subpoena to be served on the defendant in like manner as petitions at common law. Service on defendants residing in

Subpœna.

Clerk's duty.

Service by Sheriff.

another county, may be made by the Sheriff of such county, or any person, who after examination of the original and copy, will file an affidavit (subject to be traversed) as to the fact of service. If the defendant does not reside in the State, service of the bill or any order of court may be made by publication in any public gazette of this State (under the direction of the court) once a month for four months. If the non-resident defendant is represented in court by an attorney at law or in fact, service on such attorney shall be sufficient. And in all cases not embraced within the foregoing provisions, the Judge may prescribe for extraordinary service, according to the exigency of each case.

§ 4098. If an extraordinary process or remedy is prayed, the sanction of the Judge of court, or of some Judge of the Superior Courts of this State, must be first obtained before such process is issued or such remedy granted. The application may be *ex parte*, and granted without a hearing, in cases of manifest necessity. In all other cases the Judge should be careful to allow a hearing before passing the order. In all cases, on ten days' previous notice and the filing of defendant's answer, a motion may be made at chambers to set aside or dissolve the order granting the sanction of the court.

§ 4099. When such extraordinary process is granted, the Clerk shall annex the same, together with the ordinary subpœna, to the original bill, and also a copy thereof to the copy bill. Such bills and processes can be served only by a Sheriff, or his Deputy, or a Coroner, and must be personal.

§ 4100. A complainant may dismiss his bill at any time, either in term or vacation, so that he does not thereby prejudice any right of the defendant. If equitable claims by way of set-off or otherwise have been set up by the answer, the dismissal of the bill shall not interfere with the defendant's right to a hearing and trial on such claims in that proceeding.

CHAPTER II.

OF DEMURRERS, PLEAS AND ANSWERS.

SECTION.

- 4101. Mode of defence, &c.
- 4102. Demurrer—grounds of.
- 4103. Pleas—different kinds of.
- 4104. Answer and exceptions thereto.
- 4105. Verification—when necessary.

SECTION.

- 4106. Amendments—effect of, &c.
- 4107. How defendant must answer.
- 4108. Verification of non-residents.
- 4109. No replication or order for trial.
- 4110. Notice of filing, &c.

§ 4101. A defendant may either demur, plead or answer to a cause in equity, or may file two or all of these defences at once, without waiving the benefit of either, or may file two or more pleas to the same action in like manner as at law. In all cases, demurrer, pleas and answer shall be disposed of in the order named; and all demurrers and pleas shall be filed and determined at the first term, unless continued by the court or by consent of parties.

§ 4102. A demurrer denies the right to the discovery or relief, in whole or in part, admitting the allegations of the bill to be true, and is founded either upon a want of jurisdiction in the court, or of equitable right in the complainant, or upon a non-joinder or mis-joinder of parties, or causes of action, or the absence of liability by the defendant to the complainant.

§ 4103. A pure plea sets up some additional fact or facts, which, taken with the facts stated in the bill, show that the complainant is not entitled to relief. An impure or anomalous plea is filed when the complainant, anticipating the defendant's plea, alleges facts to impeach or annul its effect. In such case the plea must negative the impeaching allegations, and must be accompanied by an answer discovering all the facts within defendant's power as to such allegations. A pure plea need not be under oath or affirmation.

§ 4104. The answer of defendant, (unless further time be given,) shall be filed within thirty days after the first term of the court. If the answer is not full, (where discovery is sought,) exceptions may be filed at once, and on ten days' notice shall be argued and decided at chambers. If sustained, the Judge shall require additional answer on such terms as he may direct. Exceptions must be filed before the hour for jury business, on the second day of the second term.

- Verification of answer. § 4105. If discovery is specially disclaimed, the defendant need not verify his answer ; but the defendant shall always have the privilege of putting in an answer under oath, for the purpose of using the same as evidence on any motion to dissolve an injunction, or to set aside any extraordinary process or remedy granted.
- Defendant's privilege. A sworn answer is subject to amendment at any time, by leave of the court, as other pleadings ; but an admission made in such answer shall always be evidence, when offered by the other party.
- Amendment. § 4106. An amendment to a bill which materially changes the case, opens the bill, as amended, to demurrer or plea. The defendant shall be allowed reasonable time for answering such an amendment. An immaterial amendment does not so open the bill, and need not be answered at all, or shall be answered *instanter*.
- Effect of amendment. § 4107. When discovery is sought the defendant must answer to the best of his knowledge, information and belief. If the defendant knows nothing, but answers only to his belief from the information of others, such an answer does not require the testimony of two witnesses to overcome it.
- Answer to amendment. § 4108. When a bill, or answer, or other proceeding in equity is required to be verified by a complainant or defendant, who resides beyond the limits of this State, an affidavit, made before any commissioner of this State, or any commissioner, or master, or chancellor of a court of equity, or Judge of any court of the State where made, authorized to administer an oath, shall be a sufficient verification.
- How defendant must answer. § 4109. No replication shall be filed, and no order setting down the case for trial ; but the parties may commence to take testimony as soon as the bill is filed.
- Effect of answering on belief. § 4110. If a demurrer or plea is filed, notice of such filing must be given to the complainant or his solicitor, a reasonable time before the end of the first term.
- Verifying answer of non-resident. Replication and order for trial. Notice of filing of demurrer or plea.

CHAPTER III.

OF INTERLOCUTORY DECREES, AND THE APPOINTMENT OF RECEIVERS, MASTERS, AND AUDITORS.

SECTION.

4111. Interlocutory decrees and orders.
4112. Master or Auditor.

SECTION.

4113. Report of Master—exceptions.
4114. Fees of Master or Auditor.

Chapter 3.—Of Interlocutory Decrees, &c.

§ 4111. At any stage in the progress of an equity cause, if any portion of the same is ready for, or requires a decree, the court may hear and determine such matters and pass such interlocutory decree or order as may advance the cause and expedite a final hearing. If no issue of fact is involved, the verdict of a jury is unnecessary.

Interlocutory decrees and orders.

§ 4112. Every Chancery Court in this State may appoint a Master, to whom it may refer such matters of account as are complicated in their nature; or, by consent of parties, may appoint an Auditor to investigate and report upon similar matters in dispute. Such Master or Auditor may subpoena witnesses, administer oaths, and hear testimony on any disputed fact, always giving due notice of his sittings to the parties or their solicitors.

Master or Auditor.

§ 4113. The report of the Master or Auditor, when returned to court, shall be subject to exceptions for such time as the court may allow; and the exceptions so filed shall be the only issues of fact submitted to a jury, so far as the matters referred are concerned. When submitted, the jury shall return a verdict on each exception *seriatim*.

Report and Exceptions.

§ 4114. The fees of the Master or Auditor shall be determined by the court, unless agreed on by the parties.

His fees.

CHAPTER IV.

OF THE TRIAL AND ITS INCIDENTS.

SECTION.

4115. Trial term—when.
4116. Jury—when necessary.
4117. Rules of evidence and practice.
4118. Bill taken *pro confesso*.

SECTION.

4119. Decree for specific performance.
4120. Special verdicts and costs.
4121. New trials—appeals.

§ 4115. The trial term of all equity causes shall be the second term after service has been perfected on all the parties.

Trial term.

§ 4116. When any question of fact is involved, the same shall be decided by a special jury, selected as in cases of appeals. If there be no such question, or the master's report, unexcepted to, covers all such questions, the Judge may render a decree without the verdict of a jury.

Jury trial—when necessary.

§ 4117. The rules of evidence shall be the same as in trials at law, and the rules of practice as to continuance, and in the con-

Rules of evidence and practice.

duct of the cause before the jury, except that when a complainant relies solely on the defendant's answer, he shall be entitled to open and conclude the cause.

Bill taken
pro confesso

§ 4118. If at the trial term no answer has been filed, and the complainant has not in his bill disclaimed discovery, and no sufficient excuse is rendered for the neglect of defendant, the facts charged in the bill shall be taken as confessed, so far as the complainant (or his solicitor in his absence) will swear that the same are true, or according to his information and belief, must have been admitted to be true by the defendant in an honest answer.

So complainant refusing to answer.

And the court may proceed to decree thereon. The same rule shall be enforced against a complainant who fails or refuses to respond as to any matter set up in defendant's answer and of which discovery is sought from complainant. In proper cases the court may compel an answer by attachment for contempt.

Decree for specific performance.

§ 4119. A decree for specific performance shall operate as a deed to convey land or other property without any conveyance being executed by the vendor. Such decree, certified by the Clerk, shall be recorded in the registry of deeds in the county where the land lies, and shall stand in the place of a deed.

Special verdicts.

§ 4120. Special verdicts may be found by the jury, and they may recommend to the court the assessment of costs upon the respective parties. It is the province of the chancellor, however, to determine upon whom the costs shall fall.

Costs.

New trials.

§ 4121. New trials may be granted from the verdicts of juries in equity cases in like manner as in cases at law. But there shall be no appeal from the verdict of the jury.

Appeals.

CHAPTER V.

OF DECREES AND THEIR ENFORCEMENT.

SECTION.

- 4122. A decree defined.
- 4123. Decrees and remedies.
- 4124. Execution.
- 4125. Attachments for contempt.

SECTION.

- 4126. Transferable like judgments.
- 4127. Enforcing injunctions.
- 4128. Dormant decrees—revival.
- 4129. Limitation on bills of review.

What is a decree.

§ 4122. A decree in chancery is the judgment of the chancellor upon the facts ascertained, and should be signed by him, and entered on the minutes of the court.

§ 4123. A court of equity has full power to mould its decrees Decrees and remedies. so as to meet the exigencies of each case; and shall have full power to enforce its decrees when rendered.

§ 4124. A decree in favor of any party for a specific sum of Execution on money decrees. money or for regular instalments of money, shall be enforced by execution against the person or property as at law. The plaintiff in such execution shall be the person actually entitled without regard to his relative position in the cause. The defendant in Defences. such execution shall be entitled to all the privileges and defences allowed to executions from a judgment at law.

§ 4125. Every decree or order of a court of equity may be enforced by attachment against the person for contempt, and if Attachment for contempt a decree be partly for money and partly for the performance of a duty, the former may be enforced by execution, and the latter by attachment or other process.

§ 4126. A decree in equity is transferable like other judgments, Transfer. and when for money, shall have a like lien.

§ 4127. Injunctions, *ne exeat*, prohibition, and other extraordinary remedies may be enforced also by attachment. Lien Enforcing injunctions.

§ 4128. Decrees in equity for the payment of money shall become dormant like other judgments when not enforced, and Dormant decrees—revival. may be revived upon petition and notice, without a bill or writ of *scire facias*.

§ 4129. Bills of review shall be brought within three years Limitation on bills of review. from the date of the decree rendered, or from the time of the removal of the disability of infancy, coverture, imprisonment or insanity from the person complaining.

CHAPTER VI.

OF OTHER PROCEEDINGS IN CHANCERY.

SECTION

4130. Proceedings by petition.

4131. What may be done at chambers.

SECTION.

4132. Notice—when necessary.

4133. To minors.

§ 4130. All proceedings *ex parte*, or in the execution of the Proceedings by petition. protective powers of chancery over trust estates, or the estates of the wards of chancery, may be presented to the court by petition only, and such other proceedings be had therein as the necessity of each cause shall demand.

What may
be done at
chambers.

§ 4131. A court of equity is always open, and hence the Judge, in vacation and at chambers, may receive and act upon such petitions, always transmitting the entire proceedings to the Clerk, to be entered on the minutes or other records of the court.

Notice—
when neces-
sary.

§ 4132. In all cases of applications for the removal of trustees, or the sale of trust property, or the investment of trust funds, or similar cases where any person is interested besides the applicant, notice to such persons must be shown or its absence accounted for before the court shall proceed in the cause.

To minors.

§ 4133. If minors are interested, and they have no guardians, guardians *ad litem* must be appointed and notified before the cause proceeds.

TITLE XXVIII.

ARBITRATION AND AWARD.

CHAPTER 1. Special provisions.

CHAPTER 2. General provisions.

CHAPTER I.

SPECIAL PROVISIONS.

ARTICLE 1. Of the submission.

ARTICLE 2. Of the organization and hearing.

ARTICLE 3. Of continuances and adjournments.

ARTICLE 4. Of the evidence and witnesses.

ARTICLE 5. Of the powers of the arbitrators.

ARTICLE 6. Of the rendition and effects of the award.

ARTICLE 7. How attacked.

ARTICLE 8. Of costs and compensation of the arbitrators.

ARTICLE I.

OF THE SUBMISSION.

SECTION.

4134. Controversies submitted.

SECTION.

4135. Submission must be signed.

Controversy
submitted to
arbitration.

§ 4134. All persons having matters of controversy, whether in suit or otherwise, may submit the same to arbitration, and any

Article 1.—Of the Submission.

personal representative of any decedent, or guardian of any infant, idiot, lunatic or any trustee, may submit to arbitration any matter of controversy touching the estate or property of such decedent, idiot, lunatic, infant, or of such trust estate in the following manner:

§ 4135. All such submissions to arbitration shall be in writing, and shall contain a clear and accurate statement of the matters in controversy submitted, and any other matter that may be pertinent to said submission, and also the names of the arbitrators chosen by the parties. Said submission shall be signed by the parties or their agents, and when so signed, shall be delivered to one of the arbitrators chosen by the parties, and when this is done said submission shall be irrevocable, except by consent of all the parties.

Submission to be in writing.

ARTICLE II.

OF THE ORGANIZATION AND HEARING.

SECTION

- 4136. Must be three arbitrators.
- 4137. How chosen.
- 4138. Shall appoint time and place.

SECTION.

- 4139. List of witnesses to be furnished.
- 4140. If any fail to attend.
- 4141. Arbitrators must be sworn.

§ 4136. Every arbitration under this provision of this Code, shall be composed of three arbitrators, one of whom shall be chosen by each of the parties, and one by the arbitrators chosen by the parties.

To consist of three.

§ 4137. When the submission is delivered to the arbitrators chosen by the parties, or either, such arbitrators shall then choose another arbitrator, whose name shall be inserted in the submission.

How chosen.

§ 4138. The arbitrators so chosen shall then appoint their time and place of meeting, which shall be as soon as practicable, consistent with a proper preparation of the case, and the parties shall have ten days' notice of such time and place of meeting.

Time and place of meeting.

§ 4139. At the time the submission is made, or so soon thereafter as may be done, the parties shall furnish the arbitrators so chosen, or one of them, with a list of the witnesses, whose testimony they desire to be before said arbitrators, and any party neglecting to do this for ten days after said submission is made, shall not be entitled to delay or continuance for the absence of his testimony or witnesses.

List of witnesses to be furnished.

Article 2.—Of the Organization and Hearing.

One of the arbitrators failing to attend.

§ 4140. If any one of of the arbitrators selected by the parties should fail to attend at the time and place of meeting, or be disqualified, the party whose arbitrator is absent or disqualified, shall then choose another in his place, and if the arbitrator chosen by the arbitrators is absent or disqualified, the arbitrators chosen by the parties shall choose another in his place, and the arbitrators so chosen shall have all the powers of the arbitrators first chosen.

Arbitrators must be sworn.

§ 4141. Before the arbitrators enter upon a hearing of said case, to make up their award, they shall be sworn impartially to determine the matters submitted to them, according to law and the justice and equity of the case, without favor or affection to either party; which oath they may administer to each other.

ARTICLE III.

OF CONTINUANCES AND ADJOURNMENTS.

SECTION.

4142. Parties not ready—postponement.

SECTION.

4143. Adjournments.

Parties not ready—case postponed.

§ 4142. When, upon the meeting of the arbitrators, if either party shall not be ready for trial, the arbitrators may postpone the hearing of the case to a future day, which day shall be as early as may be consistent with the ends of justice, considering all the circumstances of the case; but there shall not be more than two adjournments of the case, except for Providential cause.

May adjourn from day to day.

§ 4143. After the arbitrators shall have commenced their investigations they may adjourn from day to day, or for a longer time if the ends of justice require it, until their investigations are completed, and they have made up their award.

ARTICLE IV.

OF THE EVIDENCE AND WITNESSES.

SECTION.

4144. Testimony taken by commission.

4145. Competency of witness.

SECTION.

4146. Examination of witnesses, &c.

Testimony may be taken by commission.

§ 4144. Testimony may be taken by commission under the same circumstances, in the same manner, and subject to the same rules and regulations as are now or may be prescribed by law for the taking of testimony by commission in the Superior

Article 4.—Of the Evidence and Witnesses.

Courts, saving only that the original interrogatories shall be filed with one of the arbitrators and the commission issue by one of the arbitrators, and the testimony, when taken, shall be directed to the arbitrator who issued the commission.

§ 4146. All free white persons who have arrived at sufficient age to understand the obligations of an oath, and are not idiots or lunatics, including also the parties to said submission, shall be competent as witnesses in all cases before said arbitrators, saving only that the wife shall not be a witness for or against the husband, nor the husband for or against the wife, except in cases where the same is allowed by law.

§ 4146. The examination of witnesses and the admission of testimony shall be governed by the rules of the Superior Courts, except as herein provided.

ARTICLE V.

OF THE POWERS OF THE ARBITRATORS.

SECTION.

4147. Powers of arbitrators.

4148. May compel production of books, &c.

SECTION.

4149. Administer oaths to witnesses, &c.

4150. If all do not attend, two may act.

§ 4147. The arbitrators shall be clothed with all the powers of the Superior Courts to compel the attendance of witnesses before them, and also to compel them to testify, and any one of said arbitrators shall have power to issue subpoenas requiring the attendance of witnesses at the time and place of their meeting, which subpoenas shall be served in the manner pointed out by law for the service of subpoenas in cases pending in the Superior Courts, and witnesses so attending shall be entitled to the same compensation as witnesses attending Superior Courts, and it may be collected in the same manner.

§ 4148. Said arbitrators shall be clothed with all the powers of the Superior Courts to compel parties to produce books and all other papers, which they may deem necessary and proper for the investigation of the matters submitted to them, giving to the party, his agent or attorney, from whom the production is required, such notice as is required in the Superior Courts for the production of papers.

§ 4149. Said arbitrators shall have power to administer oaths to witnesses and all other oaths that may be necessary for carrying the provisions of this chapter into full effect.

Article 5.—Of the Powers of the Arbitrators.

Two may
make an
award.

§ 4150. If the arbitrators so chosen shall fail to agree upon an award, then any two of them may make an award, which shall have the same force and effect as if made by all three of them.

ARTICLE VI.

OF THE RENDITION AND EFFECT OF THE AWARD.

SECTION 4151. Rendition and effect of award.

Copy to be
given to the
parties—
original re-
turned to
Superior
Court.

§ 4151. After the arbitrators shall have made up their award, they shall furnish each of the parties with a copy thereof, and return the original award to the next Superior Court of the county where the award was made, and said award shall be entered on the minutes of said court, and shall have all the force and effect of a judgment or decree of said court and may be enforced in the same manner at any time after the adjournment of said court, and shall be final and conclusive between the parties as to all matters submitted to the arbitrators, unless objection should be pleaded to the same as provided in the next section of this Code.

Effect of
award.

ARTICLE VII.

HOW ATTACKED.

SECTION.

4152. Award—how attacked and pro'd's.

SECTION.

4153. Verdict of jury and proceedings.

Frauds may
be suggested
at the return
term.

§ 4152. When said award shall have been returned to said court and entered upon its minutes, as provided in the previous section of this Code, either of the parties may suggest, on oath, at the term to which said award is returned, that the award was the result of accident, or mistake, or the fraud of some one or all of the arbitrators or parties, or is otherwise illegal. Whereupon the court shall cause an issue to be made up, which issue shall be tried by a special jury under the same rules and regulations as are prescribed for the trial of appeals; which trial shall be had at the same term of the court at which the suggestion is made, unless good cause be shown for a continuance, when the same may be continued for one term only, except for Providential causes.

Issue tried
by a special
jury.

May be con-
tinued for
one term.

Verdict of
the jury.

§ 4153. If upon the trial of such issue the jury shall return a verdict finding against said award on the specifications made in the issue submitted, the court shall forthwith pass an order va-

Article 7.—How Attacked

cating and setting aside said award; but if the jury shall not so find, said award shall remain in full force as provided in the previous section of this Code, and shall be final and conclusive unless the judgment of the Superior Court on the trial of such issue be reversed by the Supreme Court.

Order of the court.
Should be final unless reversed.

ARTICLE VIII.

OF COSTS AND COMPENSATION OF ARBITRATORS.

SECTION.

SECTION.

4154. Clerk's fees for his services.

4156. Compensation of Arbitrators, &c.

4155. The costs may be taxed, &c.

§ 4154. For each award entered upon the minutes of the Superior Court, the Clerk shall be entitled to the same pay now allowed by law for the entering of judgment in other cases, to be paid by the parties as directed in said award.

Clerks' fees.

§ 4155. The arbitrators shall return in their award the costs of the case, which they may tax against either party, or a part against one and a part against the other, according as they may think just and right.

Costs—how taxed.

§ 4156. The arbitrators shall have such compensation for their services as may be agreed upon by themselves and the parties, which shall be paid equally by the parties, or included in the judgment or decree of the court to which said award is returned as part of the costs in said case, and if the parties fail to agree on the amount so to be paid, the court to which said award is returned shall direct an issue (as to the amount of the fee) to be formed between the parties and the arbitrators, which shall be tried by a special jury, whose verdict shall be final and conclusive, unless reversed, and the subsequent proceedings thereon shall be the same as in cases of appeal.

Compensation of Arbitrators—how fixed and collected.

CHAPTER II.

GENERAL PRINCIPLES.

SECTION.

SECTION.

4157. Any number of arbitrators.

4158. Submissions when suit is pending.

§ 4157. Nothing in the preceding chapter contained shall prevent any of the parties named in the first section thereof, from submitting any and all matters of controversy to the arbitra-

Submissions to arbitration other than those provided in the preceding chapter.

Chapter 2.—General Provisions.

ment and award of any number of arbitrators, as provided by this Code, whether the same be in suit or otherwise; and when so submitted, the proceedings shall be governed by the provisions of this Code and the common law.

Submission
when suit is
pending.

§ 4158. In all matters submitted to reference by parties in a suit, under a rule of court or other agreement in writing, signed by the parties, (except as hereinbefore provided) judgment shall be entered up by the party in whose favor the award is given, and execution shall issue for the sums awarded to be paid as they respectively become due, and to be levied on the property of the party against whom the judgment shall have been entered up, and such other proceedings shall be had thereon by the court as in cases of judgments entered upon verdicts of juries.

Proceedings
therein.

TITLE XXIX.

PRACTICE IN CONNECTION WITH SUPREME COURT.

CHAPTER 1. Of bills of exceptions and writs of error.

CHAPTER 2. Of proceedings in Supreme Court.

CHAPTER I.

OF BILLS OF EXCEPTIONS AND WRITS OF ERROR.

SECTION.

- 4159. When a writ of error lies.
- 4160. Bill of exceptions.
- 4161. Tendering and certifying.
- 4162. Exceptions *pendente lite*.
- 4163. Judge removing, dead or absent.
- 4164. Death of either party.
- 4165. Judge refusing to certify.
- 4166. Failing to certify.

SECTION.

- 4167. Notice—how served.
- 4168. *Ex parte* proceedings.
- 4169. Criminal cases—proceedings in.
- 4170. Bill of exceptions—how filed.
- 4171. Operates as a supersedeas—when.
- 4172. Clerks and Sheriffs—failing in duty.
- 4173. Filing papers in the Supreme Court.

When a writ
of error lies.

§ 4159. No cause shall be carried to the Supreme Court upon any bill of exceptions, so long as the same is pending in the court below, unless the decision or judgment complained of, if it had been rendered as claimed by the plaintiff in error, would have been a final disposition of the cause. But at any stage of the cause, either party may file his exceptions to any decision, sentence or decree of the Superior Court; and if the same is certified and allowed, it shall be entered of record in the cause; and should the case at its final termination be carried by writ of

Bills of ex-
ceptions
pending the
cause.

Chapter 1.—Of Bills of Exception and Writs of Error.

error to the Supreme Court by either party, error may be assigned upon such bills of exception, and a reversal and new trial may be allowed thereon when it is manifest that such erroneous decision of the court has or may have affected the final result of the case.

§ 4160. Either party in any civil cause, and the defendant in any criminal proceeding in the Superior Courts of this State, may except to any sentence, judgment, decision or decree of such court, or of the Judge thereof, in any matter heard at chambers. Such bill of exceptions shall specify plainly the decision complained of, and the alleged error, and shall be signed by the party, or his attorney or solicitor. Bill of exceptions.

§ 4161. Such bill of exceptions shall be tendered to the Judge who presided in the cause within thirty days from the adjournment of the court, or the date of the decision at chambers, and if the same is true and contains, in connection with the transcript of the record, all the facts necessary to the understanding and adjudication of the alleged error, the said Judge shall sign and certify the same, substantially as follows: "I do certify that the foregoing bill of exceptions is true, and contains all the evidence material to a clear understanding of the errors complained of, and the Clerk of the Superior Court of the county of _____ is hereby required and ordered to make out a complete copy of the record of said case, and certify the same as such, and cause the same to be transmitted to the _____ term of the district of the Supreme Court, that the errors alleged to have been committed may be considered and corrected." This certificate shall be the writ of error. Tendering and certifying.

§ 4162. Exceptions tendered before the final hearing or judgment for the mere purpose of being made a part of the record, shall be certified to be true by the Judge, and ordered to be placed on the record. Such exceptions must be tendered during the term. Writ of error.

§ 4163. If the Judge trying the cause resigns, or otherwise ceases to hold his office as Judge, when the bill of exceptions is tendered, he may nevertheless sign and certify as above. And if he should die before certifying the same, or otherwise becomes incapable of acting, then the party may verify his bill of exceptions by his own oath, or that of his attorney, together with the oath of at least one disinterested member of the bar who was present at the trial. And such verifications shall operate in the same man- Exceptions pendente lite.

Judge removing.

Or dying.

Or absent, &c.

ner as the certificate of the Judge. If the Judge is absent from home, or by other casualty fails to certify the bill of exceptions within the time specified (and without fault of the party tendering) he may still sign and certify as soon as possible, which shall be held and deemed valid.

Party dying. § 4164. If either party dies between the hearing and the tendering of the bill of exceptions, the Judge shall nevertheless sign and certify the same, and parties shall be made in the Supreme Court as in other cases; the notices required in such cases to be given and received, may be given and received by the attorneys of the respective parties though such parties be dead.

Notices.

Judge refusing to certify.

§ 4165. If the Judge shall determine that the bill of exceptions is not true, or does not contain all the necessary facts, he shall return the same within ten days to the party, or his attorney, with his objections to the same in writing. If these objections are met and removed, the Judge may then certify, specifying in his certificate the cause of the delay. If the Judge sees proper, he may order notice to the opposite party of the fact and time of tendering the exceptions, and may hear evidence as to the truth thereof.

Notice to other party.

Judge failing to sign.

§ 4166. If from any cause the bill of exceptions is not certified by the Judge without fault of the party tendering, such party or his attorney shall apply at the next term of the Supreme Court, wherever it may be, and on petition obtain from said court a *mandamus ni si* directed to such Judge. Such petition must set out substantially the bill of exceptions tendered, and shall be verified by the attorney as to the truth of the bill as tendered, and by the party or his attorney as to the other facts stated therein. The *mandamus ni si* shall be served by some Sheriff of this State, and his return made to the Clerk of the Supreme Court. It shall be returnable at some term of the Supreme Court, at which term the court shall consider and determine the validity of the reasons given by the Judge for his failure or refusal, but in no case shall a traverse as to the truth of such return of the Judge be allowed. If the reasons be insufficient, or the Judge fails or refuses to make any return to the *mandamus ni si*, the Supreme Court shall issue a *mandamus* absolute commanding the Judge to sign and certify the bill of exceptions. If he still refuses so to do, the cause shall be heard by the Supreme Court on the exceptions as verified in the petition for *mandamus*.

Mandamus ni si.

Service.

Judge's register.

Mandamus absolute.

Chapter 1.—Of Bills of Exception and Writs of Error.

§ 4167. Within ten days after the bill of exceptions is signed and certified, the party plaintiff therein, shall serve a copy thereof upon the opposite party or his attorney, and if there be several parties with different attorneys, upon each, with a return of such service (or acknowledgement of service) endorsed upon or annexed to such bill of exceptions, and they alone are parties defendant in the Supreme Court who are thus served.

Service of copy on defendants.

§ 4168. If the proceeding in the court below be *ex parte*, and there is no opposite party, notice to no one is necessary. In cases of interpleader or otherwise, where the real contestant is not the opposite party on the record, notice shall be given to such real contestant, in addition to the copy served as above.

Ex parte proceedings.

Notice to real contestant

§ 4169. In a criminal case, the copy bill of exceptions shall be served upon the Attorney or Solicitor General, as the case may be, or upon a Solicitor General *pro tem.* who tried the cause, if he is still acting under the appointment.

In criminal cases.

§ 4170. Within fifteen days from the date of the certificate of the Judge, the bill of exceptions shall be filed in the office of the Clerk of the court where the case was tried; and in ten days from the date of such filing, it shall be the duty of the Clerk to make out a copy of such bill, together with a complete transcript of the record in such cause. Such transcript, together with the original bill of exceptions, the Clerk shall transmit, together with a certificate that the same is the true, original bill of exceptions, and a true and complete transcript of the record in such case, to the next term of the Supreme Court, as required in the Judge's certificate, directing the same to the Clerk of the said court. The copy bill of exceptions shall be retained in the office of the Clerk of the Superior Court.

Filing in Clerk's office

Clerk's duty—transcript.

Copy bill of exceptions.

§ 4171. The bill of exceptions thus filed shall operate as a *superse-deas* upon the plaintiff in error complying with the following terms: In a civil cause, the party shall, on or before filing the bill of exceptions, pay all costs, and by himself, his agent or attorney in fact or at law, give bond with good security, payable to the opposite party, and conditioned for the payment of the eventual condemnation money, and all subsequent costs, which bond shall be attested and approved by the said Clerk. Or he may file an affidavit with the said Clerk, stating that he is unable from his poverty to pay the costs and give the security for the eventual condemnation money, and that his counsel has advised him that he has good cause for a writ of error, which af-

Superse-deas.

In civil cases.

Bond.

Chapter 1.—Of Bills of Exception and Writs of Error.

Informa pauperis.

fidavit shall operate as if the costs were paid and bond given. In a criminal cause, where the offence is bailable, the defendant shall enter into a recognizance before the said Clerk, with security to be approved by him, in a sum to be fixed by the presiding Judge, conditioned for the personal appearance of such defendant, to abide the final order, judgment or sentence of said court. If the offence is not bailable, the Judge shall order a *supersedeas* at the time of filing the bill of exceptions. If the party is unable from his poverty to give the recognizance, the Judge shall order a *supersedeas* upon the filing of an affidavit as provided in civil cases, but the defendant shall not be set at liberty without the recognizance.

In criminal cases.

Informa pauperis.

Mandamus vs. Clerk or Sheriff.

Sutors not to suffer.

Time of filing in Supreme Court

Effect of failure.

§ 4172. If any Sheriff, or Clerk, or other officer shall fail to discharge any duty required of him in connection with the foregoing provisions, upon petition the Supreme Court, or the Judge of the Superior Court may compel the performance of such duty by *mandamus*; and no suitor shall lose any right by reason of the failure of such officers to discharge their duties, where he has been guilty of no fault himself, and has exercised ordinary diligence to secure their discharge of duty.

§ 4173. The papers transmitted to the Supreme Court may be filed at any time before the court has completed the docket for that circuit at that term. If they are not filed by that time, the judgment of the court below shall stand affirmed (unless the plaintiff is protected under some one of the foregoing provisions) and shall be so entered in that court upon the production of the certificate of one of the Judges of the Supreme Court, under the seal of the court, as to the fact of the failure to file the papers in the time required.

CHAPTER II.

OF PROCEEDINGS IN THE SUPREME COURT.

SECTION.

- 4174. Order of docketing cases.
- 4175. Time of docketing cases.
- 4176. Decisions at the first term.
- 4177. Making parties.
- 4178. If the record is incomplete.
- 4179. Judges dissenting.
- 4180. Decision and future direction.

SECTION.

- 4181. Remitter.
- 4182. Damages.
- 4183. Execution may issue—when.
- 4184. Amendments.
- 4185. Transcript to be filed.
- 4186. Attorneys liable for costs.
- 4187. Taxing cost.

§ 4174. All causes shall be docketed by circuits in the order in which they are received by the Clerk, and the Clerk shall, at least one month prior to the session of each term, publish in two public gazettes at the place where the court shall sit, the order in which the respective circuits of that district will be docketed for a hearing.

Order of docketing

Clerk's publication.

§ 4175. The docket shall be open for the reception of causes so long as the cases from the circuit whence they came are being heard, but when the docket for that circuit is closed, no cause shall be received except by special order of the court on proper cause shown.

Time of docketing.

§ 4176. The Supreme Court shall proceed to hear and determine at the first term (unless prevented by Providential cause) all cases properly docketed, and with the records made up ready for a hearing. And no continuance shall be allowed except for Providential cause.

Decision at first term.

Continuance

§ 4177. Should any party die after the bill of exceptions has been signed and certified, the death being suggested of record in the Supreme Court, parties shall be made by *scire facias*, in the manner heretofore prescribed by the rules of said court.

Making parties.

§ 4178. If the transcript of the record is incomplete in a material point, the fact being suggested on the oath of the party or his counsel, the cause shall be postponed and a *mandamus* issued requiring the Clerk to complete the transcript. If, however, the other party will admit the existence and effect of the omitted record, such admission in writing, shall constitute a part of the record, and the cause shall proceed to a hearing. If the Clerk refuses to send up any of the papers, the plaintiff in error or his counsel, may apply to any one of the Judges of the Supreme Court in vacation and obtain a *mandamus ni si* against said Clerk, and returnable to the term of the court where the case should be tried; and for a continued failure or refusal, the Supreme Court may attach the Clerk for contempt.

If the record is incomplete.

Admission of opposite party.

Mandamus in vacation.

Attachment for contempt

§ 4179. If the court is not unanimous in its decisions, the Judges shall deliver the opinions *seriatim*, but they shall not be required to write them out. The opinion of the majority shall decide each question. If but two Judges preside, and they are divided in opinion, the cause shall be re-argued before the remaining Judge, with a full bench, ere the term closes, if possible. If not possible, the judgment of the court below shall stand affirmed, upon the certificate of the fact of the division of the court,

Judges dissenting.

unless the Judge is absent from Providential cause, in which event the cause shall stand continued.

Decision.

§ 4180. The decision in each cause shall be entered on the minutes, and it shall be within the power of the Supreme Court to award such order and direction to the cause in the court below as may be consistent with the law and justice of the case.

Power of future direction.

Remitter.

§ 4181. The decision of the court, and any direction awarded in the case, shall be certified by the Clerk to the court below, under the seal of the Supreme Court, and shall be respected, and in good faith carried into full effect by the Superior Court. The remitter shall contain nothing more, except the costs paid in the Supreme Court.

Damages in cases of affirmation.

§ 4182. Ten per cent. damages may be awarded by the Supreme Court upon any judgment for a sum certain, which has been carried to said court, and there affirmed; *Provided*, in their opinion, the cause was taken up for delay only, and it shall be so entered in the remitter.

Judgment affirmed, execution at once.

§ 4183. If the judgment below is affirmed, upon filing the remitter with the Clerk of the Superior Court in vacation, the supersedeas shall cease, and execution shall issue at once for the amount of the original judgment.

Bill of exceptions amendable.

§ 4184. The bill of exceptions may be amended in the Supreme Court, so as to conform to the record in the cause.

Transcripts to be filed.

§ 4185. The transcript of the record shall not be recorded by the Clerk of the Supreme Court, but shall be carefully labelled and filed, so as to be easily found when needed.

Attorney liable for costs.

§ 4186. The attorney representing the plaintiff's cause shall, in all cases, be responsible for the costs in the Supreme Court. If there is a judgment of reversal, the plaintiff in error shall be entitled to a judgment for the amount of such costs against the defendant in error, so soon as the remitter is returned to the court below.

Judgment against other party.

Taxing costs

§ 4187. At the close of each judgment on the minutes, the Clerk shall tax his costs, subject to revision by the Judges of the Supreme Court, and the costs so taxed shall be entered as a part of the remitter.

PART IV.

PENAL LAWS.

TITLE I.

PENAL CODE.

- DIVISION 1. Persons capable of committing crimes.
- DIVISION 2. Principals and accessories.
- DIVISION 3. Crimes against the State and people.
- DIVISION 4. Crimes against the person.
- DIVISION 5. Crimes against the habitation.
- DIVISION 6. Crimes relative to property.
- DIVISION 7. Forging, counterfeiting, and unlawful currency.
- DIVISION 8. Crimes against public justice.
- DIVISION 9. Against public peace and tranquility.
- DIVISION 10. Against public morality, health, police and decency.
- DIVISION 11. Cheats and swindlers.
- DIVISION 12. Fraudulent or malicious mischief.
- DIVISION 13. Offences relative to slaves.
- DIVISION 14. Indictments and proceedings to execution.
- DIVISION 15. Contempts of court and attempts to commit crimes.
- DIVISION 16. Proceedings in preliminary courts.

FIRST DIVISION.

PERSONS CAPABLE OF COMMITTING CRIMES.

SECTION.

4188. Crime—definition.
4189. Intention.
4190. Infants, 14 years—liable.
4191. Under 10—incapable.
4192. Lunatics.
4193. Idiots.
4194. Aiders and abettors instead.
4195. If Insanity is pleaded.

SECTION.

4196. Married women.
4197. Drunkenness—when excuse.
4198. Misfortune or accident.
4199. Slaves under coercion.
4200. Slaves under persuasion.
4201. Attempt to persuade.
4202. Persons under fear.
4203. Felony—what is.

§ 4188. SEC. I. A crime or misdemeanor shall consist in a violation of a public law, in the commission of which there shall be ^{What persons capable of committing crimes.}

Division 1.—Persons capable of committing Crimes.

be an union or joint operation of act and intention, or criminal negligence.

Intention.

§ 4189. SEC. II. Intention will be manifested by the circumstances connected with the perpetration of the offence, and the sound mind and discretion of the person accused.

Infants of fourteen capable.

§ 4190. SEC. III. A person shall be considered of sound mind, who is neither an idiot, a lunatic, or afflicted by insanity; or who hath arrived at the age of fourteen years, or before that age, if such person know the distinction between good and evil.

Under ten, according to capacity, &c.

§ 4191. SEC. IV. An infant under the age of ten years, whose tender age renders it improbable that he or she should be impressed with a proper sense of moral obligation, or be possessed of sufficient capacity deliberately to have committed the offence, shall not be considered or found guilty of any crime or misdemeanor.

Lunatics.

§ 4192. SEC. V. A lunatic or person insane, without lucid intervals, shall not be found guilty of any crime or misdemeanor with which he or she may be charged; *Provided*, the act so charged as criminal was committed in the condition of such lunacy or insanity; but if a lunatic hath lucid intervals of understanding, he shall answer for what he does in these intervals, as if he had no deficiency.

Idiots.

§ 4193. SEC. VI. An idiot shall not be found guilty or punished for any crime or misdemeanor with which he or she may be charged.

Their counsellors and instigators punishable in their stead.

§ 4194. SEC. VII. Any person counselling, advising or encouraging an infant under the age of ten years, a lunatic or an idiot, to commit an offence, shall be prosecuted for such offence when committed, as principal; and if found guilty, shall suffer the same punishment as would have been inflicted on said infant, lunatic or idiot, if he or she had possessed discretion and been found guilty.

Plea of insanity—how tried

§ 4195. SEC. VIII. Whenever the plea of insanity is filed, it shall be the duty of the court to cause the issue on that plea to be first tried by a special jury, and if found to be true, the court shall order the defendant to be delivered to the Superintendent of the Asylum, there to remain until discharged by the General Assembly.

Division 1.—Persons capable of committing Crimes.

§ 4196. SEC. IX. A *feme covert*, or married woman, acting under the threats, command or coercion of her husband, shall not be found guilty of any crime or misdemeanor not punishable by death or perpetual imprisonment; and with this exception, the husband shall be prosecuted as principal, and if convicted, shall receive the punishment which otherwise would have been inflicted on the wife, if she had been found guilty; *Provided*, it appears from all the facts and circumstances of the case, that violent threats, command and coercion were used.

Married women—if coerced not punishable.

But their husbands in their stead.

§ 4197. SEC. X. Drunkenness shall not be an excuse for any crime or misdemeanor, unless such drunkenness was occasioned by the fraud, artifice or contrivance of other person or persons, for the purpose of having a crime perpetrated, and then the person or persons so causing said drunkenness for such malignant purpose, shall be considered a principal, and suffer the same punishment as would have been inflicted on the person or persons committing the offence, if he, she or they had been possessed of sound reason and discretion.

Voluntary drunkenness no excuse. If caused by others, such others punishable.

§ 4198. SEC. XI. A person shall not be found guilty of any crime or misdemeanor committed by misfortune or accident, and where it satisfactorily appears there was no evil design or intention, or culpable neglect.

Misfortune or accident.

§ 4199. SEC. XII. A slave committing a crime or misdemeanor, which if committed by a free white person would not be punishable by this act with death, by the threats, command or coercion of his or her owner, or other person exercising or assuming authority over such slave, shall not be found guilty; and it appearing from all the facts and circumstances of the case, that the offence was committed by the threats, command and coercion of the owner, or the person exercising or assuming authority over such slave, the said owner, or other person exercising or assuming authority over such slave; shall be prosecuted for the said crime or misdemeanor; and if found guilty, shall suffer the same punishment as he or she would have incurred if he or she had actually committed the crime with which the slave is charged.

Slaves under coercion not punishable.

But the person coercing them punishable in their stead.

§ 4200. SEC. XIII. If a slave shall commit a crime by the counsel, persuasion or procurement, or other means of a free white person, and such fact shall be made to appear, such white person shall be prosecuted for the offence, and if found guilty, shall incur the same punishment as if he or she had committed the crime with which the slave is charged.

Persons persuading or procuring slaves to commit crimes punishable instead.

Division 1.—Persons capable of committing Crimes.

Attempting to procure—punishable.

§ 4201. SEC. XIV. If any free white person shall attempt to procure a slave to commit a crime, by counsel, persuasion, bribery, force, or other means, such person shall be prosecuted for such attempt, and, on conviction, shall be punished in the same manner as prescribed in this Code for an attempt to commit such crime.

Persons acting under fear not punishable.

§ 4202. SEC. XV. A person committing a crime or misdemeanor, under threats or menaces, which sufficiently show that his or her life or member was in danger, or that he or she had reasonable cause to believe, and did actually believe, that his or her life or member was in danger, shall not be found guilty; and such threats and menaces being proved and established, the person, or persons, compelling by said threats and menaces the commission of the offence, shall be considered a principal, or principals, and suffer the same punishment as if he, she, or they, had perpetrated the offence.

Meaning of the word "felony."

§ 4203. SEC. XVI. The term "*felony*," when used in this Code, shall be construed to mean an offence for which the offender, on conviction, shall be liable by law to be punished by death or imprisonment in the penitentiary, and not otherwise.

SECOND DIVISION.

PRINCIPALS AND ACCESSORIES IN CRIME.

SECTION.

4204. Principals, 1st and 2d degree.
4205. Accessory.
4206. Before the fact.
4207. After the fact.

SECTION.

4208. Punishment of each.
4209. Of accessory after the fact.
4210. Of accessory to slaves, &c.

Principal in first degree.

§ 4204. SEC. I. A person may be principal in an offence in two degrees. A principal in the first degree, is he or she that is the actor, or absolute perpetrator of the crime. A principal in the second degree, is he or she who is present, aiding and abetting the act to be done; which presence need not always be an actual immediate standing by, within sight or hearing of the act; but there may be also a constructive presence, as when one commits a robbery, murder, or other crime, and another keeps watch or guard at some convenient distance.

Principal in second degree.

Accessory.

§ 4205. SEC. II. An accessory is one who is not the chief actor in the offence, nor present at its performance, but is some way concerned therein, either *before* or *after* the act committed.

Division 2.—Principals and Accessories in Crime.

§ 4206. SEC. III. An accessory before the fact is one who, being absent at the time of the crime committed, doth yet procure, counsel, or command another to commit a crime. Accessory before the fact.

§ 4207. SEC. IV. An accessory after the fact is a person who, after full knowledge that a crime has been committed, conceals it from the magistrate, and harbors, assists or protects the person charged with or convicted of the crime. Accessory after the fact.

§ 4208. SEC. V. A principal in the second degree, and an accessory before the fact, except where it is otherwise provided for in this Code, shall receive the same punishment as is directed to be inflicted on the principal in the first degree, or perpetrator of the crime. Punishment of principal in 2d degree

§ 4209. SEC. VI. Accessories after the fact, except where it is otherwise ordered in this Code, shall be punished by fine, or imprisonment in the common jail of the county, or both, at the discretion of the court. Punishment of accessories after the fact.

§ 4210. SEC. VII. A white person may be accessory before or after the fact, to a slave or free person of color, who has committed an offence which would be a felony, if committed by a white person, and, on conviction, such accessory shall receive the same punishment as if his principal had been a white man. Accessories to slaves.

THIRD DIVISION.

CRIMES AGAINST THE STATE AND PEOPLE.

SECTION.

4211. Treason and insurrection.
4212. Treason, 1st degree—Death.
4213. Treason, 2d degree—Penitentiary.

SECTION.

4214. Insurrection—death.
4215. Incendiary papers—death.

§ 4211. SEC. I. Crimes against the State and the people shall consist in treason in the first degree, and second degree, exciting, or attempting to excite an insurrection or revolt of slaves. Insurrection

§ 4212. SEC. II. Treason in the first degree, shall consist in levying war against the State in the same, or being adherent to the enemies of the State within the same, giving to them aid and comfort in this State or elsewhere, and thereof being legally convicted of open deed, by two or more witnesses, or other competent and credible testimony, or voluntary confession; these cases shall be adjudged treason against the State and people; and when the overt act of treason shall be committed without Treason in the first degree.

the limits of this State, the person charged therewith may be arrested and tried in any county in this State, within the limits of which he may be found, and, being thereof convicted, shall be punished in like manner as if the said treason had been committed and done within the limits of said county. Treason in the first degree shall be punished with death.

Punishment
death.

Treason in
second de-
gree.

§ 4213. SEC. III. Treason in the second degree, shall consist in the knowledge and concealment of treason, without otherwise assenting to, or participating in the same. The punishment of treason in the second degree, shall be confinement and hard labor in the penitentiary for four years.

Penitentiary
four years.

Insurrection
death.

§ 4214. SEC. IV. Exciting an insurrection or revolt of slaves, or any attempt, by writing, speaking, or otherwise, to excite an insurrection or revolt of slaves, shall be punished with death.

Circulating
insurrec-
tionary pa-
pers, &c.,
death.

§ 4215. SEC. V. If any person shall bring, introduce, or circulate, or cause to be brought, introduced, or circulated, or aid, or assist, or be in any manner instrumental in bringing, introducing, or circulating, within this State, any printed or written paper, pamphlet, or circular, for the purpose of exciting insurrection, revolt, conspiracy, or resistance, on the part of the slaves, negroes, or free persons of color in this State, against the citizens of this State, or any part of them, such persons so offending, shall be guilty of a high misdemeanor, and, on conviction, shall be punished with death.

FOURTH DIVISION.

CRIMES AND OFFENCES AGAINST THE PERSONS OF CITIZENS OR INDIVIDUALS.

SECTION.

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SECTION.

4244. Ear or lip—punishment.
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 4258. With intent to rob.
 4259. Punishment.
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 4267. Assault with intent to murder.
 4268. Stabbing.
 4269. Shooting.
 4270. Seduction.
 4271. Using abusive or obscene lang'go.

§ 4216. SEC. I. Homicide is the killing of a human being of ^{Homicide.} any age or sex, and is of three kinds—murder, manslaughter, and justifiable homicide.

§ 4217. SEC. II. Murder is the unlawful killing of a human ^{Murder.} being, whether a freeman or a slave, in the peace of the State, by a person of sound memory and discretion, with malice aforethought, either express or implied.

§ 4218. SEC. III. Express malice is that deliberate intention, ^{Express malice.} unlawfully to take away the life of a fellow-creature, which is manifested by external circumstances capable of proof.

§ 4219. SEC. IV. Malice shall be implied, where no considera- ^{Implied malice.} ble provocation appears, and where all the circumstances of the killing show an abandoned and malignant heart.

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Murder—
death.

§ 4220. SEC. V. The punishment of murder shall be death, but may be confinement in the penitentiary for life, in the following cases: 1. By sentence of the presiding Judge, if the conviction is founded solely on circumstantial testimony, or if the jury trying the traverse shall so recommend. In the former case, it is discretionary with the Judge; in the latter it is not. 2. By commutation of the Governor. 3. By act of the General Assembly.

Manslaughter.

§ 4221. SEC. VI. Manslaughter is the unlawful killing of a human creature, without malice, either express or implied, and without any mixture of deliberation whatever, which may be voluntary, upon a sudden heat of passion, or involuntary, in the commission of an unlawful act, or a lawful act, without due caution and circumspection.

Voluntary
manslaughter.

§ 4222. SEC. VII. In all cases of voluntary manslaughter, there must be some actual assault upon the person killing, or an attempt by the person killed to commit a serious personal injury on the person killing, or other equivalent circumstances to justify the excitement of passion, and to exclude all idea of deliberation or malice, either express or implied. Provocation by words, threats, menaces, or contemptuous jestures, shall in no case be sufficient to free the person killing from the guilt and crime of murder. The killing must be the result of that sudden, violent impulse of passion, supposed to be irresistible; for if there should have been an interval between the assault or provocation given, and the homicide, sufficient for the voice of reason and humanity to be heard, the killing shall be attributed to deliberate revenge, and be punished as murder.

Punishment

§ 4223. SEC. VIII. Voluntary manslaughter shall be punished by confinement and labor in the penitentiary for a term of not less than one nor longer than twenty years.

Involuntary
manslaughter.

§ 4224. SEC. IX. Involuntary manslaughter shall consist in the killing of a human being without any intention to do so; but in the commission of an unlawful act, or a lawful act, which probably might produce such a consequence, in an unlawful manner; *Provided, always*, that where such involuntary killing shall happen in the commission of an unlawful act, which, in its consequences, naturally tends to destroy the life of a human being, or is committed in the prosecution of a riotous intent, or of a crime punishable by death or confinement in the penitentiary, the offence shall be deemed and adjudged to be murder.

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§ 4225. SEC. X. Involuntary manslaughter, in the commission of an unlawful act, shall be punished by confinement and labor in the penitentiary for a term not less than one nor longer than three years. Punishment.

§ 4226. SEC. XI. Involuntary manslaughter, in the commission or performance of a lawful act, where there has not been observed necessary discretion and caution, shall be punished by fine or imprisonment in the common jail of the county, or both, at the discretion of the court. Fine and imprisonment.

§ 4227. SEC. XII. There being no rational distinction between excusable and justifiable homicide, it shall no longer exist. Justifiable homicide is the killing of a human being by commandment of the law in execution of public justice; by permission of the law in advancement of public justice; in self-defence, or in defence of habitation, property, or person, against one who manifestly intends, or endeavors by violence or surprise, to commit a felony on either; or against any persons who manifestly intend and endeavor, in a riotous and tumultuous manner, to enter the habitation of another for the purpose of assaulting or offering personal violence to any person dwelling or being therein. Justifiable homicide.

§ 4228. SEC. XIII. A bare fear of any of those offences, to prevent which the homicide is alleged to have been committed, shall not be sufficient to justify the killing. It must appear that the circumstances were sufficient to excite the fears of a reasonable man, and that the party killing really acted under the influence of those fears, and not in a spirit of revenge. Fear, to be an excuse, must be reasonable.

§ 4229. SEC. XIV. If, after persuasion, remonstrance, or other gentle measures used, a forcible attack and invasion on the property or habitation of another cannot be prevented, it shall be justifiable homicide to kill the person so forcibly attacking and invading the property or habitation of another; but it must appear that such killing was absolutely necessary to prevent such attack and invasion, and that a serious injury was intended, or might accrue to the person, property or family of the person killing. Killing in defence.

§ 4230. SEC. XV. If a person kill another in his defence, it must appear that the danger was so urgent and pressing at the time of the killing, that in order to save his own life, the killing of the other was absolutely necessary; and it must appear, also, that the person killed was the assailant, or that the slayer had The danger must be urgent.

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really and in good faith endeavored to decline any further struggle before the mortal blow was given.

All other instances.

§ 4231. SEC. XVI. All other instances which stand upon the same footing of reason and justice as those enumerated, shall be justifiable homicide.

Justifiable homicide not punished.

§ 4232. SEC. XVII. The homicide appearing to be justifiable, the person indicted shall, upon the trial, be fully acquitted and discharged.

Killing revolting slaves

§ 4233. SEC. XVIII. Killing a slave in the act of revolt, or when the said slave forcibly resists a legal arrest, shall be justifiable homicide.

Otherwise the same as white persons.

§ 4234. SEC. XIX. In all cases, the killing or maiming of a slave or person of color, or Indian in amity with the Confederate States, or any other unlawful violent assault upon the person, without sufficient provocation, shall be put upon the same footing of criminality, as the killing, or maiming, or assaulting a white person.

Advisers to kill infants.

§ 4235. SEC. XX. If any person shall counsel, advise, or direct a woman to kill the child she is pregnant or goes with, and after she is delivered of such child, she kill it, every such person so advising or directing, shall be deemed an accessory before the fact to such murder, and shall have the same punishment as the principal.

Concealment of child's death

§ 4236. SEC. XXI. The constrained presumption arising from the concealment of the death of any child, that the child whose death is concealed, was therefore murdered by the mother, shall not be sufficient or conclusive evidence to convict the person indicted of the murder of her child, unless probable proof be given that the child was born alive, nor unless the circumstances attending it shall be such as shall satisfy the minds of the jury that the mother did willfully and maliciously destroy and take away the life of such child.

Fine and imprisonment.

§ 4237. SEC. XXII. If any woman shall conceal or attempt to conceal the death of any issue of her body, male or female, which, if it were born alive, would, by law, be a bastard, so that it may not come to light whether it was murdered or not, every such mother being convicted thereof, shall be punished by fine or imprisonment in the common jail of the county, or both, at the discretion of the court.

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§ 4238. SEC. XXIII. Mayhem shall consist in unlawfully de- Mayhem.
 priving a person, free or slave, of a member, or disfiguring or
 rendering it useless.

§ 4239. SEC. XXIV. If any person shall unlawfully, and with- In what it
consists.
 out sufficient cause or provocation, cut out or disable the tongue,
 put out an eye, slit or bite the nose, ear or lip, or cut or bite off
 the nose, ear or lip, or castrate, or cut, or bite off, or disable any
 other limb or member of another, with an intention in so doing
 to maim or disfigure such person, or shall voluntarily, maliciously,
 and of purpose, while fighting or otherwise, do any of these
 acts, every such person shall be guilty of mayhem.

§ 4240. SEC. XXV. A person convicted of cutting out the Cutting the
tongue—
penitentiary
five to fifteen
years.
 tongue, with the intention, or voluntarily or maliciously, as ex-
 pressed in the preceding section, shall be punished by confine-
 ment and labor in the penitentiary for life. A person convicted
 of disabling the tongue, with the intention, or voluntarily or
 maliciously, as expressed in the preceding section, shall be pun-
 ished by confinement and labor in the penitentiary for a term
 not less than five years, nor more than fifteen years.

§ 4241. SEC. XXVI. A person convicted of putting out an Putting out
one eye—
penitentiary
two to five
years.
 eye, with the intention, or voluntarily or maliciously, as before
 expressed, in fight or otherwise, shall be punished by confine-
 ment and labor in the penitentiary for a term not less than two
 years, nor longer than five years.

§ 4242. SEC. XXVII. A person convicted of putting out the Both eyes or
the only eye—
peniten-
tiary for life.
 eyes of another, or the eye of another having but one eye, with
 a similar intention, or voluntarily or maliciously, while fighting
 or otherwise, shall be punished by confinement and labor in the
 penitentiary for and during the term of his or her natural life.

§ 4243. SEC. XXVIII. A person convicted of slitting or biting Slitting or
biting nose
—peniten-
tiary one to
three years,
or fine and
imprison-
ment.
 the nose, ear or lip of another, with the intention, or voluntarily
 or maliciously, as before expressed, while fighting or otherwise,
 shall be punished by confinement and labor in the penitentiary
 for a term of not less than one year, nor more than three years,
 or by fine and imprisonment in the common jail of the county,
 at the discretion of the court.

§ 4244. SEC. XXIX. A person convicted of cutting or biting Cutting or
biting off the
nose, ear or
lip—peni-
tentiary two
to five years.
 off the nose, ear or lip of another, with the intention, or volun-
 tarily or maliciously, as before expressed, while fighting or other-
 wise, shall be punished by confinement and labor in the peniten-

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tiary for a term of not less than two years nor more than five years.

**Castration—
death.** § 4245. SEC. XXX. A person convicted of the crime of castrating another, with the intention, or voluntarily or maliciously, as before expressed, while fighting or otherwise, shall be punished with death.

**Wounding
in a less de-
gree—peni-
tentiary five
to fifteen
years.** § 4246. SEC. XXXI. A person convicted of wilfully and maliciously injuring, wounding or disfiguring the private parts of another, with the intention aforesaid, whilst fighting or otherwise, which injuring, wounding or disfiguring do not amount to castration, shall be punished by confinement and labor in the penitentiary for a term not less than five years nor longer than fifteen years.

**Other May-
hema.** § 4247. SEC. XXXII. A person convicted of cutting or biting off, or disabling any limb or member of another, not hereinbefore designated, with the intention, or voluntarily or maliciously, as before expressed, while fighting or otherwise, shall be punished by confinement and labor in the penitentiary, for a term not less than one year nor longer than five years; or in slight and trivial cases, by fine and imprisonment in the common jail of the county, at the discretion of the court.

Rape. § 4248. SEC. XXXIII. Rape is the carnal knowledge of a female, whether free or slave, forcibly and against her will.

**Penitentiary
two to twenty
years, or
fine and im-
prisonment.** § 4249. SEC. XXXIV. Rape on a free white female shall be punished by an imprisonment at labor in the penitentiary for a term not less than two years nor longer than twenty years. If committed upon a slave, or free person of color, by fine and imprisonment, at the discretion of the court.

**Assault with
intent of
rape.** § 4250. SEC. XXXV. An assault with intent to commit a rape, shall be punished by an imprisonment at labor in the penitentiary for a term not less than one year nor longer than five years.

Sodomy. § 4251. SEC. XXXVI. Sodomy is the carnal knowledge and connection against the order of nature, by man with man, or in the same unnatural manner with woman.

**Penitentiary
for life.** § 4252. SEC. XXXVII. The punishment of sodomy shall be imprisonment at labor in the penitentiary for and during the natural life of the person convicted of this detestable crime.

Bestiality. § 4253. SEC. XXXVIII. Bestiality is the carnal knowledge and connection against the order of nature by man or woman in any manner, with a beast.

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§ 4254. SEC. XXXIX. The punishment of bestiality shall be imprisonment at labor in the penitentiary for and during the natural life of the person convicted of this detestable crime. Penitentiary for life.

§ 4255. SEC. XL. An attempt to commit sodomy or bestiality shall be punished by imprisonment and labor in the penitentiary for a term not less than two years nor more than four years. Attempt—two to four years.

§ 4256. SEC. XLI. An assault is an attempt to commit a violent injury on the person of another. Assault.

§ 4257. SEC. XLII. A bare assault shall be punished by fine or imprisonment in the common jail of the county, in the discretion of the court. Punishment.

§ 4258. SEC. XLIII. An assault with intent to murder, by using any weapon likely to produce death, shall be punished by imprisonment and labor in the penitentiary for a term not less than two years nor longer than ten years. Assault with intent to murder—penitentiary two to ten years.

§ 4259. SEC. XLIV. An assault with intent to rob, is where any person or persons shall, with any offensive or dangerous weapon or instrument, unlawfully and maliciously assault another, or shall by menaces, or in and by any forcible or violent manner, demand any money, goods or chattels of or from any other person or persons, with intent to commit robbery upon such person or persons. Assault with intent to rob.

§ 4260. SEC. XLV. A person convicted of an assault with intent to rob, shall be punished by confinement and labor in the penitentiary for a term not less than two years nor more than four years. Penitentiary two to four years.

§ 4261. SEC. XLVI. An assault with an intent to spoil or injure clothes or garments, is where any person or persons shall, at any time, willfully and maliciously assault any person or persons, with an intent to tear, spoil, cut, burn or deface, and shall tear, spoil, cut, burn or deface the garments or clothes of such person or persons; and every such offender being thereof convicted, shall be punished by a fine not exceeding two hundred dollars, and imprisonment in the common jail of the county for a term not less than three months nor more than one year. Assault to injure clothes—fine and imprisonment.

§ 4262. SEC. XLVII. Battery is the unlawful beating of another, and shall be punished by fine or imprisonment in the common jail of the county, or both, at the discretion of the court. Battery.

§ 4263. SEC. XLVIII. False imprisonment is a violation of the personal liberty of a free white person, or citizen, and consists in False imprisonment.

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confinement or detention of such person, without sufficient legal authority.

False imprisonment—fine, &c.

§ 4264. SEC. XLIX. Any person who shall arrest, confine, or detain a free white person or citizen, without process, warrant, or legal authority to justify it, shall be punished by fine and imprisonment in the common jail of the county, or either, at the discretion of the court.

When under color of legal process.

§ 4265. SEC. L. The arrest, confinement or detention of a free white person or citizen, by the warrant, mandate, or process of a magistrate, being manifestly illegal, and showing malice and oppression, the said magistrate shall be removed from office, and such magistrate, and all and every person and persons, knowingly and maliciously concerned therein, shall be punished by fine and imprisonment in the common jail of the county, or imprisonment and labor in the penitentiary for any time not less than one nor more than two years, at the discretion of the court.

Kidnapping—penitentiary 4 to 7 years.

§ 4266. SEC. LI. Kidnapping is the forcible abduction or stealing away of any free white person, or free person of color, without lawful authority, or warrant, from this State or any county thereof, and sending or conveying such person beyond the limits of said State or county against his or her will. Each and every person who shall be guilty of this crime, and be thereof lawfully convicted, shall be punished by imprisonment and labor in the penitentiary, for any time not less than four years, nor longer than seven years.

Inveigling white children—penitentiary 4 to 7 years.

§ 4267. SEC. LII. If any person shall forcibly, maliciously, or fraudulently lead, take, or carry away, or decoy or entice away, out of the limits of this State, or any county thereof, any free white child under the age of twelve years, from its parent or guardian, or against his, her, or their will or wills, and without his, her, or their consent or consents, such person so offending shall be indicted for kidnapping, and on conviction shall be punished by imprisonment and labor in the penitentiary for any time not less than four, nor more than seven years.

Stabbing—fine or imprisonment in jail, or penitentiary 1 to 2 years.

§ 4268. SEC. LIII. Any person who shall be guilty of the act of stabbing another, except in his own defence, or other circumstances of justification, with a sword, dirk, or knife, or other instrument of the like kind, shall, on conviction, be punished by a fine not exceeding one thousand dollars, or imprisonment in the common jail of the county, not to exceed six months, or fine and imprisonment both, in the discretion of the court, or confinement

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and labor in the penitentiary not less than one year nor more than two years; *Provided, always*, that if such stabbing shall produce death, the offender shall be guilty of murder or manslaughter, according to the facts and circumstances of the case; or if such stabbing shall not produce death, and the facts and circumstances show that it was the intention of the person stabbing to commit the crime of murder, then and in such case, the offender shall be guilty of the offence of an assault with intent to commit murder.

§ 4269. SEC. LIV. Any person who shall be guilty of the offence of shooting at another, free or slave, (except in his own defence or under circumstances of justification according to the principles of this Code) with a gun, pistol, or other instrument of the like kind, shall be punished by a fine not exceeding one thousand dollars, and imprisonment in the common jail not less than twelve months, or confinement in the penitentiary not less than one or more than four years, in the discretion of the court. Shooting at another.

§ 4270. SEC. LV. If any person shall, by persuasion and promises of marriage, or other false and fraudulent means, seduce a virtuous unmarried female, and induce her to yield to his lustful embraces, and allow him to have carnal knowledge of her, such person, on conviction, shall be punished by imprisonment and labor in the penitentiary for a term not less than two nor longer than twenty years. The prosecution may be stopped at any time by the marriage of the parties, or a *bona fide* and continuing offer to marry on the part of the seducer. Seduction.

§ 4271. SEC. LVI. Any person who shall without provocation, use to, or of another, and in his presence, opprobrious words, or abusive language tending to cause a breach of the peace, or who shall in like manner, use obscene and vulgar language in the presence of a female, shall be guilty of a misdemeanor, and on conviction shall be fined or imprisoned at the discretion of the court. Using abusive or obscene language.

FIFTH DIVISION.

CRIMES AND OFFENCES AGAINST THE HABITATIONS OF PERSONS.

SECTION.

4272. Crimes against habitations.
 4273. Arson.
 4274. In a town.
 4275. Elsewhere.
 4276. Attempt.
 4277. Out-house not in town.
 4278. Setting fire to.

SECTION.

4279. Burning—what is.
 4280. Setting fire—what is.
 4281. Arson, day and night.
 4282. Causing death.
 4283. Burglary.
 4284. In the day.
 4285. In the night.

Crimes
against habi-
tations.

§ 4272. SEC. I. Crimes against the habitations of individuals shall consist of, 1st, Arson; and 2d, Burglary.

Arson.

§ 4273. SEC. II. Arson is the malicious and willful burning of the house or out-house of another.

Death, if in
a city or vil-
lage.

§ 4274. SEC. III. The willful and malicious burning, or setting fire to, or attempting to burn a house in a city, town, or village, shall be punished with death.

Elsewhere—
penitentiary
5 to 20 years.

§ 4275. SEC. IV. The willful and malicious burning of the dwelling-house of another on a farm or plantation, or elsewhere, (not in a city, town, or village) shall be punished by imprisonment and labor in the penitentiary for any term not less than five years, nor more than twenty years.)

Attempt—
penitentiary
3 to 7 years.

§ 4276. SEC. V. Setting fire to the dwelling-house of another, with intent to burn the same, on a farm, or plantation, or elsewhere (not in a city, town, or village) shall be punished by imprisonment and labor in the penitentiary for a term not less than three years, nor longer than seven years.

Burning of
an out-house
not in town.

§ 4277. SEC. VI. The willful and malicious burning of an out-house of another, such as a barn, stable, or any other house (except the dwelling-house) on a farm or plantation, or elsewhere, (not in a city, town or village) shall be punished by imprisonment and labor in the penitentiary for any term not less than two years nor more than seven years.

Setting fire
to such out-
house.

§ 4278. SEC. VII. Setting fire to an out-house of another, as described in the preceding section, shall be punished by imprisonment and labor in the penitentiary for any term not less than one year nor more than three years.

What shall
be burning.

§ 4279. SEC. VIII. The crime of burning shall be complete, where the house is consumed or generally injured.

Division 5.—Crimes and Offences against the Habitations of Persons.

§ 4280. SEC. IX. The offence of setting fire to a house shall be complete, when any attempt is made to burn it, though no material injury is the consequence. What shall be setting fire.

§ 4281. SEC. X. Arson in the day time (except in a city, town, or village) shall be punished by a shorter period of imprisonment and labor than arson committed in the night. Arson in the day and night-time.

§ 4282. SEC. XI. Arson which produces the death of any person, shall be punished by the death of the person or persons committing the arson. Arson causing death.

§ 4283. SEC. XII. Burglary is the breaking and entering into the dwelling or mansion-house of another, with intent to commit a felony. All out-houses contiguous to, and within the curtilage or protection of the mansion-house, shall be considered as parts of the mansion or dwelling-house. A hired room or apartment in a public tavern, inn, or boarding-house, shall be considered as the dwelling-house of the person or persons occupying and hiring the same. Burglary may be committed in the day or night. Burglary. May be in day or night.

§ 4284. SEC. XIII. Burglary in the day time, shall be punished by imprisonment and labor in the penitentiary for any time not less than three years, nor longer than five years. In the day—penitentiary 3 to 5 years.

§ 4285. SEC. XIV. Burglary in the night shall be punished by imprisonment and labor in the penitentiary for any time not less than four years, nor longer than twenty years. In the night 4 to 20 years

SIXTH DIVISION.

OF CRIMES AND OFFENCES RELATIVE TO PROPERTY.

SECTION.

4286. Robbery.
 4287. By force.
 4288. By fear.
 4289. Larceny.
 4290. Simple larceny.
 4291. Of horse.
 4292. Indictment.
 4293. Punishment.
 4294. Of cattle.
 4295. Indictment.
 4296. Punishment.
 4297. Of hogs.
 4298. Punishment.
 4299. Other animals.
 4300. Altering marks.
 4301. Larceny of deeds, &c.
 4302. Of bonds, notes, &c.
 4303. Of fixtures.
 4304. From distressed vessels.
 4305. Of a slave.
 4306. Giving pass feloniously.
 4307. Other larcenies.
 4308. Larceny from the person.
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 4310. Secret taking.
 4311. Larceny from house.

SECTION.

4312. Punishment.
 4313. Entering with intent.
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 4315. Breaking and entering.
 4316. Public buildings.
 4317. Hut, tent, &c.
 4318. Public or bank offices.
 4319. Bailee—fraudulently converting.
 4320. Clerks, agents, &c.
 4321. Any other agent.
 4322. Violating bank charter.
 4323. Presumption against officers.
 4324. Bank insolvency.
 4325. Fraudulent transfers.
 4326. Purchasing at discount.
 4327. Fraudulent dividends.
 4328. Purchasing shares, &c.
 4329. Unlawful mining.
 4330. Erecting machinery.
 4331. Embezzling county funds.
 4332. Interference with burying-grounds.
 4333. Fraudulent Levies.
 4334. Intruding on railroad.
 4335. Obstructing, &c., railroad.
 4336. Injuring telegraph.

Definition
of robbery.

§ 4286. SEC. I. Robbery is the wrongful, fraudulent and violent taking of money, goods or chattels, from the person of another by force or intimidation, without the consent of the owner.

By force and
violence—
penitentiary
4 to 20 years.

§ 4287. SEC. II. Robbery by open force or violence, shall be punished by imprisonment and labor in the penitentiary for any time not less than four years nor longer than twenty years.

By intima-
tion—2 to 5
years.

§ 4288. SEC. III. Robbery by intimidation, or without using force and violence, shall be punished by imprisonment and labor in the penitentiary for any time not less than two years nor longer than five years.

The several
kinds of lar-
ceny.

§ 4289. SEC. IV. Larceny, or theft, as contradistinguished from robbery by violence, force or intimidation, shall consist of—1st. Simple theft or larceny; 2d. Theft or larceny from the person; 3d. Theft or larceny from the house; 4th. Theft or larceny after a trust or confidence has been delegated or reposed.

Division 6.—Of Crimes and Offences relative to Property.

§ 4290. SEC. V. Simple theft, or larceny, is the wrongful and Simple larceny. fraudulent taking and carrying away, by any person, of the personal goods of another, with intent to steal the same. The thief may be indicted in any county in which he may carry the goods stolen.

§ 4291. SEC. VI. Horse stealing shall be denominated simple Of horses. larceny, and the term "horse" shall include mule and ass and each animal of both sexes, and without regard to the alterations which may be made by artificial means.

§ 4292. SEC. VII. The offence shall in all cases be charged as How charged and described. simple larceny, but the indictment shall designate the nature, character and sex of the animal, and give some other description by which its identity may be ascertained.

§ 4293. SEC. VIII. The stealing of a horse, mule or ass, shall Punishment. be punished by by confinement and labor in the penitentiary for any time not less than two years nor longer than five years—and the stealing of more than one of these animals at the same time, shall be punished by confinement and labor in the penitentiary for any time not less than six years nor longer than fourteen years. *Discretion*

§ 4294. SEC. IX. Cattle stealing shall be denominated simple Cattle stealing. larceny, and be so charged in the indictment, and shall include the theft or larceny of any horned animal or animals, and all animals having the hoof cloven, except hogs.

§ 4295. SEC. X. The indictment shall sufficiently describe the Indictment. animal or animals falling under the description of cattle in the preceding section, so that it or they may be ascertained and identified by the owner or owners thereof.

§ 4296. SEC. XI. The stealing of one or more animals falling Punishment under the above description of cattle, if the value does not exceed the sum of twenty dollars, shall be punished by fine and imprisonment in the common jail of the county for any time not longer than six months, at the discretion of the court—but if the value of the animal or animals stolen exceeds the sum of twenty dollars, the person convicted shall be punished by imprisonment and labor in the penitentiary for any time not less than one year nor longer than four years.

§ 4297. SEC. XII. The stealing of a hog or hogs is simple larceny, and shall be so charged in the indictment; and the hog or hogs so described that it or they may be identified by the owner. Hog stealing.

Division 6.—Of Crimes and Offences relative to Property.

Punishment. § 4398. SEC. XIII. The punishment of hog stealing, if the hog or hogs stolen do not exceed the value of twenty dollars, shall be fine and imprisonment in the common jail of the county for any time not exceeding six months, at the discretion of the court—but if the value of the hog or hogs stolen exceeds the sum of twenty dollars, the person convicted shall be punished by imprisonment and labor in the penitentiary for any time not less than one year nor longer than three years.

Other animals. § 4299. SEC. XIV. All other domestic animals which are fit for food, and also a dog, may be subjects of simple larceny—and any person or persons who shall steal any such animal or animals, shall be punished by fine and imprisonment, or fine or imprisonment in the common jail of the county, at the discretion of the court.

Altering brands or marks, same as stealing. § 4300. SEC. XV. If any person or persons shall mark and brand, or mark or brand any animal or animals before mentioned, or alter or change the mark or marks or brand or brands of any such animal, being the property of another, with an intention to claim or appropriate the same to his or her own use, or to prevent identification by the true owner or owners thereof, the person or persons so offending shall be guilty of a misdemeanor, and on conviction shall suffer the same punishment as is inflicted for the theft or larceny of said animal or animals.

Larceny of deeds or papers—penitentiary 1 to 3 years. § 4301. SEC. XVI. If any person shall take and carry away any paper, document, deed, will or other writing, relating to real or personal estate, with an intention to impair, prevent, or render difficult the establishment of a title to real or personal estate, or mutilate, cancel, burn or otherwise destroy said paper, document, deed, will or other writing, with the intention aforesaid, such person shall be guilty of simple larceny, and be punished by imprisonment and labor in the penitentiary for any time not less than one year nor longer than three years.

Larceny of bonds, notes, &c.—penitentiary 1 to 4 years. § 4302. SEC. XVII. If any person shall take and carry away any bond, note, bank bill or due bill, or paper or papers securing the payment of money or other valuable thing, or any receipt, acquittance, or paper or papers operating as a discharge for the payment of money or other thing belonging to another, with intent to steal the same, such person shall be guilty of simple larceny, and be punished by imprisonment and labor in the penitentiary for any time not less than one year nor longer than four years.

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§ 4303. SEC. XVIII. Theft or larceny may be committed of or fixtures any thing or things which; in the language of the law, savors of the realty, or of any fixture or fixtures; and the punishment shall be by fine or imprisonment in the common jail of the county, or both, at the discretion of the court.

§ 4304. SEC. XIX. Plundering or stealing any article of value from a vessel in distress, or from a wreck, or any other vessel, boat, or water-craft, within the jurisdictional limits of this State, is simple larceny, and shall be punished by imprisonment and labor in the penitentiary for any time not less than one year, nor longer than five years.

Plundering
or stealing
from
wrecked or
distressed
vessels.

§ 4305. SEC. XX. The stealing of a slave is simple larceny, and shall be punished by imprisonment and labor in the penitentiary for any time not less than four years, nor longer than ten years.

Stealing a
slave.

§ 4306. SEC. XXI. Any person who shall, by any enticement, or by giving a pass, or by any other means, induce a slave to run away from his or her owner, with the intention to sell said slave, or otherwise appropriate the said slave to his (the offender's) own use, or the use of any other person, and thereby to deprive the owner of the the use and services of said slave, shall be guilty of simple larceny, and, on conviction, shall be punished by imprisonment and labor in the penitentiary for any time not less than four years nor longer than ten years.

Giving pass
to a slave
feloniously.

§ 4307. SEC. XXII. All simple larcenies or thefts of the personal goods of another, not mentioned, or particularly designated in this Code, shall be punished by imprisonment in the common jail of the county for any time not longer than one year; *Provided*, the thing or things stolen do not exceed the value of twenty dollars; but if they do exceed in value the sum of twenty dollars, then the person convicted of such larceny, shall be punished by confinement and labor in the penitentiary for any time not less than one year, nor longer than five years.

Other larcenies.

§ 4308. SEC. XXIII. Theft or larceny from the person as distinguished from robbery before described, is the wrongful and fraudulent taking of money, goods, chattels, or effects, or any article of value from the person of another, privately, without his knowledge, in any place whatever, with intent to steal the same.

Larceny
from the
person
defined.

§ 4309. SEC. XXIV. A person convicted of this class of larceny, shall be punished by imprisonment and labor in the penitentiary for any time not less than two years, nor longer than

Penitentiary two to five years.

Division 4.—Of Crimes and Offences Relative to Property.

five years; and if the offence was committed in a public place, or where many persons are assembled, it shall be considered as greatly adding to the criminality of the act, and the punishment shall be increased in consequence thereof, but in no case to exceed five years.

What secret, sudden taking shall be larceny.

§ 4310. SEC. XXV. Any sort of secret, sudden, or wrongful taking from the person with the intent described in the twenty-third section of this division, without using intimidation, or open force and violence, shall be within this class of larceny, though some small force be used by the thief to possess himself of the property; *Provided*, there be no resistance by the owner, or injury to his person, and all the circumstances of the case show that the thing was taken, not so much against as without the consent of the owner.

Larceny from the house.

§ 4311. SEC. XXVI. Larceny from the house is the breaking, or entering any house with an intent to steal, or after breaking or entering said house, stealing therefrom any money, goods, chattels, wares, merchandize, or any thing or things of value whatever.

Punishment.

§ 4312. SEC. XXVII. Any person who, by day or night, shall in any dwelling-house, store, shop or warehouse, or any other house or building, privately steal any goods, money, chattels, wares or merchandize, or any other article or thing of value, shall be punished by imprisonment and labor in the penitentiary for any time not less than two years, nor longer than five years.

Punishment for entering with intent to steal.

§ 4313. SEC. XXVIII. Any person entering a dwelling house, store, shop, or warehouse, or any other house or building, with intent to steal, but who is detected and prevented from so doing, shall be punished by imprisonment and labor in the penitentiary for any time not less than one year, nor longer than three years.

Breaking with such intent.

§ 4314. SEC. XXIX. Any person breaking any dwelling-house, store, shop, or warehouse, or any other house or building, with intent to steal, but who is detected and prevented from effecting such intention, shall be punished by imprisonment and labor in the penitentiary for any time not less than one year, nor longer than three years; but if the owner of said building, or any other person be in the house at the time of such breaking, and be put in fear, then the said offender shall be punished by imprisonment and labor in the penitentiary for any time not less than two years nor longer than five years.

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§ 4315. SEC. XXX. Any person breaking and entering any house or building, (other than a dwelling-house or its appurtenances) with intent to steal, but who is detected and prevented from carrying such intention into effect, shall be punished by imprisonment and labor in the penitentiary for any time not less than two years nor longer than four years. And any person breaking and entering any such house or building, and stealing therefrom any money, goods, chattels, wares, or merchandize, or any other thing or article of value, shall be punished by imprisonment and labor in the penitentiary for any time not less than three years, nor longer than five years. But if such breaking, entering and stealing, be accompanied by any violence, menace, or threat, or by alarming and putting in fear any person in said house, then the imprisonment and labor shall not be less than four years.

Breaking and entering

Breaking, entering and stealing.

§ 4316. SEC. XXXI. Any house, building, or edifice belonging to the State, or a corporate body, or appropriated to public worship, or any other public purpose, shall be taken and considered as a house or building within which this class of larceny may be committed.

Public buildings included.

§ 4317. SEC. XXXII. Any person entering and stealing from any hut, tent, booth, or temporary building, shall be punished by imprisonment and labor in the penitentiary for any time not less than one year nor longer than four years.

Hut, tent, &c.

§ 4318. SEC. XXXIII. Any officer, servant, or other person employed in any public department, station, or office of government of this State, or any county, town, or city of this State, or in bank or other corporate body in this State, or any president, director, or stockholder of any bank, or other corporate body in this State, who shall embezzle, steal, secrete, fraudulently take and carry away any money, gold or silver bullion, note or notes, bank bill or bills, bill or bills of exchange, warrant or warrants, bond or bonds, deed or deeds, draft or drafts, check or checks, security or securities for the payment of money or delivery of goods, or other things, lease, will, letter of attorney, or other sealed instrument, or any certificate or other public security of the State for the payment of money, or any receipt, acquittance, release, or discharge of any debt, suit, or other demand, or any transfer or assurance of money, stock, goods, chattels, or other property, or any day-book, or other book of accounts, or any agreement or contract whatever, such person so offending, shall, on conviction,

Persons employed in public offices or banks stealing or embezzling papers or property.

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be punished by imprisonment and labor in the penitentiary for any time not less than two years nor longer than seven years.

Any bailee fraudulently converting the goods or proceeds.

§ 4319. SEC. XXXIV. If any factor, commission merchant, warehouse-keeper, wharfinger, wagoner, stage-driver, or other common carrier on land or water, or any other bailee, with whom any money, bank bill or bills, note or notes, bill or bills of exchange, draft or drafts, check or checks, bond or bonds, or other security or order for the payment of money, or other valuable thing, or any cotton, corn, or other produce, goods, wares, or merchandize, or any other thing or things of value, are or may be entrusted or deposited by any person, shall fraudulently convert the same, or any part thereof, or the proceeds of any part thereof, to his or her own use, or otherwise dispose of the same or any part thereof, without the consent of the owner or bailor, and to his or her injury, and without paying to such owner or bailor, on demand, the full value or market price thereof; or if, after a sale of any of the said articles, with the consent of the owner or bailor, such person shall, fraudulently and without the consent of the said owner or bailor, convert the proceeds thereof, or any part of the said proceeds, to his or her own use, and fail or refuse to pay the same over to such owner or bailor on demand, every such person so offending shall, on conviction, be punished by imprisonment and labor in the penitentiary for any time not less than two years, nor longer than seven years.

Clerks, agents, &c. fraudulently taking and converting goods entrusted to them.

§ 4320. SEC. XXXV. If any person employed as a clerk, agent, or servant, or in any other character or capacity in any store, warehouse, counting-room, exchange office, shop, or other place of trade, traffic, or exchange where, from the nature of the business or employment, it is necessary or usual to entrust to such person any goods, wares, or merchandize, cotton, corn, or other produce, money, notes, bills of exchange, bank notes, checks, drafts, orders for payment of money, or other valuable thing, or any other thing or article of value, shall fraudulently take and carry away, or convert to his own use, or otherwise dispose of any of the said goods, wares, or merchandize, cotton, corn or other produce, money, notes, bills of exchange, bank notes, checks, drafts, orders or other thing or things of value thus entrusted to him, or committed to his charge, to the injury and without the consent of the owner thereof, or person thus entrusting him; such person so offending shall, on conviction, be punished by

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imprisonment and labor in the penitentiary for any time not less than one year, nor longer than five years.

§ 4321. SEC. XXXVI. If any person who has been entrusted by another with any money, note or notes, bill or bills of exchange, bond or bonds, check or checks, draft or drafts, bank note or notes, order or orders for the payment of money, or other valuable article or thing, or any cotton, corn, or other produce, goods, wares, or merchandize, horse or horses, mule or mules, cattle, sheep, goats, hogs, or other article or articles of value, for the purpose of applying the same for the use or benefit of the person to whom they belong, or the person delivering them, or any of them; or for the purpose of collecting money or other thing due on any such note or notes, bill or bills of exchange, bond or bonds, check or checks, draft or drafts, bank note or notes, or order or orders, and paying the proceeds thereof over to the owner or other person so entrusting or delivering the same; or for the purpose of selling such cotton, corn, or other produce, goods, wares, or merchandize, horse or horses, mule or mules, cattle, sheep, goats, hogs, or other valuable article, and paying over the proceeds of such sale to the owner, or other person so entrusting or delivering the said article or articles, or any of them, or the money, or other thing arising from the sale or collection of any of them, to his or her own use, or shall otherwise dispose of them, or any of them, to the injury and without the consent of the owner, or other person so entrusting or delivering them, and without paying to such owner or person entrusting or delivering the same the full value or market price thereof, such person so offending shall, on conviction, be punished by imprisonment and labor in the penitentiary for any time not less than one year, nor longer than five years.

§ 4322. SEC. XXXVII. Any president, director, or other officer of any chartered bank in this State, who shall violate or be concerned in violating any provision of the charter of such bank shall be guilty of a high misdemeanor, and, on indictment and conviction thereof, shall be punished by imprisonment and labor in the penitentiary for any term not less than one year, nor longer than ten years.

§ 4323. SEC. XXXVIII. Every president, director, or other officer of any chartered bank in this State, shall be deemed to possess such a knowledge of the affairs of the corporation, as to enable him to determine whether any act, proceeding or omis-

Any other agent so offending.

Bank officers violating the charter.

Presumptions against such officers.

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sion, is a violation of the charter. And every president and director who shall be present at a meeting when such violation shall happen, shall be deemed to have concurred therein, unless he shall, at the time, cause, or in writing require, his dissent therefrom to be entered at large on the minutes of the board. And every president and director not present at any meeting, when such violation shall take place shall, nevertheless, be deemed to have concurred therein, if the facts constituting such violation appear on the books of the corporation and he remain a director for three months thereafter, and do not, within that time cause, or in writing require, his dissent from such illegal proceeding to be entered at large on the minutes of the board.

Every bank
insolvency
shall be
deemed
fraudulent,
&c.

§ 4324. SEC. XXXIX. Every insolvency of a chartered bank, or refusal, or failure to redeem its bills on demand, either with specie or current bank bills passing at par value, shall be deemed fraudulent, and the president and directors may be severally indicted for a misdemeanor, and on conviction, shall be punished by imprisonment and labor in the penitentiary for any time not less than one year, nor longer than ten years; *Provided, nevertheless*, that the defendant may repel the presumption of fraud, by showing that the affairs of the bank have been fairly and legally administered, and generally with the same care and diligence that agents receiving a commission for their services are required and bound by law to observe; and, upon such showing, the jury shall acquit the prisoner.

Certain
transfers,
&c., of stock
fraudulent,
&c.

§ 4325. SEC. XL. All conveyances, assignments, transfers of stock, effects, or other contracts made by any bank in contemplation of insolvency, or after insolvency, except for the benefit of all the creditors and stockholders of said bank shall, unless made to an innocent purchaser for a valuable consideration, and without knowledge or notice of the condition of said bank, be fraudulent and void. And the president, directors, and other officers of said bank, or any of them, making or consenting to the making of such conveyance, assignment, transfer, or contract, whether the same be made to an innocent purchaser or any other, shall severally be guilty of a misdemeanor, and, on indictment and conviction thereof, shall be punished by imprisonment and labor in the penitentiary for any time not less than four years, nor longer than ten years.

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§ 4326. SEC. XLI. If any president, director, officer or agent of any bank shall, by himself or agent, or in any other manner, either for himself or for the bank, directly or indirectly purchase, or be interested in the purchase of any bill, or check, or other evidence of debt issued by the said bank, for a less sum than shall appear then due on the face thereof, such person so offending, shall be guilty of a misdemeanor, and, on indictment and conviction thereof, shall be punished by imprisonment and labor in the penitentiary for any time not less than four years, nor longer than ten years.

Bank officers
purchasing
its paper at
discount.

§ 4327. SEC. XLII. No dividends shall be made by any bank, except from the net profits arising from the business of the corporation; and if any president and directors shall declare, or pay over any dividend from the capital stock, or any other funds of the bank, except the net profits thereof, such president and directors shall, severally, be guilty of a misdemeanor, and, on indictment and conviction thereof, shall be punished by confinement and labor in the penitentiary for any time not less than one year, nor longer than ten years.

Declaring
fraudulent
dividends.

§ 4328. SEC. XLIII. If the president and directors of any bank, or any of them, shall use and apply any part of the capital stock of such bank to the purchase of shares of its own stock, such president and directors shall be guilty of a misdemeanor, and on indictment and conviction thereof, shall be punished by imprisonment and labor in the penitentiary for any time not less than one year, nor more than ten years.

Purchasing
shares with
capital stock

§ 4329. SEC. XLIV. If any person shall dig or take and carry away from the land of another, any gold, bullion, silver, or other metallic substance, with intent to appropriate the same to his, or her own use, without having previously obtained permission of the owner of such land so to do, he or she shall be guilty of a misdemeanor, and upon conviction, shall be punished with fine or imprisonment in the common jail, or both, at the discretion of the court.

Unlawful
mining.

§ 4330. SEC. XLV. If any person shall erect or use any machinery for the purpose of procuring gold or other metals from the land of another, with intent to appropriate the same to his or her own use, or for any other person whatsoever, without the permission of the owner of the land or his agent, he or she shall be guilty of a high misdemeanor, and upon conviction shall be

Erecting or
using ma-
chinery to
procure gold

Division 6.—Of Crimes and Offences relative to Property.

punished by fine or imprisonment in the common jail, or both, at the discretion of the court.

Embezzling
of county
funds.

§ 4331. SEC. XLVI. Any Clerk of the Inferior Court or County Treasurer of any county in this State, who shall divert, misapply, embezzle or conceal any money belonging to the county of which he is such Clerk or County Treasurer as aforesaid, with intent to appropriate the same to his own use, shall be guilty of a misdemeanor, and upon conviction, shall be punished with fine or imprisonment in the common jail, or both, at the discretion of the court, and shall moreover be removed from office; and on the trial of such defendant, proof of his having failed or refused to make an exhibit to the grand jury of the county of which he is such Clerk or County Treasurer, at the Superior Court first held in each year in said county (unless prevented by Providential cause) a full and complete statement of the county funds, as required by law, received by him during the preceding year, shall be deemed *prima facie* evidence of guilt and throw the burden of proof on the defendant. The prosecuting officer on the trial of any indictment founded on this clause, shall not be required to identify the money, coin or bank bills, or other property misapplied, embezzled or concealed; but in all cases, an allegation that any sum of money or evidence of debt has been received by the defendant, belonging to the county, and that he fails or refuses to account for the same, if proved, shall authorize a conviction, unless the defendant shall set up and sustain a valid and legal defence to the charge.

Interference
with private
burying
grounds.

§ 4332. SEC. XLVII. Any person, who by himself, his agent, or servants, shall mutilate or in any wise injure or destroy any private burying ground, which has been reserved in any private or public sale of the surrounding land, shall be guilty of a misdemeanor, and on conviction, shall be fined in a sum not exceeding five hundred dollars, or imprisoned in the common jail, not exceeding six months.

Fraudulent
levies on
property.

§ 4333. SEC. XLVIII. Any person who shall fraudulently cause any process, attachment, distress, or execution to be levied on any estrayed animal, or any lot or lots of land, or other property, knowing the same not to be subject to such process or writ, shall be guilty of a misdemeanor, and on conviction for the first offence, shall be fined or imprisoned, or both, at the discretion of the court; and on any subsequent conviction shall be sen-

Division 6.—Of Crimes and Offences relative to Property.

tenced to labor in the penitentiary not less than two nor longer than four years.

§ 4334. SEC. XLIX. Any person intruding unlawfully upon the constructed track of any chartered railroad company of this State, or the State railroad, contrary to the will of the company or Superintendent, shall be guilty of a misdemeanor, and upon conviction, fined or imprisoned, or both, at the discretion of the court.

Intruding on
Railroad
tracks.

§ 4335. Sec. L. If any person shall willfully and maliciously destroy, or in any manner hurt, damage, injure or obstruct, or shall willfully and maliciously cause, or aid and assist, or counsel or advise any other person or persons to destroy, or in any manner to hurt, damage, or injure, or obstruct any such railroad, or any branch thereof, or any bridge connected therewith, or any vehicle, edifice, right or privilege granted by charter, and constructed for use under authority thereof; or if any unauthorized person or persons shall turn, move, or in any manner interfere or meddle with any gate, switch, sideling, or other appurtenances to any such railroad, such person so offending, shall be guilty of felony; and on conviction, shall be imprisoned in the penitentiary not less than four, nor longer than eight years. If death ensues from such act to any person, the offender shall be guilty of murder, and punished accordingly. This penalty shall in no case interfere with the offenders liability to civil damages.

Destroying
injuring or
obstructing
Railroads.

§ 4336. SEC. LI. If any person shall willfully destroy, damage, or in any way injure the posts, wires or fixtures of any magnetic telegraph company in this State, he shall be guilty of a misdemeanor, and on conviction, shall be fined or imprisoned, or both, at the discretion of the court.

Interference
with magnet
ic telegraph
companies.

SEVENTH DIVISION.

FORGERY AND COUNTERFEITING AND UNLAWFUL CURRENCY.

SECTION.	SECTION.
4337. Official certificates, &c.	4346. Any other writing.
4338. Counterfeiting coin.	4347. Forged public seal.
4339. Bank notes.	4348. Using fictitious name.
4340. Bank check or draft.	4349. Personating another.
4341. Altering bank note.	4350. Buying under false letters, &c.
4342. Knowingly uttering.	4351. Issuing, &c. unlawful currency.
4343. Possessing to pass.	4352. Each bill—new offence.
4344. Possessing implements.	4353. Duty of grand jury.
4345. Forging notes, bills, &c.	4354. Disposition of fine.

Forging any
official cer-
tificates, &c.

§ 4337. SEC. I. If any person or persons shall falsely and fraudulently make, forge, alter or counterfeit, or cause or procure to be falsely and fraudulently made, forged, altered or counterfeited, or willingly aid or assist in falsely and fraudulently making forging, altering or counterfeiting any audited certificate or other certificate issued or purporting to have been issued by the Auditor General, or other officer authorized to issue the same, or any order or warrant issued or purporting to have been issued by the Governor, or the President of the Senate, or Speaker of the House of Representatives of the General Assembly of this State, or by any officer of the Government, or authorized person, on the Treasury of said State, for any money or other thing, or any warrant for land issued or purporting to have been issued by the justices of any land court, or by any other tribunal, officer or person, authorized to do so, within this State; or any certificate, draft, warrant or order, from any of the public officers of this State, issued or purporting to have been issued under or by virtue of an act or resolution of the General Assembly of this State; or any certificate, draft, order or warrant, issued or purporting to have been issued by any court, officer or person authorized to draw on the Treasury of this State, or for public money, wherever the same may be deposited; or any deed, will, testament, bond, writing obligatory, bill of exchange, promissory note, or order for money, or goods, or other things of value, or any acquittance or receipt, or any endorsement or assignment of any bond, writing obligatory, bill of exchange, promissory note, or order for money or goods, or other thing or things of value, with intent to defraud the said State, public officer or officers, courts, or any persons authorized, or any person or persons whatever; or shall

Division 7.—Forging and Counterfeiting and Unlawful Currency.

utter or publish as true any false, fraudulent, forged, altered or counterfeited audited certificate, Governor's, President's, Speaker's, public officer's, court's, or other duly authorized person's certificate, draft, warrant or order, so as aforesaid issued or purporting to have been issued, or any deed, will, testament, bond, writing obligatory, bill of exchange, promissory note, or order for money, or goods, or other thing or things of value, or any acquittance or receipt for money or goods, or other thing or things of value; or any endorsement or assignment of any bond, writing obligatory, bill of exchange, promissory note, or order for money or goods, or other thing or things of value, with intent to defraud the said State, public officers, courts, or persons authorized as aforesaid, or any other person or persons whatsoever, knowing the same to be so falsely and fraudulently made, forged, altered or counterfeited; every such person so offending, and being thereof lawfully convicted, shall be punished by imprisonment and labor in the penitentiary for any time not less than four years nor longer than ten years.

§ 4338. SEC. II. If any person shall falsely and fraudulently make, forge, or counterfeit, or be concerned in the false and fraudulent making, forging and counterfeiting of any gold, silver, or copper coin, which now is or shall be passing or in circulation within this State; or shall falsely and fraudulently make, or be concerned in the false and fraudulent making of any base coin, of the likeness or similitude of any gold, silver, or copper coin, which now is or shall be passing or in circulation within this State; or shall falsely and fraudulently utter, publish, pay or tender in payment any such counterfeit and forged coin of gold, silver, or copper, or any base coin, knowing the same to be forged or counterfeited, or base, or shall aid or abet, counsel or command the perpetration of either of the said crimes, such person shall, on conviction, be punished by imprisonment and labor in the penitentiary for any time not less than four years nor longer than ten years.

Counterfeiting or knowingly uttering counterfeit coins—penitentiary 4 to 10 years

§ 4339. SEC. III. If any person shall falsely and fraudulently make, sign, or print, or be concerned in the false and fraudulent making, signing or printing of any counterfeit note or bill of any bank of this State, or the note or bill of any incorporated bank, whose notes or bills are in circulation in this State, or falsely and fraudulently cause or procure the same to be done, such person so offending, shall, on conviction, be punished by imprisonment

Counterfeiting bank notes—penitentiary 4 to 10 years.

Division 7.—Forging and Counterfeiting and Unlawful Currency.

and labor in the penitentiary for any time not less than four years nor longer than ten years.

Bank check
or draft.

§ 4340. SEC. IV. If any person shall falsely and fraudulently make, sign, or print, or be concerned in the false and fraudulent making, signing, or printing of any check or draft upon any bank of this State, or bank as aforesaid; or falsely or fraudulently procure the same to be done, such person so offending shall, on conviction, be punished by imprisonment and labor in the penitentiary for any time not less than three years nor longer than seven years.

Alteration of
bank notes,
&c.—peni-
tentiary 3 to
10 years.

§ 4341. SEC. V. If any person shall falsely and fraudulently alter, or be concerned in the false and fraudulent alteration of any genuine note, bill, check, or draft of or on any bank as aforesaid; or falsely and fraudulently cause or procure the same to be done, such person so offending shall, on conviction, be punished by imprisonment and labor in the penitentiary for any time not less than three years nor longer than ten years.

Knowingly
uttering or
passing
them

§ 4342. SEC. VI. If any person shall falsely and fraudulently pass, pay, or tender in payment, utter or publish any false, forged, counterfeit or altered note, bill, check, or draft, as aforesaid, knowing the same to have been falsely and fraudulently forged, counterfeited, or altered; such person so offending shall, on conviction, be punished by imprisonment and labor in the penitentiary for any time not less than two years nor longer than ten years.

Possessing
intending to
pass them

§ 4343. SEC. VII. If any person shall have in his or her possession any such false, forged, counterfeit or altered note or notes, bill or bills, draft or drafts, check or checks, with intention fraudulently to pass the same, such person so offending shall, on conviction, be punished by imprisonment and labor in the penitentiary for any time not less than two years nor longer than ten years.

Possessing
types, paper,
&c., intend-
ing to coun-
terfeit.

§ 4344. SEC. VIII. If any person shall have in his or her possession any bank paper, types, plates or machinery, for the purpose of falsely or fraudulently forging and counterfeiting any notes, bills, checks or drafts, as aforesaid, such person so offending shall, on conviction, be punished by imprisonment and labor in the penitentiary for any time not less than four years nor longer than ten years.

Division 7.—Forging and Counterfeiting and Unlawful Currency.

§ 4345. SEC. IX. If any person shall falsely and fraudulently make, forge, counterfeit or alter any note, bill, draft or check of or on any person, body corporate, company, or mercantile house or firm, or purporting so to be; or fraudulently and falsely utter, publish, pass, pay, or tender the same in payment or demand payment of the same, knowing the said bill, note, draft, or check to be forged and counterfeited, or falsely and fraudulently altered, such person so offending shall, on conviction, be punished by confinement and labor in the penitentiary for any time not less than two nor longer than ten years.

Forging or uttering certain bills, &c.

§ 4346. SEC. X. If any person shall fraudulently make, sign, forge, counterfeit or alter, or be concerned in the fraudulent making, signing, forging, counterfeiting or altering any other writing not herein provided for, with intent to defraud any person or persons, bank or other corporate body, or shall fraudulently cause or procure the same to be done, such person so offending shall, on conviction, be punished by imprisonment and labor in the penitentiary for any time not less than two years nor longer than five years.

With intent to defraud

§ 4347. SEC. XI. If any person shall falsely and fraudulently forge or counterfeit, or be concerned in forging and counterfeiting the great seal of this State, or any seal used for government purposes, the public and common seal of any court, office, county, or corporation, or any other seal authorized by law, or shall falsely and fraudulently cause or procure the same to be forged and counterfeited, or shall falsely, fraudulently, and knowingly impress, or cause to be impressed, any instrument whatever, whether the same be written or printed, or partly written and partly printed, with such forged and counterfeited seal, or shall falsely, fraudulently, and knowingly annex or affix, or cause to be annexed or affixed to any such instrument, such forged and counterfeit seal, or shall falsely and fraudulently utter or publish any instrument or writing whatever, impressed with such forged and counterfeit seal, knowing the same to be forged and counterfeit, such person so offending shall be punished by imprisonment and labor in the penitentiary, for any time not less than two years, nor longer than ten years.

Forging or using forged public seals

§ 4348. SEC. XII. Any person who shall draw or make a bill of exchange, due bill, or promissory note, or endorse or accept the same in a fictitious name, shall be guilty of forgery, and on conviction be punished by confinement and labor in the peniten-

Using fictitious names

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tiary for any time not less than two years, nor longer than seven years.

Personating
another.

§ 4349. SEC. XIII. If any person shall put his own name to any instrument, representing himself to be a different person of that name, such person shall be guilty of forgery, and on conviction shall be punished by imprisonment and labor in the penitentiary for any time not less than two years nor longer than seven years.

Obtaining
goods, &c.,
on false
writings.

§ 4350. SEC. XIV. If any person shall designedly, by color of any counterfeit letter or writing, made in any other person's name, or fictitious name, obtain from any person money, goods, chattels, or other valuable thing, with intent to defraud any person, mercantile house, or body corporate, or company of the same, such person so offending shall, on conviction, be punished by imprisonment and labor in the penitentiary for any time not less than two nor longer than seven years.

Unauthorized
issue of
currency.

§ 4351. SEC. XV. Any person or persons, body corporate or politic, who may hereafter make, issue, circulate, pay or tender in payment, (not being an innocent holder thereof) any check, order, draft, or bill for the payment of money, or other thing having the form or similitude of a bank note, and intended to be used and circulated as money, or circulating medium, except such banking institutions and corporations as by law are authorized to issue notes, or bills for circulation, shall be liable to indictment, as for a misdemeanor, and on conviction, shall be punished by fine or imprisonment in the common jail, or both, at the discretion of the court.

Each bill a
new offence.

§ 4352. SEC. XVI. The making or issuing each check, order, draft, or bill for the payment of money, or other thing having the similitude of money, as above, shall be considered and held as a separate and distinct offence; and if done by any corporation or body politic, the officer or member of the same signing the said check, order, bill or other thing having the similitude of money, or intended to be used as money, shall be liable to prosecution and conviction.

Duty of
Judge and
jury.

§ 4353. SEC. XVII. It shall be the duty of every grand jury to notice and present all violations of the foregoing provisions as to unauthorized currency, and of the presiding Judges of the Superior Courts, whenever necessary, to give the same in special charge.

Division 7.—Forging and Counterfeiting and Unlawful Currency.

§ 4354. SEC. XVIII. In all cases of conviction for violation of sections XV and XVI, one-half of the fine shall be paid to the prosecutor, if there be one, and the other half to the Educational Fund of the county. Disposition of fine.

EIGHTH DIVISION.

CRIMES AND OFFENCES AGAINST THE PUBLIC JUSTICE.

SECTION.

- 4355. Perjury.
- 4356. Punishment.
- 4357. False swearing.
- 4358. Punishment.
- 4359. Subornation.
- 4360. Punishment.
- 4361. Disqualification.
- 4362. Verdicts void.
- 4363. Causing death.
- 4364. Bribery.
- 4365. Punishment.
- 4366. Altering public documents
- 4367. Cruelty in jailor.
- 4368. Detaining records.
- 4369. Personating in bail
- 4370. Obstructing process.
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- 4372. Rescue
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- 4377. From custody.
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- 4380. Refusing to receive prisoner.
- 4381. Refusing penitentiary prisoners.
- 4382. Receiving stolen goods.
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- 4384. Accessories after the fact.
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- 4390. Embracery.
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- 4392. Threatening letters.
- 4393. Extortion
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- 4395. Other offences.
- 4396. Mutiny
- 4397. Instigating mutiny.
- 4398. Receiving stolen goods from negroes.

§ 4355. SEC. I. Perjury shall consist in willfully, knowingly, absolutely and falsely swearing, either with or without laying the hand on the Holy Evangelist of Almighty God, or affirming in a matter material to the issue or point in question, in some judicial proceeding by a person to whom a lawful oath or affirmation is administered. Perjury defined.

§ 4356. SEC. II. Any person who shall commit the crime of perjury, shall be punished by imprisonment and labor in the penitentiary for any time not less than four years, nor longer than ten years. Punishment

§ 4357. SEC. III. False swearing shall consist in willfully, knowingly, absolutely and falsely swearing, either with or without laying the hand on the Holy Evangelist of Almighty God, False swearing defined.

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or affirming in any matter or thing (other than a judicial proceeding) by a person to whom a lawful oath or affirmation is administered.

Penitentiary 3 to 10 years. § 4358. SEC. IV. Any person who shall commit the crime of false swearing, shall be punished by imprisonment and labor in the penitentiary for any time not less than three years, nor longer than ten years.

Subornation. § 4359. SEC. V. Subornation of perjury and false swearing, shall consist in procuring another person to commit the crime of perjury or false swearing.

Penitentiary 3 to 10 years. § 4360. SEC. VI. Any person who shall commit the crime of subornation of perjury, or false swearing, shall be punished by confinement and labor in the penitentiary for any time not less than three years, nor longer than ten years.

Disqualified as witness. § 4361. SEC. VII. Any person who shall be lawfully convicted of either of the crimes mentioned and defined in the first, third, and fifth sections of this division shall, in addition to the punishment prescribed in the second, fourth, and sixth sections of this division, be forever thereafter disqualified from being a witness in any controversy.

Verdicts, &c., obtained by perjury set aside. § 4362. SEC. VIII. Any verdict or judgment, rule or order of court, which may have been obtained or entered up, shall be set aside and be of no effect, if it shall appear that the same was obtained or entered up in consequence of willful and corrupt perjury; and it shall be the duty of the court in which such verdict, judgment, rule or order may have been obtained or entered up, to cause the same to be set aside upon motion and notice to the adverse party; but it shall not be lawful for the said court to do so, unless the person charged with said perjury shall have been thereof duly convicted, and unless it shall appear to the said court that the said verdict, judgment, rule or order could not have been obtained or entered up without the evidence of such perjured person, saving always to third persons, innocent of such perjury, the right which they may have lawfully acquired under such verdict, judgment, rule or order before the same shall have been actually vacated and set aside.

Proviso.

False witness causing death, &c., to suffer death. § 4363. SEC. IX. If any person by willful and corrupt perjury shall take away the life of another, or by such willful and corrupt perjury convict another of any offence, which by this Code, is punishable with death or perpetual imprisonment, such person shall be punished with death or perpetual imprisonment.

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§ 4364. SEC. X. Bribery is the giving or receiving any undue reward to influence the behavior of the person receiving such reward in the discharge of his duty, in any office of government or of justice. Bribery defined.

§ 4365. SEC. XI. If any person shall directly, or indirectly give, or offer to give any money, goods, or other bribe, present or reward; or give or make any promise, contract or agreement for the payment, delivery or alienation of any money, goods, lands, or other bribe; or use any promises, threats, persuasions, or other like sinister, unfair, or fraudulent practices in order to obtain or influence the opinion, judgment, decree, or behavior, of any member of the General Assembly, or any officer of this State, Judge, Justice, referee or arbitrator in any discussion, debate, action, suit, complaint, indictment, controversy, matter, or cause depending, or which shall depend before him or them, such person shall, on conviction, be punished by imprisonment and labor in the penitentiary for any time not less than one year, nor more than five years. And the member of the General Assembly, or officer, Judge, Justice, referee or arbitrator who shall accept or receive such bribe, shall, on conviction, be punished by imprisonment and labor in the penitentiary for any time not less than two years, nor longer than ten years, and shall, moreover, be removed from his office. Punishment of bribery.

§ 4366. SEC. XII. If any Judge, Justice, Mayor, Alderman, Clerk, Sheriff, Coroner, or other public officer, or any other person whatsoever, shall steal, embezzle, alter, corrupt, withdraw, falsify, or avoid any record, process, charter, gift, grant, conveyance or contract; or shall knowingly and willingly take off, discharge, or conceal any issue, forfeited recognizance, or other forfeiture; or shall forge, deface, or falsify any document or instrument recorded, or any registry, acknowledgment, or certificate; or shall alter, deface, or falsify any minute, document, book, or any proceeding whatever of, or belonging to any public office within this State; or if any person shall cause or procure any of the offences aforesaid to be committed, or be in any wise concerned therein, the person so offending shall be punished by imprisonment and labor in the penitentiary for any time not less than two years, nor longer than ten years. Of the person bribed.

§ 4367. SEC. XIII. If any jailor, by too great a duress of imprisonment, or other cruel treatment, make or induce a prisoner to become an approver, or accuse and give evidence against some Stealing, altering, &c., of public documents.

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other person; or be guilty of willful inhumanity or oppression to any prisoner under his care and custody, such jailor shall be punished by removal from office, and imprisonment and labor in the penitentiary for any time not less than one year, nor longer than three years.

Officers de-
taining
books, &c.,
from succes-
sors.

§ 4368. SEC. XIV. If any officer after the expiration of the time for which he may have been elected, or appointed, shall willfully and unlawfully withhold, or detain from his successor the records, papers, documents, books, or other writings appertaining and belonging to his office, or mutilate, destroy, take away, or otherwise prevent the complete possession by his said successor, of said records, documents, papers, books, or other writings, such person so offending, shall, on conviction, be punished by fine or imprisonment in the common jail of the county, or both, at the discretion of the court.

Personating
in bail, judg-
ment, &c.

§ 4369. SEC. XV. If any person except the attorney of record shall acknowledge or procure to be acknowledged, in any of the courts of this State, or before any authorized officer, any recognition, bail, or judgment in the name of any other person not privy or consenting thereto, such person, so offending, shall, on conviction, be punished by imprisonment and labor in the penitentiary for any period of time not less than one year, nor longer than four years.

Obstructing
legal process

§ 4370. SEC. XVI. If any person shall knowingly and willfully obstruct, resist or oppose any Sheriff, Coroner, or other officer of this State, or other person duly authorized in serving, or attempting to serve or execute any lawful process, or order of any court, Judge, Justice, or arbitrators, or any other legal process whatever; or shall assault or beat any Sheriff, Coroner, Constable, or other officer, or person duly authorized, in serving or executing any process or order aforesaid, or for having served or executed the same; every person so offending, shall, on conviction, be punished by fine and imprisonment in the common jail of the county, for any time not exceeding one year.

Assault, &c.,
under color
of office.

§ 4371. SEC. XVII. If any officer of this State, whatever, shall assault or beat any individual under color of his office, or commission, without a lawful necessity so to do, such officer so offending, shall, on conviction, be punished by fine and imprisonment, in the common jail, for any time not exceeding one year.

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§4372. SEC. XVIII. Rescue is the forcibly and knowingly Rescue defined. freeing another from an arrest or imprisonment.

§4373. SEC. XIX. If any person shall rescue another in legal Punishment in criminal cases. custody on criminal process, such person so offending shall, on conviction, receive the same punishment as the person rescued would, on conviction, be sentenced to receive; but if the person rescued shall have been acquitted of the crime charged against him, then and in such case, the person rescuing shall be punished by imprisonment in the common jail of the county for any time not exceeding one year.

§4374. SEC. XX. If any person shall rescue another in legal Punishment in civil cases. custody on civil process, such person so offending shall, on conviction, be punished by a fine equal in amount to the amount of the debt or demand for which such process was issued, and imprisonment in the common jail of the county not exceeding six months.

§4375. SEC. XXI. If any person shall attempt to rescue another in legal custody on criminal process, such person so offending shall, on conviction, be punished in the common jail of the county for any time not exceeding six months, or by confinement and labor in the penitentiary for any time not less than one year nor longer than two years, at the discretion of the court. Attempt to rescue.

§4376. SEC. XXII. If any person shall aid or assist a prisoner Assisting to escape from jail. lawfully committed or detained in any jail, for any offence against this State, or under any civil process, to make his or her escape from jail, whether such escape be actually effected or not; or if any person shall convey, or cause to be delivered to such prisoner, any disguise, instrument, or arms, proper to facilitate the escape of such prisoner, such person so offending shall, on conviction, be punished by confinement and labor in the penitentiary for any time not less than one year, nor longer than four years.

§4377. SEC. XXIII. If any person shall aid or assist any prisoner to escape, or attempt to escape from the custody of any Assisting to escape from custody. Sheriff, Coroner, Constable, officer, or other person, who shall have the lawful charge of such prisoner, such person so offending, shall, on conviction, be punished by confinement and labor in the penitentiary for any time not less than one year, nor longer than five years.

§4378. SEC. XXIV. If any person confined in the penitentiary shall escape therefrom, and be thereafter retaken, such person shall be indicted for an escape, and on conviction shall be pun- Escape from penitentiary.

ished by imprisonment and labor in the penitentiary for the term of four years; and any person who shall aid or assist a prisoner confined in the penitentiary to escape, or in an attempt to escape therefrom, shall, on conviction, receive the like punishment.

Aiding therein.

§ 4379. Sec. XXV. If any Sheriff, Coroner, Constable, keeper of a jail, keeper, officer, or other person employed in the penitentiary, having any offender, guilty, or accused of, or confined for any crime in his custody, shall voluntarily permit or suffer such offender to escape and go at large, every such Sheriff, Coroner, keeper of a jail, keeper, officer, or other person employed in the penitentiary, Constable, or other officer or person so offending, shall, on conviction, be punished by confinement and labor in the penitentiary for any time not less than two years, nor longer than seven years, and shall moreover, if a public officer, be dismissed from office.

Voluntary escape.

Refusing to receive prisoners.

§ 4380. Sec. XXVI. If any Sheriff, Coroner, Constable, keeper of a jail, or other officer, whose duty it is to receive persons charged with, or guilty of an indictable offence, shall refuse to receive and take charge of such person or persons, every such Sheriff, Coroner, Constable, keeper of a jail, or other officer so offending, shall, on conviction, be punished by confinement and labor in the penitentiary, for any time not less than two years, nor longer than seven years; and such officer shall moreover be dismissed from office.

Refusing penitentiary prisoners.

§ 4381. Sec. XXVII. If the keeper of a penitentiary, or other officer or person employed there, whose duty it is to receive convicts, shall fail or refuse to do so, such keeper, officer, or other person so offending, shall, on conviction, be punished by confinement and labor in the penitentiary for any time not exceeding ten years, and shall, moreover, be dismissed from office.

Receiving stolen goods.

§ 4382. Sec. XXVIII. If any person shall buy or receive any goods, chattels, money, or other effects, that shall have been stolen or feloniously taken from another, knowing the same to be stolen or feloniously taken, such person shall be taken and deemed to be an accessory after the fact, and shall receive and suffer the same punishment as would be inflicted on the person convicted of having stolen, or feloniously taken the said goods, chattels, money or effects so bought or received.

If principal cannot be taken.

§ 4383. Sec. XXIX. If the principal thief or thieves cannot be taken, so as to be prosecuted and convicted, it shall be lawful to prosecute any person buying or receiving any goods, chattels,

Accessory

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money, or effects, stolen or feloniously taken by such principal thief or thieves, knowing the same to be stolen or feloniously taken, as for a misdemeanor, and, on conviction, such person shall be punished as prescribed in the preceding section; and a conviction under this section shall be a bar to any prosecution under the XXVIII section.

§ 4384. SEC. XXX. If any person shall receive, harbor, or conceal any person guilty of a crime punishable by death, or imprisonment and labor in the penitentiary, knowing such person to be guilty, such person so receiving, harboring, or concealing, shall be taken and deemed to be an accessory after the fact, and, on conviction, shall be punished by imprisonment and labor in the penitentiary for any time not less than one year nor longer than three years. Accessory after the fact

§ 4385. SEC. XXXI. If any person shall take or receive any money, goods, chattels, lands, or other reward, or promise to compound, or shall for any cause, compound any crime or offence, punishable with death or imprisonment and labor in the penitentiary, such person so offending shall, on conviction, be punished by imprisonment and labor in the penitentiary for any time not less than one year nor longer than five years. Compounding crime

§ 4386. SEC. XXXII. If any person informing or prosecuting under pretence of any penal law, shall compound with the offender, or direct the suit or information to be discontinued, unless it be by leave of the court where the same is pending, such person so offending shall, on conviction, pay a fine equal to so much of the penalty as he or she would be entitled to if the defendant or party prosecuted had been found guilty or convicted. Compounding penalties

§ 4387. SEC. XXXIII. If any two or more persons shall conspire or agree, falsely and maliciously, to charge and indict any innocent person of a crime, who is accordingly indicted and acquitted, such person so conspiring, and each and every one of them, shall on conviction, be punished by imprisonment and labor in the penitentiary for any time not less than twelve months nor longer than five years. Conspiracy

§ 4388. SEC. XXXIV. Common barratry is the offence of frequently exciting and stirring suits and quarrels between individuals, either at law or otherwise. Barratry defined

§ 4389. SEC. XXXV. Any person who shall be found and adjudged a common barrator, vexing others with unjust and vexatious suits, shall on conviction, be punished by a fine not exceed- Punishment

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ing five hundred dollars; and if the offender belongs to the profession of the law, he shall also be disqualified from practicing for the future.

Embracery.

§ 4390. SEC. XXXVI. Embracery is an attempt, whether successful or not, to influence a jury corruptly to one side by promises, persuasions, entreaties, money, entertainments, and the like. Every embracer who shall procure, or attempt to procure, a juror to take money, gain or profit, or shall corruptly influence, or attempt to influence, a juror by persuasions, promises, entreaties, or by any other means, shall, on conviction, be punished by imprisonment and labor in the penitentiary for any time not less than one year nor longer than four years. And the juror convicted of taking money, gain or profit, or of being corruptly influenced as aforesaid, shall be punished by confinement and labor in the penitentiary for any time not less than two years nor longer than five years, and shall moreover be forever disqualified to act as a juror.

**Mal practice
by Justices
of the Peace.**

§ 4391. SEC. XXXVII. Any Justice of the Peace, charged with malpractice in office by using oppression, tyrannical partiality, or any other conduct unbecoming his character as an upright Magistrate, or who shall willfully and knowingly demand more cost than he is entitled to by law, in the administration and under color of his office, may be indicted; which indictment shall specially set forth the merits of the complaint, and a copy thereof be served on the defendant before the same is laid before the grand jury; and the prosecutor and the Justice, and their witnesses, shall have the right of appearing and being heard before the grand jury; which indictment, if found true by the grand jury, shall as in other cases, be tried by a petit jury—and if the defendant be convicted, he shall be punished by fine or imprisonment in the common jail of the county, or both, at the discretion of the court; and shall moreover be removed from office, if still in office.

**Threatening
letters.**

§ 4392. SEC. XXXVIII. If any person shall knowingly send or deliver any letter or writing, threatening to accuse another person of a crime, with intent to extort money, goods, chattels, or other valuable thing; or threatening to maim, wound, kill or murder such person, or any of his family, or to burn or otherwise destroy or injure his or her house or other property, real or personal, though no money, goods, chattels, or other valuable thing be demanded, such person so offending shall, on conviction,

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be punished by imprisonment and labor in the penitentiary for any time not less than two years nor longer than five years.

§ 4393. SEC. XXXIX. Extortion shall consist in any public officer's unlawfully taking, by color of his office, from any person, any money or thing of value that is not due to him, or more than his due. Extortion defined.

§ 4394. SEC. XL. Any public officer who shall, by himself, his deputy, agent, or other person employed by him, be guilty of extortion in demanding and receiving other and greater fees than by law are allowed him; or shall, by color of his office, take from any person any money or other thing of value that is not due to him, or more than his due, such officer shall be subject to indictment, and, on conviction, shall be punished by fine, at the discretion of the court, and shall moreover be dismissed from office. Fine and dismissal.

§ 4395. SEC. XLI. Any other offence against public justice, not herein provided for, shall be punished by fine or imprisonment in the common jail, or both at the discretion of the court. Other offences vs. public justice.

§ 4396. SEC. XLII. If any prisoner in the penitentiary shall assail, oppose, or resist any officer of the penitentiary, or any member of the guard, with any weapon or implement calculated to cause death or serious bodily injury, such prisoner so offending shall be deemed guilty of mutiny, and, on conviction thereof, shall be punished by an additional term of imprisonment and labor in the penitentiary, not less than two years nor longer than five years, at the discretion of the court, to be computed from the expiration of the term of imprisonment and labor to which such prisoner shall have been previously sentenced. Mutiny in penitentiary.

§ 4397. SEC. XLIII. If any person shall persuade, entice or instigate any prisoner to mutiny, such person so offending shall be guilty of a misdemeanor, and, on conviction, shall be punished by confinement and labor in the penitentiary for any time not less than two years nor longer than five years, at the discretion of the court, to be computed, if a prisoner in the penitentiary, from the expiration of the term of imprisonment and labor for which he shall have been previously sentenced. Instigating mutiny.

§ 4398. SEC. XLIV. If any free white person shall buy or receive any money, goods, chattels, or other effects, from any negro or free person of color, that has or have been stolen or feloniously taken, knowing the same to have been so stolen or feloniously taken, such person so offending shall be deemed and taken to be Receiving stolen goods from a negro.

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an accessory after the fact, and being convicted thereof, shall be punished by imprisonment and labor in the penitentiary for any time not less than one year nor more than four years.

NINTH DIVISION.

OFFENCES AGAINST THE PUBLIC PEACE AND TRANQUILITY.

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Unlawful as-
semblies.

§ 4399. SEC. I. If two or more persons assemble for the purpose of disturbing the public peace, or committing any unlawful act, and do not disperse upon being commanded to do so by a Judge, Justice, Sheriff, Constable, Coroner, or other peace officer, such persons so offending shall be guilty of a misdemeanor, and, on conviction, shall be punished by fine or imprisonment in the common jail, or both, at the discretion of the court.

Riot.

§ 4400. SEC. II. If any two or more persons, either with or without a common cause of quarrel, do an unlawful act of violence, or any other act in a violent and tumultuous manner, such persons so offending shall be guilty of a riot, and, on conviction, shall be punished by fine or imprisonment in the common jail, or both, at the discretion of the court; but if the circumstances attending the riot shall be of an atrocious or aggravated nature, the offenders may be imprisoned at labor in the penitentiary for any time not less than one year nor longer than three years.

Affrays.

§ 4401. SEC. III. An affray is the fighting of two or more persons in some public place, to the terror of the citizens and disturbance of the public tranquility. Persons so offending shall be indicted, and, on conviction, shall be punished by fine or imprisonment in the common jail, or both, at the discretion of the court; and it shall be considered a great aggravation of this offence, if any contempt or disobedience of the Magistrate, or other peace officer commanding the peace, shall be proved.

Duelling.

§ 4402. SEC. IV. If any person shall deliberately challenge, by word or writing, the person of another, to fight with sword,

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pistol, or other deadly weapon, or if any person, so challenged, shall accept the said challenge, in either case, such person so giving, or sending, or accepting any such challenge shall, on conviction, be punished by a fine not less than five hundred dollars, and be imprisoned in the common jail of the county for any time not exceeding six months. Or, if the jury should so recommend, such person shall, in addition to the fine herein imposed, be punished by imprisonment and labor in the penitentiary for any time not less than one year, nor longer than two years.

§ 4403. SEC. V. If any person shall, knowingly and willfully, carry and deliver any written or printed challenge, or verbally deliver any message or challenge to another, to fight with sword, pistol, or other deadly weapon, or shall consent to be a second in any such duel or combat, such person so offending shall, on conviction, be punished in the same manner as is prescribed in the preceding section. Seconds same punishment.

§ 4404. SEC. VI. If any person shall be engaged in the act of fighting a duel with sword, pistol, or other deadly weapon, either as principal or second, such person shall be guilty of a high misdemeanor, and, on conviction, shall be punished by imprisonment and labor in the penitentiary for any time not less than four years, nor longer than eight years; *Provided, nevertheless, that* if death should ensue from such duel, then all the parties, both principals and seconds, shall be guilty of murder, and suffer the punishment of death. Act of fighting, a misdemeanor. If death ensues

§ 4405. SEC. VII. If any Justice, or other public officer bound to preserve the public peace, shall have knowledge of an intention in any person or persons to fight with any deadly weapon, and shall not use and exert his official authority to arrest the parties, and prevent the duel, by binding over the parties concerned to keep the peace towards each other, such Judge, Justice, or other peace officer so offending shall, on conviction, be dismissed from office. Officers knowing and not preventing duels.

§ 4406. SEC. VIII. If any person or persons shall, in any newspaper, or handbill, written or printed, publish or proclaim any other person or persons as a coward or cowards, or use any other opprobrious and abusive language for not accepting a challenge, or fighting a duel, such person or persons so offending shall, on conviction, be punished by a fine not exceeding five hundred dollars, and imprisonment in the common jail of the county not exceeding sixty days, at the discretion of the court. Proclaiming as "coward," &c., in print.

Division 9.—Offences against the Public Peace and Tranquility.

- Libel defined** §4407. SEC. IX. A libel is a malicious defamation, expressed either by printing, or writing, or signs, pictures or the like, tending to blacken the memory of one who is dead, or the honesty, virtue, integrity, or reputation of one who is alive, and thereby expose him or her to public hatred, contempt, or ridicule. Every person convicted of this offence, shall be punished by a fine not exceeding one thousand dollars, and by imprisonment in the common jail of the county for any time not exceeding one year, at the discretion of the court.
- Printer, a witness.** §4408. SEC. X. In all prosecutions under the two preceding sections of this division, the printer or publisher of a newspaper, handbill, or other publication containing the offensive or criminal matter, shall be a competent witness; and if such printer or publisher shall refuse to testify in the cause, or to give up the real name of the author or person authorizing and causing the publication, so that he may be indicted, then such printer or publisher shall be deemed and considered the author himself, and be indicted and punished as such; and may, moreover, be punished for a contempt of the court, as any other witness refusing to testify.
- Refusing to testify.** §4409. SEC. XI. In all cases of indictment for a libel, or for slander, the person prosecuted shall be allowed to give the truth in evidence.
- The truth in evidence.** §4410. SEC. XII. Forceful entry is the violently taking possession of lands and tenements with menaces, force, and arms, and without authority of law.
- Forceful entry.** §4411. SEC. XIII. Forceful detainer is the violently keeping possession of lands and tenements with menaces, force, and arms, and without authority of law.
- Forceful detainer.** §4412. SEC. XIV. Any person who shall be guilty of a forcible entry, or a forcible detainer, or both, may be indicted, and, on conviction, shall be punished by fine or imprisonment in the common jail of the county, or both, at the discretion of the court; and the court before whom the conviction takes place, shall cause restitution of possession of the premises to be made to the party aggrieved; *Provided, always,* that if the party forcibly detaining lands and tenements or those under whom he claims, shall have been in peaceable possession of the same for the space of three years or more, immediately preceding the filing of the complaint, such person or party shall not be subject to the penalties of this section, nor shall restitution of possession
- Punishment of forcible entry or detainer.**
- Unless 3 years possession.**

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be made; *And provided, also*, that the only questions to be submitted to and determined by the jury in trials for forcible entry, or forcible detainer, shall be the possession and the force, without regard to the merits of the title on either side. Title not examinable.

§ 4413. SEC. XV. Any person having or carrying about his person, unless in an open manner and fully exposed to view, any pistol, (except horseman's pistols,) dirk, sword in a cane, spear, bowie-knife, or any other kind of knives, manufactured and sold for the purpose of offence and defence, shall be guilty of a misdemeanor, and, on conviction, shall be punished by fine or imprisonment, or both, at the discretion of the court. Carrying concealed, deadly weapons.

§ 4414. SEC. XVI. All other offences against the public peace, not provided for in this Code, shall be prosecuted and indicted as heretofore, and the punishment, in every case, shall be by fine or imprisonment in the common jail of the county, or both, at the discretion of the court. Other offences vs. public peace.

TENTH DIVISION.

OFFENCES AGAINST THE PUBLIC MORALITY, HEALTH, POLICE AND DECENCY.

SECTION.	SECTION.
4415. Bigamy.	4435. Vagrants
4416. Punishment on married person.	4436. Common rogues.
4417. On unmarried person.	4437. Nuisances.
4418. Incest.	4438. Disinterring bodies.
4419. Adultery.	4439. Bastardy.
4420. Lewdness.	4440. Retailing without license.
4421. Lewd houses.	4441. Illegal marrying.
4422. Disorderly houses.	4442. Illegal voting.
4423. Gaming houses.	4443. Buying or selling votes.
4424. Gaming tables.	4444. Minor voting.
4425. Gambling.	4445. Adultery with negro.
4426. Gaming with minors.	4446. Whipping wife.
4427. Gaming with clerks and bank off'rs.	4447. Interfering with religious worship.
4428. Players—witnesses.	4448. Retailing near church.
4429. Judge's charge.	4449. Working slaves on Sabbath.
4430 Suspected houses.	4450. Running freight trains on Sunday.
4431. Unwholesome provisions.	4451. Violating Sabbath.
4432. Unwholesome bread, &c.	4452. Fines from Sabbath-breakers.
4433. Spreading small pox.	4453. Bonds in case of vagrancy.
4434. Violating quarantine.	4454. Att'y or Sol'r—duty in such case.

§ 4415. SEC. 1. Polygamy, or bigamy, shall consist in knowingly having a plurality of husbands, or wives, at the same time. Polygamy and bigamy.

Division 10.—Offences against the Public Morality, Health, Police and Decency.

Punishment
—if before
married.

§ 4416. SEC. II. If any person or persons within this State, being married, do or shall at any time hereafter marry any person or persons, the lawful husband or wife being alive, and knowing that such lawful husband or wife is living, such person or persons so offending shall, on conviction, be punished by confinement at labor in the penitentiary for any time not less than two years nor longer than four years, and the second marriage shall be void; but five years' absence of the husband or wife, and no information of the fate of such husband or wife, shall be sufficient cause of acquittal of the person indicted: and in every case the issue of such second marriage, born before the commencement of any prosecution for polygamy, or within the ordinary time of gestation thereafter, shall, notwithstanding the invalidity of such marriage, be considered as legitimate.

Five years'
absence.Punishment
—if before
unmarried

§ 4417. SEC. III. If any man or woman, being unmarried, shall knowingly marry the wife or husband of another person, such man or woman shall, on conviction, be punished by imprisonment and labor in the penitentiary for any time not less than one year nor longer than three years.

Incest.

§ 4418. SEC. IV. If any person shall commit incestuous fornication or adultery, or intermarry within the Levitical degrees of consanguinity, or affinity, such person so offending shall, on conviction, be punished by imprisonment and labor in the penitentiary for any time not less than one nor longer than three years, and such marriage shall be void.

Adultery
and fornication.

§ 4419. SEC. V. Any man and woman who shall live together in a state of adultery or fornication, or of adultery and fornication, or who shall otherwise commit adultery or fornication, or adultery and fornication, shall be severally indicted, and, on conviction, such offenders shall be severally fined or imprisoned in the common jail of the county, or both, at the discretion of the court; *Provided*, that the fine shall not exceed the sum of five hundred dollars, and the imprisonment shall not extend beyond the term of sixty days. But it shall, at any time, be within the power of the parties to prevent or suspend the prosecution and the punishment, by marriage, if such marriage can be legally solemnized.

Lewdness
and keeping
tippling
houses.

§ 4420. SEC. VI. Any person who shall be guilty of open lewdness, or any notorious act of public indecency tending to debauch the morals; or of keeping open tippling houses on the Sabbath day or Sabbath night shall, on conviction, be fined or

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imprisoned in the common jail, or both, at the discretion of the court.

§ 4421. SEC. VII. If any person shall maintain and keep a ^{Lewd} lewd house, or place for the practice of fornication or adultery, ^{houses.} either by himself or herself or others, he or she so offending shall, on conviction, be punished by fine or imprisonment in the common jail, or both, at the discretion of the court.

§ 4422. SEC. VIII. Any person who shall keep and maintain, ^{Disorderly} either by himself or herself, or others, a common ill-governed ^{houses.} and disorderly house, to the encouragement of idleness, gaming, drinking, or other misbehaviour, or to the common disturbance of the neighborhood or orderly citizens, such person so offending shall, on conviction, be punished by fine or imprisonment in the common jail, or both, at the discretion of the court.

§ 4423. SEC. IX. If any person shall, by himself, servant, or ^{Gaming} agent, keep, have, use or maintain, a gaming-house or room; ^{houses—fine} or shall, in any house, place or room, occupied by him, permit ^{and impris-} persons with his knowledge to come together and play for money or any other valuable thing, at any game of faro, loo, brag, bluff, or any other game played with cards, or shall knowingly rent or let any house or room, with the view or expectation of the same being used for such purpose, such person so offending shall, on conviction, be fined in a sum not exceeding five hundred dollars, and imprisoned in the common jail of the county for any time not exceeding three months.

§ 4424. SEC. X. If any person shall by himself, or servant, or ^{Gaming} any other agent, keep or employ any faro table, E O table, or A ^{tables.} B C or roulette table, or other table of like character, and shall, either by himself or agent, preside or deal at any faro table, or use any E O or A B C or roulette table, or other table of like character, for the purpose of playing and betting at the same, such person so offending shall, on conviction, be punished by imprisonment in the penitentiary not less than one or longer than three years.

§ 4425. SEC. XI. If any person shall play and bet for money, ^{Gambling.} or other thing of value, at any game of faro, loo, brag, bluff, three-up, seven-up, poker, vintun, euchre, or any other game or games played with cards, or shall play and bet for money or other thing of value, at any E O or A B C table, or other table of like character, or at roulette or *rouge et noir*, or chuckluck, or any similar game of chance played with dice, or cards or balls,

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or shall bet at any game of nine pins or ten pins, or at any other number of pins, or at any billiard or pool table, such person so offending on conviction, shall be fined in a sum not less than twenty dollars nor more than five hundred dollars.

With minors § 4426. SEC. XII. Any person keeping any table, or dealing at any game, as above specified, who shall permit any minor to play and bet thereat, or any person of full age who shall gamble with a minor at any of the games above specified shall, on conviction, in addition to the penalty prescribed above, be imprisoned at the discretion of the court.

With clerks and bank officers. § 4427. SEC. XIII. The provisions of the above section shall extend to all persons gaming with the officer or agent of any bank entrusted with any of its funds, or any clerk in any post office in this State.

Players competent witnesses. § 4428. SEC. XIV. On the trial of any person for offending against the five preceding sections of this division, any other person who may have played and betted at the same time or table, shall be a competent witness, and be compelled to give evidence, and nothing then said by such a witness shall at any time be received or given in evidence against him in any prosecution against the said witness, except on an indictment for perjury, in any matter to which he may have testified.

Judge to give gambling in charge. § 4429. SEC. XV. It shall be the duty of the Judges of the Superior Courts of this State, at the opening or commencement of every court, to give in charge to the grand juries, respectively, the substance of the sections contained in this Code relative to gambling.

Suspected rooms or houses may be broken open. § 4430. SEC. XVI. It shall be lawful for any lawful officer, with legal authority, to break open suspected rooms or houses, where it is commonly known that gaming is carried on, and to take any persons found gaming, and bind or cause them to be bound over to the next Superior Court to be held in and for the county where such offences may be committed; and if such persons so found gaming shall fail or refuse to give security for his or their appearance at court, to answer for such offences, then it shall be lawful to commit such person or persons to jail.

Selling unwholesome provisions. § 4431. SEC. XVII. Any butcher, or other person selling the flesh of a diseased animal, or other unwholesome provisions, shall be indicted, and on conviction, shall be punished by fine or imprisonment in the common jail, or both, at the discretion of the court.

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§ 4432. SEC. XVIII. Any baker, brewer, distiller, merchant, ^{Unwholesome bread or drink.} grocer, or other person, selling unwholesome bread, drink, or pernicious and adulterated liquor, knowing them to be so, shall be indicted, and on conviction, shall be fined or imprisoned in the common jail, or both, at the discretion of the court.

§ 4433. SEC. XIX. Any physician, surgeon, or other person, ^{Spreading small pox.} willfully endeavoring to spread the small pox, without inoculation, or by inoculation with matter of the small pox, or using any other inoculation than that called vaccination, unless by special commission or authority from the Inferior Court of the county where the small pox shall make its appearance, shall be indicted, and on conviction, fined in a sum not exceeding one thousand dollars, and be imprisoned in the common jail at the discretion of the court.

§ 4434. SEC. XX. Any person who shall come into this State ^{Violation of quarantine.} by land or water from any place infected with a contagious disease, and in violation of quarantine regulations, shall be indicted in any county in this State in which he may be found, and on conviction, sentenced to pay a fine not exceeding five hundred dollars, and also be imprisoned in the common jail at the discretion of the court.

§ 4435. SEC. XXI. Any person wandering or strolling about ^{Vagrants—penalty 2 to 4 years.} or leading an idle, immoral, profligate course of life, who has no property to support him, and who is able to work, or otherwise to support himself in a respectable way, or who is a professional gambler, shall be deemed and considered a vagrant, and shall be indicted as such, as in other cases, and on conviction, shall be punished by confinement and hard labor in the penitentiary for any time not less than two nor longer than four years; *Provided nevertheless*, that at any time before conviction, said indictment shall be quashed upon the defendant's paying costs and giving bond and good security in open court for his good behavior and future industry for one year. The amount of such bond shall not exceed four hundred dollars.

§ 4436. SEC. XXII. If any person shall be apprehended, ^{Having possession of false keys, picklocks, &c.} having upon him or her, any picklock, key, crow, bit, or other instrument, with intent to break and enter into any dwelling-house, warehouse, store, shop, coach-house, stable or out-house, in order to steal or commit any other crime, or shall have upon him any pistol, hanger, cutlass, bludgeon, or other offensive weapon, with intent to commit crime on any person, which, if committed,

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would be punishable by death or confinement in the penitentiary, or shall be found in or upon any dwelling-house, warehouse, store, shop, coach-house, stable, or out-house, with intent to steal any goods or chattels, every such person shall be deemed a rogue and a vagabond, and on conviction, shall be punished by confinement and labor in the penitentiary for any time not less than one year nor longer than five years, or by imprisonment in the common jail of the county at the discretion of the court.

What nuisances are indictable.

§ 4437. SEC. XXIII. Any person who shall erect or continue, after notice to abate any nuisance which tends to annoy the community, or injure the health of the citizens in general, or to corrupt the public morals, shall be indictable, and punishable by fine or imprisonment in the common jail of the county, or both, at the discretion of the court.

Disintering or purchasing dead bodies.

§ 4438. SEC. XXIV. If any person or persons shall remove the dead body of a human being from the grave or other place of interment, or from any vault, tomb, or sepulchre, or from any other place, without the consent of the friends of said deceased, except malefactors executed under sentence of the law, for the purpose of selling or dissecting the same, or from mere wantonness, such person or persons so offending shall be punished by fine or imprisonment in the common jail of the county, or both, at the discretion of the court; and any person who shall receive or purchase such dead body, knowing it to have been disinterred or removed from any tomb, vault or sepulchre, or such other place, for the purpose aforesaid, shall, on conviction, receive the same punishment.

Putative father refusing

§ 4439. SEC. XXV. If any putative father of a bastard child or children, shall refuse or fail to give security for the maintenance and education of such child or children, when required to do so in terms of the law, such putative father shall be indicted for a misdemeanor, and, on conviction of the fact of being the father of such bastard child or children, and of his refusal or failure to give such security, he shall be punished by a fine of seven hundred dollars for each child; which said fine shall be paid over to the Inferior Court of the county, to be by them improved and applied from time to time, as occasion may require, for the maintenance and education of such child or children; and if the offender is unable to pay said fine or fines, he shall be punished by imprisonment in the common jail for the space of three months.

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§ 4440. XXVI. If any person shall keep a tipping shop, or sell by the quart without the license, and taking the oath prescribed in this Code, or sell by retail in quantities less than one quart any wine, brandy, rum, gin, whisky, or other spirituous liquors, or any mixture of such liquors, in any house, booth, arbor, stall, or other place whatever, without license from the Inferior Court of the county, or without license from the corporate authorities of any town or city, where, by law, authority to grant licenses is vested in the corporate authorities of such towns or cities, such person so offending shall be guilty of a misdemeanor, and, on conviction, shall be fined in the sum of fifty dollars; and on failure to pay such fine, shall be imprisoned in the common jail for the space of thirty days; *Provided*, no person shall be liable to indictment in the Superior Courts of this State for a violation of this section when said person has been already tried by the corporate authorities for the same offence.

Retailing spirits without license.

§ 4441. SEC. XXVII. If any minister of the gospel, Judge, Justice of the Inferior Court or Justice of the Peace, shall join together in matrimony any man and woman, without a license or publication of banns, as provided by law; or where either of the parties within his own knowledge shall be an idiot or lunatic, or subject to any other disability, under this Code, which would render such contract or marriage improper and illegal, such minister, Judge, Justice of the Inferior Court or Justice of the Peace, shall be guilty of a misdemeanor, and, on conviction, shall be fined in a sum of not less than one hundred dollars nor more than five hundred dollars, which said fine, when collected, shall be paid over to the Justices of the Inferior Court of the county where the offence was committed, for the use of the common school fund of said county.

Marrying illegally or without license.

§ 4442. SEC. XXVIII. If any person shall hereafter vote more than once at any election which may be held in any county of this State, or vote out of the county in which he may usually reside, for members of the Legislature, or for county officers, unless authorized by law, such person shall be indicted for a misdemeanor, and, on conviction, shall be punished by imprisonment and labor in the penitentiary for any time not less than one year nor more than two years.

Voting more than once.

§ 4443. SEC. XXIX. If any person shall hereafter buy or sell, or offer to buy or sell a vote, or be concerned in buying or selling a vote, or shall unlawfully vote at any election which may

Buying or selling vote.

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be held in any county in this State, such persons shall be indicted for a misdemeanor, and, on conviction, shall be punished by imprisonment and labor in the penitentiary for a term not less than one year nor more than four years.

Illegal voting by a minor.

§ 4444. SEC. XXX. If any person, under the age of twenty-one years and above the age of fourteen, shall vote illegally at any election, he shall be fined in a sum not exceeding one hundred dollars or imprisoned in the common jail of the county, at the discretion of the court.

Adultery with negro.

§ 4445. SEC. XXXI. Any white man and woman of color, free or slave, who shall live together in a state of adultery or fornication, or adultery and fornication, such white man shall be guilty of the crime of living in such state, and, on conviction, shall be punished by fine or imprisonment, or both, at the discretion of the court.

Whipping wife.

§ 4446. SEC. XXXII. If any man shall whip, beat, or otherwise cruelly maltreat his wife, he shall be deemed guilty of a misdemeanor, and, upon conviction, shall be imprisoned in the common jail not exceeding six months, at the discretion of the court. On such trials the wife shall be a competent witness.

Interfering with religious worship.

§ 4447. SEC. XXXIII. Any person who shall, by cursing or using profane or obscene language, or by being intoxicated or otherwise indecently acting, interrupt or in any manner disturb any congregation of persons lawfully assembled for divine service, shall be guilty of a misdemeanor, and, on conviction, shall be fined or imprisoned, at the discretion of the court.

Selling spirits within a mile of a church.

§ 4448. SEC. XXXIV. Any person who shall sell, or cause to be sold for him, any spirituous or intoxicating liquors, within one mile of any church or meeting-house, or other place set apart or being used for divine worship, during the time appropriated to such worship, (unless the same be within an incorporated city or town,) shall be guilty of a misdemeanor, and, on conviction, shall be fined or imprisoned, or both, at the discretion of the court.

Working slaves on Sabbath day.

§ 4449. SEC. XXXV. Any person who shall, on the Lord's day, commonly called Sunday, employ, or cause to be employed, any slave in any work or labor, (works of absolute necessity and the necessary occasions of the family only excepted,) shall be guilty of a misdemeanor for each slave so employed, and, on conviction, shall be fined or imprisoned, at the discretion of the court.

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§ 4450. SEC. XXXVII. If any freight train shall be run on any railroad in this State on the Sabbath day (known as Sunday) the superintendent of transportation of such railroad company, or the officer having charge of that department of the business of the railroad, shall be liable to indictment for a misdemeanor in each county through which such train shall pass, and, on conviction, shall be fined for each offence the sum of five hundred dollars. On such trial it shall not be necessary to allege or prove the names of any of the employees engaged on such train, but the simple fact of the train being run. The defendant may justify himself by proof that such employees acted in direct violation of the orders and rules of the defendant.

Running
freight
trains on
Sabbath day.

§ 4451. SEC. XXXVI. Any tradesman, artificer, workman or laborer, or other person whatever, who shall pursue their business or work of their ordinary callings upon the Lord's day, (works of necessity or charity only excepted,) shall be guilty of a misdemeanor, and, on conviction, shall be punished by a fine not exceeding fifty dollars.

Violating
Sabbath.

§ 4452. SEC. XXXVIII. All monies arising from fines imposed for offences, the gist of which consists in their being committed on the Sabbath day, shall be paid to the Ordinary of the county, to be by him distributed for the purpose of establishing and promoting Sabbath schools in the county.

Fines for
violation of
the Sabbath.

§ 4453. SEC. XXXIX. When any person prosecuted as a vagrant, shall give bonds and security in terms of the nineteenth section and tenth division of the Penal Code of this State, and shall violate the conditions of said bonds, and that fact shall be made to appear to the Court where said indictment was found, by the affidavit or the prosecutor, or any other person, it shall be the duty of the court to cause a *scire facias* to issue, calling upon the principal in said bond, and his security, to show cause at the next term of said court, why said bond shall not be forfeited, which shall be served as in cases of bail; on which an issue shall be made up, if desired by the defendant, and tried by a jury; and if it shall appear that said defendant has violated the conditions in said bond, judgment shall be awarded on said *scire facias*, against said principal and his securities, for the penalty in said bond, with costs of suit.

Bond in
cases of va-
grancy.

§ 4454. SEC. XL. It shall be the duty of the Attorney and Solicitors General, to represent the State in all suits on bonds as aforesaid; and he shall receive five dollars for prosecuting the

Solicitor's
duty and
fees.

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scire facias, to be taxed in the bill of costs, and also five per cent. of the amount recovered on said bond.

ELEVENTH DIVISION.

OFFENCES COMMITTED BY CHEATS AND SWINDLERS, AND OFFENCES AGAINST PUBLIC TRADE.

SECTION.

- 4455. Credit by fraud.
- 4456. Cheating at play.
- 4457. Baker's cheating.
- 4458. False weights.
- 4459. Offences abolished.
- 4460. Counterfeiting brands.
- 4461. Dirt in Cotton, &c.

SECTION.

- 4462. Personating another.
- 4463. Similar offences.
- 4464. Personating witness.
- 4465. Lying to obtain security.
- 4466. Peddlers without license.
- 4467. Deceiving as to lien.
- 4468. Illegally measuring lumber.

Persons
fraudulently
obtaining
credit.

§ 4455. SEC. I. If any person, by false representation of his own respectability, wealth, or mercantile correspondence and connections, shall obtain a credit, and thereby defraud any person or persons of any money, goods, chattels, or any other valuable thing, or if any person shall cause or procure others to report falsely of his honesty, respectability, wealth, or mercantile character, and by thus imposing on the credulity of any person or persons, shall obtain a credit, and thereby fraudulently get into possession of goods, wares, or merchandize, or any other valuable thing or things, such person so offending, shall be deemed a cheat and swindler, and, on conviction, shall be punished by fine, or imprisonment in the common jail of the county, or both, at the discretion of the court; and such person shall, moreover, be compelled, by the order and sentence of the court, to restore to the party injured the property so fraudulently obtained, if it can be done.

Persons
cheating at
play.

§ 4456. SEC. II. If any person or persons shall, by any fraud, or shift, circumvention, deceit, or unlawful trick, or device, or ill-practice, whatever, in playing at cards, dice, or any game or games, or in or by bearing a share or part in the stakes, wagers, or adventures, or in or by betting on the sides or hands of such as do or shall play, obtain, or acquire to him or themselves, or to any other or others, any money, or other valuable thing or things, whatever, such person or persons so offending, shall be indicted, and, on conviction, shall be deemed a cheat, and shall be sentenced to pay a fine of five times the value of the money, or

Division 11.—Offences committed by Cheats and Swindlers, &c.

other things so won, as aforesaid, and shall also be imprisoned in the common jail of the county, at the discretion of the court.

§ 4457. SEC. III. Any baker or other person selling bread, under the assize established by the corporation of any city, town, or village, or the rules laid down by any law, shall be deemed a cheat, and, on conviction, shall be punished by fine, or imprisonment in the common jail of the county, or both, at the discretion of the court.

Bakers and others selling.

§ 4458. SEC. IV. If any person shall, knowingly, buy or sell by false weights or measures, he or she shall be deemed a common cheat, and, on conviction, shall be punished by fine, or imprisonment in the common jail of the county, or both, at the discretion of the court.

Selling by false weights and measures.

§ 4459. SEC. V. The offences of forestalling, regrating and engrossing, are hereby abolished.

Offences abolished.

§ 4460. SEC. VI. If any person shall, fraudulently, counterfeit, or be concerned in fraudulently counterfeiting any brand or mark directed by law, or shall, fraudulently, cause or procure the same to be done, or shall use, export, sell, exchange, barter, or expose to sale, any bale, cask, barrel, hogshead, or vessel of any kind, or any other thing upon which a brand or mark is directed by law to be made, with such counterfeit brand or mark, knowing the same to be false and counterfeit, such person so offending shall, on conviction, be deemed a cheat, and be punished by a fine not exceeding two hundred dollars, and imprisonment in the common jail of the county, for any term not exceeding six months.

Counterfeiting brands or marks, &c.

§ 4461. SEC. VII. Any person who shall put or cause to be put into any bale or bales of cotton, hogshead or hogsheads, barrel or barrels, cask or casks of sugar, or rice, pork, beef, or other provisions, any dirt, rubbish, or other thing, for the purpose of adding to and increasing the weight or bulk of said cotton, sugar, rice, beef, pork, or other provisions or things, shall be deemed a common cheat, and, on conviction, shall be punished by a fine equal to the value of the thing thus fraudulently packed or put up, and imprisonment and labor in the penitentiary for any time not less than one year, nor longer than five years. The bare possession or ownership of such commodities, so fraudulently packed or put up, shall not, of itself, authorize a conviction, where sufficient evidence of knowledge or privity on the

Putting dirt or rubbish into cotton, rice, &c.

part of the owner, or the person in possession, may not be produced before the court and jury.

Obtaining
goods, &c.,
by person-
ating.

§ 4462. SEC. VIII. If any person shall falsely personate another, and thereby fraudulently obtain any money, goods, chattels, or other thing or things of value, or with the intention of thereby fraudulently obtaining any money, goods, chattels, or other valuable thing, such person so offending, shall be deemed a cheat and swindler, and, on conviction, shall be punished by imprisonment and labor in the penitentiary for any time not less than one year, nor longer than five years; or, in trivial cases, by fine and imprisonment in the common jail, at the discretion of the court.

Other offen-
ces of like
kind.

§ 4463. SEC. IX. Any person using any deceitful means or artful practice, (other than those which are mentioned and provided against in this Code.) by which individuals or an individual, or the public, are or is defrauded and cheated, such person so offending, shall be deemed a common cheat and swindler, and, on conviction, shall be punished by fine or imprisonment in the common jail, or both, at the discretion of the court.

Personating
another as
witness or
otherwise in
court.

§ 4464. SEC. X. If any person shall falsely represent or personate another, and in such assumed character answer as a witness to interrogatories, or do any other act in the course of any suit, proceeding, or prosecution, or in any other way, matter or thing, whereby the person so personated or represented, or any other person, might suffer damage, loss or injury, such person so offending, shall, on conviction, be punished by confinement and labor in the penitentiary for any time not less than one year, nor more than five years.

Lying to ob-
tain endor-
sers or other
security.

§ 4465. SEC. XI. If any person, by false representation of his or her solvency, shall induce another to become his or her bail, endorser, or security upon any recognizance, bond, note, bill of exchange, or other instrument for the payment of money, or performance of any personal duty, knowing at the time that he or she is insolvent, and such bail, endorser, or security shall suffer loss or damage, in consequence of such undertaking and liability on his part, such person so offending, shall be guilty of a misdemeanor, and, on conviction, shall be punished by fine and imprisonment in the common jail, at the discretion of the court.

Dealers
without
license.

§ 4466. SEC. XII. If any peddler or itinerant trader, shall sell or vend any goods, wares, or merchandize, except such as are excepted by law, within this State, without a license from the

Division 11.—Offences committed by Cheats and Swindlers, &c.

proper authority for that purpose, such peddler or itinerant trader, shall be guilty of a misdemeanor, and, on indictment and conviction thereof, shall be fined and imprisoned, at the discretion of the court.

§ 4467. SEC. XIII. Any person who shall, in the sale or disposing of any property, either real or personal, defraud another, by falsely representing that such property is not subject to the lien of any mortgage or judgment, or other lien against such person or property, knowing the same to be subject thereto, shall be deemed and held a common cheat and swindler, and, on conviction, shall be punished by fine and imprisonment, or both, at the discretion of the court.

§ 4468. SEC. XIV. If any measurer and inspector of timber appointed under the laws of this State, or any person not being an official measurer and inspector, shall measure any timber otherwise than as required by the laws of this State, he shall be guilty of a misdemeanor; and, upon conviction thereof, shall be punished for each offence, by a fine not exceeding the value of the timber measured, or by imprisonment in the common jail of the county, for a time not exceeding ninety days; *Provided*, that this provision shall not apply to any case when the measurement is not for the purpose of being used in the sale of the timber, or to any case where the parties buying and selling, contract to have the timber measured, other than according to the laws of this State.

TWELFTH DIVISION.

FRAUDULENT OR MALICIOUS MISCHIEF.

SECTION.

- 4469. Destroying books or papers.
- 4470. Altering land marks.
- 4471. Buoys, beacons, &c.
- 4472. Setting fire to stacks.
- 4473. Setting fire to woods.
- 4474. Setting fire to fences.
- 4475. Breaking bridges, dams, &c.
- 4476. Killing or maiming cattle.
- 4477. Turnpikes, fixtures, &c.

SECTION.

- 4478. Firing or sinking vessels.
- 4479. Cutting down trees.
- 4480. Mile or guide posts.
- 4481. Obstructing highway.
- 4482. Destroying growing crop.
- 4483. Fixtures of coast survey.
- 4484. Public burying grounds.
- 4485. Injuring fish ponds.
- 4486. Other similar acts.

§ 4469. SEC. I. If any person shall fraudulently or maliciously tear, burn, or in any other way destroy any deed, lease, will, bond, or other writing sealed, or any bank bill or note, check,

Destroying books or papers of value

draft, or other security for the payment of money, or the delivery of goods, or any certificate, or other public security of this State, or of the Confederate States, or any of them, for the payment of money, or any receipt, acquittance, release, discharge of any debt, suit, or other demand, or any transfer or assurance of money, stock, goods, chattels, or other property, or any letter of attorney, or other power, or any day-book, or other book of accounts, or any agreement, or contract whatever, with intent to defraud, prejudice, or injure any person, or body politic or corporate, such person so offending shall, on conviction be punished by imprisonment and labor in the penitentiary for any time not less than one year nor longer than four years, or, in trivial cases, by imprisonment in the common jail, or by fine, or both, at the discretion of the court.

Altering or
removing
land marks,

§ 4470. SEC. II. If any person shall knowingly, maliciously, or fraudulently cut, fell, alter or remove any certain boundary tree, or other allowed landmark, to the wrong or injury of his neighbor, or any other person, such person so offending shall on conviction, be punished by a fine not exceeding five hundred dollars, and imprisonment in the common jail of the county for any time not exceeding one year.

Buoys, beacons,
&c.

§ 4471. SEC. III. If any person or persons shall maliciously or without authority, cut down, remove, or destroy any beacon or beacons, buoy or buoys, erected by any commissioners of pilotage, or other person or persons duly authorized for that purpose, such person or persons so offending shall, on conviction, be punished by confinement and labor in the penitentiary for any time not less than two years nor longer than five years.

Setting fire
to stacks,

§ 4472. SEC. IV. Any person or persons who shall willfully and maliciously set fire to, or burn any stack or stacks of corn, fodder, grain, straw, or hay, shall, on conviction, be punished by imprisonment and labor in the penitentiary for any time not less than one year nor longer than three years.

Setting fire
to woods.

§ 4473. SEC. V. If any person shall willfully and maliciously set on fire, or cause to be set on fire, any woods, lands or marshes within this State, so as thereby to occasion loss, damage or injury to any other person, such person so offending shall, on conviction, be punished by imprisonment in the common jail for any time not exceeding six months, at the discretion of the court.

Fences.

§ 4474. SEC. VI. If any person shall willfully and maliciously set fire to any fence or fences, or other enclosure, or cause or pro-

cure the same to be done, or shall take from such fence or enclosure any rail or rails, or other material of which the same is made or composed, for the purpose of using the same as fuel, such person so offending shall, on conviction, be punished by fine and imprisonment in the common jail of the county, at the discretion of the court.

§ 4475. SEC. VII. If any person shall unlawfully, willfully and maliciously break down, cut open, through, injure or destroy any bridge, river or meadow bank, rice-dam mill-dam, or any other dam or bank, such person so offending shall, on conviction, be punished by confinement and labor in the penitentiary not less than one year nor longer than three years, or by fine and imprisonment in the common jail, at the discretion of the court.

Breaking
bridges,
dams, banks,
&c.

§ 4476. SEC. VIII. If any person shall maliciously maim or kill any horse, mule, bull, steer, ox, cow, calf, heifer, or other animal falling under the description hereinbefore given of horses or cattle, or shall maliciously kill a hog or hogs, such person so offending shall, on conviction, be punished by fine or imprisonment in the common jail at the discretion of the court.

Killing or
maiming
cattle or
hogs.

§ 4477. SEC. IX. If any person shall maliciously injure or destroy any turnpike gate or gates, or any post or posts, rail or rails, wall or walls, or any chain, bar, or other fence belonging to any turnpike gate, or any house or houses erected, or to be erected for the use of any such turnpike gate or gates, or shall willfully and maliciously injure or destroy any lock or locks, or other works erected to protect and secure the navigation of any river or canal in this State, every such person so offending shall, on conviction, be punished by imprisonment and labor in the penitentiary for any time not less than one year nor longer than four years.*

Turnpike
and naviga-
tion fixtures.

§ 4478. SEC. X. If any person shall willfully and maliciously burn, or set fire to any ship, boat, or other vessel above the value of two hundred dollars, along side of any wharf, or at anchor in any river, or in any waters in this State, or if any person shall willfully and maliciously make, or assist in making any hole in the bottom, side, or any part of any ship, boat, or other vessel, above the value aforesaid, or do any other act tending to the loss or destruction of such ship, boat, or other vessel, within the waters of this State as aforesaid, such person so offending shall, on conviction, be punished by imprisonment and labor in the peni-

Firing or
sinking ves-
sels.

*NOTE.—For similar provision as to railroads, see Sixth Division, section 4335.

tentiary for any time not less than three years nor longer than seven years; and if the ship, boat, or other vessel thus injured or destroyed, as aforesaid, be of the value of two hundred dollars, or under that value, then the person convicted of injuring or destroying such ship, boat, or other vessel, as aforesaid, shall be punished by fine or imprisonment in the common jail of the county, or both, at the discretion of the court.

Cutting
down trees.

§ 4479. SEC. XI. If any person shall willfully and maliciously cut down, injure or destroy any tree or trees planted or growing in any town, village, or city, or in any avenue, yard, garden, orchard or plantation, for ornament, shelter, shade, or profit, such person so offending shall, on conviction, be punished by fine or imprisonment in the common jail of the county, or both, at the discretion of the court.

Mile or
guide posts.

§ 4480. SEC. XII. If any person shall willfully or maliciously break, deface, destroy, or remove any mile stone or post, or any guide board, erected upon any public road or highway, or alter any mark or inscription upon any such mile stone or post, or guide board, such person so offending shall be indicted for a misdemeanor, and, on conviction, shall be punished by a fine not exceeding fifty dollars, or imprisonment in the common jail not exceeding thirty days.

Obstructing
highway.

§ 4481. SEC. XIII. Any person who shall stop up or obstruct a public highway, with a malicious intent, or shall do the same acts without such intent, and fail to remove the same on notice from the overseer or commissioner of the road, shall be guilty of malicious mischief, and on conviction, fined or imprisoned, or both, at the discretion of the court.

Severing
produce
from the
realty.

§ 4482. SEC. XIV. If any person shall commit any trespass by willfully and maliciously severing from the land of another any produce thereof, such person so offending shall be indicted for a misdemeanor, and, on conviction, shall be punished by a fine not exceeding one hundred dollars, or by imprisonment in the common jail not exceeding thirty days.

Injuries to
coast survey
fixtures.

§ 4483. SEC. XV. Any person who shall willfully or wantonly injure, deface, or remove any signal, monument, building, or any other appendage thereto, erected within this State by virtue of any act of Congress authorizing a coast survey, shall be guilty of a misdemeanor, and, on conviction, shall be fined or imprisoned, or both, at the discretion of the court.

Division 12.—Fraudulent or Malicious Mischief.

§ 4484. SEC. XVI. Any person who shall willfully or wantonly injure or destroy any enclosure around or within any public grave-yard or burying-ground, or any monument or tombstone, or other fixture therein, shall be guilty of a misdemeanor, and, on conviction, fined or imprisoned, or both, at the discretion of the court.

§ 4485. SEC. XVII. Any person willfully and maliciously breaking the dam or destroying the fish, or fishing therein, or otherwise injuring any artificial fish-pond, shall be guilty of a misdemeanor, and, on conviction, fined or imprisoned, at the discretion of the court.

§ 4486. SEC. XVIII. All other acts of willful and malicious mischief, in the injuring or destroying any other public or private property, not therein enumerated, shall be punished by fine or imprisonment in the common jail, or both, at the discretion of the court before whom the same shall be tried.

THIRTEENTH DIVISION.

OFFENCES RELATIVE TO SLAVES.

SECTION.

- 4487. Harboring slaves.
- 4488. Carrying off slaves.
- 4489. Beating or wounding.
- 4490. Cruel treatment.
- 4491. Trading with slaves.
- 4492. Evidence.
- 4493. Selling goods to.
- 4494. Judge's charge.
- 4495. Giving tickets.
- 4496. Teaching to read and write.
- 4497. Employing in printing.
- 4498. Peddlers trading with.
- 4499. Hiring without pass.
- 4500. Selling books, &c., to.
- 4501. Trading with closed doors.

SECTION.

- 4502. Presumptive evidence.
- 4503. Negro clerk, partner, &c.
- 4504. Rescue of a negro.
- 4505. Gaming with negroes.
- 4506. Proof necessary.
- 4507. Contracts with mechanics.
- 4508. Master concealing criminal.
- 4509. Detaining runaway slave.
- 4510. Selling poisonous drugs to slaves.
- 4511. Having negro clerks.
- 4512. Furnish'g person of color with gun.
- 4513. Poisonous drug.
- 4514. Furnishing person of color with.
- 4515. Punishment.

§ 4487. SEC. I. Any person who shall conceal, harbor, hide or employ, in their own or in the service of any other person or persons, any slave, to the injury of the owner thereof, shall be guilty of a felony, and, on conviction thereof, shall be punished by imprisonment and labor in the penitentiary for a time not exceeding three years nor less than one year; *Provided, nevertheless*, that on the trial of this offence, the person charged with

it shall be acquitted, if he or she had an apparent well founded claim to the slave so harbored or concealed, and had been peaceably possessed of him twelve months next preceding the commencement of such harboring or concealing; and on every conviction for concealing or harboring a slave, the owner of such slave may recover damages in a civil suit for the loss of the labor and services of such slave, notwithstanding such conviction.

Carrying off slaves or inducing them to run away

§ 4488. SEC. II. Any person who shall remove or carry, or cause to be removed or carried away out of this State, or any county thereof, any slave being the property of another person, without the consent of the owner or other person having authority to give such consent, either with or without any intention or design on the part of the offender to sell or otherwise appropriate the said slave to his own use; or shall, by bribery, promises of freedom, or any other enticement, induce any slave in this State to leave the services of his owner, or who shall attempt, by any of these means, to induce the slave of another to run away or leave the service of his owner, such person so offending shall be guilty of a misdemeanor, and be punished by imprisonment in the penitentiary not less than seven nor more than ten years.

Unprovoked beating or wounding the slaves of others, &c.

§ 4489. SEC. III. Any person, except the owner, overseer, or employer of a slave, who shall beat, whip, or wound such slave; or any person who shall beat, whip, or wound a free person of color, without sufficient cause or provocation being first given by such slave or free person of color, such person so offending may be indicted for a misdemeanor, and, on conviction, shall be punished by fine or imprisonment in the common jail of the county, or both, at the discretion of the court; and the owner of such slave, or guardian of such free person of color, may, notwithstanding such conviction, recover in a civil suit damage for the injury done to such slave or free person of color.

Cruel treatment of slaves by owners.

§ 4490. SEC. IV. Any owner, overseer, or employer of a slave or slaves, who shall cruelly treat such slave or slaves, by unnecessary and excessive whipping, beating, cutting or wounding, or by cruelly and unnecessarily tearing or biting with dogs, by withholding proper food and sustenance, by requiring greater labor from such slave or slaves than he, she or they are able to perform, or by not affording proper clothing, or cause or permit the same to be done; every such owner, overseer, or employer, shall be guilty of a misdemeanor, and, on conviction, shall be punished by fine or imprisonment in the common jail of the

Division 13.—Offences relative to Slaves.

county, or both, at the discretion of the court. On second conviction, such person shall be declared incapable of holding slave property in the State. See section 1859.

§4491. SEC. V. If any person shall buy or receive from any slave any amount of money exceeding one dollar, or any cotton, tobacco, wheat, rye, oats, corn, rice, or poultry of any description whatever, or any other article, commodity or thing, (except brooms, baskets, foot and bed mats, shuck collars, and such other thing or things, article or articles as are usually manufactured or vended by slaves for their own use only,) without written permission from the owner, overseer, or employer of such slave, or some other person authorized to give such permission, authorizing such slave to sell and dispose of such money or other article or articles; such person so offending shall be guilty of a misdemeanor, and, on conviction, be punished by fine or imprisonment in the common jail of the county, or both, at the discretion of the court. If any owner, overseer, employer, shop keeper, store keeper, or any other person whatsoever, shall sell to or furnish any slave or slaves, or free person of color with spirituous liquor, wines, cider, or any intoxicating liquors, for his own use or for the purpose of sale, such person so offending shall, upon conviction thereof, pay a fine of not less than fifty dollars nor more than two hundred dollars, and be imprisoned not less than ten nor more than fifty days for the first offence, and upon a second conviction to be subject to fine and imprisonment in the common jail of the county, at the discretion of the court, not to exceed sixty days' imprisonment and five hundred dollars fine; *Provided*, nothing herein contained shall prevent the owner, overseer, or employer from furnishing their slaves, or those under their care, with such quantity of spirits, &c., as they may believe is for the benefit of such slave or slaves, but in no case to permit them in any way to furnish others therewith.

§4492. SEC. VI. If any slave or slave shall be found in any store house or tippling shop, unless sent by his, her, or their owner, overseer, or employer, after the hour of nine o'clock at night or before day-break in the morning, or on the Sabbath day, it shall be taken and received as presumptive evidence against the person or persons owning, or person keeping the store or tippling shop, of a violation of the preceding section of this division, which presumption may be rebutted by any other circumstance in favor of the accused.

Purchasing
from slaves
without per-
mit.

Selling them
spirits.

Provisions
to the own-
ers.

Slaves
found in tip-
pling houses.

Delivering goods to slaves.

§ 4493. SEC. VII. If any person shall sell or deliver to any slave or slaves any goods, wares or merchandize, or any other thing or things, unless it be in exchange for some article or articles which the owner, overseer, or employer of such slave or slaves may have authorized such slave or slaves to trade or deal in, according to the provisions of the fifth section of this division, such person so offending shall be guilty of a misdemeanor, and, on conviction, shall be punished by fine or imprisonment in the common jail of the county, or both, at the discretion of the court.

Judges to give these laws in charge.

§ 4494. SEC. VIII. It shall be the duties of the Judges of the Superior Courts, at the commencement of every term, to give in charge to the grand jury the substance and intention of the sections of this division, in regard to trading with slaves.

Giving tickets unlawfully—fine.

§ 4495. SEC. IX. If any person shall give a ticket, pass or license to any slave who is the property, or under the care and control of another, without the consent of the owner, or other person having the care or control of such slave, such person so offending shall be guilty of a misdemeanor, and, on conviction, shall be fined in a sum not exceeding fifty dollars.

Teaching slaves to read or write.

§ 4496. SEC. X. If any person shall teach any slave, negro, or free person of color, to read or write either written or printed characters, or shall procure, suffer, or permit a slave, negro, or free person of color, to transact business for him in writing, such person so offending shall be guilty of a misdemeanor, and, on conviction, shall be punished by fine, or imprisonment in the common jail of the county, or both, at the discretion of the court.

Certain employments in printing offices prohibited.

§ 4497. SEC. XI. If any person owning or having in his possession, and under his control, any printing press or types in this State, shall use or employ, or permit to be used or employed, any slave or free person of color, in the setting up of types, or other labor about the office requiring in said slave, or free person of color, a knowledge of reading or writing, such person so offending shall be guilty of a misdemeanor, and, on conviction, shall be punished by a fine not exceeding one hundred dollars.

Peddlers trading with slaves without authority—fine \$1,000.

§ 4498. SEC. XII. If any peddler, or itinerant trader, whether carrying his goods, wares and merchandize in a wagon, or otherwise, shall at any time, either buy from or sell to, or otherwise trade with any slave or slaves, unless it be with the permission and in the presence of the owner, overseer, or other person hav-

ing charge of such slave or slaves: such peddler, or itinerant trader, shall be guilty of a misdemeanor, and, on indictment and conviction thereof, shall be fined in a sum not exceeding one thousand dollars, one-half to the use of the prosecutor, and the other half to the use of the county where the crime was committed, and the defendant shall stand committed until the fine is paid; and a copy of this section shall be annexed to all licenses granted peddlers.

Copy of this annexed to licenses.

§ 4499. SEC. XIII. Any person who shall hire a slave, by contract with such slave, without a written or verbal permit from the owner or person having the right to control such slave, shall be guilty of a misdemeanor, and, upon conviction, shall be fined at the discretion of the court.

Hiring a slave without a permit.

§ 4500. SEC. XIV. If any shop keeper, or other person, shall sell, give, barter, or in any way furnish, or allow to be furnished by any person in his employment, to any slave or free person of color, any printed or written book, pamphlet, or other publication, writing paper, ink, or other articles of stationery for his own use, or for the purpose of sale, without written or verbal permission from the owner, guardian, or other person having control of such negro or free person of color, such person so offending shall, upon conviction thereof, be fined not less than ten, nor more than fifty dollars for the first offence; and be fined and imprisoned, at the discretion of the court, for the second offence.

Selling or furnishing books, &c., to negroes.

§ 4501. SEC. XV. Any merchant, tradesman, or shop keeper, who by himself, or his clerk or agent, shall have closed the front door or doors of his store, shop or stall, while engaged in selling to, or buying from, or in any wise trading with a slave or free person of color, shall be guilty of a misdemeanor, and, on conviction, shall be fined not less than one hundred nor more than two hundred dollars, one-half to be paid to the informer or prosecutor; and, on failure to pay, the defendant shall be imprisoned in the common jail, at the discretion of the court.

Trading with negroes with closed doors.

§ 4502. SEC. XVI. That the slave or free person of color shall be found in any store or shop, or shall be seen going in or coming out of the same, with the front door or doors thereof closed, (except for ingress and egress,) shall be presumptive evidence of a violation of the foregoing section, so as to cast the burden of proof on the defendant.

Slave, &c., going in, &c., presumptive evidence.

§ 4503. SEC. XVII. Any white person who shall permit a slave or free person of color, either as his partner, clerk, agent, or

Selling liquor by negro clerk, &c.

assistant, to keep or sell any spirituous or intoxicating liquors, or to keep open any shop, or house, or booth, or stall, for the purposes of such sales, shall be guilty of a misdemeanor, and, on conviction, shall be fined or imprisoned, or both, at the discretion of the court.

Rescue of negro.

§ 4504. SEC. XVIII. If any person rescue a negro or free person of color in legal custody on criminal process, such person so offending shall, on conviction, be punished by confinement and labor in the penitentiary for not less than one nor longer than five years.

Gaming with negroes.

§ 4505. SEC. XIX. If any white person is found playing and betting, or playing or betting, with a negro or negroes, or free person of color, at any game with cards, dice, or any other game or games of chance or hazard, for the purpose of winning, or for others to win or lose money, or anything of value, such person so offending shall be guilty of a misdemeanor, and, on conviction, for the first offence, shall be fined or imprisoned, or both, at the discretion of the court; and upon a second conviction shall be subject to imprisonment at hard labor in the penitentiary not less than one nor more than four years.

Proof necessary.

§ 4506. SEC. XX. The game or games played need not be proved. The prosecution shall be required to prove the playing or betting only.

Making contract with negro mechanics or masons.

§ 4507. SEC. XXI. Any white person who shall contract or bargain with any slave mechanic or mason, for the erection or repairs of any building, whether the same be done directly or indirectly, shall be guilty of a misdemeanor, and the master of such slave, mechanic or mason, or guardian of such free person of color, who shall knowingly authorize or permit such mechanic or mason to make such contracts as are herein prescribed, shall be in like manner guilty of a misdemeanor; and on conviction of any person offending under this section, he shall be punished by fine not exceeding two hundred dollars.

Master concealing or running a slave accused of crime.

§ 4508. SEC. XXII. Any master or person having control of a slave accused of any crime under the laws of this State, who shall conceal or convey away any such slave, with a view to evade the punishment of his crime, shall be guilty of a misdemeanor, and, on conviction, shall be fined in the value of such slave, and imprisoned at the discretion of the court, if the crime charged against the slave be a capital offence; and if the crime be not capital, shall be fined in a sum not exceeding two

hundred dollars. A prosecution shall bar any suit at the instance of an informer.

§ 4509. SEC. XXIII. Any person taking up a runaway slave who shall fail or refuse to deliver such slave to the owner, or the jailor of the county, if practicable, within four days, after taking up the same, or to give notice to such owner or jailor, if practicable, within said time, shall be guilty of a misdemeanor, and on conviction, shall be fined or imprisoned in the common jail of the county, or both, at the discretion of the court.

Detaining a runaway slave.

§ 4510. SEC. XXIV. Any druggist, merchant, or other person who shall sell or furnish to any slave or free person of color, without the written permission of his master, employer, or guardian, any poisonous drug or medicine, shall be guilty of a high misdemeanor, and, on conviction, shall be punished by fine or imprisonment in the common jail of the county, or both, at the discretion of the court.

Selling poisonous drugs to slaves.

§ 4511. SEC. XXV. Any grocer, or retailer, or merchant, keeping spirituous liquors for sale, who shall employ, or have a negro as a clerk, or employee about his store, bar or shop, so that such negro may have access to such liquors, shall be guilty of a misdemeanor, and, on conviction, shall be punished by fine or imprisonment, or both, at the discretion of the court. The burden shall be on the defendant to prove that such negro employee had no access to such liquors.

Having negro clerks.

§ 4512. SEC. XXVI. Any person other than the owner, who shall sell or furnish to any slave or free person of color, any gun, pistol, bowie knife, slung shot, sword cane, or other weapon used for the purpose of offence or defence, shall, on indictment and conviction, be fined by the court in a sum not exceeding five hundred dollars, and imprisoned in the common jail of the county not exceeding six months, at the discretion of the court; *Provided*, That this provision shall not be so construed as to prevent owners or overseers from furnishing a slave with a gun, for the purpose of killing birds, &c., about the plantation of such owner or overseer.

Furnishing persons of color with gun.

§ 4513. SEC. XXVII. Any druggist, store-keeper or physician, who sells or delivers to any persons other than druggists or practising physicians any of the following poisonous drugs, viz: arsenic, strychnine, hydrocyanic acid, and aconite, shall keep a register, and enter therein the name and place of residence of the person to whom such drug is sold or delivered, the name and

With poisonous drugs.

quantity of the poisonous drug so sold or delivered, and the time of the sale or delivery. Any druggist, store-keeper or physician, who fails or refuses to comply with the provisions of this section, shall be guilty of a misdemeanor, and, on conviction thereof, shall be fined, or imprisoned in the common jail of the county; the fine not to exceed five hundred dollars, and the imprisonment not to exceed six months.

Punishment. § 4514. SEC. XXVIII. Any person who shall furnish any slave or free person of color, with any of the drugs enumerated in the preceding section, or any other poisonous drug, shall be guilty of a felony, and, upon conviction thereof, shall be sentenced to hard labor in penitentiary for a term not exceeding twenty years.

If death ensues. § 4515. SEC. XXIX. If any person shall furnish any slave or free person of color, with any of the drugs enumerated in section 4513, or with any other poisonous drug or matter likely to produce death, with the intent or purpose that such poison shall be maliciously administered, in any manner, to any person, such person furnishing any slave or free person of color with such poison, with the intent aforesaid, shall, on conviction thereof, be punished by confinement and hard labor in the penitentiary for a term not exceeding twenty, nor less than ten years, and if such poison be so administered whereby death to any person ensues, or whereby the health of any person is injured or impaired, such person so offending, shall, on conviction thereof, be punished **Punishment.** with death, or by imprisonment and hard labor in the penitentiary for a term not less than five years, at the discretion of the Judge.

FOURTEENTH DIVISION.

OF INDICTMENTS, ARRAIGNMENTS, TRIAL, VERDICT, JUDGMENT AND EXECUTION.

SECTION.	SECTION.
4516. Form of indictment.	4555. Date from sentence.
4517. Exceptions.	4556. Offences on county lines.
4518. Malicious prosecution.	4557. Death in another county.
4519. Costs paid by county.	4558. Or on soil of C. S.
4520. Prosecution on presentments.	4559. Insane offender.
4521. Arraignments in small offences.	4560. Act not attempt.
4522. Copy indictment and witnesses.	4561. Jury may find attempt.
4523. In minor offences.	4562. Two convictions, longest time.
4524. Arraignments.	4563. Convicts witnesses.
4525. Standing mute.	4564. Empannelling jury.
4526. Demurrers and special pleas.	4565. Talesmen.
4527. Record of issue.	4566. Putting pannel on prisoners.
4528. Entry on indictment.	4567. Challenge to the array.
4529. Arraignment in fetters.	4568. Challenge for cause.
4530. Challenges.	4569. Questions on <i>voir dire</i> .
4531. In minor offences.	4570. Setting aside for cause.
4532. Jury judges of law.	4571. Swearing in chief.
4533. Time of trial—continuance.	4572. No investigation before triers.
4534. Demand for trial.	4573. Pen'y. confinement disqualification.
4535. Nolle prosequi.	4574. Joint defendants.
4536. Juror's oath.	4575. Continuance by one.
4537. Witnesses oath.	4576. Opprobrious words.
4538. Before grand jury.	4577. Oath on inquests of insanity.
4539. Several arraignments.	4578. Abstract of evidence.
4540. Fine money.	4579. Form of sentence.
4541. Paid immediately.	4580. Commutation for good behavior.
4542. Discretionary imprisonment in pen.	4581. Collection of costs.
4543. Convicts sent to penitentiary.	4582. Discharge of insolvents.
4544. Notice to keeper.	4583. Bail taken twice.
4545. Escapes therefrom.	4584. Forfeiting recognizance.
4546. Confinement in jail.	4585. Proceedings vs. bail.
4547. No benefit of clergy.	4586. Surrender by bail.
4548. Death by hanging; mode of ex'n.	4587. Discretionary imprisonment.
4549. Judge's report.	4588. Settlement of minor offences.
4550. Punished under existing laws.	4589. Of all others.
4551. Limitation on indictments.	4590. Excessive costs.
4552. Insane convicts.	4591. Two returns of "no bill."
4553. Pregnant convicts.	4592. Insolvent costs.
4554. Subsequent execution.	

§ 4516. SEC. 1. Every indictment or accusation of the grand jury shall be deemed sufficiently technical and correct, which states the offence in the terms and language of this Code, or so plainly that the nature of the offence charged may be easily

understood by the jury. The form of every indictment or accusation shall be as follows :

“GEORGIA, }
County. }

Form of the
first count.

“The grand jurors selected, chosen and sworn for the county of _____, to wit, _____, in the name and behalf of the citizens of Georgia, charge and accuse A. B., of the county and State aforesaid, with the offence of _____ for that the said A. B., (here state the offence, and the time and place of committing the same, with sufficient certainty,) contrary to the laws of said State, the good order, peace and dignity thereof.”

Subsequent
counts.

If there should be more than one count, each additional count shall commence with the following form : “And the jurors aforesaid, in the name and behalf of the citizens of Georgia, further charge and accuse the said A. B. with having committed the offence of _____, (here state the offence as before directed,) for that,” &c.

Exceptions.

§ 4517. SEC. II. All exceptions which go merely to the form of an indictment, shall be made before trial ; and no motion in arrest of judgment shall be sustained for any matter not affecting the real merits of the offence charged in such indictment.

Costs to be
paid by
prosecutor.

§ 4518. SEC. III. Upon every indictment, the prosecutor's name shall be endorsed, who, upon the acquittal or discharge of the person accused, shall be compelled to pay all costs which have accrued, if the grand jury, by their foreman, upon returning “no bill,” express it as their opinion that the prosecution was unfounded or malicious ; or if the petit jury upon returning a verdict of “not guilty,” shall express a similar opinion.

Persons ac-
quitted and
insolvents.

§ 4519. SEC. IV. A person against whom a bill of indictment shall be preferred and not found true by the grand jury ; or who shall be acquitted by the petit jury of the offence charged against him or her, shall not be liable to the payment of the costs ; and in all such cases, as also where persons liable by law for the payment of the costs, shall be unable to pay the same, it shall and may be lawful for the officers severally entitled to such costs, to present an account therefor to the Judge of the court in which the said prosecutions were depending, which account being examined and allowed by him, it shall and may be lawful for said Judge, by an order of said court, to authorize and direct the Sheriff or Clerk to retain for his own-use, and to pay to the At-

torney or Solicitor General, and other officers of the court, the amount of their respective accounts, out of any monies by him received for fines inflicted by the said court, or collected on forfeited recognizances.

§ 4520. SEC. V. It shall be the duty of the Attorney or Solicitor General to prosecute on all presentments of grand juries, where such presentment or presentments is or are for offences indictable by law : and the endorsement on the indictment by the Attorney or Solicitor General, that the same is founded on the presentment of a grand jury, shall be sufficient, without any prosecutor's name appearing on the indictment.

Solicitor
General to
prosecute
upon pre-
sentments.

§ 4521. SEC. VI. No person indicted, unless it be for an offence which may, on conviction, subject him or her to death, or imprisonment in the penitentiary for the term of three years or more, shall be put for his or her arraignment in the bar dock, or other place set apart in the court room for the arraignment of prisoners.

Arraign-
ments for
small of-
fences.

§ 4522. SEC. VII. Every person charged with a crime or offence which may subject him or her, on conviction, to death or imprisonment in the penitentiary for the term of three years or more, shall be furnished, previous to his or her arraignment, with a copy of the indictment, and a list of the witnesses who gave testimony before the grand jury.

Copy of in-
dictment
and list of
witnesses.

§ 4523. SEC. VIII. Every person charged with an offence shall, at his or her request, or the request of his or her counsel, be furnished with a copy of the indictment, and a list of the witnesses who gave evidence before the grand jury.

In small
cases a copy
on request.

§ 4524. SEC. IX. Upon the arraignment of a prisoner, the indictment shall be read to him or her, and such prisoner shall be required to answer whether he or she is guilty or not guilty of the offence charged in the said indictment, which answer or plea shall be made orally by the prisoner, or his or her counsel. And if he or she shall plead guilty, such plea shall be immediately recorded on the minutes of the court by the Clerk, together with the arraignment ; and the court shall pronounce upon such prisoner the judgment of the law, in the same manner as if such prisoner had been convicted of the offence by the verdict of a jury : but at any time before judgment is pronounced, such prisoner may withdraw the plea of " guilty," and plead not guilty ; and such former plea shall not be given in evidence against him or her on his or her trial.

Form of ar-
raignment.

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standing
mute or
pleading not
guilty.

§ 4525. SEC. X. If the prisoner, upon being arraigned, shall plead "not guilty," or shall stand mute, the Clerk shall immediately record upon the minutes of the court the plea of "not guilty," together with the arraignment, and such arraignment and plea shall constitute the issue between the prisoner and the people of this State.

Demurrers
or special
pleas to be
in writing.

§ 4526. SEC. XI. If the prisoner, upon being arraigned, shall demur to the indictment, or plead to the jurisdiction of the court, or in abatement, or any special plea in bar, such demurrer or plea shall be made in writing; and if such demurrer or plea shall be decided against such prisoner, then such prisoner may, nevertheless, plead and rely on the general issue of "not guilty."

Issue may
be recorded
afterwards.

§ 4527. SEC. XII. If the Clerk shall fail or neglect to record the arraignment and plea of the prisoner at the time the same is made, it may and shall be done at any time afterwards, by order of the court, and this shall cure the error or omission of the Clerk.

To be enter-
ed on the in-
dictment.

§ 4528. SEC. XIII. The arraignment and plea or answer of the prisoner shall be entered on the indictment by the Attorney or Solicitor General, or other person acting as prosecuting officer on the part of the people of this State.

Prisoners
not to be ar-
raigned in
feters.

§ 4529. SEC. XIV. No prisoner shall be brought into court for arraignment or trial, tied, bound or fettered, unless the court shall deem it necessary, during his or her arraignment or trial; and if the health of the prisoner, or other circumstances should render it more convenient to the prisoner and his counsel that he or she should not be placed for his or her arraignment, or during his or her trial, within the bar-dock, or other place assigned in the court room for prisoners, the court may grant the indulgence of removing the prisoner to any other place in the court room, or contiguous to it, requested by the prisoner or his or her counsel.

Challenges.

§ 4530. SEC. XV. Every person indicted for a crime or offence which may subject him or her, on conviction, to death, or four years' imprisonment or longer in the penitentiary, may peremptorily challenge twenty of the jurors empannelled to try him or her. And every person indicted for an offence which may subject him or her, on conviction, to imprisonment in the penitentiary for any time less than four years, may peremptorily challenge twelve of the jurors empannelled to try him or her; and the State shall be allowed one-half the number of peremptory challenges allowed the prisoner.

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§ 4531. SEC. XVI. In all other cases the court shall have a panel of twenty-four jurors, of which the prisoner shall have the right to challenge seven peremptorily, and the State five; the remaining twelve shall constitute the jury. In minor offences.

§ 4532. SEC. XVII. On every trial of a crime or offence contained in this Code, or for any crime or offence, the jury shall be judges of the law and the fact, and shall in every case give a general verdict of "guilty" or "not guilty," and on the acquittal of the defendant or prisoner, no new trial shall, on any account, be granted by the court. Jury are judges of law and fact

§ 4533. SEC. XVIII. Every person against whom a bill of indictment is found, shall be tried at the term of the court at which the indictment is found, unless the absence of a material witness or witnesses, or the principles of justice should require a postponement of the trial, and then the court shall allow a postponement of the trial until the next term of the court; and the court shall have power to allow the continuance of criminal causes from term to term, as often as the principles of justice may require, upon sufficient cause shown on oath. Indictments triable at the term when found.

§ 4534. SEC. XIX. Any person against whom a true bill of indictment is found for an offence not affecting his or her life, may demand a trial at the term when the indictment is found, or at the next succeeding term thereafter, or at any subsequent term, by special permission of the court, which demand shall be placed upon the minutes of the court; and if such person shall not be tried at the term when the demand is made, or at the next succeeding term thereafter; *Provided*, that at both terms there were juries empanelled and qualified to try such prisoner, then he or she shall be absolutely discharged and acquitted of the offence charged in the indictment. In cases not capital.

§ 4535. SEC. XX. No *nolle prosequi* shall be entered on any bill of indictment after the case has been submitted to the jury, except by the consent of the defendant. Nolle prosequi.

§ 4536. SEC. XXI. In all criminal cases, the following oath shall be administered to the petit jury, to wit: "You shall well and truly try the issue formed upon this bill of indictment between the State of Georgia and A. B., who is charged (here state the crime or offence) and a true verdict give according to evidence. So help you God." Petit jurors' oath.

Witnesses' oath.

§ 4537. SEC. XXII. The following oath shall be administered to witnesses in criminal cases, viz: "The evidence you shall give to the court and jury upon the trial of this issue between the State of Georgia and A. B., who is charged with (here state the crime or offence) shall be the truth, the whole truth, and nothing but the truth. So help you God."

Oath of witness before grand jury.

§ 4538. SEC. XXIII. And the following oath shall be administered to witnesses intended to be sent before the grand jury: "The evidence you shall give the grand jury on this bill of indictment (or presentment) as the case may be, (here state the case) shall be the truth, the whole truth, and nothing but the truth. So help you God." In every case in this Code, the person whose property has been stolen, injured, destroyed, taken away, or fraudulently converted or conveyed, or whose name has been forged to any instrument, or who has received a personal injury, shall be a competent witness on the trial of the offender or offenders.

Several imprisonments to be in succession.

§ 4539. SEC. XXIV. Where a person shall be prosecuted and convicted on more than one indictment, and the sentences are imprisonment in the penitentiary, such sentences shall be severally executed, the one after the expiration of the other; and the Judge shall specify in each the time when the imprisonment shall commence, and the length of its duration.

Fines—to whom to be paid and for what use.

§ 4540. SEC. XXV. All fines imposed by this Code, not otherwise appropriated by this Code, shall be paid over by the Clerks of the Superior Court to the Ordinary of the county, for educational purposes in such county, except the county of Chatham, where the said fines shall be paid over to the corporation of the city of Savannah, and the Clerks of the Inferior Courts shall keep a fair account of the fines received, and the time when received, and the names of the persons from whom the said fines were collected.

Paid immediately.

§ 4541. SEC. XXVI. Every fine imposed by the court under the authority and by virtue of this act, shall be immediately paid, or within such reasonable time as the court may grant.

Penitentiary at discretion—jury recommendation.

§ 4542. SEC. XXVII. In all cases where the term of punishment in the penitentiary is discretionary, the court shall determine that punishment, paying due respect to any recommendation which the jury may think proper to make in that regard.

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§ 4543. SEC. XXVIII. Every person convicted in any county of this State of any crime or offence punishable with confinement in the penitentiary, shall, as soon as possible after conviction, together with a copy of the record of his or her conviction and sentence, be safely removed and conveyed to the said penitentiary by a guard to be sent therefrom for that purpose, and therein be safely kept during the term specified in the judgment and sentence of the court.

Convicts soon and safely sent to penitentiary.

§ 4544. SEC. XXIX. In all cases where persons are convicted and sentenced to imprisonment in the penitentiary, it shall be the duty of the Clerks of the Superior Courts of the respective counties where such persons may be convicted and sentenced, to inform the principal keeper of the penitentiary immediately thereafter by mail, or by private conveyance where there is no post office in the county, of the conviction and sentence of said convict, and that he or she is detained in the county jail, or under guard, as the case may be, subject to the order of the keeper aforesaid.

Clerk to notify the keeper.

§ 4545. SEC. XXX. The trial of prisoners escaping from the penitentiary shall be had for such escape before the Superior Court of Baldwin county, and prisoners so escaping shall remain in the penitentiary and be treated as other convicts, after their apprehension, until such trial shall take place; and upon such trial, the copies of the records transmitted to the keeper of the penitentiary relative to the former trials of such prisoners, shall be produced and filed of record in the said Superior Court of Baldwin county.

Trials for escapes from penitentiary.

§ 4546. SEC. XXXI. When any person may be convicted of any offence which may subject him or her to confinement in the penitentiary, it shall be the duty of the presiding Judge, by his sentence, to order the convict into custody, to be safely kept in jail; or if there be no jail in the county then in the nearest jail, or under a suitable guard, until he or she shall be demanded by a guard to be sent from the penitentiary for the purpose of conveying such convict to the said penitentiary.

Convicts confined in jail till sent for by penitentiary guard.

§ 4547. SEC. XXXII. No person convicted of a crime in this State shall be allowed the benefit of clergy; and in all cases where the penalty of death is annexed to a crime the convict shall suffer that punishment.

No benefit of clergy.

§ 4548. SEC. XXXIII. The sentence of death shall be executed by publicly hanging the offender by the neck until he is dead.

Death by hanging.

The execution of the sentence shall be in private and witnessed only by the executing officer, a sufficient guard, the relatives of the criminal, and such clergyman and friends as he may desire. The place for such execution shall be provided by the Inferior Court of each county. The Judge passing sentence may order the execution to be in public, if he sees proper, and may in either case take such steps as he thinks best to secure the execution of the sentence and to determine when death supervenes.

Judges to report the defects of the Code.

§ 4549. SEC. XXXIV. It shall be the duty of the Judges of the Superior Courts to make a special report annually to the Governor of this State, previous to the meeting of the General Assembly, and by him to be submitted to the Legislature, of all such defects, omissions, or imperfections in this Code, as experience on their several circuits may suggest.

Crimes to be punished under co-existing laws.

§ 4550. SEC. XXXV. All crimes and offences committed shall be prosecuted and punished under the laws in force at the time of the commission of such crime or offence, notwithstanding the repeal of such laws before such trial takes place.

Limitations of indictments.

§ 4551. SEC. XXXVI. Indictments for murder may be found and prosecuted at any time after the death of the person killed. In all other cases (except murder) where the punishment is death or perpetual imprisonment, indictments shall be filed and found in the proper court within seven years next after the commission of the offence, and at no time thereafter. In all other felonies, the indictments shall be found and filed in the proper court within four years next after the commission of the offence, and at no time thereafter. And in all other cases where the punishment by law is fine or imprisonment, or fine and imprisonment in the common jail of the county, indictments shall be found and filed in the proper court within two years after the commission of the offence, and at no time thereafter; *Provided, nevertheless*, that if the offender shall abscond from this State, or so conceal himself that he cannot be arrested, such time during which such offender has been absent from the State, or concealed, shall not be computed or constitute any part of the said several limitations; *Provided, also*, that no limitation shall run so long as the offender or the offence is unknown; *Provided, further*, that if the indictment is found within the time limited, and for any information shall be quashed or *noll. prosd.*, a new indictment may be found and prosecuted within six months from the time the first is quashed or *noll. prosd.*

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§ 4552. SEC. XXXVII. If, after any convict shall have been sentenced to the punishment of death, he shall become insane, Becoming insane after conviction. the Sheriff of the county, with concurrence and assistance of the Inferior Court thereof, shall summon a jury of twelve men to inquire into such insanity; and if it be found, by the inquisition of such jury, that such convict is insane, the Sheriff shall suspend the execution of the sentence directing the death of such convict, and make report of the said inquisition and suspension of execution to the presiding Judge of the district, who shall cause the same to be entered on the minutes of the Superior Court of the county where the conviction was had. And at any time thereafter, when it shall appear to the said presiding Judge, either by inquisition or otherwise, that the said convict is of sound mind, the said Judge shall issue a new warrant directing the Sheriff to do execution of the said sentence on the said convict, at such time and place as the said Judge may appoint and direct in the said warrant, which the Sheriff shall be bound to do accordingly. And the said Judge shall cause the said new warrant and other proceedings in the case to be entered on the minutes of the said Superior Court.

§ 4553. SEC. XXXVIII. If a female convict sentenced to the punishment of death shall be found pregnant with child, the Female convicts pregnant. Sheriff, with the concurrence and assistance of the Inferior Court, shall select one or more physician or physicians, who shall make inquisition, and if, upon such inquisition, it appear that such female convict is quick with child, the Sheriff shall suspend the execution of the sentence directing the death of such female, and make report of the said inquisition and suspension of execution to the presiding Judge of the district, who shall cause the same to be entered on the minutes of the Superior Court of the county where the conviction was had. And at any time thereafter, when it shall appear to the said presiding Judge that the said female convict is no longer quick with child, he shall issue a new warrant directing the Sheriff to do execution of the said sentence at such time and place as the said Judge may appoint and direct in the said warrant, which the Sheriff shall be bound to do accordingly. And the said Judge shall cause the said new warrant and other proceedings in the case to be entered on the minutes of said Superior Court.

If execution
is not done
at appointed
time.

§ 4554. SEC. XXXIX. Whenever, for any reason, any convict sentenced to the punishment of death shall not have been executed pursuant to such sentence, and the same shall stand in full force, the presiding Judge of the Superior Court where the conviction was had, on the application of the Attorney or Solicitor General of the district, or other person prosecuting for the State, shall issue a *habeas corpus* to bring such convict before him; or if such convict be at large, said Judge or any judicial officer of this State may issue a warrant for his apprehension; and upon the said convict being brought before the said Judge, either by *habeas corpus* or under such warrant, he shall proceed to inquire into the facts and circumstances of the case, and if no legal reason exists against the execution of such sentence, such Judge shall sign and issue a warrant to the Sheriff of the proper county, commanding him to do execution of such sentence at such time and place as shall be appointed therein, which the said Sheriff shall do accordingly. And the Judge shall cause the proceeding in such case to be entered on the minutes of the Inferior Court of the county.

Execution—
within what
time from
sentence.

§ 4555. SEC. XL. Whenever any convict shall be sentenced to the punishment of death, the court shall specify the time and place of execution in such sentence, which time shall not be less than twenty days nor more than sixty days from the time of the sentence, except in the case of a female convict who is quick with child at the time, in which case the court may and shall appoint some day that will arrive after she shall have been delivered of such child.

Offences on
boundary
lines.

§ 4556. SEC. XLI. When an offence shall be committed on the boundary line of two counties, it shall be considered and adjudged to have been committed in either county, and an indictment for such offence may be found and tried in, and conviction thereon may be had in either of said counties.

Death from
an act done
in another
county.

§ 4557. SEC. XLII. When any mortal wound shall be given, or any poison shall be administered, or any other means shall be employed in one county by which a human being shall be killed, who shall die thereof in another county, the indictment shall be found and the offender shall be tried in the county where the act was performed or done from which the death ensued.

Or on soil
ceded to C.
S.

§ 4558. SEC. XLIII. If such wound be given or poison administered upon soil the jurisdiction over which has been ceded to the Confederate States, within the geographical limits of this State,

or within the territory of an adjoining State, and death shall ensue therefrom in any county in this State, the indictment shall be found and the cause tried in the county where the death occurs.

§ 4559. SEC. XLIV. No lunatic or person afflicted with insanity, shall be tried, or put upon his trial for any offence, during the time he is afflicted with such lunacy or insanity, which shall be tried in the manner hereinbefore pointed out, where the plea of insanity at the time of offence is filed, and, on being found true, the prisoner shall be disposed of in like manner.

Lunacy and insanity.

§ 4560. SEC. XLV. No person shall be convicted of an assault with intent to commit a crime, or of any other attempt to commit any offence, when it shall appear that the crime intended, or the offence attempted, was actually perpetrated by such person at the time of such assault, or in pursuance of such attempt.

The attempt never to be indicted.

§ 4561. SEC. XLVI. Upon the trial of an indictment for any offence, the jury may find the accused not guilty of the offence charged in the indictment, but guilty of an attempt to commit such offence, without any special count in said indictment for such attempt; *Provided*, the evidence before them will warrant such finding.

Jury may always find the attempt.

§ 4562. SEC. XLVII. If any person, who has been convicted of an offence, and sentenced to confinement and labor in the penitentiary, shall afterwards commit a crime punishable by confinement and labor in the penitentiary, and be thereof lawfully convicted, such convict shall be sentenced to undergo and suffer the longest period of time and labor prescribed for the punishment of such offence, of which he stands convicted.

Two convictions, longest time.

§ 4563. SEC. XLVIII. On the trial of any convict in the penitentiary for the crimes of escape and mutiny, or either of them, any other prisoner or convict, not included in the same indictment, shall be a competent witness, and the infamy of his character and of the crime of which he has been convicted, shall be exceptions to his credit only.

On trials for escapes and mutiny.

§ 4564. SEC. XLIX. When any person stands indicted for an offence, which, upon conviction, may subject him to the punishment of death or imprisonment in the penitentiary, it shall be the duty of the court to have empannelled forty-eight jurors, from which to select a jury for the trial of such offender, and to continue to furnish such pannels until a jury is obtained.

Empanneling jury.

Talesmen.

§ 4565. SEC. L. Said pannel shall contain the petit jurors already sworn and in attendance, and talesmen summoned by order of the court, indiscriminately and impartially from the citizens of the county.

Putting pannel on prisoner.

§ 4566. SEC. LI. The Clerk shall make out three lists of each pannel, and furnish one to the prosecuting counsel, and one to the counsel for the defence. The Clerk shall then call over the pannel, and it shall be immediately put upon the accused.

Challenge to the array.

§ 4567. SEC. LII. The accused may, in writing, challenge the array for any cause going to show that it was not fairly or properly empannelled, or ought not to be put upon him, the sufficiency of which challenge the court shall determine at once. If sustained, a new pannel shall be ordered; if not sustained, the selection of jurors shall proceed.

Challenges for cause.

§ 4568. SEC. LIII. On calling each juror, he shall be presented to the accused in such a manner that he can distinctly see him, and it shall be then lawful for the State, or the accused, to make either of the following objections, viz :

1. That he is not a free white citizen. resident in the county.
2. That he is over sixty, or under twenty years of age.
3. That he is an idiot, or lunatic, or intoxicated.
4. That he is so near of kindred to the prosecutor, or the accused, or the deceased, as to disqualify him by law, from serving on the jury.

Time when to be made.

It shall be the duty of the court to hear immediately such evidence as may be submitted, (the juror being a competent witness,) in relation to the truth of these objections, and, if he shall be satisfied of the truth of either, the juror shall be set aside for cause, if either one of these objections be true in fact: but, if the fact is unknown to either party, or the counsel of such party, at the time the juror is under investigation, and is subsequently discovered, such objection may be made, and the proof heard at any time before the prosecuting counsel submits to the jury any of his evidence in the case; but if known to the party or his counsel, the objection must be made before the juror is sworn in the case.

Questions on voir dire.

§ 4569. SEC. LIV. On all trials for crimes or offences on the criminal side of the court, where the punishment is death, or imprisonment and labor in the penitentiary, any juror may be put upon his *voir dire*, and the following questions shall be propounded to him, viz : " Have you, from having seen the crime

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committed, or having heard any of the testimony delivered on oath, formed and expressed any opinion in regard to the guilt or innocence of the prisoner at the bar?" If the juror shall answer in the negative, then the following question shall be propounded to him: "Have you any prejudice or bias resting on your mind, either for or against the prisoner at the bar?" And if the juror shall answer these questions in the negative, the following question shall be propounded: "Is your mind perfectly impartial between the State and the accused?" And if he shall answer this question in the affirmative, he shall be adjudged and held a competent juror, in all cases where the offence does not involve the life of the accused; but when it does involve the life of the accused, the following additional question shall be put to him: "Are you conscientiously opposed to capital punishment?" If he shall answer this question in the negative, he shall be held a competent juror: *Provided, nevertheless*, that either the State or the defendant shall have the right to introduce evidence before the Judge, to show that the answers, or any of them, of the jurors are untrue; and it shall be the duty of the Judge to determine upon the truth of such answers as may be thus questioned before the court.

§ 4570. SEC. LV. If a juror shall answer any of these questions, so as to render him incompetent, or he shall be so found by the Judge, he shall be set aside for cause.

§ 4571. SEC. LVI. If found competent and not challenged peremptorily by the State, he shall be put upon the prisoner, and unless challenged peremptorily by him, shall be sworn to try the cause.

§ 4572. SEC. LVII. When a juror has been found competent as aforesaid, no other or further investigation before triers, or otherwise, shall be had, unless upon newly discovered evidence to disprove his answer, or to show him incompetent as aforesaid, which may be heard by the Judge at any time before any of the evidence on the main issue is submitted; and if the juror is proved incompetent, the Judge may order him withdrawn from the jury and cause another selected in the same manner as is above pointed out.

§ 4573. SEC. LVIII. Any person sentenced to confinement and labor in the penitentiary, is and shall be thereby rendered incapable of holding or exercising any public or private office, trust,

power, or authority, and any such held by him shall become and be vacant, by virtue of such sentence.

Joint defend-
ants may
be tried sep-
arately.

§ 4574. SEC. LIX. When two or more defendants shall be jointly indicted for any offence, any one defendant may be tried separately, and if the offence be such as requires the joint action and concurrence of two or more persons, the acquittal or conviction of one, shall not operate as an acquittal or conviction of any of the others not tried, but they shall be subject to be tried in the same manner.

Continuance
by one.

§ 4575. SEC. LX. The continuance of a case by one of several defendants indicted jointly shall in no case operate as a continuance as to the other defendants objecting thereto.

Opprobrious
words may
be proved
in defence.

§ 4576. SEC. LXI. On the trial of any indictment for an assault, or an assault and battery, the defendant may give in evidence to the jury, any opprobrious words, or abusive language used by the prosecutor, or person assaulted or beaten; and such words and language may or may not amount to a justification, according to the nature and extent of the battery, all of which shall be determined by the jury.

Oath of In-
quest of in-
sanity.

§ 4577. SEC. LXII. On the trial of the question of insanity, arising after the person shall have been condemned to die, provided for by section 4562 of this division, the following oath shall be administered to the jury, to wit: "You, and each of you do solemnly swear (or affirm) that you will well and truly try this issue of insanity between the State and A. B., now condemned to die, and a true verdict give according to evidence. So help you God."

In capital
or peniten-
tiary cases.

§ 4578. SEC. LXIII. That on the trial of all cases where the party, if found guilty, would be subjected to confinement in the penitentiary, or any greater punishment, it shall be the duty of the presiding Judge, to have the testimony given in said case taken down; and in the event of the jury returning a verdict of guilty, the testimony shall be entered on the minutes of the court or a book to be kept for that purpose.

Form of sen-
tence.

§ 4579. LXIV. In sentencing a person convicted of an offence subjecting him to penitentiary imprisonment, the judge shall frame such sentence so as to authorize his confinement and labor in the penitentiary of this State, or at such other place or places as the Governor of the State may direct.

§ 4580. SEC. LXV. The Superintendent or principal keeper of the penitentiary shall keep a book, in which shall be entered the names of the convicts sentenced for a term of two or more years; opposite to each name shall be placed by the book-keeper a mark of approbation or disapprobation, according to the conduct of each; and should it appear from this book that the conduct of any one is unexceptionable, then such convict's time of confinement (except confinement for life) shall be shortened two days in each and every month for the time they shall have so served.

Commuta-
tion for good
behavior.

§ 4581. SEC. LXVI. The costs of any prosecution shall not be demanded of any defendant (except the fees of his own witnesses) until after conviction or escape, in either of which cases judgment may be entered up for all costs accruing in the committing or Superior Courts, and by any officer pending the prosecution, on which judgment the Clerk shall issue execution against all the property of the defendant; and such judgment shall have a lien upon such property from the date of the arrest of the defendant. In cases of conviction, the court may nevertheless direct the defendant to be imprisoned until all costs are paid.

Collection of
costs.

Lien of judg-
ment.

§ 4582. SEC. LXVII. If any prisoner in the common jail, after the time of his imprisonment expires, or otherwise, is detained merely until costs are paid, and the Justices of the Inferior Court are satisfied that he is unable to pay the costs, said Justices (the whole court therein concurring) may discharge such prisoner from further confinement.

Discharge of
insolvents
by Inferior
Court.

§ 4583. SEC. LXVIII. No person shall give bail more than twice after indictment or presentment found for the same offence.

Bail taken
only twice.

§ 4584. SEC. LXIX. Upon the failure to appear of any principal in any bond, or recognizance given by a person charged with a penal offence, or by a prosecutor to prosecute, or by a witness to appear and testify, the prosecuting attorney shall proceed to forfeit such bond or recognizance in the manner heretofore practiced in this State.

Proceedings
to forfeit re-
cognizances.

§ 4585. SEC. LXX. The Clerk shall issue a *scire facias* on all forfeited bonds, recognizances, or other obligations, against the principal and his sureties, which shall be served by the Sheriff or his deputy, or by publication, as provided in section 3345, returnable to the next term of such court. And if, at such term, no sufficient cause be shown to the contrary, judgment, on motion, shall be entered against such principal and sureties, or such of them as have been served.

Judgment
against bail.

- Surrender of bail. § 4586. SEC. LXXI. Bail can surrender their principal to the Sheriff in vacation as well as in open court.
- Indefinite imprisonment. § 4587. SEC. LXXII. In all cases where imprisonment in the common jail of the county, by the sentence of the court, is a part or the whole of the punishment, and the offence is such a one where, by this Code, no limit is fixed for the discretion of the court, such imprisonment shall in no case exceed six months, and where no limit is placed on the discretion of the Judge to fine, such fine shall not exceed five hundred dollars.
- Discretionary fine. § 4588. SEC. LXXIII. All offences against the person or property of a citizen, not punishable by fine or imprisonment, or a more severe penalty, may be settled by the prosecutor and offender at any time before verdict, the costs up to the time of settlement being first paid.
- Settlement of minor offences. § 4589. SEC. LXXIV. All other offences must be settled by the prosecutor, with the consent of the court, entered by order on its minutes, and not otherwise.
- Of all others. § 4590. SEC. LXXV. Any officer of court knowingly demanding as costs from a defendant, fees to which they are not entitled, shall be guilty of a misdemeanor, and punished by fine or imprisonment, at the discretion of the court.
- Excessive costs misdemeanor. § 4591. SEC. LXXVI. Two returns of "no bill" by grand juries, on the same charge or accusation, shall be a bar to any future prosecution for the same offence, either under the same or another name, unless such returns have been procured by the fraudulent conduct of the person charged, on proof of which, or of newly discovered evidence, the Judge may allow a third bill to be presented, found and prosecuted.
- Two returns of "no bill" a bar. § 4592. SEC. LXXVII. When costs are not recovered from the defendant, the same shall be paid to the respective officers out of money received for fines, upon orders regularly presented and allowed and entered on the minutes of the court. Such orders, (except those of the prosecuting attorneys,) shall be paid in the order of their date, and all monies arising from fines shall be distributed under an order of the court, to be entered on the minutes at each term. Upon application of the Ordinary, the grand jury may, at any term, require an exhibit from the Solicitor General and Clerk, showing the disposition of all money arising from fines, and the present state of their accounts. The cases on the criminal docket shall be called in the order in which they stand on the docket, unless the defendant be in jail, and the
- Insolvent costs. Order for distribution. Power of grand jury.

State shall be required in every case to announce ready or not ready for trial, before the defendant shall be called on to make such announcement; and in all cases in which the defendant cannot according to law demand a trial, a continuance shall not be granted to the State, except upon a reasonable showing therefor.

FIFTEENTH DIVISION.

OF CONTEMPTS OF COURT. AND ATTEMPTS TO COMMIT CRIMES.

SECTION.

4593. Contempts of court.

SECTION.

4594. Penalty for attempts.

§ 4593. SEC. I. The power of the several courts of law and equity in this State, to issue attachments and inflict summary punishments for contempts of court, shall not extend to any cases except the misbehavior of any person or persons in the presence of the said courts, or so near thereto as to obstruct the administration of justice; the misbehavior of any of the officers of said courts in their official transactions, and the disobedience or resistance by any officer of said courts, party, juror, witness, or other person or persons to any lawful writ, process, order, rule, decree, or command of the said courts.

Power of courts in punishing contempt.

§ 4594. SEC. II. If any person shall attempt to commit an offence prohibited by law, and in such attempt shall do any act towards the commission of such offence, but shall fail in the perpetration thereof, or shall be prevented or intercepted from executing the same, such person so offending shall be indicted for a misdemeanor, and, on conviction thereof, shall, in cases where no provision is otherwise made in this Code, or by law, for the punishment of such attempt, be punished as follows:

Attempts to commit crimes how punished.

First—If the offence attempted to be committed be such as is punishable by law with death, the person convicted of such attempt shall be punished by imprisonment and labor in the penitentiary for any time not less than two years, nor more than seven years.

If the intended offence would have been capital.

Second—If the offence attempted to be committed be punishable by law by imprisonment and labor in the penitentiary for a time not less than four years, the person convicted of such attempt shall be punished by imprisonment and labor in the penitentiary for any time not less than one year, nor more than four years.

If penitentiary 4 years

Division 15.—Of Contempts of Court and Attempts to Commit Crimes.

If penitentiary 2 years, *Third*—If the offence attempted to be committed be such as is punishable by law by imprisonment and labor in the penitentiary for a time not less than two years, the person convicted of such attempt shall be imprisoned in the penitentiary at labor for the term of one year.

If penitentiary 1 year, *Fourth*—If the offence attempted to be committed be punishable by law by imprisonment and labor in the penitentiary for a time not exceeding one year, the person convicted of such attempt shall be punished by fine not exceeding five hundred dollars, or imprisonment in the common jail, or both, at the discretion of the court.

If fine \$500 or imprisonment in jail, or both, *Fifth*—If the offence attempted to be committed be punishable by law by fine not exceeding five hundred dollars, or imprisonment in the common jail, or both, the person convicted of such attempt shall be punished by fine, or imprisonment in the common jail, at the discretion of the court.

SIXTEENTH DIVISION.

PROCEEDINGS IN PRELIMINARY COURTS.

ARTICLE 1. Proceeding prior to arrest.

ARTICLE 2. Of arrest and its consequences.

ARTICLE 3. Of courts of inquiry, commitment and bail.

ARTICLE 4. Of warrants for good behavior and to keep the peace.

ARTICLE 5. Of search warrants.

ARTICLE 6. Of proceedings in cases of bastardy.

ARTICLE I.

PROCEEDINGS PRIOR TO ARREST.

SECTION.

4595. Who may issue warrants.

4596. Form of affidavit.

4597. Form of warrant.

4598. Special warrant.

SECTION.

4599. Of selection of Judge to try cause.

4600. Officer may require bond.

4601. Backing warrant.

Who may issue warrants

§ 4595. SEC. I. Any Judge of a Superior or City Court, any Justice of the Inferior Court or of the Peace, or any corporation officer clothed by law with the powers of a Justice of the Peace, may issue his warrant for the arrest of any offender against the

Article I.—Proceedings prior to Arrest.

Officer may require bond to prosecute.

§ 4600. SEC. VI. The officer issuing a warrant upon any sufficient grounds of suspicion, may require the applicant first to file a bond with sufficient sureties to prosecute the suit, in the event of a committal.

Backing warrants in another county.

§ 4601. SEC. VII. A warrant may be issued in any county where the defendant is, though the crime was committed in another; and a warrant once issued may be executed in any county, being first backed by a judicial officer of such county, substantially as follows:

GEORGIA, } To any lawful officer to execute and return.
County. }

J. P. [SEAL.]

ARTICLE II.

OF ARRESTS AND ITS CONSEQUENCES.

SECTION.

- 4602. Arrest—posse to assist.
- 4603. Arrest—without warrant.
- 4604. Arrest—by private person.
- 4605. Duty of person arresting.
- 4606. Of officer arresting.

SECTION.

- 4607. Following offender.
- 4608. Bench warrant.
- 4609. What constitutes an arrest.
- 4610. Breaking open doors.

Arrest and posse.

§ 4602. SEC. I. Every officer is bound to execute the penal warrants placed in his hands, and to that end he may summon to his assistance, either in writing or verbally, any of the citizens of the neighborhood or county. As the posse of such officer, their acts shall be subject to the same protection and consequences as official acts.

Arrest without warrant.

§ 4603. SEC. II. An arrest may be made for a crime by an officer, either under a warrant or without a warrant, if the offence is committed in his presence, or the offender is endeavoring to escape, or for other cause there is likely to be a failure of justice for want of an officer to issue a warrant.

By private person.

§ 4604. SEC. III. A private person may arrest an offender, if the offence is committed in his presence or within his immediate knowledge; and if the offence is a felony, and the offender is escaping or attempting to escape, a private person may arrest him upon reasonable and probable grounds of suspicion.

Duty of person arresting.

§ 4605. SEC. IV. In every case of an arrest without warrant, the person arresting shall without delay convey the offender before the most convenient officer authorized to receive an affidavit

Article 2.—Of Arrest and its Consequences.

and issue a warrant. And no such imprisonment shall be legal beyond a reasonable time allowed for this purpose.

§ 4606. SEC. V. Every officer arresting under a warrant shall exercise reasonable diligence in bringing the person arrested before the person authorized to examine, commit or receive bail. Of officer arresting.

§ 4607. SEC. VI. If the accused is in the act of escape, any officer having the warrant may pursue and arrest him beyond the limits of the county of which he is an officer; and in such case the accused shall be carried back to the county whence he escaped for examination and commitment. In all other cases the examination shall be had in the county of the arrest, unless by consent of the accused he is carried to the county whence the warrant issued. Following offender.

§ 4608. SEC. VII. A bench warrant is one issued by a Judge of the Superior Court for the arrest of one accused of a crime by a grand jury. Every officer is bound to execute it within his bailiwick, and every person so arrested must be committed to jail until bail is tendered, in which case any judicial officer, or the Sheriff of the county where the accusation was found, may receive the bail, and to this end may fix the amount of the bond and approve the sureties. Bench warrant.

§ 4609. SEC. VIII. An actual touching with the hand is not essential to constitute a valid arrest. If the defendant voluntarily submits to be considered under arrest, or yields on condition of being allowed his freedom of locomotion under the discretion of the officer, the arrest is complete. What constitutes an arrest.

§ 4610. SEC. IX. In order to arrest under a warrant charging a crime, the officer may break open the door of any house where the offender is concealed. Breaking open doors.

ARTICLE III.

OF COURTS OF INQUIRY.

SECTION.

- 4611. Who may hold.
- 4612. Other associates.
- 4613. Time granted parties.
- 4614. Evidence.
- 4615. Abstract of evidence.
- 4616. Witnesses may be recognized.
- 4617. Binding over witnesses.
- 4618. Rule of decision.

SECTION.

- 4619. Commitment.
- 4620. Bail.
- 4621. Waiving trial.
- 4622. May be committed for diff. offences.
- 4623. Disposition of papers.
- 4624. Bail surrendering principal.
- 4625. Bail allowed—how often.
- 4626. Informality no ground of discharge.

Article 3.—Of Courts of Inquiry.

Who may hold. §4611. SEC. I. Any Judge of the Superior or Inferior Court, or Justice of the Peace, or city or town officer who may be *ex officio* Justice of the Peace, may hold a court of inquiry to examine into any accusation against any person legally arrested and brought before him. The time and place of such inquiry shall be determined by him.

Other associates. §4612. SEC. II. The officer before whom the accused is brought may associate with him in the investigation one or more Justices, in which event a majority shall decide all questions. If there are only two presiding, the original Justice shall determine all questions where the court is not agreed.

Time granted defendant. §4613. SEC. III. A reasonable time shall be given to the defendant or prosecutor for the preparation of his case, and in no event shall the defendant be forced to trial without the aid of counsel, if there be a reasonable probability of his securing counsel without too great delay.

Evidence. §4614. SEC. IV. The court shall hear all legal evidence submitted by either party, and shall always permit the defendant to make his own statement of the transaction (not under oath) if he desires to do so. The weight to be given to such statement shall be entirely in the discretion and sound judgment of the court. Whenever such statement is made, it shall be the duty of the court to reduce it to writing, and return it with the other papers to the Superior Court, in the event of a commitment.

Defendant's statement.

Mem. of evidence. §4615. SEC. V. If the charge be of a felony, the court shall cause an abstract of all the evidence to be made and returned as above.

Binding over witnesses. §4616. SEC. VI. In the event of a commitment, the court in its discretion may require the witnesses in behalf of the State or others to give suitable bonds for their appearance at court, with or without sureties, as the circumstances seem to demand.

Attendance of witnesses. §4617. SEC. VII. A court of inquiry shall have power to compel the attendance of all witnesses resident within the county, after notice of twenty-four hours, and to this end may order their arrest.

Rule of decision. §4618. SEC. VIII. The duty of the court of inquiry is simply to determine whether there is sufficient reason to suspect the guilt of the accused, to require him to appear and answer before the Superior Court. And whenever such probable cause exists, it is the duty of the court to commit.

Article 3.—Of Courts of Inquiry.

§ 4619. SEC. IX. The following form, or one in substance the same, shall be deemed a sufficient commitment :

GEORGIA,)
County. (

A. B. having been arrested on a warrant for the offence of _____ and brought before me, after hearing evidence, it is ordered that he be committed for trial for the offence of _____. And the jailor of said county (or any other county, if necessary,) is required to receive and safely keep him until discharged by due process of law. Witness, my hand and seal, this _____ day of _____ 18 _____ J. P. [SEAL.]

§ 4620. SEC. X. If bail is tendered and accepted, no regular commitment need be entered, but a simple memorandum of the fact of bail being taken. A reasonable opportunity shall be allowed every person accused to give bail, and even after commitment and imprisonment, the committing court may order the prisoner brought before him or them, to receive bail, unless such prisoner be a slave or free person of color, in which case see Penal Code for Slaves.

§ 4621. SEC. XI. If the party waives a hearing and tenders bail, a memorandum of these facts shall be entered on the warrant; and this may be done by the party charged before arrest, and when done, shall operate as a supersedeas.

§ 4622. SEC. XII. A court of inquiry may commit for a different offence than that stated in the warrant, if the evidence requires it.

§ 4623. SEC. XIII. The commitment shall be delivered to the officer in whose charge the prisoner is placed, to be delivered with the prisoner to the jailor, and a memorandum of the fact entered on the warrant. The warrant and all the other papers shall be forwarded to the Clerk of the Superior Court, to be delivered to the Solicitor or Attorney General.

§ 4624. SEC. XIV. Bail may surrender their principal in satisfaction to the Sheriff, or in open court, in discharge of themselves from liability and such privilege, shall continue to the day of the term, without liability for costs for a forfeiture of the bond. After forfeiture, and before final judgment, the bail may, at any time, surrender their principal, upon payment of all costs accruing up to that time. The death of the principal at any time before final judgment, shall be equivalent to a surrender.

Article 3.—Of Courts of Inquiry.

Bail but
once.

§4625. SEC. XV. No person shall give bail but once before indictment found, nor more than twice afterwards, before trial. Capital offences areailable only before a Judge of the Superior or three Justices of the Inferior Court, and is, in every case, a matter of sound discretion. All other cases areailable by the committing court. Excessive bail shall never be demanded.

Informality
no ground of
discharge.

§4626. SEC. XVI. No prisoner shall be discharged on writ of *habeas corpus*, because of informality in the commitment, or of the proceedings prior thereto, provided the foregoing provisions of this division have been substantially complied with.

ARTICLE IV.

OF WARRANTS FOR GOOD BEHAVIOR, AND TO KEEP THE PEACE.

SECTION.

1627. Bond for good behavior.
1628. Suit for breach.
1629. Extended from term to term.
1630. Bond to keep the peace.

SECTION.

4631. Breach of the bond.
4632. When revoked.
4633. Extending the bond.
4634. Wife may require it.

Bond for
good beha-
vior.

§4627. SEC. I. Any of the judicial officers before named may, upon the information of others under oath, or on his motion, issue his warrant against any person in the county, whose conduct is such as to justify the belief that the safety of any one or more of the citizens of the county, or the peace or the property of the same is in danger of being injured or disturbed thereby; and upon the return of such warrant, the court, in its discretion, may require from such person a bond with sureties for his good behavior, until the next term of the Superior Court of the county.

Suit for
breach.

§4628. SEC. II. For a violation of such bond, suit may be brought at the instance of any citizen of the county, and one-half the recovery shall be paid to the informer, and the other half be added to the Educational Fund of the county.

Extended
from term
to term.

§4629. SEC. III. Such bond for good behavior may be extended from term to term, by the Superior Court in its discretion: the sureties, like other bail, having the privilege of surrendering their principal. If not extended, it expires with the session of such court.

Bond to
keep the
peace.

§4630. SEC. IV. Upon the information of any person under oath, that he is in fear of bodily harm to himself or his family, from another, or of violent injury to his property, any of the judicial officers, before named, may issue his warrant against such

Article 4.—Of Warrants for Good Behavior.

other person, requiring his arrest; and if, upon the return thereof, the court is satisfied, upon hearing the evidence of both parties, that probable cause for such fear exists, he may require the accused to give bond, with good security, to keep the peace, as against the person, family and property of the affiant: and, on failure to give the bond, shall commit him to jail.

§ 4631. SEC. V. Actual violence, or a menace of violence, or any other act intended and calculated to excite alarm, or to provoke a breach of the peace, shall be a violation of such bond; and for every such act, the party at whose instance it shall be required, shall have a right of action. Breach of the bond.

§ 4632. SEC. VI. If the party requiring the bond, by his own conduct provokes a violation by the other, no recovery shall be had. When provoked.

§ 4633. SEC. VII. The Superior Court may, at any time, discharge the bond, unless there be a motion to extend it, accompanied by evidence to satisfy the court of the necessity of such extension. Extending the bond.

§ 4634. SEC. VIII. A wife may require a bond to keep the peace, or for good behavior against her husband. Wife may require it.

ARTICLE V.

OF SEARCH WARRANTS.

SECTION.

4635. When issued.

4636. How executed.

4637. Goods if found.

SECTION.

4638. Forcible taking of goods.

4639. Binding over offender.

§ 4635. SEC. I. A warrant to search the person or property of another, must issue only upon probable cause supported by oath, and particularly describing the place to be searched, and the person or thing to be seized. When issued

§ 4636. SEC. II. The officer executing such a warrant, may break the door of the house or room specified in the warrant. The warrant is his justification. If it was taken without probable cause, the breaking and search is a trespass on the part of the applicant therefor. How executed.

§ 4637. SEC. III. If the goods are found, the officer shall seize and bring them before the court, who may hear evidence as to ownership and possession, and grant possession to the owner from whom the same have been feloniously taken. Goods if found.

Article 5.—Of Search Warrants.

Forcible taking of goods.

§ 4638. SEC. IV. The forcible taking of goods, if not done with criminal intent, is not probable cause for a search warrant.

Blinding over offender.

§ 4639. SEC. V. Upon the hearing, the court may require the person, in whose possession the goods are found, to give bond for his appearance, to answer either charge for larceny, or receiving stolen goods, as the facts may be.

ARTICLE VI.

OF PROCEEDINGS IN CASES OF BASTARDY.

SECTION.

4640. Proceedings against parents.

4641. Commitment of mother.

SECTION.

4642. Suit on bond.

4643. Deposit of bond.

Proceedings against the mother.

§ 4640. SEC. I. Any Justice of the Peace, in any county within this State, who of his own knowledge, or on information to him on oath, made of any free white woman having a bastard child, or being pregnant with one, which it is probable will become chargeable to the county, he may thereupon cause a warrant, under his hand and seal, directed to the Sheriff or any Constable of said county where the case may arise, and oblige the offender to be brought before him to give security to the Inferior Court of the county in the sum of seven hundred and fifty dollars, for the support and education of such child or children till the age of fourteen years, or to discover on oath the father of such bastard child; which being done, the said Justice shall issue his warrant, in like manner, to bring before him the person sworn to be the father of such child or children so born, or to be born, who, on refusing to give security for the maintenance and education of such child or children until they arrive at the age of fourteen years, and also the expense of lying-in with such child or children, boarding, nursing, and maintenance while the mother of such child is confined by reason thereof; that then it may and shall be lawful for the said Justice to bind over such delinquent in a sufficient recognizance to be and appear before the next Superior Court which may be held in said county; and it shall be the duty of the Attorney or Solicitor General to prefer a bill of indictment, to be laid before the grand jury, to answer to such complaint as may be then and there alleged against him touching the premises.

Against the father.

Article 6.—Of Proceedings in cases of Bastardy.

§ 4641. SEC. II. In case the woman, who shall have been delivered or is likely to be delivered, when brought before a Justice, refuses to discover on oath the father of such child or children so born, or to be born, or give such security to appear before the next Superior Court to be held in and for the said county, and to give such security as may be then and there required of her by the said court, for the maintenance and education, as aforesaid, of the said child or children: that then it shall be lawful for the Justice to commit her, in manner and form aforesaid, as pointed out by this act; and in case of her refusing to make known to the said court the father of such child, or give security as aforesaid, that then it may and shall be lawful for the said court to imprison her not exceeding three months; *Provided, nevertheless*, that nothing herein contained shall be so construed as to bar either party, when charged as aforesaid, from offering exculpatory testimony to the magistrate in the first instance of the charge exhibited, who may exercise his discretionary power, after due inquiry being had, either to discharge or recognize both or either of the parties charged as aforesaid, in conformity to the intent and meaning of this act, anything to the contrary notwithstanding.

Women to be committed who fail to comply with this act.

But they may offer exculpatory evidence.

§ 4642. SEC. III. It shall be the duty of the Inferior Courts in the several counties of this State, when any child has or shall become chargeable to the county where bonds are taken, as above recited, for the maintenance of bastard children, to institute an action on all bonds so taken, and it shall be lawful for them to recover the full amount of said bond or bonds, which judgment or judgments shall remain open, and be subject to be appropriated by the courts aforesaid, from time to time, as the situation and exigencies of the said bastard child may require.

Bonds for the maintenance of bastard children.

§ 4643. SEC. IV. It shall be the duty of the Justice or Justices of the Peace before whom the bond shall be taken, to return such bond to the Clerk of the Inferior Court of the county in which such female shall reside, within thirty days after the same is taken.

How and where bonds are to be returned.

TITLE II.

OF THE PENITENTIARY.

CHAPTER I.

THE PENITENTIARY.

SECTION.	SECTION.
4644. Officers appointed by Governor.	4668. Morals.
4645. Officers appointed by Prin. Keeper.	4669. By-Laws.
4646. Salaries.	4670. Accounts of the State.
4647. Prisoner's clothes.	4671. Conveyance of convicts.
4648. Description of prisoners.	4672. General supervision of Prin. Keeper.
4649. Search of convicts.	4673. Confinement on Sabbath.
4650. Law to be read to convicts.	4674. Book-keeper—duties.
4651. Clothing of convicts.	4675. Drafts and salaries.
4652. Clothing on discharge.	4676. Contingencies.
4653. Labor of convicts.	4677. Suits, by whom brought.
4654. Hours of labor.	4678. Assistant Keeper.
4655. Garden cultivated.	4679. Bonds.
4656. Cleanliness observed.	4680. Oath.
4657. Hospital.	4681. Marked price of goods.
4658. Punishment by officers.	4682. Successors.
4659. Letters to be examined	4683. Officers exempt.
4660. Visitors—permission to.	4684. Lending materials, &c.
4661. Spirituous liquors.	4685. Commissioners.
4662. Lights.	4686. Amount of materials.
4663. Cells.	4687. Physician.
4664. Inspector's duty.	4688. Chaplain.
4665. Confederate States convicts.	4689. Bible, &c.
4666. Bosses.	4690. Costs on escapes.
4667. Duty of Principal Keeper.	4691. Legislative Committee.

§ 4644. The officers for the management of the penitentiary shall be one Inspector, one Principal Keeper, a Book-keeper, a Physician, and a Chaplain, all of whom shall be appointed for one year by the Governor, who may remove at his pleasure and fill the vacancies.

§ 4645. There shall be one Assistant Keeper, and as many overseers, not exceeding four, as the Principal Keeper may deem necessary; all of whom shall be appointed by the Principal Keeper for one year, but removable at his pleasure, and the vacancies filled by him.

§ 4646. For the salaries to be paid to the several officers of the penitentiary, see section 1574.

Officers appointed by the Governor.

Officers appointed by the P. K.

Salaries.

Chapter 1.—The Penitentiary.

§ 4647. The Principal Keeper shall cause the clothes of each prisoner, when received, to be cleansed and carefully kept, to be returned to him on his discharge: or at the request of the prisoner he may sell them and deposit the proceeds with the Clerk, to be paid to the prisoner on his discharge, or, in case of his death before that time, to his legal representatives.

Prisoner's clothes.

§ 4648. The Principal Keeper on the reception of each convict shall enter, in a book kept for that purpose, an accurate description of such convict, giving his name, age, height, color of eyes and hair, complexion, place of nativity, time of conviction, county where convicted, nature of crime, and period of confinement.

Description of prisoners.

§ 4649. He shall also cause such convict to be searched and deprived of any article by which an escape might be effected, and also of all monies in his possession, to be returned on his discharge, or to his legal representatives in case of his death.

Search of convicts.

§ 4650. He shall also read to such convict such parts of the laws of this State as impose penalties for escape, and the rules relating to the conduct of prisoners.

Laws read to convicts.

§ 4651. The following clothing shall be annually furnished to prisoners, viz: one jacket, one vest and one pair of trowsers of kerseys, two pair of shoes, two pair of coarse yarn socks, four shirts, and two pair of trowsers of cotton cloth, with one jacket of the same; the material of the jackets and trowsers to be parti-colored. An additional suit of clothes shall be given to convicts laboring as blacksmiths; also, to each convict a cheap mattress and as many blankets as are necessary.

Clothing to be furnished.

§ 4652. When discharged, each prisoner shall receive a suit of clothes not exceeding ten dollars in value, and money not exceeding the same amount; the Principal Keeper to discriminate in both according to the conduct of the prisoner during his confinement.

Clothing on discharge.

§ 4653. Except on Sunday and when confined in their cells, the prisoners shall be kept at hard labor as far as may be consistent with their age, health and ability, and they shall be so arranged at labor as to be under the constant supervision of the Assistant, or one of the overseers, as far as practicable; and no intercourse between convicts shall be allowed, except such as is necessary for the work on which they are engaged.

Labor.

Supervision.

§ 4654. The hours of labor shall be regulated by the length of the day, allowing not more than forty minutes for meals.

Hours of labor.

- Garden. § 4655. A garden shall be attached to the penitentiary and worked by the convicts, the vegetables to be for their use.
- Cleanliness. § 4656. The walls of the cells and other apartments of the prison buildings shall be washed with lime at least once a year; the floors shall be kept neat and clean, and the building fumigated and purified with chloride of lime as often as the Physician shall deem necessary.
- Hospital. § 4657. A hospital shall be provided for the sick, and a convict, seriously ill at the expiration of his term, shall have the privilege of remaining until his recovery.
- Punishment by officers. § 4658. For violation of rules or by-laws, the prisoner shall be punished at the discretion of the Principal Keeper, the concurring assent of the Inspector being necessary for the infliction of corporal punishment.
- Letters, &c. § 4659. All letters or other things to or from the convicts shall pass through the hands of the Principal Keeper, and may be inspected and withheld by him in his discretion.
- Visitors. § 4660. Visitors must have the permission of the Principal Keeper, and must be attended while in the penitentiary by a keeper or guard. A wife of a convict may be allowed to visit him under such rules as the Principal Keeper may adopt.
- Spirituous liquors. § 4661. Spirituous liquors shall be allowed to a convict only by prescription of the Physician.
- Lights. § 4662. No light shall be allowed in cells after they are locked for the night.
- Cells. § 4663. Prisoners shall be kept in separate cells, and prisoners of different sexes shall at all times be kept separate and apart. The cells shall be numbered and divided into wards, over each of which shall be an overseer. The overseer shall search the cell and prisoner every night to prevent escape.
- Inspector's duty. § 4664. The Inspector shall purchase all materials which shall be needed by the Principal Keeper for the use of the penitentiary, and when delivered, shall take his receipt for the same. At stated times he shall advertise in two of the gazettes at the capital for sealed proposals to furnish wood, stock and coal. He shall purchase provisions and stores for the prisoners and guard, when required in writing by the Principal Keeper, and at no other time. With the assistance of the Principal Keeper, he shall price all articles made in the penitentiary. He shall make an annual return to the Governor on the first day of October of each year, showing all of his acts connected with his office.

Chapter 1.—The Penitentiary.

§ 4665. The Inspector shall have power to regulate the terms on which convicts sentenced by the courts of the Confederate States for the circuit and district of Georgia shall be admitted in the penitentiary. C. S. convicts.

§ 4666. The Inspector may employ suitable persons to give necessary instructions in such branches of work as require such skill and knowledge as no convict possesses. Bosses.

§ 4667. The Principal Keeper shall deliver all manufactured articles to the book-keeper, taking duplicate receipts therefor, specifying the prices assessed by the Inspector. He shall also make an annual return to the Governor on the first day of October, showing the amounts of materials, &c., received, and of manufactured articles delivered to the book-keeper, and also the amount of materials and unfinished work on hand. Principal Keeper's duty.

§ 4668. He shall carefully note the moral conduct of the prisoners, and furnish them with such moral and religious books as he thinks proper. Morals.

§ 4669. Together with the Inspector, the Principal Keeper may make all necessary by-laws and regulations for the successful working and government of the institution. By-laws.

§ 4670. The order of the Governor shall be sufficient voucher for any article, work or labor, needed by the State, and the book-keeper shall keep a regular account of the same. Accounts of the State.

§ 4671. The Principal Keeper shall make all necessary arrangements for the conveyance of convicts to the penitentiary, and may draw on the book-keeper for the funds necessary to defray all such expenses. Conveyance of convicts.

§ 4672. The Principal Keeper shall have a general superintending power over the institution, and shall be responsible for the conduct of all officers under his command. He may enlist his own guard, not exceeding three officers, with as many men as necessary, and at such wages as may be agreed on, and may dismiss them again at his pleasure. General Supervision of Principal Keeper.

§ 4673. The Principal Keeper may exercise his discretion as to the time the convicts shall be confined on the Sabbath day. Confinement on Sabbath.

§ 4674. The book-keeper shall sell all manufactured articles at the prices assessed as aforesaid, and collect all debts due to the institution, and shall make a quarterly return to the Governor showing the exact condition of his department. Book keeper's duty.

§ 4675. The debts contracted by the Inspector as aforesaid, shall be paid upon the drafts of the Principal Keeper or the Drafts.

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book-keeper. The salaries of the several officers, overseers and guard shall be paid quarterly by the book-keeper in accordance with the pay-roll made out and certified by the Principal Keeper.

Contingencies.

§ 4676. The book-keeper shall also pay incidental and contingent expenses of the institution upon the presentation of the accounts audited and certified by the Principal Keeper.

Suits.

§ 4677. The book-keeper is authorized to commence suit in his own name, officially, for any debt or cause of action occurring to the penitentiary.

Assistant Keeper and overseer.

§ 4678. The Assistant Keeper, and overseers shall alternately remain within the penitentiary during the night, to superintend the guard in such manner as the Principal Keeper shall direct. During the day they shall remain in their respective departments, superintend the labor of the convicts, and discharge all such duties required of them by the Principal Keeper as shall tend to the safe keeping of the prisoners, the preservation of the buildings and other property of the institution, and the successful operation of the same.

Bonds.

§ 4679. The Inspector, Principal and Assistant Keeper and book-keeper, before they enter upon the discharge of their respective duties shall give bond and good security to the Governor and his successors, in such sums as may be designated by him, for the faithful performance of their respective duties.

Oath.

§ 4680. The said officers shall also take and subscribe the following oath: "I, _____, do solemnly swear that I will diligently execute all the duties lawfully required of me, as an officer of the penitentiary, and will carry into execution the laws and regulations for the government of the same, to the best of my knowledge and ability. And I will, on no occasion, ill-treat or abuse any prisoner under my care, beyond the punishment accorded by law, or the rules and regulations of the penitentiary. So help me God."

Reducing marked prison.

§ 4681. The Principal Keeper and Inspector may at any time reduce the marked price of any article offered for sale, if satisfied from any cause, the mark is above its market value, and notify the book-keeper of such charge.

Successors.

§ 4682. The Principal Keeper and book-keeper shall deliver to their successors all the property of the institution of every kind in their charge, taking receipts therefor.

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§ 4683. The officers of the penitentiary shall be exempt from militia duty in time of peace, and from jury, patrol, road and corporation duty at all times. Exemption of officers.

§ 4684. No officer of the penitentiary shall sell or loan any of the tools, materials, or products of the garden. The Principal Keeper may sell old and useless materials, accounting for the same to the book-keeper. Lending or selling materials.

§ 4685. The Governor shall appoint three commissioners annually, who shall take an inventory of the stock of the penitentiary, with an appraisal of its present value. Annual appraisalment.

§ 4686. The Assistant Keeper shall keep a set of books on the system of double entry, in which shall be kept a full and correct account of all purchases made, a proper record of all the raw material consumed in the various work-shops, as well as of all the manufactured articles, cash, and job work turned over to the book-keeper for sale. He shall also take charge of the storehouse containing the materials, and issue the same to the different overseers of the work-shops, charging every item used to the appropriate shop. Amount of raw materials.

§ 4687. The physician to the penitentiary, appointed by the Governor, shall visit all the sick of the prisoners and guard at least once every day and before ten o'clock, A. M.—and oftener if necessary or desired by the Principal Keeper. He shall also, at least once every week, inspect the institution generally in whatever may affect its healthfulness. Physicians.

§ 4688. The chaplain appointed by the Governor shall preach to the convicts at least once every Sabbath day, and give them such other religious instruction as their condition may require. Chaplains.

§ 4689. The Governor shall cause to be furnished to each convict a Bible and hymn book, to remain in his cell, and upon his discharge he shall be permitted to carry the same away with him. Bible, &c.

§ 4690. The expenses of all trials for escapes from the penitentiary, or attempts to escape, shall be paid by the State. Costs on escapes.

§ 4691. A joint committee of both branches of the Legislature shall be appointed at each session to investigate closely into the affairs of the penitentiary, and report thereon; and all the officers of the said institution shall furnish said committee all the assistance and information within their power. Legislative committee.

Article 1.—General Principles.

TITLE III.

PENAL CODE FOR SLAVES AND FREE PERSONS OF COLOR.

CHAPTER I.

PENAL CODE FOR SLAVES AND FREE PERSONS OF COLOR.

ARTICLE 1. General principles.

ARTICLE 2. Capital offences.

ARTICLE 3. Offences not capital.

ARTICLE 4. Trial of offences.

ARTICLE 5. Bail—when allowed.

ARTICLE I.

GENERAL PRINCIPLES.

SECTION.

4692. Definition in Penal Code.

4693. Provisions of Penal Code.

4694. Insane offender.

4695. Principal and accessory.

4696. Principal in second degree.

4697. Offences committed under coercion.

SECTION.

4698. Confessions to a master and guar'n.

4699. Master competent witness.

4700. Master may control defence.

4701. Employment of counsel.

4702. Proceeding on indictment, &c.

4703. No second punishment.

Definitions.

§ 4692. All definitions of the Penal Code, so far as the same are applicable to offences committed by slaves and free persons of color, shall be held and taken as embraced and made a part of this Code.

Exceptions for want of capacity, &c.

§ 4693. The age or capacity, and the exceptions as to insane persons and idiots, the provisions as to drunkenness, misfortune, or accident, and crimes committed under fear or threats, shall be held applicable to slaves and free persons of color.

Idiot or insane person.

§ 4694. If a slave or free person of color is found by a jury to be an idiot or insane, and for that cause is discharged from prosecution for a capital offence, the presiding Judge shall pass such order for his future confinement as shall protect the community from his future acts, the expenses of such confinement shall be paid by the owner, if a slave, and out of the estate of the free person of color, if he has any.

Article 1.—General Principles.

§ 4695. A slave or free person may be a principal in the second degree, or accessory either before or after the fact, to crimes committed by white persons, or by other slaves or free persons of color, and in all cases the punishment shall be regulated under the provisions of sections five and six of the second divisions of the Penal Code. Principal or accessory.

§ 4696. A slave shall never be punished for any offence not capital which was committed under the coercion, order, threats or persuasion of his master or the person having control over him, if it shall clearly appear that the act was entirely the result of such influence, and not from any criminal intent. Coercion.

§ 4697. The confessions of a slave or free person of color, made to his master or guardian under the order of such master or guardian, shall not be held as voluntary confessions, or admitted in evidence as such, nor shall confessions made by a slave to a master be admitted at all, nor shall confessions made by a slave or free person of color, under punishment or the threat of punishment, be held admissible as evidence in any case. Confessions.

§ 4698. The rules of evidence in the trial of slaves and free persons of color, shall be the same as in the trial of white persons; other slaves and free persons of color shall be competent witnesses, if otherwise unobjectionable. Confessions to master.

§ 4699. The master shall, in all cases, be a competent witness for or against his slave. Master witness.

§ 4700. In all trials of slaves, the master shall control the defence of his slave, (unless the court in its discretion pass an order directing the defence to be controlled by others,) and all motions, demands, consents, bonds, bail, or other proceedings necessary to the defence, may be made by the master or his attorney. Defence.

§ 4701. If the master fails to employ counsel for the defence of his slave, charged with a capital offence, the court shall appoint counsel, and the master shall be responsible for reasonable fees to such counsel thus appointed, unless he shall personally, or by attorney, disclaim all desire to defend; in the latter case the court shall enter such disclaimer on its minutes, and the slave, if acquitted, shall be the property of the counsel defending him. Employment of counsel.

§ 4702. The proceedings on indictments against slaves and free persons of color for capital offences, the empanneling of juries, and all other proceedings usual in such cases to final execution, shall be the same as prescribed in the penal code for white persons. Proceedings.

Article 1.—General Principles.

No second
punishment.

§ 4703. No slave shall be tried twice for the same offence, nor shall a slave be punished under a legal process for an offence not capital, when he has already received punishment by consent of the master and the person aggrieved by his act.

ARTICLE II.

CAPITAL OFFENCES.

SECTION.

4704. Capital offences.
4705. Insurrection defined.
4706. Attempt to excite an insurrection.
4707. Administering poison.
4708. Offences which may be capital.

SECTION.

4709. Conviction for minor offences.
4710. Punishment for manslaughter
4711. Provocation to a slave.
4712. Self-defence.
4713. Pardoning power.

Capital of-
fences.

§ 4704. The following offences, when committed by a slave or free person of color, shall be punished, on conviction, with death, viz: Insurrection, or an attempt to excite it; murder, poisoning with intent to kill, and rape upon a free white female.

Insurrec-
tions.

§ 4705. Insurrection shall consist in any combined resistance to the lawful authority of the master or the State, with intent to the permanent denial thereof, when the same is manifested or intended to be manifested by acts of violence—the mere resistance of a slave, or his attempt to escape, or actual escape, from the master, shall not constitute insurrection.

Attempt to
excite.

§ 4706. Any attempt, by threats, persuasion, or otherwise, to induce other slaves to join in an insurrection in existence or contemplated, shall constitute an attempt to excite an insurrection.

Administer-
ing poison.

§ 4707. The administering of poison to a free white person with intent to kill, shall constitute the offence specified in this article, although the poisoning failed of its effect from any cause.

Offences
which may
be capital.

§ 4708. The following offences, when committed by a slave or free person of color, shall be punished in the discretion of the court, either by death or such other punishment as the court may prescribe, proportionate to the offence and calculated to prevent the occurrence of like offences in future, viz: Attempt to commit a rape upon a free white female; assaulting a free white person with intent to murder or with a weapon likely to produce death; maiming a free white person; arson of any description; attempting to administer poison to any human being, or

Article 2.—Capital Offences.

actually poisoning a slave or free person of color with intent to kill.

§ 4709. If a slave or free person of color is charged with a capital offence, but is convicted of a minor offence, the court shall proceed to sentence the prisoner for such minor offence according to the laws of this State. If the grand jury find a true bill for a minor offence the court shall remit the case to the committing court.

§ 4710. If a slave be convicted of voluntary manslaughter, either of a white person or of another negro, part of the punishment shall be branding in a conspicuous place with the letter "M."

§ 4711. Obedience and submission being the duty of a slave, much greater provocation is necessary to reduce a homicide of a white person by him to voluntary manslaughter, than is prescribed for white persons; in every case the question must be for the jury to decide whether the provocation was such as to justify uncontrollable passion in one accustomed to obedience and submission.

§ 4712. Self defence is the right of every human being where his own life is unlawfully endangered. In the case of a slave, it must clearly appear that the act done was in defence of his life and not in a spirit of revenge. Self defence, or defence of his master or family, is the only justification of a homicide by a slave.

§ 4713. The Governor of the State shall have the full pardoning power over all offences committed by slaves.

ARTICLE III.

OFFENCES NOT CAPITAL.

SECTION.

4714. Minor offences specified.
4715. Offences not named in the Code.
4716. Offences by free persons of color.

SECTION.

4717. Punishment of free negroes.
4718. Discretionary punishment.

§ 4714. The following offences defined in the Penal Code shall also be offences punishable in a slave or free person of color, viz: assault upon any person, free or slave; assault with intent to murder another free person of color; battery upon the same; kidnapping a free person; inveigling and kidnapping a free

Article 3.—Offences not Capital.

white child; stabbing a slave or free person of color; robbery; larceny; forgery; perjury; rescue; aiding in escape; conspiracy; receiving stolen goods; unlawful assemblies; riot; affray; keeping gaming houses or tables; gambling, and every specification of malicious mischief.

Offences not named in the Code.

§ 4715. In addition to the foregoing, the following shall be offences when committed by slaves or free persons of color, viz: furnishing spirituous liquors to other slaves or free persons of color; concealing or harboring runaway slaves; furnishing permits or free papers to a slave or slaves; teaching or instructing a slave or free person of color in the knowledge of any poisonous root, plant or herb, or other poison; administering medicine, or pretended medicine, to a slave, except by authority of the master or employer, or under the direction of a physician; carrying fire arms or other deadly weapons, except in the company of a white person at least sixteen years of age, or else about the business of the master or employer; purchasing from or selling to other slaves any article or thing not usually manufactured or sold by slaves, without a permit from his master or employer; aiding or assisting in any manner in bringing into the State or circulating any insurrectionary document of any kind whatever; teaching other slaves or free persons of color to read or write; indecent or disorderly conduct in the presence and to the annoyance of free white persons; insolent or improper language to a white person.

Offences by free negroes.

§ 4716. The following shall be offences when committed by free persons of color, viz: Vagrancy; using false weights and measures; immigrating into the State in violation of its laws; violating quarantine; inveigling and enticing away any slave or slaves, for the purpose and with the intention to assist in the escape of such slave to another State; and failing to register their names as required by law.

Punishment for immigrating into this State.

§ 4717. The punishment of a free person of color for immigrating into this State, in violation of its laws, shall be sale into perpetual bondage—to be had on conviction under the direction of the court—the proceeds to be paid into the Educational Fund of the county. Five years quiet residence shall bar an indictment.

Discretionary punishment.

§ 4718. The punishment for all other offences specified in this article shall be in the discretion of the court before which the trial is had. It shall not extend to life, limb or health, nor be cruel in its nature, but shall be proportioned to the offence, keeping

Article 3.—Offences not Capital.

in view the principles of humanity, and have for its chief object the deterring of the offender and all others from a repetition of the offence. The court may order free persons of color hired to the highest bidder in order to raise money to pay any fine (not exceeding three hundred dollars,) which may be imposed by the court.

ARTICLE IV.

TRIAL OF OFFENCES

SECTION.

4719. Capital offences—trial of.
 4720. Investigating court—duty of.
 4721. Proceedings.
 4722. Attendance of witnesses.
 4723. May be required to give bond.

SECTION.

4724. Trial of minor offences.
 4725. Sentence.
 4726. Jailor's duty.
 4727. *Custorari*.
 4728. Discretion of Judge.

§ 4719. All capital offences, or offences which may be capital, shall be tried before the Superior Court of the county where the offence was committed. All other offences shall be tried by the special court hereinafter provided. Capital offences where tried.

§ 4720. If it appears to the investigating court that the offence may be capital, the prisoner shall be committed to the common jail of the county, or some secure jail, (unless the Justices see proper to receive bail from the master or guardian,) and the Justices shall send the papers to the Clerk of the Superior Court to be delivered to the Solicitor General. The grand jury may indict or present, however, without this preliminary investigation. Duty of investigating court.

§ 4721. The proceedings on trials in the Superior Court shall be the same as in other criminal cases, except so far as modified by this Code. Proceedings.

§ 4722. Whenever a slave is a witness in any cause, the court trying the cause, or the Clerk, previous to the trial, may issue a subpoena directed to the master or employer, or person having control of such slave, requiring him to produce the slave at the time and place of trial to testify in the cause; and on failure to comply with such subpoena the court may order the arrest of such slave, in addition to attaching for contempt the person failing to comply with the subpoena. Witnesses compelled to attend.

§ 4723. If a slave is a material witness in a capital case, the investigating court may require the master or employer of the Bond may be required.

Article 4.—Trial of Offences.

slave to give bond for his appearance to testify in the Superior Court, and on failure to give such bond, the court may order such witness to be imprisoned until the court sits.

Trial of minor offences. § 4724. Over all minor offences, any three or more Justices of the Peace of the county where the alleged offence was committed, or the Mayor, or Recorder, or Intendent of any incorporated city or town in which the offence was committed, shall have jurisdiction. Any one of them on complaint made on oath, or information officially given, may issue a warrant for the arrest of the slave or free person of color charged with the offence, and the subsequent proceedings shall be the same as in ordinary courts of inquiry.

Execution of sentence. § 4725. The judgment or sentence of the court shall be executed by the Constable or Marshal, or any other person specially designated by the court.

Jailor's duty. § 4726. The jailor shall receive and safely keep any prisoner under execution, in accordance with the decision of the court. The jailor's fees and all the costs of trials shall be paid by the owner of the slave, or the guardian of the free person of color. If the latter refuses to pay such costs, the free person of color may be hired out until the money is raised for such purposes.

certiorari. § 4727. If either the prosecutor or owner of the slave or his agent, or guardian of the freeman, shall be dissatisfied with any decision, judgment, or sentence of the court trying a minor offence, he may file written exceptions to such decision, judgment or sentence, which, if true, shall be allowed and signed by the court, and when such exceptions are filed and allowed, the court shall postpone the execution of the sentence for ten days, to allow the party to apply to the Judge of the Superior Court for a writ of *certiorari*. If the writ is granted, the sentence shall be suspended till final judgment on such writ, and a new trial, if granted, may be had before the same or other Justices. In the meantime, the owner or guardian shall give bond and security for the forthcoming of the prisoner, or he shall be committed to jail.

Discretion of Judge. § 4728. On hearing such writs of *certiorari*, the Judge of the Superior Court may either grant a new trial or else pass such judgments or sentence, as, in view of the whole case, is consistent with justice and the principles of this Code.

Article 5 —Bail—when Allowed.

ARTICLE V.

BAIL—WHEN ALLOWED.

SECTION.

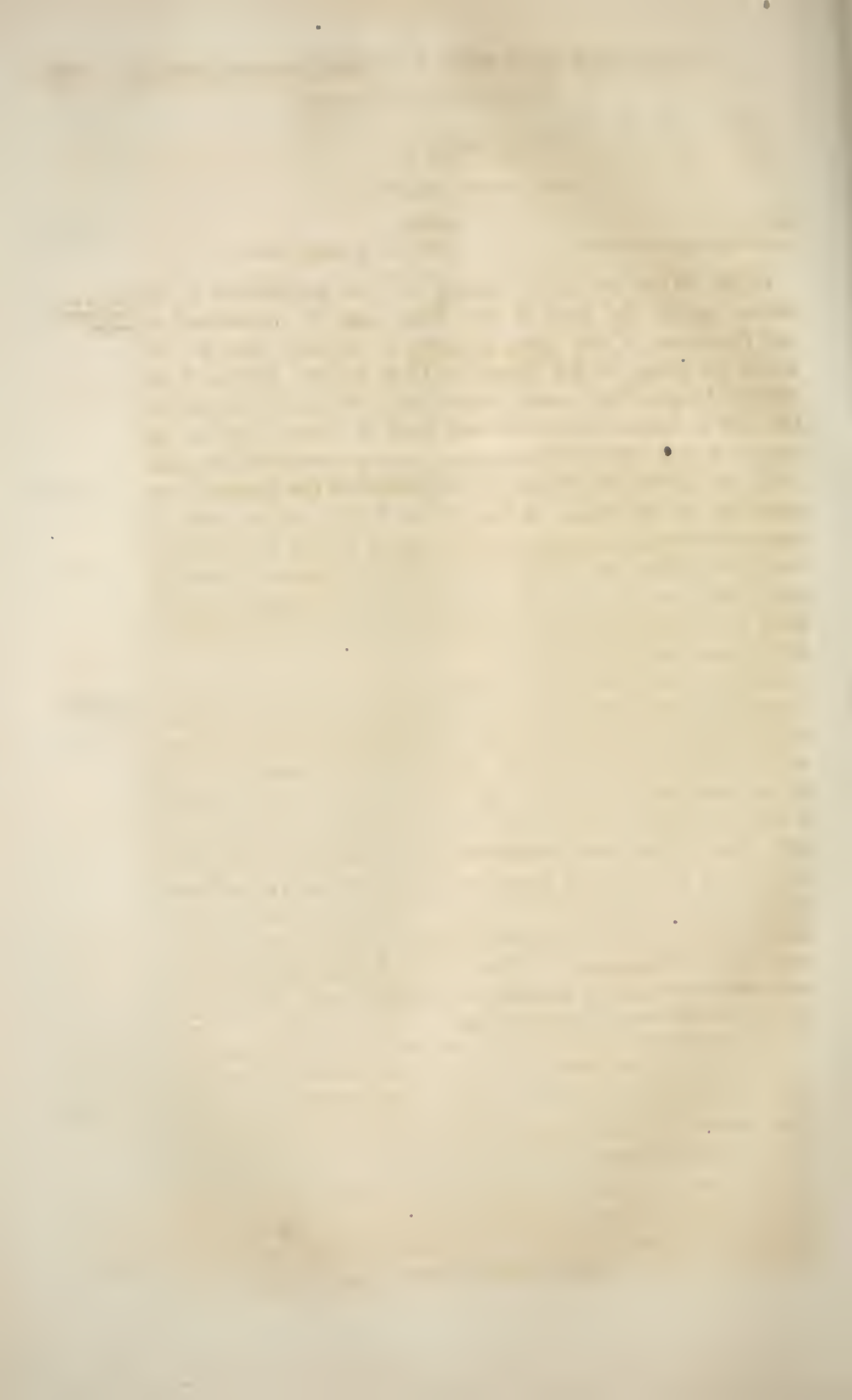
4729. Bail after commitment.

SECTION.

4730. Bail pending *certiorari*.

§ 4729. When any slave, charged with the commission of any offence against the laws of this State may be committed to jail, the owner of said slave, his agent or attorney, may sue out before the Judge of the Superior Court, or any Justice of the Inferior Court of the county where such offence was committed, the writ of *habeas corpus* for such slave or slaves; and on the return of such writ of *habeas corpus*, as now directed by law, such Judge of the Superior Court, or the Justices of the Inferior Court presiding on the return of the writ of *habeas corpus*, may, in their discretion, admit such slave or slaves to bail, in a sum not less than double the value of such slave or slaves; *Provided*, such Judge or Justices shall be of the opinion that if such offence or violation had been committed by a white person, it would be bailable, and not otherwise.

§ 4730. In all cases where a slave or free person of color, is charged with an offence not punishable by loss of life or limb, and in all cases where the sentence of the Magistrates trying a slave, or free person of color, for any offence, does not extend to loss of life or limb, and a *certiorari* has been procured to such sentence, it shall be lawful for the owner, agent, employer, or guardian of such slave or free person of color to bail, such slave or free person of color, by giving a bail bond, in the usual form, with sufficient securities, in a sum equal to twice the value of such slave or free person of color, to the Magistrates issuing the warrant against such slave or free person of color; who is hereby required, when such bond and security is given, to discharge such slave or free person of color from imprisonment.



APPENDIX.

LAWS HAVING REFERENCE TO THE CITY OF SAVANNAH.

- ARTICLE 1. The city of Savannah.
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ARTICLE I.

THE CITY OF SAVANNAH.

SECTION.

4731. The city as a corporation.
4732. Mayor and Aldermen.
4733. Election of Mayor and Aldermen.
4734. In case of a tie.
4735. Organization after new election.
4736. Chairman shall be elected.
4737. Rules and regulations.
4738. Compensation of Mayor.
4739. Mayor and Aldermen—eligibility.
4740. Qualification of voters.

SECTION.

4741. Election and hours of voting.
4742. Registry of voters.
4743. Manner of registering names.
4744. Clerk's duty.
4745. List of votes to be furnished.
4746. Oath to be administered to voters.
4747. Voting illegally.
4748. Creating riot, &c.
4749. Posse may be called out.

§ 4731. The city of Savannah, as a corporation, shall continue to exist under the name and style of the Mayor and Aldermen of the city of Savannah; and by its corporate name may sue and defend in any case where a natural person might.

Style of the city as a corporation.

Article 1.—The City of Savannah.

- Mayor and Aldermen—Election and term of office. § 4732. The board of Mayor and Aldermen of said city shall consist of a Mayor and twelve Aldermen, to be chosen by ballot on the second Monday in October, annually, by votes of those entitled to vote at such elections; and the board of Mayor and Aldermen shall hold their offices until their successors are duly elected and qualified. A quorum for business shall consist of seven Aldermen and the Mayor, or presiding chairman, except in the months of July, August, September and October, when a majority of the Aldermen in the city shall suffice.
- A quorum.
- Mayor and Aldermen—how elected. § 4733. The Mayor and the Aldermen shall be separately designated on the ticket; and the candidate for Mayor receiving a majority of the votes for that office, shall be declared elected; and the twelve who shall receive the highest number of votes for Aldermen shall constitute the board of Aldermen; *Provided*, that, should there be a failure to elect twelve Aldermen by reason of several candidates receiving the same number of votes, then those elected shall proceed at their first meeting, and after their qualification, to elect the number necessary to constitute twelve, out of such number as shall have received the equal number of votes as aforesaid.
- In case of a tie.
- In case of a tie in election for Aldermen. § 4734. In case of a tie in the vote for Mayor, or if there be more than two candidates for Mayor, and no candidate shall receive a majority of all the votes for that office, the board of Aldermen, after having completed its own organization, shall elect the Mayor from among those who were candidates before the people for the office of Mayor; and in case of a vacancy in the office of Mayor, by death, resignation, or otherwise, the board of Aldermen shall elect from their own body a Mayor for the residue of the term; and, in case of a vacancy in the office of Alderman, from any cause, it shall be lawful for the board to fill the vacancy, the person chosen having a majority of the votes of Aldermen present.
- Vacancy—how filled.
- Newly elected Mayor and Aldermen—organization and oath. § 4735. The newly elected Mayor and Aldermen shall meet on the first Monday after their election, for organization; and each Alderman shall take the following oath: "I do solemnly swear (or affirm) that I will faithfully execute the duties of an Alderman of the city of Savannah, according to the laws of the State and the ordinances of the city, to the best of my ability and understanding." The same oath shall be taken by the Mayor, substituting the word "Mayor" for "an Alderman."
- A chairman shall be elected. § 4736. When organized according to law, the board shall elect a chairman, who shall, in case of the absence, death or resignation of the Mayor, be vested with all his power and authority, and execute all the duties pertaining to the office; and, in the absence of both, a chairman *pro tempore*, chosen by the board, shall have the like power and authority.
- Rules and regulations. § 4737. The Mayor and Aldermen shall have power, from time to time, to adopt all rules and regulations for their own government, and the orderly dispatch of business.

Article I.—The City of Savannah.

§ 4738. The Mayor shall receive such salary or compensation for his services, payable out of the City Treasury, as the City Council may determine. Compensation of Mayor.

§ 4739. No person shall be eligible to the office of Mayor or Alderman of Savannah, who is not, at the time of election, a citizen of the Confederate States, and shall not have resided in the State of Georgia for one year immediately preceding the election, and continued to do so up to the time of election, and within the corporate limits of Savannah, at least six months immediately preceding the election; and who shall not have paid all city taxes, or have, in his own right, sufficient real estate to satisfy all such taxes. Eligibility of Mayor and Aldermen.

§ 4740. All persons shall be qualified to vote at elections for Mayor and Aldermen of the city of Savannah, who are citizens of the Confederate States, have resided in this State for one year immediately preceding the election, and continued to do so up to the time of election, and within the corporate limits of Savannah for one month immediately preceding their registration, and four months before the election, who have attained the age of twenty-one years, and have paid all city taxes, or have, in their own right, sufficient real estate to satisfy any tax executions which may be issued against them; who shall have made all returns required by the ordinances of the city, and have been registered according to law. Qualification of voters.

§ 4741. Elections for Mayor and Aldermen of Savannah shall be held at the court-house in said city, between the hours of seven in the morning and six in the afternoon, under the superintendence of the Justices of the Inferior Court of Chatham county, and the Justices of the Peace in said city, or any three or more of them; but no person holding an office of profit or emolument under the corporation of Savannah, shall be competent to preside; and it shall be the duty of the presiding Magistrates to certify the result of all such elections, on tally sheets for that purpose to be made out, which tally sheets shall be delivered to the Mayor, or Clerk of Council, three days before the first meeting of the board elect. Elections—when held

§ 4742. The Clerk of the Common Council of the city of Savannah, and, in case of his sickness or absence, any officer duly elected and appointed by the Mayor and Aldermen, or a majority of them, for that purpose, shall open a list for the registration of voters on the first Monday in January of each and every year, which list shall be kept open until two o'clock in the afternoon of the first Monday in September ensuing, when it shall be finally and absolutely closed. Registry of voters.

§ 4743. It shall be the duty of such clerk or officer, upon the application, in person, and not by proxy, of any person entitled to vote as aforesaid, within the time prescribed for the list to be kept open, to register the name of such person, expressing in such registry his name, age, occupation or business, and the place of Manner of registering and description of person.

Article 1.—The City of Savannah.

his residence in the city of Savannah, which shall be entered by the clerk or officer on said list, opposite the name of each applicant—the applicant first paying to the Clerk of Council, or other officer as aforesaid, for the City Treasury, the sum of one dollar, which shall be in lieu of the poll tax now paid; but no person shall be entitled to registry, when his continued residence within the State cannot be one year, and within the corporate limits four months, immediately preceding the election. The Clerk may, in any case, administer an oath to the applicant, touching his right to be registered.

Applicant
may be
sworn.

Duty of the
Clerk.

§ 4744. It shall be the duty of said clerk, or other officer, to arrange and publish a list of the names so registered in alphabetical order, in one of the gazettes in the city of Savannah, at least once a month from the first Monday in January to the Tuesday after the first Monday in October in every year, and to affix and keep an alphabetical printed list of the names of all registered voters at the door of the court-house and the Exchange in Savannah, for one week from the Tuesday after the first Monday in October of every year; but, in said list, it shall not be necessary for said clerk to publish the age, business, or place of residence, of such voter.

A list of the
names reg-
istered to be
furnished
managers.

§ 4745. It shall be the duty of the Clerk of Council to furnish to the Magistrates presiding at the election of Mayor and Aldermen of Savannah, at the opening of the polls on the day of said election, a complete list of all the names, arranged in alphabetical order, which shall have been registered according to the foregoing provisions, together with the age, occupation, or business, and place of residence in Savannah, of every person whose name is so registered at the time of such registration, certified under the hand of said clerk, and the corporate seal of Savannah, which list shall be kept before the presiding Magistrates during such election; and, when said election is over, it shall be deposited in the office of said Clerk of Council, to be safely kept by him.

Oath of vo-
ters.

§ 4746. The presiding Magistrates shall be authorized to administer the following oath to any person attempting to vote: "You do solemnly swear that you are a citizen of the Confederate States; that you have resided in the State of Georgia for one year, immediately preceding this election, and within the corporate limits of the city of Savannah, for the last four months; that you are twenty-one years of age; that you have paid all taxes due the city of Savannah, or have, in your own right, sufficient real estate to satisfy any executions against you; that you have made all returns required by the ordinances of the city; that you have been duly registered within the time prescribed by law, and that you have not yet voted this day. So help you God." Any person conscientiously opposed to taking an oath, may affirm to the same tenor.

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§ 4747. Any person voting, or attempting to vote at such election, not qualified to vote, shall be guilty of a misdemeanor, and, on conviction before the Superior Court of Chatham county, shall be punished by fine or imprisonment, or both, at the discretion of the court. Illegal voting.

§ 4748. The presiding Magistrates, or any one of them, shall be authorized to commit, instanter, to the common jail, any unqualified person offering or attempting to vote as aforesaid, and any person attempting to commit, or actually committing an act of violence, at or about the polls or place of election; and any person attempting to create, or actually creating a riot or disturbance at or about the polls, or place of election, by verbal order issued to any officer of the county or city, or by warrant under his or their hand, addressed to all lawful officers of the county and city, or to any private person specially named therein; May be committed to jail. *Provided*, that any person so committed, shall be entitled to be discharged or admitted to bail upon examination according to law, at any time after ten o'clock on Tuesday after the second Monday in October; *And provided, further*, that no person committed upon verbal order, as aforesaid, shall be detained in jail more than twenty-four hours, unless a written detainer be lodged against him. Creating a riot, or attempting to do so.

§ 4749. Any officer, upon the receipt of the verbal order, as aforesaid, or any officer or private person specially named, upon the receipt of the warrant, as aforesaid, shall be authorized to require the assistance of a posse; and any officer of the city or county refusing or neglecting to obey such verbal order or written warrant, shall be guilty of a misdemeanor, and, on conviction before the Superior Court of Chatham county, shall be punished by fine or imprisonment, or both, at the discretion of the court; and it shall be the duty of the Magistrate or Magistrates, giving such order or issuing such warrant, to present the offending officer to the grand jury of the Superior Court, at its ensuing term. Arrest—by whom made. Officer refusing.

ARTICLE II.

CORPORATE AND JURISDICTIONAL LIMITS.

SECTION.

- 4750. Corporate limits of Savannah.
- 4751. Citizenship.
- 4752. Jurisdiction.

SECTION.

- 4753. Subjects of jurisdiction—appeal.
- 4754. Stores, shops and bar-rooms.

§ 4750. The corporate limits of the city of Savannah shall continue to be, and the same are hereby defined, as follows, to wit: beginning at a point on the Western side of the mouth of Bilbo's canal, and running thence, in a direct line, to a granite stone near the culvert on Thunderbolt road, and which stone Corporate limits of Savannah.

Article 2.—Corporate and Jurisdictional Limits.

marks the line of the present city limits, thence along the North side of Thunderbolt road, the West side of Water's road, the North side of Lover's lane, and its line prolonged to the line of Springfield plantation, thence along the boundary line of said plantation to the bifurcation of the Augusta and Louisville roads, and thence to a point on the river bank, ten chains West of William B. Giles & Co's. mill, thence along the line prolonged to Hutchinson's Island, thence along the shore of Hutchinson's Island to the eastern end of it, thence to the point of beginning.

Citizenship. § 4751. All persons residing within said defined limits shall be entitled to the privileges of citizenship, under the same conditions and restrictions as the residents of the wards already laid out: and all persons and property within the said defined limits, shall be subject to and bound by all the ordinances and regulations of the Mayor and Aldermen of said city, now of force and

Proviso. hereafter to be ordained and established: with this *Proviso*, nevertheless, that the said corporate authorities shall have no power to tax any of the lands, or other property within said defined limits, not now liable to taxation, except where the plan of the city is now, or shall hereafter be regularly and *bona fide* extended over such limits.

Jurisdiction. § 4752. The said Mayor and Aldermen shall have jurisdiction over vessels and rafts lying in the river Savannah, between said city and Tybee, and their respective crews: and all porters working on board such vessels, shall be subject to the ordinances of said city in regard to badges, and to porters and laborers.

Jurisdictional limits of the city. § 4753. The jurisdictional limits of Savannah shall extend one mile beyond the above defined corporate limits, so as to enable the Mayor and Aldermen, by ordinance, to prohibit the cultivation of rice within said extended limits: and any person aggrieved by the action of Council in this respect, may appeal from any such proceeding to the Superior Court of Chatham county, the appeal to be tried by a special jury: and the only point in issue on such trial shall be: Is the cultivation of rice in the place prohibited injurious to the health of any portion of the citizens or inhabitants of Savannah? And if such issue shall be determined in the negative, then the prohibition shall be null and void, and not otherwise.

Jurisdiction as to stores, shops, and bar-rooms. § 4754. The jurisdictional limits of said city shall extend two miles beyond the above defined corporate limits, so as to give to said Mayor and Aldermen the control and regulation of all shops, stores and bar-rooms, and the sole regulation and power of governing and directing taverns, and granting licences for retailing liquors within such limits, and of preserving peace and good order therein on the Sabbath, under such rules and regulations, as from time to time may be deemed advisable.

ARTICLE III.

POWERS AND RIGHTS OF THE CORPORATION

SECTION.

4755. By-laws.
 4756. Taxation.
 4757. Debts due the city—dignity of.
 4758. Streets, wharves, lanes, &c.
 4759. System of drainage.
 4760. Public market.
 4761. May borrow money.
 4762. May hold real and personal estate.
 4763. Police officers—app'tm't and pay.
 4764. Shops, taverns, bar rooms, &c.
 4765. Pains and penalties.
 4766. Fines—how collected.

SECTION.

4767. Mayor and Aldermen—powers.
 4768. Pavements and sidewalks.
 4769. Exemptions of persons and prop'ty.
 4770. Persons convicted—how punished.
 4771. Exemptions from militia duty.
 4772. Jail of Chatham county.
 4773. Rules and regulations of the jail.
 4774. Erection of jail.
 4775. Jail fees.
 4776. Ordinances continued.
 4777. How evidenced.

§ 4755. The Mayor and Aldermen of said city shall have power and authority, from time to time, to make, ordain and establish such by-laws, ordinances, rules and regulations as shall appear to them requisite and necessary for the security, welfare and convenience of the said city and its inhabitants, and for preserving health, peace and good government within the limits of the same. May establish by-laws.

§ 4756. They are also hereby vested with full power and authority to make such assessments and lay such taxes on the inhabitants of said city, and those who hold taxable property within the same, and those who transact or offer to transact business therein, as said corporate authorities may deem expedient for the safety, benefit, convenience and advantage of said city, and may enforce the payment of such assessments and taxes in such manner as said Mayor and Aldermen may prescribe. Besides real and personal property, the said Mayor and Aldermen may tax capital invested in said city, stocks in money corporations, choses in action; income and commissions derived from the pursuit of any profession, faculty, trade or calling; dividends; bank, insurance, express, and other agencies; and all other property or sources of profit not expressly prohibited or exempt by State law or competent authority of the Confederate States. Taxation.

§ 4757. Taxes and assessments due to said city shall rank as debts due to the public, whether in the administration of the assets of a decedent, or otherwise; and tax executions in favor of the city shall have the same lien on property throughout the State as judgments have by law. Rank of tax and debts due the city.

§ 4758. They shall also have power and authority to widen, extend or straighten any street, lane, way or square in said city; and to open, lay out and establish any new street, lane, way or square within the limits of said city; to remove Powers over streets, lanes, wharves, &c.

Article 3.—Powers and Rights of the Corporation.

all nuisances, and all encroachments by wharves, erections or obstructions of any kind along the line of the river, or along or upon any street, lane, way or place; but whenever said Mayor and Aldermen shall exercise the power to widen, extend or straighten a street, lane, way or square, or to open, lay out and establish any new street, lane, way or square, to the injury of private right, they shall appoint five freeholders, who shall assess the damages sustained or the benefits or advantages derived by the owner or owners of the lot or lots fronting on said streets, lanes, ways or squares so widened, extended, straightened, opened, laid out or established, with power and authority to said Mayor and Aldermen to enforce the award or decision; but the owner or owners of land affected by such decision shall have the right to appeal therefrom to a special jury in the Superior Court of Chatham county, whose verdict in the premises shall be conclusive.

System of drainage.

§ 4759. The said Mayor and Aldermen shall also have power to establish a complete system of drainage in and around said city, for the health and comfort of its inhabitants; but in cases where private property may be taken, or private right be injured for such purpose, the same proceedings for assessing and paying the damage incurred shall be had as are pointed out in the foregoing section.

Public market.

§ 4760. They shall also have the complete control and management of the present public market, and any other that may be established in said city, and the regulation of the same, and of sales and purchases therein.

May borrow and loan money

§ 4761. The said Mayor and Aldermen shall have power to borrow money and contract loans for the public good and to subscribe for works of internal improvement which, in their judgment, may be to the interest of said city, and to issue bonds and pledge the property, faith and credit of the city for the payment of such subscriptions; *Provided*, no subscription or outlay of money shall be made for any such work out of the city, except upon the recommendation of a public meeting of the citizens of Savannah, called for the purpose; and all bonds heretofore issued by said Aldermen and still outstanding are hereby declared legal and valid.

Proviso.

May hold real and personal property

§ 4762. The said city, in its corporate capacity, may hold real and personal property, and may sell and dispose of all or any part of the domain, property, land, lots, or any personal property to it belonging, from time to time, on such terms as to said corporation shall seem expedient; but no street, lane, or thoroughfare, after having been dedicated to public uses, (including all present dedications,) shall be aliened by said corporation, except by authority of the General Assembly. All rights of property existing in said corporation at the adoption of this Code, are hereby expressly reserved to it.

Article 3.—Powers and Rights of the Corporation.

§ 4763. The said Mayor and Aldermen shall have power to appoint all such officers under them as they may deem proper for the police and good government of said city, and to make all such rules and regulations for the government and compensation of such officers as said Mayor and Aldermen may deem proper. Besides commissioners of pilotage, they may also appoint the harbor master, vendue master, port wardens, health officers, inspectors of every sort, gaugers and measurers, and fix their duties and compensation; but all appointments to office, under said Mayor and Aldermen, existing at the adoption of this Code, shall continue until the incumbents of said offices respectively shall be superseded by expiration of the term of the same respectively, or by resignation, or by authority of law, or by ordinance of said city, for incapacity or improper conduct, when said Mayor and Aldermen are not, by this Code or by other statutory enactments, or by the Constitution of this State, prevented from declaring a vacancy.

Police officers—
appointment
and pay.

§ 4764. The said Mayor and Aldermen shall have the control and regulation of all shops, taverns, stores and bar rooms within the corporate and jurisdictional limits of said city and the regulation of tavern licenses and licenses to retail liquors within the same; and also the power to regulate the conduct of peddlers and itinerant traders within the same limits, by taxation or otherwise. They shall also have the power to pass all ordinances, rules and regulations proper or necessary for the government of slaves and free person of color within the city and its jurisdictional limits.

Shops, taverns, stores
and bar
rooms.

Slaves and
free persons
of color.

§ 4765. They shall have power and authority to impose and inflict such pains, penalties and forfeitures for violations of the by-laws or ordinances of the city as shall, in their judgment, be conducive to the good order and government of said city; *Provided*, that no fine or forfeiture, for one individual offence, shall exceed one hundred dollars, and no imprisonment shall be for more than thirty days; although, the said Mayor and Aldermen may impose and inflict several and distinct fines and imprisonments, at the same meeting of Council, for several and distinct offences.

Pains and
penalties.

§ 4766. Fines, penalties and forfeitures shall be levied by warrant or execution of distress, and sale of the offender's goods and chattels, if any to be found; otherwise, of lands and tenements; and, in case of no such property, then the defendant may be imprisoned in the common jail, or made to do public work as hereinafter provided; and, in the case of slaves or free persons of color, corporal punishment may be inflicted.

Fines and
penalties—
how collected.

Slave or free
person of color.

§ 4767. The Mayor, or any one Alderman, shall be vested with the power of a Justice of the Peace, so as to enable him, within the corporate and jurisdictional limits of the city, to suppress riots or breaches of the peace, arrest, confine, or bind over offen-

Mayor and
Aldermen
vested with
the powers
of J. P.

Article 3.—Powers and Rights of the Corporation.

ders against the laws of the State, to answer for such offences before the proper tribunal.

Pavements
and side-
walks.

§ 4768. Said Mayor and Aldermen shall have power to order such pavements and side-walks, and repairs of the same, as they may deem proper; and, upon the failure of any person to comply with such order within the time prescribed, the said Mayor and Aldermen may have the same done, and levy and collect the expenses thereof, by execution against the lands and goods and chattels of the owner of the lot, whether holding the same under lease-hold title from the city, or by title otherwise derived.

Mayor, &c.,
exempt from
jury duty.

§ 4769. The Mayor and Aldermen, during their continuance in office, shall be exempt from jury duty; and the Springfield plantation, and all other property of the city now exempt from taxation by the State, shall continue to be so exempt.

Persons convicted of offences—how punished.

§ 4770. They shall have power to establish work-houses and tread-mills, and to cause labor and confinement therein, and also on the public streets, squares or lanes, by persons whether white or colored, convicted of offences against the ordinances of the city, or laws of the State in relation to said city.

Persons exempt from militia duty.

§ 4771. The officers and privates of the Police, or City Watch of Savannah, shall be exempt from the performance of militia duty under the peace establishment of this State; and they, and the Engineer and Assistant Engineer of the Savannah water works shall be exempt from jury duty.

The jail of
Chatham
county.

§ 4772. The jail of Chatham county shall continue as heretofore under the direction, control and management of the Mayor and Aldermen of Savannah, with all the rights and duties of commissioners of the same, and with power to them to appoint a jailor and other necessary officers, for a term not exceeding three years; which said jailor and other officers shall respectively give such bond, and be allowed such compensation as the Mayor and Aldermen shall by ordinance prescribe, and which said jailor and other officers shall be removable from office by said Mayor and Aldermen, for any misconduct which shall, in their opinion, furnish sufficient cause.

Rules and regulations respecting the jail.

§ 4773. And said Mayor and Aldermen shall have power to pass all ordinances, resolutions, rules and regulations for the regulation of the jail and the government of the jailor and other officers, and all persons confined within said jail, as said Mayor and Aldermen shall from time to time deem proper, and as shall not be repugnant to law; and the jailor shall be answerable for all escapes from such jail, to the same extent and in the same manner as the Sheriff or other keeper of a jail may, by the general law, be.

Laws for the erection of new jail.

§ 4774. All laws of force for the erection of any new jail by the Justices of the Inferior Court of Chatham county, are hereby continued in force; but such new jail, when erected, shall become the jail of said county, under the direction, control and management of said Mayor and Aldermen, as in the preceding

Article 3.—Powers and Rights of the Corporation.

section mentioned: but the said jail shall be subject at all times to the visits and inspection of said Justices, and of the grand inquests of the said county and city, who may report to the City Council of said city any misconduct of the officers thereof, or evils existing therein, and recommend to said City Council any mode of redress or remedy therefor.

§ 4775. Persons committed to said jail on other than civil process, or process from the corporate authorities of Savannah, shall be a charge on the county from which the prisoner may be sent; and said city authorities may demand periodical settlements from such county for the fees accruing for such prisoner; and in case the Inferior Court of any such county shall refuse to make periodical settlements or payments, it shall be lawful for the Superior Court of such county, by mandamus or other process, on the application of said corporation of Savannah, or the jailor, to compel such settlement and payment. Jail fees.

§ 4776. All ordinances of said city existing at the time of the adoption of this Code, and not repugnant thereto, shall be of full force and effect until the same be altered, modified or repealed by the Mayor and Aldermen of said city. Ordinances continued in force.

§ 4777. All ordinances, by-laws, rules and regulations of said city, published by authority of said Mayor and Aldermen, and promulgated as such by said authority, shall be evidence in all the courts of this State to the same extent that laws of the State, as published by authority, shall be evidence of such laws; and when, in any case, an exemplification of any such ordinance, by-law, rule or regulation, minute of Council, or any paper of file in any of the departments of the government of said city may be required, the same may be authenticated under the official signature of the Mayor, or acting Mayor, and the seal of said city. Ordinances of the city—how evidenced.

ARTICLE IV.

SPECIAL POWERS OF THE MAYOR AND CITY COUNCIL.

SECTION.

4778. Special powers of Mayor.

SECTION.

1780. Nuisances—how abated.

4779. Ordinances and Police regulations.

1781. Colored seamen, slaves, paupers.

§ 4778. The Mayor of the city of Savannah, for the time being, and, during his absence or inability to discharge his official duties, the Chairman of Council, or such other officer as may by law, or ordinance, or vote, or rule of Council, of the said city, be at such times his substitute, shall have full power and authority to issue warrants for the arrest of all persons charged, upon affidavit before such officer or other lawful magistrate, with having committed, within the limits of the city of Savannah, offences against any penal law of this State; and to take the examina- Special powers of Mayor.

Article 4.—Special Powers of the Mayor and City Council.

tion of such persons, and the same to discharge or commit to prison, or let to bail, according to law, to answer such charge before the proper court having jurisdiction of the same, in the same manner as Justices of the Peace of the several counties of the State now or hereafter may have by law; and to issue such warrant according to law, to be executed within the jurisdictional limits of Savannah; all which warrants may be executed by the Marshal or Deputy Marshal, or any Constable of said city, and be returned before said Mayor, or his temporary official substitute, as aforesaid. And the said Mayor or substitute as aforesaid, may, by warrant issued on affidavit as aforesaid, cause suspected places to be entered, in as full and ample a manner as any other Magistrate of this State may, with a view to the detection and prevention, or punishment of offences, within said jurisdictional limits, against the laws of this State, or the ordinances of said city.

Ordinances—
and police
regulations.

§ 4779. The Mayor and Aldermen of said city shall have full power and authority to pass all such ordinances and establish such police regulations, not repugnant to the constitution and laws of this State, as in their judgment and discretion may be deemed best calculated to suppress, within the jurisdictional limits of said city, the practice of illicit trading with slaves and free persons of color, and receiving stolen goods from them, and furnishing spirituous liquors to slaves, and of affixing and enforcing such penalties for the violation of such ordinances and police regulations as said Mayor and Aldermen shall deem proper, and as shall not be inconsistent with such constitution.

Nuisances—
how abated.

§ 4780. The said Mayor and Aldermen shall have power, by ordinance, resolution, or order of Council, to cause to be abated within the jurisdictional limits of said city, any nuisance which may tend to the immediate annoyance of the citizens in general, may be manifestly injurious to the public health or safety, or tend greatly to corrupt the manners and morals of the people, or any considerable part thereof; whether the nuisance be such at common law or by statute of this State, or by ordinance of said city passed in conformity with law; and to enforce the order for abatement and removal of such nuisance by the Marshal and other civil force of said city. And said Mayor and Aldermen shall have full power and authority to establish such system of quarantine and make such sanitary regulations anywhere on the Savannah river, or elsewhere in Chatham county, as may in their judgment be proper to prevent the spread of contagious or infectious disease in said city.

Quarantine
and sanitary
regulations.

Colored
seamen.

§ 4781. Said Mayor and Aldermen shall have full power and authority to pass all ordinances and make all such rules and regulations as may, in their judgment, be proper to prevent free colored seamen arriving in the river Savannah, or any of its waters, from communicating with the shore or the slaves and free persons of color in the State; and also to prevent the influx or

Article 4.—Special Powers of the Mayor and City Council.

immigration of paupers into said city; and nothing in the general laws of the State shall ever be considered in derogation of the powers hereby conferred upon said city authorities on said subjects; and any and every ordinance of said city now existing in relation to the influx of paupers therein shall be considered as hereby confirmed.

Slaves and paupers.

Existing ordinances continued.

ARTICLE V.

POLICE COURT OF SAVANNAH

SECTION.

SECTION.

4782. Sessions and jurisdiction.

4783. Officers may collect cost.

§4782. The Police Court of said city is hereby continued a court of record, and the Mayor or acting Mayor is hereby authorized to preside in said court, and to hold sessions thereof as often as to him may appear to be necessary. Said Court shall have cognizance of all offences against the ordinances of said city, and the laws of this State touching said city, with power to inflict the proper punishment by fine and imprisonment, or other penalty prescribed by such laws and ordinances from time to time, and to enforce the same by mittimus, directed to the Marshal of said city or any lawful Constable thereof, and to the jailor of Chatham county, when necessary; and said court shall have power to commit to jail any and all person and persons who may disturb said court during its sittings, or who may in any manner be in contempt of its lawful authority; but an appeal may be entered or taken from any judgment or decision of said court (except a commitment for contempt,) to the Mayor and Aldermen of said city, in Council assembled, all costs being first paid and bond given to abide the decision of said Council, and no certiorari shall ever be allowed or granted until such is entered and the same is heard and determined by Council; and on the confirmation by Council of the decision or judgment of said Police Court, in whole or in part, no certiorari shall be allowed until the fine inflicted or confirmed by Council, and all costs, shall be paid into the Treasury of said city.

Police Court a court of record.

Sessions and jurisdiction.

Appeal may be entered.

Certiorari granted—when.

§4783. The Clerk of Council, the Marshal of said city, and the officers and members of the Police of said city, who are hereby declared to be *ex officio* Constables of said city, shall be officers of said Police Court; and they are hereby authorized to demand and receive, for services rendered or duties performed in said court, such fees and costs for themselves, to be collected out of the defendants, as may be established by ordinance of said city.

Officers of Police Court may collect costs.

Article 6.—Organization of the City Government.

ARTICLE VI.

ORGANIZATION OF CITY GOVERNMENT.

SECTION 4784. Organization of City Government.

Organization of the city government. § 4784. The organization of the City Government of Savannah, as existing at the time of the adoption of this Code, shall continue until superseded or modified in conformity with the provisions of said Code.

ARTICLE VII.

FIRE DEPARTMENT OF SAVANNAH.

SECTION

SECTION.

4785. Savannah Fire Company.

4787. Election and duty of officers.

4786. May purchase and hold property.

4788. Other companies may be estab'd

Fire company and their successors. § 4785. The corporation known as the "Savannah Fire Company," and their successors, shall continue to exist under said corporate name, and under that name to sue and be sued, plead and be impleaded, answer and be answered to, in any and all the courts of this State, and to have, exercise and enjoy all the powers granted to them not repugnant to the Constitution of the Confederate States, and of this State.

May purchase and hold property. § 4786. Said corporation shall continue invested with power to hold all funds and property now belonging to it, and such additions to said funds or property as may hereafter be made, and to purchase and hold real and personal estate; and also to receive all donations, legacies and bequests which may be made to it, to be held, used and enjoyed for the purposes following, that is to say, that the rents, interests and profits of all such property which said corporation may purchase or be interested in, and the interest of all loans which it has made or shall make, shall be used and applied to the purpose of relieving the distresses of its members, and to and for no other use or purpose whatsoever.

Profits—how appropriated. § 4787. Said corporation shall elect their officers in the manner pointed out in the ordinances of the City Council of Savannah, and nothing herein contained shall be so construed as to make said Fire Company independent of said City Council; but that it shall continue to be subject to the same control of the City Council as that body has heretofore exercised over it. Said Fire Company shall, on the first Monday in January, annually, report to the City Council of Savannah what property they have purchased or become interested in, what loans they have made, the state of their funds, what disbursements they have made, and for what benevolent purposes.

May elect officers.

Not independent of City Council.

Shall report first Monday in January annually.

Article 7.—Fire Department of Savannah.

§ 4788. The Mayor and Aldermen shall have power to appoint such officers and agents and make such rules and regulations for such appointments, and for the keeping up of an efficient force for preventing and extinguishing fires in said city, as the said Mayor and Aldermen shall deem expedient; but nothing herein contained shall be construed to repeal the charter of any fire company now existing by law.

Mayor and Aldermen may establish other fire companies.

ARTICLE VIII.

COLLECTION OF RENTS, RECOVERY OF POSSESSION, &c.

SECTION.

SECTION.

4789. Distress for rent.

4792. Dispossessing tenant.

4790. Claim to property distrained.

4793. Warrant, how obtained—detenues.

4791. Lien of distress warrants.

4794. Contracts for rent bear interest.

§ 4789. Rent due by any person or persons, for lands or tenements lying within the city of Savannah or the precincts thereof, may be recovered by distress warrant, issuing on the affidavit of the person claiming the same, his agent or attorney at law, or in fact, for the sum claimed to be due. If such sum, exclusive of interest, do not exceed fifty dollars, such affidavit must be made before a Justice of the Peace, and the warrant be issued by such Justice, and be directed to and executed by any lawful Constable of the county and levied on any property of the defendant; and the advertisement and sale shall be as in other cases of sale under execution. If the rent shall exceed fifty dollars, besides interest, the affidavit must be made before the Judge of the Superior Court or Judge of the City Court of Savannah, or any of the Justices of the Inferior Court of Chatham county, who shall issue a warrant authorizing the Sheriff of the City Court of Savannah, or any lawful Constable of said city, to distrain on any property belonging to the defendant, and to advertise and sell the same as in cases of execution on judgment; but in every case of levy under this section a replevy shall be allowed, when the defendant or his agent shall make oath that the rent claimed, or some part thereof, is not due, and shall give security for the eventual condemnation money; and in that case the levying officer shall return the papers to the court having jurisdiction, and the issue thus tendered shall be there tried and determined by a jury, as in cases of claim; and in case of verdict for the plaintiff, judgment shall be entered up and execution issued against principal and security, as in cases of appeal.

Rent—distress for.

Warrant—by whom issued and to whom directed.

Advertisement and sale.

If rent exceeds fifty dollars.

Replevy—how made.

Issue and trial.

§ 4790. When property distrained shall be claimed by a third person, the claim shall be on oath of such person, or his agent, and shall be put in, returned and determined, as in other cases of claim.

Claim to distrained property.

Article 8.—Collection of Rents, Recovery of Possession, &c.

Lien of distress warrant.

§ 4791. No preference shall be given to persons distraining for rent, where there is a judgment against the person or property so distrained; but the lien of such distress warrant shall be the same as the lien of a judgment on the property of the defendant.

Tenant failing to pay and deliver possession may be dispossessed.

§ 4792. Where any person leasing or renting any lot or lots, tenement or tenements, within the city of Savannah, shall fail to pay the rent when the same shall become due, and shall refuse to deliver possession to the lessor, at the expiration of his lease or contract for rent, the Judge of the Superior Court, or any one of the Justices of the Inferior Court of Chatham county, or the Judge of the City Court of Savannah, may issue a writ of possession, directed to the Sheriff of the City Court of Savannah, or any lawful Constable of said city, commanding said Sheriff or Constable to deliver possession of the premises to the lessor; which writ shall be by such officer immediately executed and returned.

Applicant must make oath.

§ 4793. The application to a Judge or Justice, under the preceding section must be on the affidavit of the party applying, or his attorney or agent; but when the tenant shall declare, on oath in writing, that his lease, whether oral or written, is not expired, or that he does not hold the premises either by lease or rent from such person making such application, or by any one holding under him by rent or otherwise, he shall not be removed from the possession of said premises; but the Sheriff or Constable shall return the proceedings to the next Superior Court of Chatham county, and the fact shall be there tried; but if determined against the tenant, he shall pay double the rent reserved or to be due, and the party entitled to possession shall immediately be put in possession, by order of said Superior Court; but the tenant making oath in order to retain possession, shall not be entitled to retain possession, except on giving bond and good security, to be approved of by the Sheriff or Constable, conditioned for paying double the rent reserved, or to be due, if the proceedings in the Superior Court shall be determined against such tenant; and said bond, when so taken, shall be returned into court with the other proceedings.

Contracts for rent bear interest.

§ 4794. Contracts for rent, whether oral or written, shall bear interest from the time the rent becomes due; and all actions for recovery of rent in arrear, before any court within the city of Savannah, shall be triable at the first term of the court to which the action is returnable.

ARTICLE IX.

CEMETERIES IN AND NEAR SAVANNAH.

SECTION.

4795. Owners and keepers of cemeteries

4796. Interments to be reported.

4797. Owners, &c., failing in duty.

SECTION.

4798. Exemptions from jury duty.

4799. Acts continued in force.

§ 4795. It shall be the duty of each and every owner or keeper of a cemetery, (other than a private cemetery or burial place) within five miles of the extended limits of the city of Savannah, to keep a correct record or registry, in a well bound book, of all interments made by him, or his assistant or assistants, of the remains of any deceased person, showing his or her name, nativity, age, place of residence and death, day of burial, disease or accident occasioning the death of the deceased, and the name of the attending physician, if any.

Owners and
keepers of
cemeteries.

§ 4796. Each and every such person owning or keeping a cemetery as aforesaid, shall make out and hand to the Clerk of Council of Savannah, a regular monthly report of all interments made by him, or by his assistant or assistants, of all deceased persons dying within the city of Savannah, or elsewhere, and buried as aforesaid, and make out and furnish a weekly report of such interments to the secretary of the board of health of said city whenever said board shall meet weekly, and monthly, when its meetings shall be monthly.

Interments
to be report-
ed monthly.

Weekly re-
ports.

§ 4797. Any person offending against any of the provisions of the two immediately preceding sections, shall, on conviction before the Police Court of Savannah, (which is hereby invested with jurisdiction in all such cases) be fined in the sum of thirty dollars for each and every offence, one-half of the fine to the informer, and the other half to the corporation of Savannah; but the defendant may appeal from the decision of said Police Court to the Mayor and Aldermen in council assembled, under such rules and regulations as are prescribed by law.

Penalty for
failing to
comply with
the two pre-
ceding sec-
tions.

§ 4798. The keepers of public cemeteries in and near Savannah, shall be exempt from jury duty in the Superior and Inferior Courts of Chatham county, and in the City Court of Savannah.

Keepers
exempt from
jury duty.

§ 4799. The act of 27th December, 1847, incorporating the Evergreen Cemetery Company of Bonaventure, and so much of the Act of 18th February, 1854, as refers to the cemetery for the deceased members of the Roman Catholic congregation worshipping in the city of Savannah, are continued in full force.

Acts of 1847
and 1854
continued.

Article 10.—City Court of Savannah.

ARTICLE X.

CITY COURT OF SAVANNAH.

SECTION.	SECTION.
4800. A court of record.	4839. Judge, Clerk and Sheriff's duties.
4801. Jurisdiction.	4840. Oath of Clerk and Sheriff.
4802. Judges—election and term of office.	4841. May suo and be sued—process.
4803. Election—when held.	4842. Attorney's fees.
4804. Vacancies—how filled.	4843. Attachment by Clerk.
4805. Failure to elect.	4844. Records and minutes.
4806. Judge's salary.	4845. Jurors—how selected, &c.
4807. His oath.	4846. How drawn.
4808. Solicitor General—his fees.	4847. Persons subject to serve.
4809. Clerk and Sheriff.	4848. Jury boxes and keys.
4810. Confession of judgment.	4849. Defaulting jurors.
4811. <i>Habeas corpus</i> .	4850. Not to serve longer than one week
4812. Claims and mortgages.	4851. Perishable property levied on.
4813. Session of court—trial first term.	4852. <i>Certiorari</i> proceedings.
4814. Suits—how commenced.	4853. Sheriff may appoint Deputy.
4815. Lien of Judgments.	4854. Constable's duty and fees.
4816. Adjournments of court.	4855. Summary proceedings.
4817. Production of papers.	4856. Notice of hearing.
4818. Rules of practice.	4857. Powers of court in such cases.
4819. Jurisdiction and power.	4858. Persons subject to such process.
4820. Answer—when and how filed.	4859. Clerk, Sheriff and Bailiff's duty.
4821. Verdicts, confessions, and appeals.	4860. Vexatious arrests.
4822. Sales under execution.	4861. Arrests under civil process.
4823. Judgments—when entered.	4862. Hearing and return.
4824. Stay of execution.	4863. Witnesses and examination.
4825. Claims to real property.	4864. Appeal not allowed.
4826. Bail—how sued out and served.	4865. Salary of Solicitor General.
4827. Attachments.	4866. Money arising from fines, &c.
4828. By whom issued.	4867. Justices of the Peace.
4829. Judgment—to whom directed.	4868. Peace warrant and bond.
4830. By whom levied.	4869. Jury fees—attorney's liability.
4831. Declaration—when filed.	4870. Clerk and Sheriff's fees.
4832. Garnishments.	4871. Insolvent debtors.
4833. How sued out and served.	4872. Ballance due defendant.
4834. Notice—how served.	4873. Rules of practice.
4835. Parties—how made.	4874. Continuances.
4836. <i>Scire facias</i> —how served.	4875. Jailor's duty.
4837. Witnesses—interrogatories.	4876. Sheriff's statement to Judge.
4838. Testimony <i>de bene esse</i> .	4877. Sentence and punishment.

Name and style as a court of record.

§ 4800. The City Court of Savannah, by that name, and as a court of record in the city of Savannah, shall continue to exist, and shall have cognizance of civil cases, not involving title to real estate, where the damages or cause of action shall not exceed the sum of five hundred dollars, exclusive of interest, and shall be above the jurisdiction of a Justices' Court: and cases of

Article 10.—City Court of Savannah.

tort, where the damage claimed shall not exceed five hundred dollars; and the said court shall have criminal jurisdiction of all minor offences committed within the jurisdictional limits of the city of Savannah, and which do not subject offenders to confinement in the penitentiary; and of such other cases as may be hereinafter provided for.

§ 4801. The ordinary civil jurisdictional limits of said court shall embrace the corporate limits of the city of Savannah, now and hereafter established; and its criminal jurisdictional limits shall embrace the entire jurisdictional limits of said city as now fixed and hereafter to be fixed by law. Ordinary civil jurisdiction.

§ 4802. The Mayor and Aldermen of the city of Savannah shall have the election, by ballot, of the Judge of said court, who shall hold his office for three years, and until his successor is elected and qualified, unless sooner removed by the Governor, on the address of two-thirds of both branches of the General Assembly for that purpose. He shall be commissioned by the Governor, on proof of his election, under the hand of the Clerk of Council, and seal of the City of Savannah. Judge—election and term of office.

§ 4803. The next regular election of Judge of said court shall be at the first regular meeting of the City Council of Savannah, in January, in the year eighteen hundred and sixty-three; and regular elections for Judge of said court shall be every three years thereafter, but the present organization of said court shall continue until the Judge or other officers thereof shall be displaced or superceded by law; and the City Council of Savannah shall have power to fill all vacancies in such offices occurring from death, resignation, or otherwise. Election—when held.

§ 4804. Should a vacancy in the office of Judge of said court, by death, resignation, or otherwise, occur before the said first meeting in January, eighteen hundred and sixty-three, the said Mayor and Aldermen shall, at their first regular meeting after such vacancy shall have occurred, proceed to elect a Judge to fill such vacancy; and whenever a vacancy shall occur thereafter, from any cause, the said Mayor and Aldermen shall, at their first meeting, elect a Judge to supply such vacancy. Vacancies occurring before the 1st of January, 1863—how filled.

§ 4805. Should the said Mayor and Aldermen fail to elect a Judge at the time appointed for a regular election, it shall be lawful for them to elect at their next regular meeting. Failure to elect a Judge.

§ 4806. The Judge of said City Court shall have an annual salary that shall not be increased or diminished during his continuance in office; which salary shall be fixed by the said Mayor and Aldermen, and be paid, in monthly instalments, out of the City Treasury of Savannah; but such salary shall not be less than fifteen hundred dollars. Judge's salary.

§ 4807. He shall, before entering on the duties of his office, take and subscribe an oath faithfully and impartially to discharge such duties to the best of his abilities and understanding, and agreeably to the constitution of this State and the constitution His oath.

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of the Confederate States, and to support said constitutions; and said oath shall immediately thereafter be forwarded to the Governor, and filed in the Executive Department.

Solicitor General—who shall be. § 4808. The Solicitor General of the Eastern district shall prosecute for all offences cognizable before said court; but, in his absence, the Judge shall have power to appoint a Solicitor General, *pro tempore*, who shall receive the same fees as are allowed by law to the Solicitor General in all cases conducted by him.

His fees.

Clerk and Sheriff—their election. § 4809. The Clerk and Sheriff of said court shall be elected by said Mayor and Aldermen for such term respectively, and under such qualification and other rules and regulations as they shall prescribe.

Confession of judgment. § 4810. No confession of judgment shall be entered up in said court, unless the defendant resides in the corporate limits of Savannah, and unless the cause shall have been regularly sued out and docketed, nor until such cause is called in order by the court for trial.

Habeas corpus—powers of the court in relation to. § 4811. The Judge of said court shall have power to issue writs of *habeas corpus*, and to hear and dispose of the same, in all cases arising or occurring within the jurisdictional limits of Savannah, in the same way and with the same powers as the Judge of the Superior Court, and to discharge, admit to bail, or remand to jail any prisoner, according to his discretion and the law of the land; but nothing herein contained shall be construed to lessen or take away the powers of the Judge of the Superior Court, or Justices of the Inferior Court of Chatham county.

Jurisdiction in claim cases. § 4812. The said City Court shall have jurisdiction of all claim cases where personal property is levied on under execution, or other process from said court; and all mortgages upon personal property, for an amount within the jurisdiction of said court, may be foreclosed by the Judge of the same, in the same way or manner as in the Superior or Inferior Court; and all subsequent proceedings thereon shall be in said City Court, and such as are conformable to the general law of the State.

Mortgages.

Sessions. § 4813. The sessions of said court shall be held on the first Monday in February, May, July and November of every year; and all causes, except attachments, shall be triable at the first term.

Trial first term.

Suits—how commenced and prosecuted. § 4814. All suits in said court, (except attachment cases,) shall be commenced at least fourteen days before the term to which they are returnable; and the process shall be served on the defendant at least ten days before the session of the court. Suits shall in other respects be conformable to the mode of proceeding in the Superior Courts; but the process shall be annexed by the Clerk of said City Court, be tested in the name of the Judge thereof, and be directed to and served by the Sheriff thereof.

Lien of judgments.

§ 4815. All judgments obtained in said court shall be a lien on all property belonging to the defendants throughout the State:

but property exempt from levy and sale, under the general law of the State, shall be exempt from levy and sale, under process from said court; and all executions shall be tested in the name of the Judge, issued and signed by the Clerk, directed to the Sheriff of the City Court of Savannah, and all and singular the Sheriffs of the State of Georgia, and may be levied on all property of the defendants throughout the State; but the Sheriff of said City Court may levy all such executions on property within any part of the county of Chatham.

Exemptions.

Executions
how issued.

§ 4816. In the absence of the Judge of said court, from indisposition, or otherwise, it shall be the duty of the Clerk or Sheriff of the same to open and adjourn said court to such day as the Judge may, in writing, direct.

Adjourn-
ments of
court.

§ 4817. The said court is empowered to compel the production of books, papers and writings in the possession of any party to a suit in said court, containing evidence pertinent to the cause in question, under the rules and regulations provided by law for other courts of record.

May compel
the produc-
tion of books
papers, &c.

§ 4818. The mode of conducting proceedings in said court, and carrying to trial suits therein, shall be the same as in the Superior Court, except as may be otherwise herein provided.

Rules of
practice.

§ 4819. The Judge of said City Court shall have power and authority to hear and determine all civil causes of which the said court has jurisdiction, and to give judgment and award execution thereon; *Provided, always*, that either party in any cause shall be entitled to a trial by jury upon entering a demand therefor, in writing, on or before the call of the docket of said court at the term to which the cause is returnable.

Jurisdiction
of the court.Trial by
jury.

§ 4820. The defendant shall file his answer in writing, on or before the opening of the court, at the return term of the suit, and the pleadings shall conform to the general law of the State. In case of default, the same shall be noted on the docket; and in such case the plaintiff shall be entitled to proceed *ex parte* and establish his demand, upon the proof thereof, at such return term.

Answer—
when and
how filed.Default and
proceeding
thereon.

§ 4821. In every case where a verdict may be rendered by a jury, or where a jury trial may have been demanded, and either party shall confess judgment, reserving the right to appeal, an appeal may be entered by either party to a special jury in said City Court, as in cases of appeal in the Superior Court; and the same shall be there tried, under the rules and regulations applicable to the Superior Courts.

Verdict or
confession
judgment.Appeal and
trial there

§ 4822. All sales of property, taken under execution by the Sheriff of said court, or any Sheriff of a county, shall be conformable to the laws of the State regulating Sheriff's sales.

Sales of pro-
perty und-
execution.

§ 4823. The party in whose favor a verdict shall be rendered in said court, shall be allowed to enter and sign judgment thereon, at any time within four days after the adjournment of the court, at the Clerk's office, for the amount of such verdict and

Judgments
—when and
where en-
tered.

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all legal costs; and no execution shall issue on such verdict, until such judgment shall be entered by the party or his attorney.

Stay of execution 60 days.

§ 4824. Stay of execution, for sixty days, may be had in the same manner and on the same terms as are or may be allowed in the Superior Court.

Claim to real property.

§ 4825. Claims to real property, levied on under execution issuing from said court, shall be returned to and tried in the Superior Court of the county where such real property may be situate; and such claims shall be put in and tried and determined as in other cases of claim in such Superior Court. Claims to personal property levied on under execution or attachment from said City Court shall be returned and tried there in the same manner as claims to personal property in the Superior Court.

Bail—how sued out and served.

§ 4826. Bail may be required in cases originating in said court, in the same manner and on the same terms as in cases of bail in the Superior Court; but with this proviso, that in any case about to be instituted in said court, it shall be lawful and sufficient to serve the defendant with a process and copy of the affidavit, as in cases of bail pending the action; and whenever such process with a copy of the affidavit annexed, and a copy or copies of such process and affidavit, shall be placed in the hands of the Sheriff of said court, he shall arrest the defendant or defendants, and serve him or them with a copy or copies of said affidavit and process, and deal with him or them in the manner prescribed by the laws of the State in regard to bail; and the subsequent proceedings shall be as in other cases. In every bail case issued under the foregoing proviso, the plaintiff must file his declaration eight days before the return term of the process or lose a term; and, on failure to do so during such return term, the court shall, on motion, order a non-suit.

Attachments.

§ 4827. All acts or parts of acts already or hereafter passed upon the subject of attachment and garnishment, or legislating as to any matter whatever in the Superior Courts of this State, shall apply to said City Court as if named with the Superior Courts, so far as the nature of that tribunal will admit.

By whom issued.

§ 4828. The Judge of said court or any Alderman of said city, or any Justice of the Peace or Notary Public, may issue attachments returnable to said court, and within the jurisdictional amount of the same; but such attachments must be issued at least ten days before they are returnable and levied at least nine days before such return term; and no judgment shall be rendered in attachment until the term after the return term.

Judgment thereon.

To whom directed.

§ 4829. Such attachments shall be directed to the Sheriff of the City Court of Savannah, and all and singular the Sheriffs and Constables of this State; and all prior and subsequent proceedings relative to such attachments, not herein expressly mentioned or specified, shall be governed by the laws of the State in relation to attachments, due regard being had to the nature of the different tribunals.

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§ 4830. The Sheriff of the City Court of Savannah may levy attachments returnable to said court in any part of Chatham county. By whom levied.

§ 4831. The declaration in attachment may be filed at any time during the return term of the attachment; but, on failure so to file it, the court shall, on motion, dismiss the attachment. Declaration—when filed.

§ 4832. Said court shall have jurisdiction in all cases in garnishment, as well as when the debt of the garnishee to the defendant shall exceed as when it shall fall short of the jurisdictional amount of said court; and in all cases of suit on bail or attachment, claim or other obligations or bonds, given by parties to any proceedings issued from or had in said court, although the penalties of said bonds may exceed the jurisdiction of said court by being in double the sum sworn to, attached, or of the executions issued, or property levied on; *Provided*, the original cause of action upon which such bonds or obligations were had or taken did not exceed the jurisdiction of said court. Garnishments—jurisdiction in the court of

§ 4833. Garnishment proceedings in said court shall be conformable to the law of the State on that subject; but the summons must be served on the garnishee, personally, ten days before the court to which the garnishee is directed to appear; *Provided*, such garnishee shall reside in the county of Chatham, or not elsewhere in the State; but where the garnishee shall reside in any other county, then he shall be summoned and served, and shall make his return, and all other proceedings shall be had in the manner pointed out in the general law of the State for non-resident garnishees; with this proviso, however, that the summons must be returnable to the Superior Court of the county of the residence of such garnishee, and further proceedings be had in said Superior Court. Garnishments—how sued out, served, and returned

§ 4834. Any notice which may be required to be given in any attachment case in said court, in order to make the judgment a lien on all the property of the defendant, or otherwise, may be served by the Sheriff of said court, or any Constable of the city of Savannah; and plaintiffs in attachment may examine witnesses residing out of said city, in the same manner or under the same rules and regulations prescribed by the the general law of the State. Notice—by whom served. Witnesses residing out of the county.

§ 4835. In attachment cases in said court, ten days' notice by *scire facias*, to make parties, shall be sufficient. Parties—how made.

§ 4836. *Scire facias* to make parties in any cause in said court shall be had as in the Superior Court; but such *scire facias* shall run throughout the State, and may be served by any Sheriff thereof; and service ten days before the return term thereof shall be valid and sufficient. *Scire facias* to make parties.

§ 4837. The general law of the State in regard to witnesses and their attendance, interrogatories, sets-off, affidavits of illegality, arbitration, and the examination of parties to suits by interrogatories, or under subpoena, and all other matters of a judi- Witnesses, and their attendance.

Article 10.—City Court of Savannah.

cial nature, within the jurisdiction conferred on said City Court, shall be applicable to said City Court, respect being had to the nature of the different tribunals; but subpoenas shall be served by the Sheriff of said court, or a Constable of said city, or a private person; and a commission to examine witnesses may issue on three days notice to the opposite party, or his attorney.

Commission to take testimony.

De bene esse.

§ 4838. The Judge of said court shall have power to cause testimony to be taken *de bene esse*, in all cases pending in the same, according to the general law of the State, due regard being had to the nature of the tribunals; and the said Judge and other officers of said court shall have, respectively, power to administer all oaths pertaining to their respective offices, as fully as the Judge and other officers of the Superior Court may, in like cases, do.

Judge, Clerk and Sheriff—respective duties of.

§ 4839. All the duties and liabilities attached to the Superior and Inferior Courts, and to the Sheriffs of the counties, shall be attached to the Clerk and Sheriff of said City Court; and the Judge of said court is empowered to exercise the same authority over the Clerk and Sheriff, and other officers of said court, as is legally exercised by the Judges of the Superior Court over the Clerks of the Superior Court and Sheriffs of the counties, and other officers amenable to them.

Oath of the Clerk and Sheriff.

§ 4840. Said Clerk and Sheriff of said City Court shall, respectively, take an oath similar to that prescribed for Clerks of the Superior and Inferior Courts, and for the Sheriffs of the counties; and said oaths may be administered by the Judge of said City Court, or the Mayor or Clerk of the City Council of Savannah.

The Clerk and Sheriff may sue and be sued in said court.

§ 4841. Said Sheriff and Clerk of said City Court may sue and be sued in said court; but, when the Clerk may be defendant in any action, the process shall be signed by the Judge; and said Clerk shall, if required, copy the petition and annex the process thereto; and the Clerk shall also make out final process in any case in which he may be interested, as in other cases, which shall be signed by the Judge and executed as in other cases; and in all cases before said Court, in which the Sheriff shall be plaintiff or defendant, process shall be directed to the Marshal, and all and singular the Constables of the city of Savannah, and may be served by any one of them; and the proceedings thereon shall be as in other cases.

Process of Sheriff, how directed and served.

Attorney's fee.

§ 4842. The attorney's fee in each cause brought in said court, (and in all attachment cases returnable to said court, and actually put into the hands of an officer for service.) shall be five dollars, such fee to be taxed in the bill of costs. But, where the defendant shall prevail, the defendant's attorney shall be allowed a fee of two dollars; and three dollars shall, in every case, become immediately due to the city of Savannah, to be paid to the Clerk, and by him accounted for, and paid over in quarterly returns to the City Treasurer of Savannah. Every officer receiving an at-

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tachment for service, shall immediately report the same to the said Clerk, who shall immediately collect the city fee from the attaching party, or his attorney; and if said Clerk shall fail to make any quarterly return and payment as aforesaid, he shall pay, for the use of said city, the penalty of five hundred dollars, to be enforced in said court, by attachment against the Clerk for a contempt.

Cost in attachment cases.

§ 4843. In any case where it may be necessary to attach the Clerk of said court, it shall be lawful for the Judge thereof to call in the services of the Clerk of the City Council of Savannah; and the Marshal of said City shall be competent to enforce any attachment by said Judge against the Sheriff thereof.

Attachment against the Clerk.

§ 4844. The Clerk of said court shall copy into a book of record, to be provided by the Mayor and Aldermen of Savannah, all the proceedings in all the civil cases in said court; which entry of record shall be made within twenty days after the determination of any cause; and the Clerks shall be allowed the same fees for that service, to be taxed in the bill of costs, as are allowed in the Superior Courts for similar service; and the said Clerk shall keep, from day to day, regular minutes of the proceedings of said Court, which shall be examined and signed by the Judge.

Record of proceedings—by whom kept.

Minutes of Court.

§ 4845. All persons residing within the corporate limits of Savannah, and liable to serve as jurors in the Superior Court of Chatham County, shall be liable to serve as jurors in said City Court; and the Judge of said court shall conform to the laws of this State pointing out the mode of selecting, drawing and summoning jurors for the Superior Court, except as may be herein-after mentioned; and the fines and other proceedings relative to non-attendance of jurors, or contempts by them committed, shall be in conformity with the general law; and the oaths to be administered to juries and witnesses in said City Court, upon the trial of civil causes, shall be the same as are by law to be administered to juries and witnesses in the Superior Courts.

Jurors, how selected, &c.

Oaths of Jurors and witnesses.

§ 4846. The Judge of said City Court shall, previously to the adjournment of any regular or adjourned term thereof, draw, conformably to the laws of the State, twenty-three persons to serve on an inquest or grand jury for the said court and city, and twenty-four persons for the trial of all civil and criminal cases of which said court has jurisdiction; but no inquest or grand jury shall consist of less than eighteen persons, though twelve persons of any grand jury may find a bill or make a presentment; and the mode of proceeding and trial in all criminal cases in said court shall be the same as in the Superior Courts of the State; and the oaths to be administered to jurors and witnesses in said City Court, shall be the same as those administered to jurors and witnesses in criminal cases in the Superior Courts.

How drawn.

Grand jury consist of eighteen at least.

§ 4847. It shall be the duty of the Clerk of said City Court, under the direction of the Judge thereof, at least once in every three years, beginning within six months after the promulgation

Persons subject to jury duty.

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of this Code, to make out a complete list, from the best sources to be determined by said Judge, of all persons liable to do jury duty in said court; from which list the Judge shall select those most competent to do grand and special jury duty, whose names shall be then placed by said Clerk on convenient slips of paper, in the grand jury box; and the remaining persons shall do petit jury duty, and their names shall, in like manner, be deposited in the petit jury box.

Jury boxes
and keys, by
whom kept.

§ 4848. The jury boxes shall be kept by the Clerk, and the keys by the Sheriff; and no jury box shall, under any pretence, be opened but by the authority of the Judge.

Defaulting
jurors, ex-
cuses of.

§ 4849. The Judge of said court shall, in all cases, determine on the validity of the excuses of jurors; and he may, in any case, in term time or vacation, relieve a juror from payment of a fine, at any time before the same is paid over, if, in the discretion of said Judge, circumstances shall seem to warrant such remission.

Not com-
pelled to
serve longer
than one
week.

§ 4850. The grand and petit jurors, in said court, shall not be compelled to serve longer than one week, except when actually engaged in the trial of a case at the expiration of such week; but the Judge is authorized, hereby, to have summoned, instanter, either by drawing from the jury boxes, or otherwise, any additional number of grand and petit jurors that in his discretion he may deem necessary to perform the service demanded by the business before the court.

Expenses of
property
levied on.

§ 4851. In all cases where, under execution or attachment process, returnable to said court, horses, mules, or other live stock, may be levied upon, the Sheriff or other levying officer shall be allowed the amount of stabling or keeping necessary, according to the current rates actually expended by him; and, in all cases of levy, under process as aforesaid, horses, mules, hogs, or other live stock, or dry goods, groceries, or other property of a perishable nature, may be sold by order of the Judge of said court, upon application to him, on oath, at such time and place as to him may seem most advantageous; *Provided*, that not less than ten days' notice be given in a public gazette, and at the court house in said city, of the time and place of sale; except in cases of fruit or other articles that would be greatly deteriorated by a delay of ten days.

Property of
a perishable
nature may
be sold by
order.

Certiorari,
how sued
out, and
proceedings
thereon.

§ 4852. When either party to a cause in said court shall take exceptions to any proceedings in a suit, affecting the real merits of the same, it shall be the duty of the Judge to cause to be made and filed of record in said court, a just and true statement of the facts relating thereto, and of all legal points arising therein; and the said party, after a full compliance with the law of the State regulating the granting of *certiorari*, may apply to the Judge of the Eastern District for a writ of *certiorari*, who shall grant the same, if he shall deem the exceptions taken to be sufficient; but no writ of *certiorari* shall issue after three months from the adjournment of the term at which the exceptions are taken.

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§ 4853. In any case where it may be necessary to have property levied on by the Sheriff of said court, guarded, said Sheriff may appoint and have sworn in, a special deputy for that purpose; and the Judge may allow a reasonable compensation in such case, and in any other case where the Sheriff may require assistance; and if any person shall oppose, resist, assault or beat any special Sheriff in the discharge of his duty, such person shall, on conviction, be fined or imprisoned at the discretion of the court.

Sheriff may appoint a deputy when.

§ 4854. The Constables, and *ex officio* Constables, of the city of Savannah, from time to time shall be Constables of said court, so far as to authorize them to serve all process and orders of said court to them directed; but the Judge of said court is hereby empowered to select, in conjunction with the Mayor of said city, five members of the mounted or foot police of Savannah, as special bailiffs of said court, who shall remain bailiffs, as aforesaid, for one year, unless removed as bailiffs by the Judge, or in case of dismissal or resignation from said police. It shall be the duty of three of said bailiffs to attend allsittings of said court, subject to the orders of the Judge thereof; and they shall receive one dollar a day, whilst so attending, to be paid from the fines and forfeitures in said court; said bailiffs being empowered to serve any criminal warrant within the jurisdictional limits of said court; (*Provided*, the warrant does not issue for an offence above the grade of misdemeanor,) and, for purposes thereof, shall be considered lawful Constables of the State of Georgia, and receive the same fees as may be allowed by law to the Constables of this State; *Provided*, nothing herein contained shall be construed to relieve such bailiffs from any other duties imposed by law, which shall not interfere with the duties above imposed.

Constables of said court, duties and pay therefor.

§ 4855. Upon the petition of any ship-master, supercargo, owner or consignee of any vessel, or of any artieled seaman, or any mariner or apprentice attached to a ship or vessel, who shall have any dispute or difference with any person, touching any contract, agreement, sale, promise, debt or demand whatsoever, within the jurisdiction of said City Court, or who shall be charged with any assault, or assault and battery, trespass to the person, or other offence within the jurisdiction of said court, committed anywhere within the County of Chatham, or where such ship-master, supercargo, owner or consignee, or artieled seaman, or mariner, or apprentice, may prosecute for assault, or assault and battery, or trespass to the person, or other offence within the jurisdiction of said court, committed anywhere in said county, or may be plaintiff in any such dispute or difference, touching any contract, agreement, sale, promise, debt or demand whatsoever, within the jurisdiction of said court, setting forth under oath, in such petition, the nature of his case, and that he cannot, without great inconvenience and damage to him, await the determination of such matter in difference, or the trial of such charge, by the ordinary and usual mode of proceedings in the courts in this State,

Summary proceedings before said court, in cases specified.

Article 10.—City Court of Savannah.

Special court. it shall be lawful for the Judge of said court, and he is hereby required and directed, to order and appoint a special or extraordinary court, to be held within forty-eight hours after the grant of such order, for the trial of any such cause, matter in difference, charge or offence; and the said Judge shall, immediately, or within twenty-four hours after the granting of such order, draw the necessary jury or juries for the investigation and trial of such matter of dispute, civil or criminal; and such jury or juries shall be forthwith summoned to appear at the time and place appointed; and further proceedings shall be had, in a summary way, as may be agreeable to law, and as though said court were in session at a regular term.

Jury, by whom and when drawn. § 4856. At the time and place which the said Judge shall appoint, the parties, being duly notified by twelve hours' previous notice of such time and place, shall attend personally in any criminal case, and personally or by attorney in any civil case, before the said Judge, who shall then hear the parties, and shall in a summary way proceed to judge and determine such cause, and shall, forthwith, by the usual process of said court, execute the judgment of said court in such cause, unless exceptions to such judgment shall be taken by either party in a civil case on the pronouncing of such judgment; and if either party shall so except, or, in a criminal case, the defendant shall so except, it shall be his duty forthwith to apply to the Judge of the Superior Court of the Eastern District for a *certiorari*, founded on such exceptions, which, if allowed by the Judge of the said district, within twenty-four hours after the rendition of such judgment, shall be a supersedeas thereof; and, in case of the absence of the Judge of said district, then reasonable time shall be allowed to the party making such exception to make such application, the said party giving good bond and security to the other party, to be approved of by the Judge of said City Court, conditioned to abide the final decision of the cause.

12 hours notice of the time and place of hearing. Trial. Exceptions. Certiorari. Bond of applicant. Jurisdiction and power of the Judge holding such court.

Witnesses compelled to attend. Production of papers. § 4857. At such special or extraordinary courts, the said Judge shall have full power to try each cause in which any captain or commander of a vessel, or articed seaman, or mariner or apprentice attached to a ship or vessel, may be a party, in the most summary and speedy manner, and to compel the attendance of witnesses by the most summary process that can be devised; and no more delay shall occur in the trial of such causes than such as is indispensable to the due administration of justice; and the said Judge shall have power to enforce, by order and process, the bringing before him of any and all papers appertaining to such cause, wherever such papers may be, whether actually returned to another court within the city of Savannah, or not so returned.

To what persons the foregoing proceedings apply. § 4858. The foregoing provisions in regard to special or extraordinary courts, and writs of *certiorari* thereto, shall apply to all cases where any person or persons shall be charged and prosecuted for the offence of abducting, entertaining, secreting, lodg-

Article 10.—City Court of Savannah.

ing, or concealing any artieled seaman, or mariner, or apprentice, or suffering the same to be done, or aiding or assisting any artieled seaman, or mariner, or apprentice to desert his ship or vessel, or secretly carrying off any artieled seaman, or mariner, or apprentice from any such ship or vessel, or harboring with intent to inveigle, entice, carry away, abduct, or secretly carry off any artieled seaman, or mariner, or apprentice from a ship or vessel, or affording any conveyance or facility to such seaman, or mariner, or apprentice to desert such ship or vessel, as defined in this Code, or in any law of this State, present or future, and not subjecting the offender to imprisonment in the penitentiary, whether such offence be committed in the jurisdictional limits of the city of Savannah, or within any part of the county of Chatham, upon the application to said Judge by the prosecutor in such case, or other person in interest, by petition, on oath, stating that he, or the witnesses, or some of them, necessary in carrying on said prosecution, cannot, without great inconvenience and damage to him or them, await the trial of such charge or prosecution by the usual and ordinary course of proceedings in the courts of the State.

§ 4859. The Sheriff and Clerk of said City Court, and all bailiffs thereof, shall attend such special or extraordinary courts, and shall be entitled to the fees allowed by law for services therein; and, in civil cases therein, the fee of three dollars, for use of the city, shall be paid by the plaintiff in each case, to be taxed in the bill of costs against the losing party.

The Clerk,
Sheriff, and
bailiffs shall
attend.

§ 4860. For preventing vexatious arrests and fraudulent detention of artieled seamen, or mariners, or apprentices attached to a ship or vessel, it shall not be lawful for any keeper of a tavern or tippling house, or any other person, when an artieled seaman, or mariner, or apprentice, as aforesaid, shall have been committed to jail by his captain, or the owner or consignee of his vessel, to lodge a detainer under the pretence of civil process founded on debt or civil contract; but in any such case, when any artieled seaman, or mariner, or apprentice, as aforesaid, shall have been so committed to jail, it shall be the duty of the jailor to surrender such seaman, or mariner, or apprentice, as aforesaid, upon the requisition of the owner, captain, or consignee committing him, notwithstanding any detainer which may be or have been lodged against such seaman, or mariner, or apprentice, founded on civil process; and upon failure of such jailor, within the limits of Savannah, to make such surrender, the same may be enforced by summary order of the Judge of said City Court, directed to the Sheriff and Constables of said court.

Vexatious
arrests.

§ 4861. It shall not be lawful for any Sheriff, Constable, or other officer to arrest any artieled seaman, or mariner, or apprentice attached to any ship or vessel, on civil process, within twenty-four hours next immediately before the time which shall have been designated by advertisement for the sailing of such vessel, or after

Arrest of
persons un-
der civil
process.

Article 10.—City Court of Savannah.

the lapse of such time, if such vessel shall have been detained beyond that time by adverse wind or other cause; and in case of any such arrest within such time, anywhere within the limits of Chatham county, the Judge of said City Court shall have power and authority to discharge such seaman, or mariner, or apprentice instantly on the application of the captain, owner, or consignee showing that such arrest was made within the time prohibited; and the officer making such arrest shall be punishable by indictment in said court, and, on conviction, shall be fined in a sum not exceeding one hundred dollars.

Defendant
may have a
summary
hearing.

§ 4862. If any articed seaman, mariner, or apprentice, as aforesaid, shall be arrested under civil or criminal process issued by any Justice of the Peace or Justice of the Inferior Court, for any matter, cause, or thing within the jurisdiction of the said City Court, or offence committed anywhere in the county of Chatham, whether hereinbefore specified or not, the captain, owner, or consignee of the vessel to which such seaman shall be under articles at the time of such arrest, or to which such mariner or apprentice may belong, shall be entitled to apply to said Judge for a summary hearing, as hereinbefore provided for other summary hearings before said court; and the said Judge shall have full power and authority to take jurisdiction and cognizance of such cause, and finally decide the same, as in the said other cases of summary hearing; and it shall be the duty of the officer making such arrest, and of the Justice from whom the process emanated, on the requisition of the said Judge, to transmit to the said Judge all documents and papers in relation thereto; and the same proceedings in regard to *certiorari* shall be had as are applicable to other trials before such special or extraordinary courts.

Arresting
officer and
magistrate
shall turn
over papers.

Witnesses
may be ex-
amined be-
fore the trial
—when.

§ 4863. Whenever, after any order shall have been granted by said Judge, appointing a special or extraordinary term of said court, for the trial of any criminal offence therein cognizable, and application may be made to the said Judge by the prosecuting officer of the said court, or by the defendant or defendants, or parties charged with such offence, or his or their counsel, (such application, if made by the parties themselves, to be verified by affidavit,) setting forth that a material witness or witnesses for the applicant is or are about to leave the city of Savannah, and on that account, or from imminent sickness or other cause, will not, in reasonable probability, be able to be present at the trial of the cause in which his or their testimony is needed, it shall be the duty of the said Judge forthwith to order process of subpoena to issue, requiring said witness or witnesses to appear in person before him, at a certain place and time, (of which time and place the said prosecuting officer, and the said defendant or defendants, or parties charged, shall have at least twelve hours notice,) to give testimony in the said cause; at which time and place the said Judge shall take down in writing the answers of the said witness or witnesses, given under oath, to the question or questions to be propounded to him or them, touching the said cause, on examination and cross-examination, by the parties respectively, or their

Article 10.—City Court of Savannah.

counsel; such examination to be made and testimony to be received in accordance with the usual practice in courts of justice and with the rules of evidence; which said answers, when so taken and committed to writing, shall be sealed up, appropriately endorsed and certified under the hand of said Judge, and shall remain in the office of the Clerk of said court, for the benefit of both parties, and may be read as evidence upon the trial of the cause in or with reference to which the said testimony may have been taken, as aforesaid; *Provided*, the said witness or witnesses shall not be personally present to testify in such cause at said trial, and not otherwise.

Answers
may be used
by either
party.

§ 4864. No appeal to a special jury shall be allowable in any case before any special or extraordinary session of said court.

Appeal not
allowed.

§ 4865. In consideration of the additional labor imposed upon the Solicitor General of the Eastern District, in appearing and prosecuting criminal causes at the regular and special terms of said court, he shall have and receive, in addition to the fees allowed by law, the sum of five hundred dollars per annum, payable in quarterly instalments from the fines and forfeitures in said court; but, in case of the absence of the Solicitor General, such fees shall be paid to the Solicitor General *pro tempore*; and the fees of the Solicitor General shall in all cases be the same as are allowed by law in the Superior Courts.

Salary of Sol-
licitor Gene-
ral.

§ 4866. Moneys arising from jury fines, and fines imposed for violation of the penal laws, and collected from forfeited recognizances in said court shall be subject to the payment of the fees of the Solicitor General, and the Clerk and Sheriff, and other officers of said court, in criminal cases; and the Solicitor General, Clerk, and Sheriff, and other officers bringing the money into court shall be entitled to have their insolvent bills paid first, and then the bills of former Solicitors, Clerks, and Sheriffs, and other officers shall be paid according to priority; but no bill remaining unpaid for a longer time than four years shall take any part of said fund.

Money aris-
ing from
fines.

Officers
bringing
money into
court.

§ 4867. It shall be the duty of the Justices of the Peace, and other persons exercising the powers of magistrates within the city of Savannah, to commit or place under bonds all persons charged with misdemeanors committed within the jurisdictional limits of the city of Savannah, or elsewhere, and within the special jurisdiction of said City Court, for trial before the City Court of Savannah, instead of the Superior Court; and if any such case be returned to the Superior Court, the Judge thereof is hereby empowered to order said case transferred for trial to said City Court; and all bonds and other papers forming said record shall be deemed and considered as valid and binding as if returned in the first instance to said City Court; and it shall be the duty of the Solicitor General to prosecute all such cases in the said City Court; and in all such cases of misdemeanor returned to the Superior instead of said City Court, the Magistrate so returning

Justice of
the Peace—
his power.

Article 10.—City Court of Savannah.

the same shall forfeit all costs and charges in the same; and such Magistrate, so acting, may, besides, be attached and punished as for contempt in said Superior or City Court.

Peace war-
rants and
bonds.

§ 4868. All peace warrants and bonds to keep the peace taken in Chatham county shall be returned immediately to the Solicitor General of the Eastern District, or, in his absence from said county, to the Clerk's office of the said City Court of Savannah, and also all warrants and bonds for offences cognizable by said City Court; and said Solicitor General shall, at every term of said City Court, lay such warrants and bonds before the Judge thereof, who may then examine into any such case; and if it shall appear to him in any case, from the papers or other evidence to be presented by the prosecution, that there is no real ground for such warrant or bond, or commitment under such warrant, or that the security required is too large, or too small, then he may annul such warrants, cancel such bond, relieve from such commitment, order less or more security, and compel the prosecutor to pay all cost and expenses, as in his discretion may seem proper; and such Judge may, in any such case, and other cases of prosecution before said court, where it shall appear to him that corruption or gross oppression has been practiced by any Justice of the Peace in said county, compel such Justice to pay all the costs and jail fees, and other expenses, in such case; and he shall cause such Justice to be bound over to the Superior Court, to answer for such malpractice.

Jury fees.

§ 4869. For every verdict rendered in a civil cause in said court, the jury fees shall be one dollar, to be paid by the party taking such verdict. And in every case where the plaintiff may be liable for costs, and resides beyond the civil jurisdictional limits of said court, judgment for such costs may be entered up against the plaintiff's attorney of record.

Attorney lia-
ble for costs
—when.

Clerk and
Sheriff fees.

§ 4870. Except where otherwise expressly provided in this Code, the costs to be allowed the Clerk and Sheriff, and other officers of said court, shall be the same as those allowed for similar services in the Superior Court of Chatham county; and the provisions of this section shall apply as well to special as to regular terms of said court.

Insolvent
debtors and
their dis-
charge.

§ 4871. The laws of the State in relation to insolvent debtors and their discharge, shall apply to said court, where any person may be arrested by process issuing out of it; but all suggestions of fraud in said court must be tried by a jury.

Balance due
defendant.

§ 4872. Where the balance due a defendant shall exceed the jurisdiction of the court, defendant may have judgment to the extent of the jurisdiction, and may afterwards sue for the amount of excess beyond the sum so by him recovered.

Rules of
practice.

§ 4873. The Judge of said court may make rules of practice for the same, not in conflict with the general laws of the State; and, in all cases of fees to officers where such general laws do not strictly apply, he may by rule or order of court, fix such fees by analogy to the general law.

Article 11.—Justices of the Peace and Justices' Court.

§ 4874. Continuances in said court shall be regulated by the ^{Continuan-} general law applicable to other courts of record of the State. ^{ces.}

§ 4875. The keeper of the common jail in Chatham county, ^{Jailor—his} shall, at every regular term of said City Court, return to the ^{duties speci-} Judge thereof, a jail calendar, containing the name of every white ^{fied.} prisoner therein, the time and cause of commitment, the name of the committing Magistrate, or Magistrates, and the place where the alleged offence, or other cause of detention, may have occurred; and if, in any case, it shall appear to him that there is no good cause for the imprisonment, he may discharge such prisoner on such terms as such Judge may order; but such Judge shall have no power to discharge any person committed for contempt of a Court of record, or by authority of the Confederate States, or any person regularly committed on charge of a capital offence.

§ 4876. The Sheriff of said City Court shall, at the opening of ^{Sheriff's} every regular term, hand to the Judge a just and true statement ^{statement to} of all moneys received by said Sheriff from fines and forfeited ^{Judge.} recognizances, the amount paid out by him, and the account on which the same was paid, together with a statement of the balance on hand; and the Judge may order any balance paid into the registry of court, or deposited in some safe place of keeping, subject to the future order of the court.

§ 4877. Whenever, in any case, the said court shall be author- ^{Sentence &} ized to sentence a person to imprisonment, such imprisonment may, ^{punishment.} as part of the sentence of the court, be in any work-house established by the city authorities of Savannah; and the Judge may sentence such prisoner to work in such place, or to work on the streets of Savannah, under the direction of the city authorities.

ARTICLE XI.

JUSTICES OF THE PEACE AND JUSTICES' COURT.

SECTION.

4878. Civil Jurisdiction.
4879. Judgment first term.
4880. Plaintiff and defendant may be sworn.
4881. Prosecutions vs. persons of color

SECTION.

4882. Bail.
4883. Special jurisdiction.
4884. Costs—by whom paid.

§ 4878. The civil jurisdiction of each of the Justices of the ^{Civil juris-} Peace for the first, second, third, and fourth districts, shall extend ^{dition.} over the whole of said districts, and two miles from the corporate limits of the city of Savannah as established by law, and each of the Justices for the aforesaid districts may take cognizance of, award judgment, and issue process of execution in all cases of debt or contract not exceeding the amount of a Justice's jurisdiction, where the defendant may reside in any of said districts, in the same manner as if the defendant resided in the district of the

Article 11.—Justices of the Peace and Justices' Court.

Justice issuing such process; but such Justices are hereby required to hold their courts, and keep their offices, within the limits of the districts for which they are respectively elected.

Judgment first term.

§ 4879. In every suit brought in any of the Justices' Courts in said districts, judgment shall be rendered at the first term, unless the defendant shall enter an appearance, and file a plea in writing; and whenever the defendant shall enter such appearance and file such plea at the first term, the case shall be placed on the Jury docket, and tried by a Jury at the succeeding term, unless good cause be shown for a continuance.

Otherwise if a plea be filed.

Plaintiff and defendant may both be sworn—when.

§ 4880. In every case before any of the Justices' Courts for said districts, in which the plaintiff shall be admitted to prove his own account by his own oath, it shall be lawful for the defendant to be sworn and give his testimony in defence, upon making affidavit that he has no other testimony which it is in his power to procure to disprove the justice of the account; and the defendant may always prove his set-off by his own oath, in every case where the plaintiff might prove a similar demand by his oath.

Prosecution against a slave or free person of color.

§ 4881. Whenever a prosecution shall be entered against a slave or free person of color, for an offence not punishable with death, within the limits of any of the aforesaid districts, it shall be the duty of the magistrate before whom such prosecution is instituted, within forty-eight hours after the filing of the affidavit, to draw from the jury-box of his district the names of seven persons, any five of whom shall constitute a jury to try said slave or free person of color; and if the jury shall return a verdict of not guilty, then the slave or free person of color shall be discharged; and if the jury shall find a verdict of guilty, then, and in that case, the magistrate shall proceed to pronounce the sentence, having regard in his sentence to any recommendation which the jury may make as to the mode or extent of punishment.

Bail.

§ 4882. In every such case of prosecution, the slave or free person of color, shall be admitted to bail by the magistrate, at any time before conviction, or after conviction, where a *certiorari* is applied for, upon good security in a reasonable sum being tendered to the magistrate, for the appearance of such slave or free person of color to abide the final decision of the cause.

Special jurisdiction of Justice.

§ 4883. All civil complaints or suits, or matters in dispute or difference, which, by the provisions of this Code applicable to the City Court of Savannah, would (if the amount in dispute or difference were within the jurisdiction of said Court) authorize the Judge of said City Court to hold special or extraordinary courts for the trial thereof, the amount whereof shall not, in any one case, exceed the jurisdiction of a Justice of the Peace, may be tried by any Justice of the Peace for that part of the county of Chatham embraced within the corporate limits of the city of Savannah, or within the said first, second, third, and fourth districts, under the same restrictions as to petition, notice, affidavit, and other modes of procedure, set forth in said provisions, as far as such modes of

Ordinance of Secession.

procedure may be made to conform to proceedings in Justices' Courts; and all and every process issued by any Justice of the Peace, by authority hereof, shall be served by any lawful constable of any of said districts; and every such case shall be determined by a jury of five, to be drawn instanter from the jury-box of said Magistrate, which jury shall be summoned to appear for the trial of said action, or matter in dispute, or difference, within forty-eight hours from the time of issuing the process; and the costs shall be the same as in other trials in Magistrates' Courts.

§ 4884. No person who may be discharged by a magistrate or magistrates of any of said districts, for want of sufficient cause of commitment, shall ever be compelled to pay any part of the costs of prosecution or examination. ^{Costs—by whom paid}

§ 4885. No Code or system of laws which may be passed by the General Assembly at its present or any adjourned session, shall be construed to repeal or modify any of the provisions of this Act, unless such provisions shall be specially named or referred to; and all Banking, Commercial, Religious, Charitable, Literary, Military, and other Charters and incorporations, and privileges, and exemptions, good and valid in law, and existing or operative in the city of Savannah and county of Chatham at the time of passing any such Code or system, and not expressly superseded thereby, are hereby expressly saved and confirmed, and the terms and provisions of this Act shall be construed as though they were part and parcel of such Code or system of laws, in case such Code or system shall be passed as aforesaid.*

 THE ORDINANCE OF SECESSION

To dissolve the Union between the State of Georgia and other States united with her under a compact of Government entitled "the Constitution of the United States of America."

§ 4886. *We, the people of the State of Georgia, in Convention assembled, do declare and ordain, and it is hereby declared and ordained:* That the ordinance adopted by the people of the State of Georgia in Convention on the second day of January in the year of our LORD seventeen hundred and eighty-eight, whereby the Constitution of the United States of America was assented to, ratified and adopted; and also all acts and parts of acts of the General Assembly of this State ratifying and adopting amendments of the said Constitution, are hereby repealed, rescinded and abrogated.

§ 4887. *We do further declare and ordain,* That the Union now subsisting between the State of Georgia and other States, under the name of the "United States of America," is hereby dissolved, and that the State of Georgia is in the full possession and exercise of all those rights of sovereignty which belong and appertain to a free and independent State.

* NOTE.—For the law in relation to Seamen, Mariners, and Apprentices, see Part 1st, Title 16, Chapter 4, Art. 2., page 291.

THE CONSTITUTION OF THE STATE OF GEORGIA,

As amended by the State Convention, at Savannah, on the 23d Day of March, and submitted to, and ratified by, a Vote of the People of Georgia, on the first Tuesday in July, 1861, and duly proclaimed by His Excellency, the Governor of the State.

ARTICLE 1. Declaration of fundamental principles

ARTICLE 2. Legislative department.

ARTICLE 3. Executive department.

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ARTICLE I.

DECLARATION OF FUNDAMENTAL PRINCIPLES.

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Government.

May be altered.

§ 4888. 1. The fundamental principles of free government cannot be too well understood, nor too often recurred to.

§ 4889. 2. God has ordained that men shall live under government; but as the forms and administration of civil government are in human, and therefore fallible, hands, they may be altered or modified whenever the safety or happiness of the governed requires it. No government should be changed for light or transient causes, nor unless upon reasonable assurance that a better will be established.

Article 1.—Declaration of Fundamental Principles.

§ 4890. 3. Protection to person and property is the duty of government: and a government which knowingly and persistently denies or withholds from the governed such protection, when within its power, releases them from the obligation of obedience.

§ 4891. 4. No citizen shall be deprived of life, liberty, or property, except by due process of law: and of life or liberty, only by the judgment of his peers.

§ 4892. 5. The writ of "*Habeas Corpus*" shall not be suspended, unless, in case of rebellion or invasion, the public safety may require it.

§ 4893. 6. The right of the people to keep and bear arms shall not be infringed.

§ 4894. 7. No religious test shall be required for the tenure of any office; and no religion shall be established by law; and no citizen shall be deprived of any right or privilege by reason of his religious belief.

§ 4895. 8. Freedom of thought and opinion, freedom of speech, and freedom of the press, are inherent elements of political liberty. But while every citizen may freely speak, write and print, on any subject, he shall be responsible for the abuse of the liberty.

§ 4896. 9. The right of the people to appeal to the courts; to petition government on all matters of legitimate cognizance; and peaceably to assemble for the consideration of any matter of public concern—shall never be impaired.

§ 4897. 10. For every right, there should be provided a remedy; and every citizen ought to obtain justice without purchase, without denial, and without delay—conformably to the laws of the land.

§ 4898. 11. Every person charged with an offence against the laws of the State shall have the privilege and benefit of counsel:

Shall be furnished, on demand, with a copy of the accusation, and with a list of the witnesses against him:

Shall have compulsory process to obtain the attendance of his own witnesses:

Shall be confronted with the witnesses testifying against him: and

Shall have a public and speedy trial by an impartial jury.

§ 4899. 12. No person shall be put in jeopardy of life or liberty more than once for the same offence.

§ 4900. 13. No conviction shall work corruption of blood, or general forfeiture of estate.

§ 4901. 14. Excessive bail shall not be required; nor excessive fines imposed; nor cruel and unusual punishments inflicted.

§ 4902. 15. The power of the courts to punish for contempt shall be limited by Legislative Acts.

§ 4903. 16. A faithful execution of the laws is essential to good order; and good order in society is essential to liberty.

Article 1.—Declaration of Fundamental Principles.

- Legislative acts void—when. § 4904. 17. Legislative Acts in violation of the fundamental law are void; and the Judiciary shall so declare them.
- Ex post facto laws. § 4905. 18. *Ex post facto* laws, and laws impairing the obligation of contracts, and retro-active legislation injuriously affecting the right of the citizen, are prohibited.
- Operation of laws—general. § 4906. 19. Laws should have a general operation; and no general law shall be varied in a particular case by special Legislation; except with consent of all persons to be affected thereby.
- Taxation—object of. § 4907. 20. The right of taxation can be granted only by the people; and shall be exercised only to raise revenue for the support of government, to pay the public debt; to provide for the common defence, and for such other purposes as are specified in the grant of powers.
- Private ways. § 4908. 21. In cases of necessity, private ways may be granted upon just compensation being first paid; and with this exception, private property shall not be taken except for public use; and then, only upon just compensation; such compensation, except in cases of pressing necessity, to be first provided and paid.
- Security of persons against searches and seizures. § 4909. 22. 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 warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place or places to be searched, and the persons and things to be seized.
- Martial law. § 4910. 23. Martial law shall not be declared, except in cases of extreme necessity.
- Standing armies. § 4911. 24. Large standing armies in time of peace, are dangerous to liberty.
- Soldiers. § 4912. 25. 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 prescribed by law.
- Imprisonment. § 4913. 26. The person of a debtor shall not be detained in prison after delivering *bona fide* all his estate for the use of his creditors.
- Inherent rights. § 4914. 27. The enumeration of rights herein contained shall not be construed to deny to the people any inherent rights which they have hitherto enjoyed.
- Declaration part of Constitution. § 4915. 28. This declaration is part of this Constitution, and shall never be violated on any pretence whatever.

Article 2.—Legislative Department.

ARTICLE II.

LEGISLATIVE DEPARTMENT.

SECTION I.

SECTION.

4916. Departments distinct.
 4917. Legislative Power.
 4918. Time of meeting.
 4919. Compensation of members.

SECTION.

4920. Disqualification of members.
 4921. Persons convicted of felony.
 4922. Holder of public money.

§ 4916. 1. The Legislative, Executive and Judicial departments, shall be distinct; and each department shall be confided to a separate body of magistracy. No person or collection of persons, being of one department, shall exercise any power properly attached to either of the others: except in cases herein expressly provided.

Departments of Government.

§ 4917. 2. The Legislative power shall be vested in a General Assembly, which shall consist of a Senate and House of Representatives.

General Assembly.

§ 4918. 3. The meeting of the General Assembly shall be annual, and on the first Wednesday in November, until such day of meeting shall be altered by law. A majority of each House shall constitute a quorum to transact business; but a smaller number may adjourn from day to day, and compel the attendance of their members in such manner as each House shall prescribe. No session of the General Assembly shall continue for more than forty days, unless the same shall be done by a vote of two-thirds of each branch thereof.

Time of meeting—quorum.

§ 4919. 4. The compensation of the members and officers of the General Assembly shall be fixed by law, at the first session subsequent to the adoption of this Constitution: and the same shall not be increased so as to affect the compensation of the members or officers of the Assembly by which the increase is adopted.

Pay of members.

§ 4920. 5. No person holding any military commission or other appointment, having any emolument or compensation annexed thereto, under this State or the Confederate States, or either of them, (except Justices of the Inferior Court, Justices of the Peace and officers of the militia), nor any defaulter for public money, or for legal taxes required of him, shall have a seat in either branch of the General Assembly; nor shall any Senator or Representative, after his qualification as such, be elected to any office or appointment by the General Assembly having any emoluments or compensation annexed thereto, during the time for which he shall have been elected.

Disqualification of members.

§ 4921. 6. No person convicted of any felony before any Court of this State, or of the Confederate States, shall be eligible

Convicted of felony.

Article 2.—Legislative Department.

to any office or appointment of honor, profit or trust, within this State.

Collectors
of public
money.

§ 4922. 7. No person who is a collector or holder of public money, shall be eligible to any office in this State, until the same is accounted for and paid into the Treasury.

SECTION II.

SECTION.

4923. Number of Senators.

4924. Qualification of Senators.

SECTION.

4925. President of the Senate.

4926. Impeachments—how tried.

44 Senators
—election of.

§ 4923. 1. The Senate shall consist of forty-four members, one to be chosen from each senatorial district, which district shall be composed of three contiguous counties. If a new county is established, it shall be added to a district which it adjoins until there shall be another arrangement of the senatorial districts. The senatorial districts shall not be changed except when a new census shall have been taken.

Qualification

§ 4924. 2. No person shall be a Senator who shall not have attained to the age of twenty-five years, and be a citizen of the Confederate States, and have been for three years an inhabitant of this State, and for one year a resident of the district from which he is chosen.

President.

§ 4925. 3. The presiding officer shall be styled the President of the Senate, and shall be elected *vice versa* from their own body.

Impeach-
ments.

§ 4926. 4. The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation; and no person shall be convicted without the concurrence of two-thirds of the members present. Judgment, in cases of impeachment, shall not extend further than removal from office and disqualification to hold and enjoy any office of honor, profit or trust within this State; but the party convicted shall, nevertheless, be liable and subject to indictment, trial, judgment and punishment according to law.

SECTION III.

SECTION.

4927. House of Representatives.

4928. Qualification of members.

4929. Speaker—how chosen.

SECTION.

4930. Sole power of impeachment.

4931. Bills for revenue, &c.

Number of
members.

§ 4927. 1. The House of Representatives shall be composed as follows: The thirty-seven counties having the largest representative population shall have two Representatives each. Every

Article 2.—Legislative Department.

other county shall have one Representative. The designation of the counties having two Representatives shall be made by the General Assembly immediately after the taking of each census.

§ 4928. 2. No person shall be a Representative who shall not ^{Qualification} have attained to the age of twenty-one years, and be a citizen of the Confederate States, and have been for three years an inhabitant of this State, and for one year a resident of the county which he represents.

§ 4929. 3. The presiding officer of the House of Representa- ^{Speaker.} tives shall be styled Speaker, and shall be elected *viva voce* from their own body.

§ 4930. 4. They shall have the sole power to impeach all per- ^{Impeach-} sons who have been or may be in office. ^{ments.}

§ 4931. 5. All bills for raising revenue, or appropriating mo- ^{Revenue and} ney, shall originate in the House of Representatives; but the ^{appropriations.} Senate may propose or concur in amendments, as in other bills.

SECTION IV.

SECTION.

4932. Powers of each House.
4933. May punish for contempts.
4934. Members free from arrest.
4935. Journal of Proceedings.
4936. Bills—how passed.

SECTION.

4937. By whom signed.
4938. Adjournments.
4939. Oath of members.
4940. Yeas and Nays.

§ 4932. 1. Each House shall be the judge of the election re- ^{Election re-} turns and qualifications of its own members; and shall have ^{turns and} power to punish them for disorderly behavior or misconduct, by ^{qualification} censure, fine, imprisonment or expulsion; but no member shall ^{of members.} be expelled except by a vote of two-thirds of the House from which he is expelled.

§ 4933. 2. Each House may punish, by imprisonment not ^{Contempts.} extending beyond the session, any person not a member, who shall be guilty of a contempt, by any disorderly behavior in its presence; or who, during the session, shall threaten injury to the person or estate of any member, for anything said or done in either House: or who shall assault any member therefor; or who shall assault or arrest any witness going to or returning therefrom; or who shall rescue, or attempt to rescue, any person arrested by order of either House.

§ 4934. 3. The members of both Houses shall be free from ^{Arrest of} arrest during their attendance on the General Assembly, and in ^{members.} going to and returning therefrom, except for treason, felony, or breach of the peace. And no member shall be liable to answer, in any other place, for anything spoken in debate in either House.

§ 4935. 4. Each House shall keep a journal of its proceed- ^{Journal kept} ings, and publish them immediately after its adjournment. The ^{by each} ^{House.}

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yeas and nays of the members on any question shall, at the desire of one-fifth of the members present, be entered on the journals. The original journals shall be preserved (after publication) in the office of the Secretary of State: but there shall be no other record thereof.

Read in each House on three separate days.

§ 4936. 5. Every bill, before it shall pass, shall be read three times and on three separate and distinct days in each House, unless in cases of actual invasion or insurrection. Nor shall any law or ordinance pass which refers to more than one subject matter, or contains matter different from what is expressed in the title thereof.

Must be signed.

§ 4937. 6. All Acts shall be signed by the President of the Senate and the Speaker of the House of Representatives; and no bill, ordinance, or resolution intended to have the effect of law, which shall have been rejected by either House, shall be again proposed under the same or any other title, without the consent of two-thirds of the House by which the same was rejected.

Adjournments.

§ 4938. 7. Neither House shall adjourn for more than three days, nor to any other place, without the consent of the other; and in case of disagreement between the two Houses, on a question of adjournment, the Governor may adjourn them.

Oath.

§ 4939. 8. Every Senator and Representative, before taking his seat, shall take an oath or affirmation to support the Constitution of the Confederate States and of this State; and also, that he hath not practiced any unlawful means, either directly or indirectly, to procure his election. And every person convicted of having given or offered a bribe, shall be disqualified from serving as a member of either House for the term for which he was elected.

Votes requiring two-thirds.

§ 4940. 9. Whenever this Constitution requires an Act to be passed by two-thirds of both Houses, the yeas and nays on the passage thereof shall be entered on the journals of each.

SECTION V.

SECTION.

- 4941. Powers of the General Assembly.
- 4942. New counties—how made.
- 4943. Census—how taken.

SECTION.

- 4944. Learning and science—appropriations.
- 4945. May pardon or commute.

General Assembly.

§ 4941. 1. The General Assembly shall have power to make all laws and ordinances, consistent with this Constitution and not repugnant to the Constitution of the Confederate States, which they shall deem necessary and proper for the welfare of the State.

New counties.

§ 4942. 2. They may alter the boundaries of counties, and lay-off and establish new counties; but every bill to establish

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a new county shall be passed by at least two-thirds of the members present, in each branch of the General Assembly.

§ 4943. 3. They shall provide for the taking of a census or enumeration of the people of this State, at regular decades of years, commencing at such times as they may prescribe.

§ 4944. 4. The General Assembly shall have power to appropriate money for the promotion of learning and science, and to provide for the education of the people.

§ 4945. 5. The General Assembly shall have power by a vote of two-thirds of each branch, to grant pardons in cases of final conviction for treason, and to pardon or commute in cases of final conviction for murder.

SECTION VI.

SECTION.

SECTION.

4946. Corporate powers not to be granted. 4948. Donations—how granted.

4947. Money—how drawn from treasury. 4949. Tax for internal improvements.

§ 4946. 1. The General Assembly shall have no power to grant corporate powers and privileges to private companies, except to banking, insurance, railroad, canal, plank road, navigation, mining, express, lumber, and telegraph companies; nor to make or change election precincts; nor to establish bridges and ferries; nor to change names, or legitimate children; but shall by law prescribe the manner in which such power shall be exercised by the courts. But no bank charter shall be granted or extended, and no Act passed authorizing the suspension of specie payment by any chartered bank, except by a vote of two-thirds of each branch of the General Assembly.

§ 4947. 2. No money shall be drawn from the treasury of this State, except by appropriation made by law; and a regular statement and account of the receipt and expenditure of all public money shall be published from time to time.

§ 4948. 3. No vote, resolution, law or order shall pass, granting a donation or gratuity in favor of any person, except by the concurrence of two-thirds of the General Assembly.

§ 4949. 4. No law shall be passed by which a citizen shall be compelled, directly or indirectly, to become a stockholder in, or contribute to a railroad or other work of internal improvement, without his consent; except the inhabitants of a corporate town or city. This provision shall not be construed to deny the power of taxation for the purpose of making levees or dams to prevent the overflow of rivers.

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SECTION VII.

SECTION.

4950. Importation of negroes.
4951. From slave-holding States.

SECTION.

4952. Emancipation of slaves.
4953. Killing or maiming a slave.

Importation of negroes.

§ 4950. 1. The importation or introduction of negroes from any foreign country, other than the slave-holding States or Territories of the United States of America, is forever prohibited.

From slave States.

§ 4951. 2. The General Assembly may prohibit the introduction of negroes from any State; but they shall have no power to prevent immigrants from bringing their slaves with them.

Emancipation of slaves.

§ 4952. 3. The General Assembly shall have no power to pass laws for the emancipation of slaves.

Killing or maiming a slave.

§ 4953. 4. Any person who shall maliciously kill or maim a slave, shall suffer such punishment as would be inflicted in case the like offence had been committed on a free white person.

ARTICLE III.

EXECUTIVE DEPARTMENT

SECTION I.

SECTION.

4954. Governor—term of office.
4955. Election—when and how held.
4956. Qualification.

SECTION.

4957. Vacancy—how filled.
4958. Oath.

Governor chosen for two years.

§ 4954. 1. The executive power shall be vested in a Governor, who shall hold his office during the term of two years, and until such time as a successor shall be chosen and qualified. He shall have a competent salary fixed by law, which shall not be increased or diminished during the period for which he shall have been elected; neither shall he receive, within that period, any other emolument from the Confederate States, or either of them, or from any foreign power.

Election by the people.

§ 4955. 2. The Governor shall be elected by the persons qualified to vote for members of the General Assembly, on the first Wednesday in October, in the year of our Lord, 1861; and on the first Wednesday in October, in every second year thereafter, until such time be altered by law; which election shall be held at the places of holding general elections, in the several counties of this State, in the manner prescribed for the election of members of the General Assembly. The returns for every election of Governor shall be sealed up by the managers, separately from other returns, and directed to the President of the Senate and Speaker of the House of Representatives, and transmitted to the Governor, or the person exercising the duties of

Article 3.—Executive Department.

Governor for the time being; who shall without opening the said returns, cause the same to be laid before the Senate, on the day after the two houses shall have been organized; and they shall be transmitted by the Senate to the House of Representatives. The members of each branch of the General Assembly shall convene in the Representative chamber, and the President of the Senate, and the Speaker of the House of Representatives, shall open and publish the returns in presence of the General Assembly; and the person having the majority of the whole number of votes given in, shall be declared duly elected Governor of this State; but if no person have such majority, then from the two persons having the highest number of votes, who shall be in life, and shall not decline an election at the time appointed for the Legislature to elect, the General Assembly shall immediately elect a Governor *viva voce*; and in all cases of election of a Governor by the General Assembly, a majority of the votes of the members present shall be necessary for a choice. Contested elections shall be determined by both Houses of the General Assembly, in such manner as shall be prescribed by law.

§ 4956. 3. No person shall be eligible to the office of Governor who shall not have been a citizen of the Confederate States twelve years, and an inhabitant of this State six years, and who hath not attained the age of thirty years. His qualification.

§ 4957. 4. In case of the death, resignation, or disability of the Governor, the President of the Senate shall exercise the executive powers of the government until such disability be removed, or a successor is elected and qualified. And in case of the death, resignation, or disability of the President of the Senate, the Speaker of the House of Representatives shall exercise the executive power of the government until the removal of the disability or the election and qualification of a Governor. Vacancy—how filled.

§ 4958. 5. The Governor shall, before he enters on the duties of his office, take the following oath or affirmation: "I do solemnly swear or affirm (as the case may be,) that I will faithfully execute the office of Governor of the State of Georgia; and will, to the best of my abilities, preserve, protect and defend the constitution thereof." Governor's oath.

SECTION II.

SECTION.

4959. Style.

4960. Pardoning power of Governor.

4961. Writs of election—special sessions.

4962. Filling vacancies.

4963. Persons once rejected by the Senate.

SECTION.

4964. Veto power.

4965. As to resolutions.

4966. State House offices.

4967. Great Seal.

4968. Governor's Secretaries.

Article 3.—Executive Department.

- Governor's style.** § 4959. 1. The Governor shall be Commander-in-Chief of the army and navy of this State, and of the militia thereof.
- His pardoning power.** § 4960. 2. He shall have power to grant reprieves for offences against the State, except in cases of impeachment, and to grant pardons, or to remit any part of a sentence, in all cases after conviction, except for treason or murder, in which cases he may respite the execution, and make report thereof to the next General Assembly.
- Shall issue writs of election.** § 4961. 3. He shall issue writs of elections to fill vacancies that happen in the Senate or House of Representatives, and shall have power to convene the General Assembly on extraordinary occasions; and shall give them, from time to time, information of the state of the republic, and recommend to their consideration such measures as he may deem necessary and expedient.
- Fill vacancies in office.** § 4962. 4. When any office shall become vacant by death, resignation, or otherwise, the Governor shall have power to fill such vacancy, unless otherwise provided for by law: and persons so appointed shall continue in office until a successor is appointed agreeably to the mode pointed out by this Constitution, or by law in pursuance thereof.
- Appointees rejected by the Senate.** § 4963. 5. A person once rejected by the Senate shall not be re-appointed by the Governor to the same office during the same session or the recess thereafter.
- His power in making laws.** § 4964. 6. The Governor shall have the revision of all bills passed by both Houses, before the same shall become laws; but two-thirds of each House may pass a law, notwithstanding his dissent; and if any bill should not be returned by the Governor within five days (Sundays excepted) after it has been presented to him, the same shall be a law, unless the General Assembly, by their adjournment, shall prevent its return. He may approve any appropriation and disapprove any other appropriation in the same bill, and the latter shall not be effectual unless passed by two-thirds of each House.
- His passing resolutions.** § 4965. 7. Every vote, resolution, or order, to which the concurrence of both Houses may be necessary, except on a question of election or adjournment, shall be presented to the Governor, and, before it shall take effect, be approved by him, or, being disapproved, shall be re-passed by two-thirds of each House, according to the rules and limitations prescribed in case of a bill.
- Secretary of State, Treasurer and Surveyor General.** § 4966. 8. There shall be a Secretary of State, a Comptroller General, a Treasurer, and Surveyor General elected by the General Assembly, and they shall hold their offices for the like period as the Governor, and shall have a competent salary, which shall not be increased or diminished during the period for which they shall have been elected. The General Assembly may at any time consolidate any two of these offices, and require all the duties to be discharged by one officer.

Article 3.—Executive Department.

§ 4967. 9. The great seal of the State shall be deposited in ^{Great seal of the State.} the office of the Secretary of State, and shall not be affixed to any instrument of writing but by order of the Governor or General Assembly; and the General Assembly shall, at their first session, after the rising of this Convention, by law cause the great seal to be altered.

§ 4968. 10. The Governor shall have power to appoint his ^{Governor's Secretaries.} own Secretaries, not exceeding two in number.

ARTICLE IV.

JUDICIAL DEPARTMENT.

SECTION I.

SECTION.

4969. Judicial power.
4970. Supreme Court.

SECTION.

4971. Jurisdiction of Supreme Court.
4972. Cases—how and when disposed of.

§ 4969. 1. The judicial powers of this State shall be vested in a Supreme Court for the correction of errors, a Superior, Inferior, Ordinary and Justices' Courts, and in such other courts as have been or may be established by law. ^{Jurisdiction of courts.}

§ 4970. 2. The Supreme Court shall consist of three Judges, ^{Organization.} who shall be appointed by the Governor with the advice and consent of two-thirds of the Senate, for such term of years as shall be prescribed by law, and shall continue in office until their successors shall be appointed and qualified, removable by the Governor on the address of two-thirds of each branch of the General Assembly, or by impeachment and conviction thereon.

§ 4971. 3. The said Court shall have no original jurisdiction, ^{Shall have no original jurisdiction.} but shall be a court alone for the trial and correction of errors in law and equity from the Superior Courts of the several circuits, and shall sit at least once a year, at a time prescribed by law, in each of one or more judicial districts, designated by the General Assembly for that purpose, at such point in each district as shall by the General Assembly be ordained, for the trial and determination of writs of error from the several Superior Courts included in such judicial districts.

§ 4972. 4. The said court shall dispose of and finally determine every case on the docket of such court at the first or second term after such writ of error brought; and in case the plaintiff in error shall not be prepared at the first term of such court after error brought, to prosecute the case, unless precluded by some Providential cause from such prosecution, it shall be stricken from the docket, and the judgment below shall stand affirmed. ^{Cases tried at the first term.}

SECTION II.

SECTION.

- 4973. Judges of the Supreme Court.
- 4974. Jurisdiction in divorce cases.
- 4975. In criminal cases.
- 4976. Criminal cases—where tried.
- 4977. Respecting titles to land.
- 4978. Appellate jurisdiction.

SECTION.

- 4979. May correct errors, &c.
- 4980. May issue writs of mandamus, &c.
- 4981. Superior and Inferior Courts.
- 4982. Joint obligors, &c.
- 4983. Maker and endorser.
- 4984. Sessions of the Sup'r and Inf'r c'ts.

Superior
Court Judges.

§ 4973. 1. The Judges of the Superior Courts shall be appointed in the same manner as Judges of the Supreme Court from the circuits in which they are to serve, for the term of four years, and shall continue in office until their successors shall be appointed and qualified, removable by the Governor on the address of two-thirds of each branch of the General Assembly, or by impeachment and conviction thereon.

Jurisdiction
in divorce.

§ 4974. 2. The Superior Court shall have exclusive jurisdiction in all cases of divorce, both total and partial; but no total divorce shall be granted, except on the concurrent verdicts of two special juries. In each divorce case, the court shall regulate the rights and disabilities of the parties.

In criminal
cases.

§ 4975. 3. The Superior Court shall also have exclusive jurisdiction in all criminal cases, except as relates to people of color, fines for neglect of duty, contempts of court, violations of road laws, and obstructions of water courses, jurisdiction of which shall be vested in such judicature or tribunal as shall be or may have been pointed out by law; and except in all other minor offences committed by free white persons, and which do not subject the offender or offenders to loss of life, limb or member, or to confinement in the penitentiary; in all such cases, corporation courts, such as now exist, or may hereafter be constituted, in any incorporated city or town, may be vested with jurisdiction, under such rules and regulations as the Legislature may hereafter by law direct.

Venue.

§ 4976. 4. All criminal cases shall be tried in the county where the crime was committed, except in cases where a jury cannot be obtained.

Respecting
titles to land.

§ 4977. 5. The Superior Court shall have exclusive jurisdiction in all cases respecting titles to land, which shall be tried in the county where the land lies. And also in all equity causes which shall be tried in the county where one or more of the defendants reside, against whom substantial relief is prayed.

Appellate
jurisdiction.

§ 4978. 6. It shall have appellate jurisdiction in all such cases as may be provided by law.

May correct
errors.

§ 4979. 7. It shall have power to correct errors in inferior judicatories by writ of *certiorari*, and to grant new trials in the Superior Court on proper and legal grounds.

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§ 4980. 8. It shall have power to issue writs of mandamus, prohibition, *scire facias*, and all other writs which may be necessary for carrying its powers fully into effect. Writs of mandamus.

§ 4981. 9. The Superior and Inferior Courts shall have concurrent jurisdiction in all other civil causes; which shall be tried in the county where the defendant resides. Concurrent jurisdiction.

§ 4982. 10. In cases of joint obligors, or joint promissors or co-partners, or joint trespassers residing in different counties, the suit may be brought in either county. Joint obligors.

§ 4983. 11. In case of a maker and endorser or endorsers of promissory notes residing in different counties in this State, the same may be sued in the county where the maker resides. Maker and endorser.

§ 4984. 12. The Superior and Inferior Courts shall sit in each county twice in every year, at such stated times as have been or may be appointed by the General Assembly. Sessions.

SECTION III.

SECTION.

4985. Judges' salaries.

4986. States' Att'y and Sol'r General.

4987. Justices of the Inferior Court.

SECTION.

4988. Justices of the Peace.

4989. Ordinary—election and duties.

§ 4985. 1. The Judges shall have salaries adequate to their services fixed by law, which shall not be diminished during their continuance in office; but shall not receive any other perquisites or emoluments whatever, from parties or others, on account of any duty required of them. Salaries.

§ 4986. 2. There shall be a State's Attorney and Solicitors appointed in the same manner as the Judges of the Supreme Court and commissioned by the Governor; who shall hold their offices for the term of four years, or until their successors shall be appointed and qualified, unless removed by sentence on impeachment, or by the Governor, on the address of two-thirds of each branch of the General Assembly. They shall have salaries adequate to their services fixed by law, which shall not be diminished during their continuance in office. Attorneys and Solicitors.

§ 4987. 3. The Justices of the Inferior Courts shall be elected in each county by the persons entitled to vote for members of the General Assembly. Justices of the Inferior Court.

§ 4988. 4. The Justices of the Peace shall be elected in each district by the persons entitled to vote for members of the General Assembly. Justices of the Peace.

§ 4989. 5. The powers of a Court of Ordinary and of Probate, shall be vested in an Ordinary for each county, from whose decisions there may be an appeal to the Superior Court, under regulations prescribed by law. The Ordinary shall be *ex officio* Clerk of said court, and may appoint a deputy clerk. The Or- Ordinary—election and duties.

Article 4.—Judicial Department.

dinary, as Clerk, or his deputy, may issue citations and grant temporary letters of administration, to hold until permanent letters are granted; and said Ordinary, as Clerk, or his deputy, may grant marriage licenses. The Ordinaries in and for the respective counties shall be elected, as other county officers are, on the first Wednesday in January, 1864, and every fourth year thereafter, and shall be commissioned by the Governor for the term of four years. In case of any vacancy of said office of Ordinary, from any cause, the same shall be filled by election, as is provided in relation to other county officers, and until the same is filled, the Clerk of the Superior Court for the time being shall act as Clerk of said Court of Ordinary.

ARTICLE V.

MISCELLANEOUS PROVISIONS.

SECTION.

- 4990. Qualification of voters.
- 4991. Elections by the Legislature.
- 4992. Elections by the people.
- 4993. Civil officers—term of office.

SECTION.

- 4994. Militia and county officers.
- 4995. Constitution—how amended.
- 4996. When Constitution shall take effect.

Voters.

§ 4990. 1. The electors of members of the General Assembly shall be free white male citizens of this State; and shall have attained the age of twenty-one years; and have paid all taxes which may have been required of them, and which they have had an opportunity of paying, agreeably to law, for the year preceding the election; and shall have resided six months within the district or county.

Elections by the Legislature.

§ 4991. 2. All elections, by the General Assembly, shall be *viva voce*, and when the Senate and House of Representatives unite for the purpose of electing, they shall meet in the Representative chamber, and the President of the Senate shall in such cases preside, and declare the person or persons elected.

By the people.

§ 4992. 3. In all elections by the people, the electors shall vote by ballot, until the General Assembly shall otherwise direct.

Civil officers.

§ 4993. 4. All civil officers shall continue in the exercise of the duties of their several offices, during the periods for which they were appointed, or until they shall be superceded by appointments made in conformity with this Constitution; and all laws now in force shall continue to operate, so far as they are compatible with this Constitution, until they shall expire, be altered or repealed; and it shall be the duty of the General Assembly to pass all necessary laws and regulations for carrying this Constitution into full effect.

Militia and county officers.

§ 4994. 5. All militia and county officers shall be elected by the people in such manner as the General Assembly may by law direct.

Article 5.—Miscellaneous Provisions.

§4995. 6. This Constitution shall be amended only by a convention of the people called for that purpose.

§4996. 7. This Constitution shall not take effect until the same is ratified by the people. And to this end, there shall be an election held at all the places of public election in this State, on the first Tuesday in July, 1861, when all the citizens of this State entitled to vote for Governor, shall cast their ballots either for "Ratification" or "No Ratification." The election shall be conducted in the same manner as general elections, and the returns shall be made to the Governor. If a majority of the votes cast shall be for "Ratification," the Governor shall, by proclamation, declare this Constitution adopted by the people. But if for "No Ratification," that fact shall be proclaimed by the Governor, and this Constitution shall have no effect whatever.

Done in Convention of the Delegates of the people of the State of Georgia, at Savannah, on the 23d day of March, in the year of our Lord eighteen hundred and sixty-one.

Amend-
ments to the
Constitution
This takes
effect—wise

THE CONSTITUTION OF THE CONFEDERATE STATES OF AMERICA,

As adopted by the Provisional Congress, at Montgomery, in the State of Alabama, on the 11th day of March, in the year of our Lord 1861, for the permanent Federal Government of the Confederate States of America; and adopted and ratified by a unanimous vote of the Convention of the State of Georgia, at Savannah, on the 16th day of March, in the year of our Lord, 1861; and by said Convention resolved that said Constitution be published as part of the Code of Georgia.

We, the people of the Confederate States, each State acting in its sovereign and independent character, in order to form a permanent Federal Government, establish justice, insure domestic tranquility and secure the blessings of liberty to ourselves and our posterity—invoking the favor and guidance of Almighty God—do ordain and establish this Constitution for the Confederate States of America.

Article 1.—Legislative Department.

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 ARTICLE 5. Amendments—how made.
 ARTICLE 6. Miscellaneous Provisions.
 ARTICLE 7. Ratification.

ARTICLE I.

LEGISLATIVE DEPARTMENT.

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5025. Coin, weights and measures.	5058. Title of laws.
5026. Counterfeiting; punishment.	5059. Limitations on States.
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Article 1.—Legislative Department.

SECTION I.

§ 4997. All legislative powers herein delegated shall be vested in a Congress of the Confederate States, which shall consist of a Senate and House of Representatives. Legislative power.

SECTION II.

§ 4998. 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 be citizens of the Confederate States, and have the qualifications requisite for electors of the most numerous branch of the State Legislature; but no person of foreign birth, not a citizen of the Confederate States, shall be allowed to vote for any officer, civil or political, State or Federal. Representatives—how chosen, and qualifications of voters.

§ 4999. 2. No person shall be a Representative, who shall not have attained the age of twenty-five years, and be a citizen of the Confederate States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen. Qualification of members.

§ 5000. 3. Representatives and Direct Taxes shall be apportioned among the several States which may be included within this Confederacy, 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 slaves. The actual enumeration shall be made within three years after the first meeting of the Congress of the Confederate 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 fifty thousand, but each State shall have at least one Representative; and until such enumeration shall be made, the State of South Carolina shall be entitled to choose six—the State of Georgia ten—the State of Alabama nine—the State of Florida two—the State of Mississippi seven—the State of Louisiana six, and the State of Texas six. Apportionment of members.

§ 5001. 4. When vacancies happen in the representation from any State, the Executive authority thereof shall issue writs of election to fill such vacancies. Vacancies.

§ 5002. 5. The House of Representatives shall choose their Speaker and other officers; and shall have the sole power of impeachment; except that any judicial or other federal officer, resident and acting solely within the limits of any State, may be impeached by a vote of two-thirds of both branches of the Legislature thereof. Speaker and other officers. Impeachment.

SECTION III.

Senators—
how chosen. § 5003. 1. The Senate of the Confederate States shall be composed of two Senators from each State, chosen for six years by the Legislature thereof, at the regular session next immediately preceding the commencement of the term of service; and each Senator shall have one vote.

Senators—
how classed. § 5004. 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 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.

Vacancies—
how filled. § 5005. 3. No person shall be a Senator who shall not have attained the age of thirty years, and be a citizen of the Confederate States; and who shall not, when elected, be an inhabitant of the State for which he shall be chosen.

Qualification
of Senators. § 5006. 4. The Vice President of the Confederate States shall be President of the Senate, but shall have no vote, unless they be equally divided.

Vice Presi-
dent. § 5007. 5. The Senate shall choose 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 Confederate States.

May choose
other offi-
cers. § 5008. 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 Confederate States is tried, the Chief Justice shall preside; and no person shall be convicted without the concurrence of two-thirds of the members present.

Trial of Im-
peachments. § 5009. 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 Confederate States; but the party convicted shall, nevertheless, be liable and subject to indictment, trial, judgment, and punishment according to law.

Judgment
on impeach-
ment.

SECTION IV.

Elections—
how held. § 5010. 1. The times, places, and manner of holding elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof, subject to the provisions of this

Article 1.—Legislative Department.

Constitution; but the Congress may, at any time, by law, make or alter such regulations, except as to the times and places of choosing Senators.

§ 5011. 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.

Congress shall assemble annually

SECTION V.

§ 5012. 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.

Elections—by whom judged.

Quorum.

§ 5013. 2. Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds of the whole number, expel a member.

Rules.

§ 5014. 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 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.

Journals.

Yeas and Nays.

§ 5015. 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.

Adjournments.

SECTION VI.

§ 5016. 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 Confederate 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.

Compensation.

Free from arrest.

§ 5017. 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 Confederate States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the Confederate States shall be a member of either House during

Members not eligible to office.

Article 1.—Legislative Department.

his continuance in office. But Congress may, by law, grant to the principal officers in each of the Executive Departments a seat upon the floor of either House, with the privilege of discussing any measures appertaining to his department.

SECTION VII.

Revenue
bills.

§ 5018. 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.

Passing
bills.

§ 5019. 2. Every bill which shall have passed both Houses, shall, before it becomes a law, be presented to the President of the Confederate States; if he approve, he shall sign it; but if not, he shall return it with his objections to that House in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of that House shall agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered, and if approved by two-thirds of that House, it shall become a law. But in all such cases, the votes of both Houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each House respectively. If any bill shall not be returned by the President within ten days (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. The President may approve any appropriation and disapprove any other appropriation in the same bill. In such case he shall, in signing the bill, designate the appropriations disapproved; and shall return a copy of such appropriations, with his objections, to the House in which the bills shall have originated; and the same proceedings shall then be had as in case of other bills disapproved by the President.

Veto.

Orders, reso-
lutions, &c.,
—how pass-
ed.

§ 5020. 3. Every order, resolution or vote, to which the concurrence of both Houses may be necessary (except on a question of adjournment) shall be presented to the President of the Confederate States; and before the same shall take effect, shall be approved by him; or being disapproved by him, shall be re-passed by two-thirds of both Houses according to the rules and limitations prescribed in case of a bill.

SECTION VIII.

The Congress shall have power—

§ 5021. 1. To lay and collect taxes, duties, imposts, and ex-

Article 1.—Legislative Department.

cises, for revenue necessary to pay the debts, provide for the common defence, and carry on the Government of the Confederate States; but no bounties shall be granted from the treasury; nor shall any duties or taxes on importations from foreign nations be laid to promote or foster any branch of industry; and all duties, imposts and excises shall be uniform throughout the Confederate States:

Power of
Congress—
taxes.

§ 5022. 2. To borrow money on the credit of the Confederate States:

Loans.

§ 5023. 3. To regulate commerce with foreign nations, and among the several States, and with the Indian tribes; but neither this, nor any other clause contained in the Constitution, shall ever be construed to delegate the power to Congress to appropriate money for any internal improvement intended to facilitate commerce; except for the purpose of furnishing lights, beacons, and buoys, and other aids to navigation upon the coasts, and the improvement of harbors and the removing of obstructions in river navigation, in all which cases, such duties shall be laid on the navigation facilitated thereby, as may be necessary to pay the costs and expenses thereof:

Commerce.

§ 5024. 4. To establish uniform laws of naturalization, and uniform laws on the subject of bankruptcies, throughout the Confederate States, but no law of Congress shall discharge any debt contracted before the passage of the same:

Naturaliza-
tion.

Bankruptcy.

§ 5025. 5. To coin money, regulate the value thereof and of foreign coin, and fix the standard of weights and measures:

Coin money
and fix meas-
ures.

§ 5026. 6. To provide for the punishment of counterfeiting the securities and current coin of the Confederate States:

Counterfeit-
ing—punish-
ment.

§ 5027. 7. To establish post offices and post routes; but the expenses of the post office department, after the first day of March, in the year of our Lord eighteen hundred and sixty-three, shall be paid out of its own revenues:

Post office.

§ 5028. 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:

Science and
arts.

§ 5029. 9. To constitute tribunals inferior to the Supreme Court:

Courts.

§ 5030. 10. To define and punish piracies and felonies committed on the high seas, and offences against the law of nations:

Piracies.

§ 5031. 11. To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water:

Declare war.

§ 5032. 12. To raise and support armies; but no appropriation of money to that use shall be for a longer term than two years:

Raise money

§ 5033. 13. To provide and maintain a navy:

Navy.

§ 5034. 14. To make rules for the government and regulation of the land and naval forces:

Land and na-
val forces.

§ 5035. 15. To provide for calling forth the militia to ex-

Militia.

Article I.—Legislative Department.

enue the laws of the Confederate States, suppress insurrections, and repel invasions:

Organization of militia. § 5036. 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 Confederate 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:

Exclusive jurisdiction. § 5037. 17. To exercise exclusive legislation, in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of one or more States and the acceptance of Congress, become the seat of the Government of the Confederate States; and to exercise like authority over all places purchased by the consent of the Legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings: and

To make all laws necessary, &c. § 5038. 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 Confederate States, or in any department or officer thereof.

SECTION IX.

Importation of negroes. § 5039. 1. The importation of negroes of the African race, from any foreign country, other than the slaveholding States or Territories of the United States of America, is hereby forbidden; and Congress is required to pass such laws as shall effectually prevent the same.

From States or Territories. § 5040. 2. Congress shall also have power to prohibit the introduction of slaves from any State not a member of, or Territory not belonging to this Confederacy.

Habeas corpus. § 5041. 3. 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.

Attainder—no post facto laws. § 5042. 4. No bill of attainder, *ex post facto* law, or law denying or impairing the right of property in negro slaves shall be passed.

Tax. § 5043. 5. No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.

Exportation. § 5044. 6. No tax or duty shall be laid on articles exported from any State, except by a vote of two-thirds of both Houses.

Preference. § 5045. 7. No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another.

Money—how drawn. § 5046. 8. No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular

Article 1.—Legislative Department.

statement and account of the receipts and expenditures of all public money shall be published from time to time.

§ 5047. 9. Congress shall appropriate no money from the treasury except by a vote of two-thirds of both Houses, taken by yeas and nays, unless it be asked and estimated for by some one of the heads of Department, and submitted to Congress by the President; or for the purpose of paying its own expenses and contingencies; or for the payment of claims against the Confederate States, the justice of which shall have been judicially declared by a tribunal for the investigation of claims against the government, which it is hereby made the duty of Congress to establish.

Appropriating money.

§ 5048. 10. All bills appropriating money shall specify in federal currency the exact amount of each appropriation and the purposes for which it is made; and Congress shall grant no extra compensation to any public contractor, officer, agent or servant, after such contract shall have been made or such service rendered.

Bills for appropriations.

§ 5049. 11. No title of nobility shall be granted by the Confederate 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.

Titles of nobility not allowed.

§ 5050. 12. 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 petition the government for a redress of grievances.

No established religion.

§ 5051. 13. 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.

Arms.

§ 5052. 14. 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.

Soldiers.

§ 5053. 15. 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.

Unreasonable searches and seizures.

§ 5054. 16. 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 be compelled, in any criminal case, to be a witness against himself; nor be deprived of life, liberty, or property, without due process

Persons accused of offences—how charged.

Article I.—Legislative Department.

of law; nor shall private property be taken for public use, without just compensation.

A speedy and public trial. § 5055. 17. In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defence.

Trial by jury § 5056. 18. 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 so tried by a jury shall be otherwise re examined in any court of the Confederacy, than according to the rules of the common law.

Excessive bail. § 5057. 19. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Title of Laws. § 5058. 20. Every law or resolution having the force of law, shall relate to but one subject, and that shall be expressed in the title.

SECTION X.

Limitation of the powers of individual States § 5059. 1. No State shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal, coin money; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, or *ex post facto* law, or law impairing the obligation of contracts; or grant any title of nobility.

Imposts and duties. § 5060. 2. No State shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any State on imports or exports, shall be for the use of the treasury of the Confederate States; and all such laws shall be subject to the revision and control of Congress.

Tonnage—troops and ships of war. § 5061. 3. No State shall, without the consent of Congress, lay any duty on tonnage, except on sea-going vessels, for the improvement of its rivers and harbors navigated by the said vessels; but such duties shall not conflict with any treaties of the Confederate States with foreign nations; and any surplus revenue, thus derived, shall, after making such improvement, be paid into the common treasury. Nor shall any State keep troops or ships of war in time of peace, enter into any agreement or compact with another State, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay. But when any river divides or flows through two or more States, they may enter into compacts with each other to improve the navigation thereof.

Article 2.—Executive Department.

ARTICLE II.

EXECUTIVE DEPARTMENT.

SECTION.

5062. Executive power; where vested.
 5063. Mode of election; President, &c.
 5064. Meeting of Electors.
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 5067. Time of Election.
 5068. Who may be President.
 5069. Vice President may act; when.

SECTION.

5070. President's compensation.
 5071. His oath.
 5072. His powers.
 5073. Treaties; Nominations.
 5074. Removing Officers.
 5075. Fill vacancies.
 5076. President's duties.
 5077. Impeachment.

SECTION I.

§ 5062. 1. The Executive power shall be vested in a President of the Confederate States of America. He and the Vice President shall hold their offices for the term of six years; but the President shall not be re eligible. The President and Vice President shall be elected as follows:

§ 5063. 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 Confederate States, shall be appointed an Elector.

§ 5064. 3. 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 government of the Confederate States, directed to the President of the Senate; the President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted; the person having the greatest number of votes for President shall be the President, if such 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

Article 2.—Executive Department.

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 case of the death, or other constitutional disability of the President.

Vice President.

§ 5065. 4. 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.

Eligibility.

§ 5066. 5. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice President of the Confederate States.

Time of election.

§ 5067. 6. The Congress may determine the time of choosing the Electors, and the day on which they shall give their votes: which day shall be the same throughout the Confederate States.

Who may be elected President.

§ 5068. 7. No person, except a natural-born citizen of the Confederate States, or a citizen thereof, at the time of the adoption of this Constitution, or a citizen thereof born in the United States, prior to the 20th December, 1860, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained the age of thirty five years, and been fourteen years a resident within the limits of the Confederate States, as they may exist at the time of his election.

Vice President may act as President—when.

§ 5069. 8. 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.

§ 5070. 9. The President shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected; and he shall not receive within that period any other emolument from the Confederate States, or any of them.

His oath.

§ 5071. 10. Before he enters 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 Confederate States, and will to the best of my ability, preserve, protect, and defend the Constitution thereof.

Article 2.—Executive Department.

SECTION II.

§ 5072. 1. The President shall be commander-in-chief of the army and navy of the Confederate States, and of the militia of the several States, when called into the actual service of the Confederate 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 Confederate States, except in cases of impeachment.

President of
Confederate
States—his
powers.

§ 5073. 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 Confederate 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 courts of law or in the heads of Departments.

Make treat-
ties.

Appoint offi-
cers.

§ 5074. 3. The principal officer in each of the Executive Departments, and all persons connected with the diplomatic service, may be removed from office at the pleasure of the President. All other civil officers of the Executive Department may be removed at any time by the President, or other appointing power, when their services are unnecessary, or for dishonesty, incapacity, inefficiency, misconduct, or neglect of duty; and when so removed, the removal shall be reported to the Senate, together with the reasons therefor.

Removal of
officers.

§ 5075. 4. The President shall have power to fill all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session; but no person rejected by the Senate shall be re-appointed to the same office during their ensuing recess.

Vacancies.

SECTION III.

§ 5076. 1. The President shall, from time to time, give to the Congress information of the state of the Confederacy, 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 Confederate States.

President's
duties

Article 2.—Executive Department.

SECTION IV.

Officers removable by impeachment.

§ 5077. 1. The President, Vice President, and all civil officers of the Confederate States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

ARTICLE III.

JUDICIAL DEPARTMENT.

SECTION.

- 5078. Courts and Judges.
- 5079. Jurisdiction.
- 5080. Of Supreme Court.

SECTION.

- 5081. Trial by Jury.
- 5082. Treason.
- 5083. Attainder.

SECTION I.

Judicial power and tenure of Judges.

§ 5078. 1. The judicial power of the Confederate States shall be vested in one Supreme Court, and in such Inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the Supreme and Inferior Courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office.

SECTION II.

Jurisdiction—extent of

§ 5079. 1. The judicial power shall extend to all cases arising under this Constitution, the laws of the Confederate 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 Confederate States shall be a party; to controversies between two or more States; between a State and citizens of another State where the State is plaintiff; between citizens claiming lands under grants of different States; and between a State or the citizens thereof, and foreign States, citizens or subjects; but no State shall be sued by a citizen or subject of any foreign State.

Whether original or appellate.

§ 5080. 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.

Article 3.—Judicial Department.

§ 5081. 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.

SECTION III.

§ 5082. 1. Treason against the Confederate 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.

§ 5083. 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. Attainder.

ARTICLE IV.

RELATIVE RIGHTS OF THE STATES.

SECTION.

5084. Acts and records of States.
5085. Citizens of different States.
5086. Fugitives from Justice.
5087. From service.

SECTION.

5088. Other States admitted.
5089. Power over property.
5090. Territories of Confederate States.
5091. Republican Government.

SECTION I.

§ 5084. 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. Acts and records of the State.

SECTION II.

§ 5085. 1. The citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States, and shall have the right of transit and sojourn in any State of this Confederacy, with their slaves and other property, and the right of property in said slaves shall not be thereby impaired. Citizen's privileges.

§ 5086. 2. A person charged in any State with treason, felony, or other crime against the laws of such State, who shall flee from justice, and be found in another State, shall, on demand of the Fugitives from Justice.

Article 4.—Relative Rights of the States.

Executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime.

From ser-
vice.

§ 5087. 3. No slave or other person held to service or labor in any State or territory of the Confederate States, under the laws thereof, escaping or lawfully carried into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor: but shall be delivered up on claim of the party to whom such slave belongs, or to whom such service or labor may be due.

SECTION III.

Other States
admitted.

§ 5088. 1. Other States may be admitted into this Confederacy by a vote of two-thirds of the whole House of Representatives, and two-thirds of the Senate, the Senate voting by States; 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.

Power over
property.

§ 5089. 2. The Congress shall have power to dispose of and make all needful rules and regulations concerning the property of the Confederate States, including the lands thereof.

Territory.

§ 5090. 3. The Confederate States may acquire new territory; and Congress shall have power to legislate and provide governments for the inhabitants of all territory belonging to the Confederate States, lying without the limits of the several States; and may permit them, at such times, and in such manner as it may by law provide, to form States to be admitted into the Confederacy. In all such territory, the institution of negro slavery, as it now exists in the Confederate States, shall be recognized and protected by Congress, and by the territorial government; and the inhabitants of the several Confederate States and Territories shall have the right to take to such territory any slave lawfully held by them in any of the States or Territories of the Confederate States.

Republican
form.

§ 5091. 4. The Confederate States shall guaranty to every State that now is, or hereafter may become a member of this Confederacy, 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 is not in session,) against domestic violence.

Article 5.—Amendments—how made.

ARTICLE V.

AMENDMENTS—HOW MADE.

SECTION 5092. Amendments—how made.

SECTION I.

§ 5092. 1. Upon the demand of any three States, legally assembled in their several conventions, the Congress shall summon a convention of all the States, to take into consideration such amendments to the Constitution as the said States shall concur in suggesting at the time when the said demand is made; and should any of the proposed amendments to the Constitution be agreed on by the said convention—voting by States—and the same be ratified by the Legislatures of two-thirds of the several States, or by conventions in two-thirds thereof—as the one or the other mode of ratification may be proposed by the general convention—they shall thenceforward form a part of this Constitution. But no State shall, without its consent, be deprived of its equal representation in the Senate.

Amendments—how allowed.

ARTICLE VI.

MISCELLANEOUS PROVISIONS.

SECTION.

- 5093. The Government.
- 5094. Prior debts.
- 5095. Supreme law.

SECTION.

- 5096. Oath of officers.
- 5097. Enumeration of rights.
- 5098. Rights reserved.

§ 5093. 1. The Government established by this Constitution is the successor of the Provisional Government of the Confederate States of America, and all the laws passed by the latter shall continue in force until the same shall be repealed or modified; and all the officers appointed by the same shall remain in office until their successors are appointed and qualified, or the offices abolished.

The Government by this Constitution

§ 5094. 2. All debts contracted and engagements entered into before the adoption of this Constitution shall be as valid against the Confederate States under this Constitution as under the Provisional Government.

Prior debts

§ 5095. 3. This Constitution, and the laws of the Confederate States, made in pursuance thereof, and all treaties made, or which shall be made under the authority of the Confederate States, shall be the supreme law of the land; and the Judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

The supreme law of the land.

§ 5096. 4. The Senators and Representatives before mentioned, and the members of the several State Legislatures, and

Oath to support the Constitution.

Article 6.—Miscellaneous Provisions.

all executive and judicial officers, both of the Confederate 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 Confederate States.

Enumeration of rights § 5097. 5. The enumeration, in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people of the several States.

Powers reserved. § 5098. 6. The powers not delegated to the Confederate States by the Constitution, nor prohibited by it to the States, are reserved to the States, respectively, or the people thereof.

ARTICLE VII.

RATIFICATIONS.

SECTION.

5099. Ratifications.

SECTION.

5100. Ratification by five States.

Ratification. § 5099. 1. The ratification of the conventions of five States shall be sufficient for the establishment of this Constitution between the States so ratifying the same.

When ratified by five States. § 5100. 2. When five States shall have ratified this Constitution, in the manner before specified, the Congress under the Provisional Constitution, shall prescribe the time for holding the election of President and Vice President; and, for the meeting of the Electoral College; and, for counting the votes, and inaugurating the President. They shall, also, prescribe the time for holding the first election of members of Congress under this Constitution, and the time for assembling the same. Until the assembling of such Congress, the Congress under the Provisional Constitution shall continue to exercise the legislative powers granted them; not extending beyond the time limited by the Constitution of the Provisional Government.

NOTE.—The following is the order in which the several States seceded from the United States, to wit:

South Carolina on the 20th day of December, 1860.

Mississippi on the 9th day of January, 1861.

Alabama on the 11th day of January, 1861.

Florida on the 11th day of January, 1861.

Georgia on the 19th day of January, 1861.

Louisiana on the 26th day of January, 1861.

Texas on the 1st day of February, 1861.

Virginia on the 17th day of April, 1861.

Arkansas on the 6th day of May, 1861.

North Carolina on the 20th day of May, 1861.

Tennessee on the 8th day of June, 1861.

Missouri on the 5th day of August, 1861.

MISCELLANEOUS PROVISIONS.

SECTION.

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- 5115. No Judicial interference.
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- 5117. Verdict in Trover—Piff. may select.

§ 5101. Any person who may have rent due, when the sum does not exceed \$50, may, himself, his agent or attorney, make application to any Justice of the Peace, within the District where his tenant may reside, or where his property may be found, and obtain from such Justice a distress warrant for the sum claimed to be due, on the oath of the principal, his agent or attorney, in writing, for the said rent, which may be levied by any Constable duly qualified, on any property belonging to the said tenant, whether found on the premises or elsewhere, who shall advertise and sell the same as provided in case of levy and sale under execution.

Distress warrants how obtained.

Oath of the principal, his agent, or attorney—subjoined.

Under \$50 may be levied by a Constable.

§ 5102. When any distress warrant shall issue for a sum exceeding \$50, it shall be levied by the Sheriff of the county or his Deputy, and advertised and sold as provided in cases of other executions.

Over \$50 may be levied by the Sheriff or Deputy.

§ 5103. The party distrained may in all cases replevy the property so distrained, by making oath that the sum or some part thereof distrained for is not due, and give security for the eventual condemnation money; and in such case the levying officer shall return the same to the Court having cognizance thereof, which shall be tried by a jury as provided for the trial of claims.

Property levied upon may be replevied.

§ 5104. When property distrained may be claimed by a third person the same shall be claimed on oath and bond given as required in cases of other claims, which shall be returned and tried as provided by law for the trial of the right of property levied upon by execution.

Claims—how interposed and tried.

NOTE.—See Landlord and Tenant, Part 2, Title 5, Chapter 5, Page 436. Tenants holding over, see Part 3, Title 21, Chapter 1, Article 2, Page 768.

Oath of Bailiff to the Grand Jury.

§ 5105. The following oath shall be administered to all Bailiff's attending Grand Juries, to-wit: You do solemnly swear that you will diligently attend the Grand Jury, during the present term, and carefully deliver to that body all such bills of indictment, or other things, as shall be sent to them by the Court, without alteration, and as carefully return all such as shall be sent by that body to the Court, so help you God.

Oath of Bailiff's taking charge of special and petit juries.

§ 5106. The following oath shall be administered to all Bailiff's sworn to take charge of special and petit juries in the Superior or Inferior Courts, of this State, to-wit: You shall take this jury, and all others committed to your charge during the present term, to the jury room or some other private and convenient place, where you shall keep them without meat, drink, or fire, candle-light and water only excepted (unless otherwise directed by the Court.) You shall not speak to them yourself, nor suffer others to speak to them, unless it be by leave of the Court to ask them if they have agreed on a verdict or are likely to agree. All this you shall do to the best of your skill and power so help you God.

Bonds of Constables and Sheriff's may be sued without an order of Court.

§ 5107. The bond required of Sheriff's, their deputies, and constables, as provided in section three hundred and twenty-four and four hundred and forty-five, may be sued on for the satisfaction of the public, or by any person aggrieved, in his own name, without any order of Court for that purpose, for the misconduct of the Sheriff, his deputy, or jailor, or such Constable as the case may be.

Tax Receivers and Collectors to be elected for 2 years.

§ 5108. Section 840, 841, 851 and 852, of this Code, are superceded by the Act of 1860, and the following adopted in lieu thereof, to-wit: The receiver of Tax returns and Tax collector in and for the several counties of this State, shall be elected on the first Wednesday in January, in the year 1862, and every second year thereafter, and shall be commissioned by the Governor for the term of two years, and in case of vacancies in said offices, the same shall be filled as provided in relation to other county offices.

Bond and security to be given annually. Receiver may be removed for neglect of duty.

§ 5109. The bonds of receivers of Tax returns, and Tax collectors, shall be given with security annually as now required by law, as to collectors; and should it become necessary for the Comptroller General to impose a fine upon the receiver of Tax returns, for neglect or unfaithful performance of duty, the Governor may declare the office of Receiver of Tax returns vacant, and such vacancy shall be filled as provided in the preceding section.

Vacancies—how filled.

Collectors fees for issuing tax, *fi. fa.*

§ 5110. Tax Collectors in the several counties of this State shall be allowed the sum of fifty cents for each *fi. fa.* issued by them respectively for the collection of State and county Taxes, to be included in such *fi. fa.* and paid by the defendant.

§ 5111. The Sheriff or Constable (as the case may be) shall be

NOTE.—For Bailiff's, see Part 1, Title 5, Chapter 8, Article 2, Page 97.

NOTE.—For the law in relation to Sheriff's and their deputies, see Part 1, Title 5, Chapter 6, Page 75.

entitled to the same fees for levying, advertising and selling under Tax Executions, as provided by law in cases of Executions at common law; but no Tax Collector, Sheriff, or Constable, shall receive costs on any Tax Execution, unless the same be collected from the defendant.

Fees for levying tax at *l. fa.* Not allowed unless collected out of defendants.

§ 5112. When any Tax Collector, can find no property of the defendant, on which to levy any Tax Execution in his hands, it shall be his duty to make an entry to that effect on said Execution; and such Tax Collector, may then issue summons of garnishment against any person, whom he may believe is indebted to the defendant, or who may have property, money or effects in his hands, when said summons of garnishment shall be served by the Tax Collector, the Sheriff, his deputy, or any Constable of the county in which the garnishee may reside, at least 15 days before the setting of the Court to which the same is made returnable, and returned to the Superior Court of the county for which he is Tax Collector.

Tax collector may issue garnishment.

How served and returned

§ 5113. Said Tax Collector shall enter on said Execution the names of the persons garnisheed, and return said Execution to said Superior Court, and all the subsequent proceedings shall be the same as now provided by law in relation to garnishments in other cases, when judgment has been obtained, or Execution issued.

Proceedings on Garnishment.

§ 5114. It shall be the duty of the Justices of the Peace, in the several Captains' Districts in this State, to make returns to the Receiver of Tax returns, of all persons liable to pay Taxes, in their respective Districts, on or before the first day of May, in each and every year, and if there is no Justice of the Peace for the District, it shall then be the duty of the Road Commissioners to make such return under the foregoing provisions as are required of Justices of the Peace, by the said first day of May, in each and every year.

Persons subject to pay tax to be returned to receiver by Justice of the Peace, and if none then by Road Commissioners.

§ 5115. No replevin shall lie, or any Judicial interference be had, in any levy or distress for Taxes under the provisions of this Code, but the party injured shall be left to his proper remedy in any Court of law having jurisdiction thereof.

No Judicial interference to be had.

§ 5116. When any suit or action is pending in any Court of law or Equity in this State for the recovery of personal property, the issue of said property, born or to be born, or accruing after the commencement of such suit or action, may be recovered in such suit or action, and it shall be the duty of the Court, to allow the declaration or bill to be amended at any stage of the proceedings so as to include such issue.

Trover for personal property, amendment allowed to include the issue.

§ 5117. It shall be at the option of the plaintiff in an action to recover personal property, to say upon the trial thereof, whether

Verdict in Trover—plaintiff may select.


NOTE.—For commissions of Tax Collectors and Receivers, see Section 492 and 860. By the Act of 1861, the offices of Tax Receiver and Collector, are consolidated, and the duties thereof to be discharged by one officer to be styled Tax Receiver and Collector.

NOTE.—For amendments generally, see Part 3, Title 3, Chapter 2, Page 640.

he will accept an alternative verdict for the property or its value; or whether he will demand a verdict for the damages alone, or for the property alone, and its hire, if any; and it shall be the duty of the Court to instruct the jury to render the verdict as the plaintiff may thus select.

NOTE.—For verdict, see Part 3, Chapter 1, Article 1, Page 654.

INDEX.

 This Code is indexed by sections. The notes under each title in the Index are numbered 1, 2, 3, &c. References are made to these numbers and not to the sections of the book. Thus, a reference, "see County Tax 1," refers to number 1 under the head of County Tax, and not to any section of the book. The plan of the Index is the same as that of T. R. R. Cobb's new Digest of the Laws of Georgia, except that this Index refers to Sections and his to Pages.

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ERRATA.

SECT. LINE.

- In sections 88, 95 and 108, for 84 and 85 read 88 and 84
527. 3. In 8th paragraph, for *ratified* read *ratified*
722. 5. For *properly* read *properly*
724. 2. For *hind* read *hind*
775. 5. For *resolvent* read *resolvent*,
In sections 1106, 1108, 1109, 1114, for *domesticity* read *Admitted*.
1251. 1. For *Tuesday* read *Wednesday*
1332. 2. For *county* read *country*
1525. —. Transpose the second and third lines
1660. 1. For *contubernia* read *contubernia*
1885. 7. For *property* read *property*
1972. 4. For *for* read *to that of*
2245. 1. Omit *the*, before *recession*
2400. 1. For *documental* read *documental* *columns*
2685. 3. For *resort* read *resort*
2717. 1. Read *such* between *to be* and *land* *of*
2756. 3. For *inquiry* read *inquiry*
2786. 3. For *interested* read *interested*
2788. 2. For *of* read *of*
2792. 6. For *is* read *is*
2890. 3. For *laught* read *laught*
3087. —. In head note and margin, for *express* read *express*
3091. 4. For *two* read *two*
3147. 1. Fifth paragraph, for *recessions* read *recessions* and *recessions* read *recessions*
3183. 3. For *flows* read *affects*
3292. 7. For *recessions* read *recessions*
3296. 1. For *is* read *is*
3297. 1. For *is* read *is*
3345. 1. For *in* read *in*
3363. 2. For 217 and 218, read 216, 217 and 218
3404. 1. For *proceed* read *proceed*
3465. 6. For *to* read *person directed as a tenant, read directed to the person sought to be prohibited*
3646. 6. For *to* read *to*
3666. 7. For *to* read *to*
3676. 13. For *to* read *to*
3723. —. For *to* read *to*
3782. 7. For *to* read *to*
3781. 7. For *to* read *to*
3918. 3. After *to* read *of*
4318. 4. For *to* read *to*
4318. 13. For *to* read *to*
4458. 2. For *to* read *to*
4486. 3. For *to* read *to*
4548. 2. Omit *to*
4551. 21. For *to* read *to*
4554. 18-19. For *to* read *to*
4577. —. For 4562 read 4562
4585. 4. For 4562 read 4562 and 4562
4588. 2. For *to* read *to*
4627. 2. For *to* read *to*
1980. 10. Paragraph 7, after the word *Court*, read as follows: Upon writ *admitt* being filed, the Judge or Justice, as the case may be, shall grant an order requiring the Clerk of the Court of which he is Judge or Justice, to issue an execution instantly, against the person owing the debt, and also against the boat or craft, for the amount sworn to, and the costs, which execution, when issued, shall be levied by any Sheriff of this State, on such boat or craft, under the same rules and regulations as other levies and sales under execution.

378



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1070



1070
1070
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