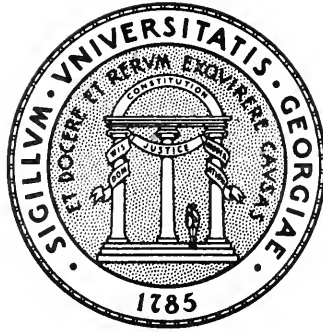


FIG 2



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THE CODE

OF THE

STATE OF GEORGIA.

ADOPTED DECEMBER 15th,
1895.

PREPARED BY
JOHN L. HOPKINS, CLIFFORD ANDERSON
AND JOSEPH R. LAMAR.

VOL. I.

ATLANTA, GEORGIA:
THE FOOTE & DAVIES COMPANY,
PRINTERS AND BINDERS.
1896.

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THE STATE OF GEORGIA,
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PREFACE TO THE ORIGINAL CODE.

By an Act of the General Assembly, assented to December 9th, 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 statutes of the State, the decisions of the Supreme Court, or the statutes of England of force in this State."

David Irwin, Hon. Herschell 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 nor labor. How far they have succeeded in their effort, 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, and 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 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 publishers 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 superseded 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 references 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, we can but regret it.

DAVID IRWIN,
THOMAS R. R. COBB,
R. H. CLARK.

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 of December, 1859) to meet the commissioners appointed under an Act to provide for the codification of the laws of Georgia (approved 19th of December, 1858) at the capitol 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 the 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 intended 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, especially 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 led 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 new 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, and 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, 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 first 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 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, Esqs., 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 February 28th, 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 public 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, etc., as codified by order of the city council of Savannah, by the city attorney of Savannah, be, and the same are 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 December 19th, 1860.

PREFACE TO THE REVISED EDITION.

The late war and its results having produced so many radical changes in the Constitution and laws of Georgia, a revision of the Code of the State became a matter of necessity. Prompted by an appreciation of that necessity, as well as the suggestions of his friends, the undersigned entered upon the work of carefully revising said Code, so as to exclude therefrom all such parts as had been repealed or superseded, and to include all laws passed since the adoption of said Code, which were of force at the adjournment of the General Assembly of 1866, thus making the Code conform to the fifth clause of the first section of the Fifth Article of the Constitution of Georgia, adopted by the convention of 1865. All parts of the Code that have been repealed or superseded have been left out, and all laws still of force, that were never embodied in the Code, have been arranged under appropriate heads. The head-notes and sections have been rearranged and renumbered, and the new laws are included in brackets, with references to the authorities in which they may be found. A new and enlarged index has been made, which, it is hoped, will enable any lawyer or citizen readily to find the law on any given subject. By resolution of the General Assembly, His Excellency Governor Jenkins appointed a committee, composed of General Andrew J. Hansell, Colonel Logan E. Bleckley, and Colonel Nathaniel J. Hammond, to examine the work; and after a careful and elaborate examination, this committee of distinguished lawyers reported to His Excellency that the revision of the Code was thorough and accurate. The undersigned did not feel at liberty to change even the wording of the laws passed since the adoption of the Code, but embodied them just as they were enacted by the legislature. The work has been tedious and difficult, and the undersigned does not claim that it is perfect; but, having done the very best that time, circumstances, and his official duties would allow, he places it before a generous profession and an indulgent people.

DAVID IRWIN.

PREFACE TO REVISED AND ANNOTATED EDITION.

Since the publication of Irwin's Revised Edition of the Code of Georgia, many and great changes have taken place in the Constitution and laws of the State. That edition is entirely exhausted, and many of the officers, lawyers, and people are not supplied with it. A second revised edition would, therefore, seem to be a necessity. These considerations, coupled with a general demand therefor, induced the undersigned to prepare a second revision of the Code, containing the Constitution and laws of the State, including all general acts of the legislature of 1873. The profession and people having become familiar with the original plan and arrangement of the Code, we have deemed it best to let them remain unchanged. We have transferred the side-notes to the beginning of the sections, and have placed in their stead carefully prepared references to the statutes of the State, from which the law of the Code

was originally derived, thus furnishing ready means of tracing the history of any particular section, and of placing upon it a proper construction. Reference is also made to collateral or cognate sections in the margin, which we think will greatly facilitate a proper and thorough understanding of the law of our State. We have also prepared references to the decisions of the Supreme Court of Georgia up to and including those made at the January term, 1873. The decisions which bear directly upon a particular section or part of a section follow immediately after it in small print, whilst those decisions which do not bear directly upon the subject of a particular section, or part of a section, but refer to the subject of a chapter or an article generally, will be found in a general note at the end of such chapter or article. In the Appendix we have placed the Constitution of Georgia, adopted and ratified in 1868; the Constitution of the United States, with the recent amendments thereto; and the rules of the superior and Supreme courts of the State, up to July, 1873, together with references to decisions of our Supreme Court on these Constitutions and rules of practice. The reader will also find in the Appendix, references to decisions of the Supreme Court on subjects not in the Code, but which are of special interest to the Georgia lawyers and people. In the present edition we have preserved the numbers of the sections as they occur in Irwin's Revised Code, noting such as have been repealed or superseded, with a reference to the repealing or superseding act. This will be found an especial convenience in applying such decisions of our Supreme Court as refer to the sections of Irwin's Code by numbers.

In preparing this revision of the Code, it has been our purpose to compass the three things which the honorable attorney-general says, in his report to the Governor, he was especially careful to ascertain by his examination of it. We may have stricken from the Code something that is still law, and we may, possibly, have retained in it something that is not law, but we confidently submit our work to the profession and people of Georgia, as a reliable source from which a knowledge of the law of the commonwealth may be obtained. We have stricken from the Code everything upon the subject of bail in civil cases, except that which relates to bail in actions for personalty, deeming it repealed by that section of the Constitution which declares, that "there shall be no imprisonment for debt." Some able lawyers have suggested that this provision of the Constitution does not repeal the law of bail in actions *ex delicto*. Be this and like cases as they may, we are consoled by the reflection, that if we have excluded what is law, it is law still, and if we have left anything in the book that is not law, the fact of it being retained does not make it law. All statutes up to 1851 are referred to in Cobb's New Digest of the laws of Georgia—indicated by the letter "C." The index to the Code has been revised, the heads multiplied, and the subdivisions improved, and we are encouraged to hope that by the index to the present edition any law in the book can be readily found. The task of revision and annotation has been hard and difficult, and we give our work to the public with the earnest hope, that whatsoever of the errors and imperfections may be found in it, may be viewed with the liberality and indulgence called for by the magnitude and difficulties of the undertaking.

DAVID IRWIN,
GEO. N. LESTER,
WALTER B. HILL.

ATTORNEY-GENERAL'S REPORT.

ATLANTA, GA., February 7th, 1873.

His Excellency JAMES M. SMITH, *Governor, Atlanta, Ga.:*

For a month, just past, I have been engaged in the examination of the revision of "Irwin's Code," made by Messrs. David Irwin, George N. Lester, and Walter B. Hill, submitted to me by Your Excellency, under a resolution of the General Assembly, approved August 26th, 1872.

The examination was conducted by Col. G. N. Lester, representing the revisers. Having completed it, I have the honor of submitting to Your Excellency the following report:

I was careful to ascertain especially three things: First, that all the old law which had been repealed by the Constitution of 1868, and acts passed under it, and all inconsistent with the Constitution of the United States and laws thereof, was stricken out, and that every part of Irwin's Code, clearly consistent with said Constitution and laws, was so changed as to make this revision consist and harmonize with the fundamental law; secondly, that all general acts passed under the Constitution of 1868, and still of force, were incorporated into this revision in their appropriate places, according to the plan and arrangement of Irwin's Code, as contemplated by said resolution; and thirdly, that it contained, also, so much of the statute law of this State, of force in 1860, as is not expressly superseded by, nor inconsistent with, the present Code, though not embodied therein.

In doing this I have sought and obtained valuable aid from several of the leading minds in the State.

All statutes of doubtful constitutionality, and all laws and parts of laws not repealed expressly or by obvious and necessary implication, have been retained in this revision. The revisers and I agree that the courts alone should pronounce upon their validity.

The examination has been careful and elaborate. From it I take pleasure in reporting that the revision has been faithfully and well performed, and that it is accurate and thorough. The resolution did not contemplate an examination and report upon the references to collateral and cognate sections, the citations of the statutes upon which the sections stand, and the decisions of the Supreme Court upon them. Yet I made such an examination of various parts of the revision.

From this I am satisfied that these annotations and references are full and accurate, if not exhaustive of all references, citations and annotations proper to be made according to the plan of the work.

They form a new and excellent addition to the Code and greatly increase its value. Said resolution properly declared that a revision was a necessity; and I am persuaded that this one will satisfy the legal profession, the officers and citizens of the State, as an embodiment of all our statutory law in a convenient and familiar form, and these references to the statutes of which it is made, and the decisions of our highest court expounding them, make this revision combine all the benefits without the disadvantages consequent upon a codification of the laws of a State. I have the honor to be, etc.,

N. J. HAMMOND,
Attorney-general of Georgia.

PREFACE TO THE FOURTH EDITION.

This edition to the Code of Georgia was prepared by authority of an Act of the General Assembly, approved the 16th of September, 1881.

We have spared neither time nor labor in our endeavor to furnish to the bar and people of Georgia a useful, valuable book. The result of that endeavor is now submitted to the candid judgment of a generous profession and a just people.

We may not claim that it is perfect, but we do say that we have toiled late and early to make it as nearly so as human effort could compass such an end.

The undertaking, from first to last, involved great care, vast labor, and patient toil, and all these have been faithfully bestowed.

The revision and thorough annotation of a book like the Code of Georgia is a task that has nothing easy about it. In executing the task assumed by us, we have endeavored to present an edition of the Code embodying the following features:

1. An accurate and thorough revision of the statutes, so as to conform to the Constitution of 1877, striking out the repealed sections, with a reference, in every instance, to the repealing law; noting all amendments, and inserting all statutes passed since 1873, including the laws of the session of 1880-1. This was attended with no little difficulty. In quite a number of instances the legislature has passed many statutes upon the same subject, sometimes enacting in part the same thing, with additions or variations, and at other times changing the law so as to make the question of repeal or no repeal a matter of construction; and as we had no power to make or construe the law, and did not feel at liberty to sift and analyze the statutes on a given subject, and thus *determine* what was the law on that subject, in all cases of doubt we inserted all the statutes, leaving it to the courts to decide what was repealed and what was not repealed, and to determine the law by construing all the statutes together.

2. A full annotation of the entire Code, by references to the decisions of our Supreme Court, from the first volume to the date of publication. These references have been made fuller than heretofore, so as to show not only the subject to which the decisions relate, but also, as far as practicable, the points decided. The references are sometimes to the body of the decisions, and not always to the page on which the case begins.

3. In addition to the references to the Georgia Reports, we have referred to other authorities, a list of which will be found in the Appendix. Some of these construe our statutes, others show the sources from which the sections of the Code were derived, or the changes made by the statutes, and others construe statutes similar to our own.

4. We have retained the marginal references to the old statutes, thus enabling the practitioner, officer, or citizen to trace the history of those sections of the Code upon which there was legislation prior to 1863, the letter "C" in these references indicating Cobb's New Digest.

5. We have not changed the numbers of the sections of the Code of 1873. They have been cited by our Supreme Court for nearly ten years, and hence they have been retained. The added sections are indicated by letters, and are so referred to in the index. We have also retained the numbers of the sections of Irwin's Code of 1868, and have added the numbers of the sections of the Code of 1863, where the sections are still of force. Thus the courts, lawyers, and people of the State can see the law as it was in 1863, and in 1868, and what it is now. The first number refers to the present Code, the second to

Irwin's Code, and the third to the Code of 1863, and where there has been any change in the section since 1863, there is a reference in the margin to the statute or statutes by which the change was made.

6. In the Appendix, we have given the Constitution of 1877, and the Constitution of the United States, both of which are annotated with references to the decisions of our own Supreme Court, and the Supreme Court of the United States, and to standard text-books on the subject.

7. The new rules of practice will be found in the Appendix, with annotations and references to the decisions of the Supreme Court of Georgia thereon.

8. We have also given a table of cases in the Supreme Court of Georgia, which have been overruled, criticised, doubted, or explained, or the law of which has been changed or modified by the Code of the State.

9. The index has been the subject of anxious care and painstaking. It is considerably enlarged, the heads multiplied, and the matter distributed under as many heads as it was thought at all advisable. Under the principal or larger heads, we have endeavored to arrange the subdivisions alphabetically. Where the subdivisions were not numerous we have ignored the alphabetical arrangement. We have some doubt whether or not the profession will be pleased with this alphabetical arrangement, as it often reverses, and sometimes confuses the natural and logical order in which the law of a particular chapter or article comes in the Code. Be this as it may, many lawyers thought the alphabetical arrangement would be best, and we have complied with their wishes on the subject. We sincerely hope that the index will be satisfactory. Let all who use the book be just enough to keep in mind, that the five thousand or more sections of the Code cannot, with any sort of propriety, be rewritten in the index. We feel very sure that any one at all familiar with the contents and law of the Code, can, by the present index, readily find any desired section.

In regard to the annotations, the plan has been to put under each section the authorities relating to, or illustrating its provisions, the citations to the Georgia Reports coming first, and the citations of other authorities following, but separated by sufficient space to indicate the difference between the two sorts of references. The same order is observed in the general notes at the end of the articles or chapters, with the additional distinction that those citing the Georgia Reports are headed "General Note," while those citing other authorities are headed so as to show the topics, thus: "General Note on Principal and Agent."

There are so many collateral sections in the Code that it has been impossible to arrange under each section of the Code, where there are several kindred sections, all the authorities that might be there grouped. Hence, in consulting the annotations, resort should be had not only to those under a particular section but those under the collateral sections given in the margin. Thus, the conclusiveness of judgments is stated in sections 2897, 3577 and 3826, under each of which references to authorities are given, and *all* of which should be examined by any one desiring to consult the citations exhaustively. [Sometimes, but not always, the notes themselves direct attention to notes on same subject found elsewhere.

The mark / indicates *Ibid.* Thus in 4 Ga., etc., 86; 9/27, the latter means 9 Ga. 27. The same mark is used in the references to other series of reports.

The small letters a, b, c, etc., located in the sections at particular words or phrases are intended to guide the eye to authorities bearing on the subject of such particular words or phrases.

Additional information as to the general authorities cited will be found, after the index, accompanying a list of abbreviations used, etc., which all who use these references are requested to consult.

It is probably proper to say, that in dividing our labors on the Code, it was left to the undersigned George N. Lester, to revise and arrange the statute law of the book, and to prepare the index. Mr. Rowell prepared the annotations and references to the decisions of the Supreme Court of Georgia, and the table of overruled and criticised cases, and Mr. Hill prepared the notes and references to the other authorities referred to. Mr. Hill also gave valuable assistance in arranging the subdivisions of the index in alphabetical order.

This edition of the Code, with its plan, arrangement, and execution, so far as it had gone when he examined it, was submitted, by resolution of the General Assembly, to Hon. Clifford Anderson, Attorney-general, and his report is hereunto annexed.

GEO. N. LESTER,
C. ROWELL,
W. B. HILL.

ATTORNEY-GENERAL'S OFFICE, ATLANTA, GA., July 13th, 1881.

To the Honorable the President of the Senate and Speaker of the House of Representatives:

By direction of the General Assembly, I have carefully examined the revision prepared by Messrs. Geo. N. Lester, Walter B. Hill, and O. Rowell, of the "Code of 1873," as far as it has been completed. It comprises all the statute law believed to be now of force in this State. When the acts which may be passed during the present session of the General Assembly shall have been added, the work will be finished. I do not hesitate to state that if what remains to be done is as faithfully performed as that submitted for my examination, it will be as nearly accurate and complete in all its parts as any human undertaking can reasonably be expected to attain.

It is believed that all those portions of the Code of 1873, which have been repealed by subsequent legislation, or superseded by the Constitution of 1877, have been omitted; and that every act of a general nature passed since 1873, occupies its appropriate place in the new revision. Pursuing the plan hitherto adopted in all cases of doubt whether statutes have been repealed or are still of force, they have been retained, to be passed on by the courts. I have not had time since the work was submitted to me to examine all the marginal notes of reference to the decisions of the Supreme Court, and tracing the history of particular legislation, I have formed my opinion of this part of it from numerous specimens submitted to me by the revisers. On the whole, I cordially commend the new revision to the favorable action of the General Assembly. It is timely, if not absolutely necessary, and the demand for such a work is general if not universal.

Very respectfully,

CLIFFORD ANDERSON,
Attorney-general of Georgia.

PREFACE TO THIS CODE.

ACT PROVIDING FOR THIS CODE.

An Act to provide for the appointment of three Commissioners to codify the laws of Georgia, to define the duties and powers of said Commissioners, to fix their compensation, and for other purposes.

SECTION I. *Be it enacted by the General Assembly of the State of Georgia,* That within thirty days after the passage of this Act, the Governor and the Chief Justice and the Associate Justices of the Supreme Court shall appoint three citizens, learned in the law, who shall be commissioned to codify the laws of this State. Any vacancies occurring in said commission before the completion of its work shall be promptly filled by the Governor and the Chief Justice and Associate Justices of the Supreme Court.

SEC. II. *Be it likewise enacted,* That the duties and powers of said commissioners shall be to codify and arrange in systematic and condensed form the laws now in force in Georgia, from whatever source derived, following the general plan and system of the Code of 1863, and subsequent revised editions thereof. The commissioners shall preserve, as far as practicable, the numbering of the sections contained in the Revised Code of 1882, and shall make marginal reference to statutes, and shall annotate the sections with the decisions of the Supreme Court of the State explanatory of the same, but shall not make annotation of any other decisions nor of any text-books. The commissioners shall begin their work as soon as practicable after their appointment, and shall use due diligence in completing the same. When they shall have finished their work, they shall file two typewritten copies of the manuscript, together with a full index to the same, in the Executive office: *Provided,* that the codifiers shall separately codify the civil and criminal laws of the State, and shall make a full and complete separate index to each of said codifications. The commissioners shall have authority to employ a clerk, who shall be paid at the rate of \$100 per month for the time he is engaged in his work; said salary to be paid monthly, on the warrant of the Governor, who shall issue his warrant upon the certificate of the commissioners as to the sum due said clerk.

SEC. III. *Be it likewise enacted,* That each of said commissioners shall receive the sum of \$3,000 as compensation for his services, one half of which shall be paid on the warrant of the Governor, when the copies of the manuscript have been filed in the Executive office as hereinbefore provided, and the balance of said compensation shall be paid on the warrant of the Governor when the work of said commissioners has been accepted or approved by the General Assembly.

SEC. IV. *Be it likewise enacted,* That all laws and parts of laws in conflict with this Act are hereby repealed.

Approved December 19th, 1893.

APPOINTMENT OF COMMISSIONERS.

STATE OF GEORGIA, EXECUTIVE OFFICE, ATLANTA, December 21st, 1893.

The Governor, the Chief Justice and the two Associate Justices, met to exercise the appointing power conferred by the Act of the General Assembly, approved December 19th, 1893, as to three commissioners to codify the laws of Georgia; and

It is ordered, all concurring, that the commissioners consist of John L. Hopkins, of Fulton; Clifford Anderson, of Bibb; and Joseph R. Lamar, of Richmond.

It is further ordered that this order be entered on the minutes of the Executive Department, and on the minutes of the Supreme Court, and that a copy of the same be furnished to each of the commissioners.

W. J. NORTHEN,
Governor.

L. E. BLECKLEY,
Chief Justice.

T. J. SIMMONS,
Associate Justice.

SAMUEL LUMPKIN,
Associate Justice

COMMITTEE TO EXAMINE THE WORK.

WHEREAS, The commissioners appointed by the Governor under an Act entitled "An Act to provide for the appointment of three commissioners to codify the laws of Georgia, to define the duties and powers of said commissioners, to fix their compensation, and for other purposes," approved December 19th, 1893, will have completed their work before the next session of the General Assembly of Georgia; and

WHEREAS, Under said Act, said work of said commissioners must be accepted or approved by the General Assembly of the State; therefore, be it

Resolved by the General Assembly, the House of Representatives concurring therein, That a committee of three from the Senate and five from the House of Representatives be, and they are, hereby appointed to carefully examine the work of said commissioners, and report the result of their examination to the next session of the General Assembly; be it further

Resolved, That if said committee shall accept and approve the work of said commissioners, then, and in that event, said committee are hereby authorized to prepare and draft a bill to be introduced in the General Assembly to approve, adopt, and make of force said work of said commissioners as the Code of laws of this State.

Approved December 15th, 1894.

REPORT OF COMMITTEE.

To the General Assembly of Georgia:

The committee appointed under the resolution of the last session of this General Assembly, approved December 15th, 1894, to carefully examine the work of the commissioners appointed under an act to provide for the codification of

the laws of Georgia (approved December 19th, 1893), met in the capitol at Atlanta, Georgia, in company of said commissioners, on the 17th day of June, 1895, proceeded to discharge that duty, and make the following report as the result of their examination:

The first work of the committee was to see that the acts of the legislature of public and general character were embodied in the work of the commissioners. This the committee did by commencing with the Acts of 1882-3, and calling attention to each act separately in order to verify the fact that the commissioners had omitted nothing necessary to be placed in their work. By this process the committee is authorized to say that all the acts of the General Assembly since the Code of 1882 are embodied in the work of the commissioners. The committee is, by the same process, satisfied that the addenda in the Code of 1882, except those sections repealed, are embodied in the present Code.

When the committee had completed this part of their investigation, they then compared the new legislation with the manuscript of the commissioners, and found this part of the work complete in every particular; having copied the acts, and, as far as practicable, omitted all meaningless words and repetitions of sentences, and placed the same in proper Code language. This work has been accomplished by the commissioners to the entire satisfaction of the committee.

All matter in the Code of 1882, and acts since that Code, of a special or local nature, both of time and locality, have been omitted by the commissioners. By the adoption of this method much of the matter now embraced in the Code of 1882 is omitted, thus, to some extent, reducing the volume of matter to be printed.

So far as the committee has been able to observe, all the sections of the Code of 1882, and the acts since that Code, that have become obsolete, superseded, or that are unconstitutional, have been omitted. The acts of doubtful constitutionality have been retained.

The General Assembly is especially cited to the fact that the committee has directed the commissioners to eliminate the chapter in the Code of 1882 on the subject of "Court Contracts," embracing sections 2756 to 2772 (a), inclusive, the committee being of the opinion that the sections mentioned are both obsolete and unconstitutional; in this opinion the committee are sustained by the unanimous vote of the commissioners.

The commissioners have placed in the Code, and in Code language, many decisions of the Supreme Court relating to the fundamental principles of law which have not heretofore appeared in the Code. These sections are properly numbered and placed in their appropriate places, with marginal notes referring to the decisions. These decisions were necessary to give symmetry and completeness to the statutes which they follow, and will be of incalculable benefit to the magistrate, lawyer, and student.

Referring to the Act by which the present commissioners were appointed, they were authorized to codify and arrange in systematic and condensed form all the laws now of force in Georgia, from whatever source derived, following the general plan and system of the Code of 1863, and subsequent revised editions thereof. These directions the commissioners have followed, with the exception of the arrangement and grouping of the sections, which change the commissioners felt authorized to make under the Act. The committee observed with pleasure that the commissioners have arranged the grouping of the sections of the Civil and Penal Codes, so that each and every section will fall under its proper division. This orderly arrangement of the sections will simplify the work of investigation.

Under the Act above referred to, the commissioners were required to preserve, as far as practicable, the numbering of the sections contained in the

Code of 1882. This work was found by the commissioners to be wholly impracticable, and the committee was unanimous in the opinion that this could not be done. The commissioners have retained the sections of the Code of 1882 intact, and have arranged the references and marginal notes so that the practitioner will be able to find any act that he may seek to investigate.

The committee is of the opinion that the commissioners have fully complied with the requirements of the law as to the marginal notes and references.

Referring again to the defined duties of the commissioners, they were required to make a full, complete, and separate index to the civil and penal codifications. The committee is unanimously of the opinion that this work could not be done with completeness and accuracy from the manuscript in the hands of the commissioners, and that it would be better for the interest of the State that this duty imposed upon the commissioners be postponed until the work shall go to the press; at which time when the printed matter comes from the press, the commissioners will be better able to index the work, and by this means the index can be arranged with perfect accuracy.

The Penal Code, text and annotations, is now complete and ready for action by the General Assembly. The text of the Civil Code is also complete, but the annotations are incomplete, and that part of the work is not ready for publication. The work of preparing the annotations proved to be far greater than the commissioners at first supposed, and it was so vast that its completion by this time was next to impossible; but we are informed that this work will be completed by the first of April, 1896.

The work of the commissioners in the present codification of the laws has been extremely laborious. The legislation of the past decade has been so voluminous and conflicting, they have been forced to cull through an immense mass of matter in order to determine what laws are of force, and what have been repealed or superseded by other legislation. The commissioners having this work in charge have labored incessantly for more than eighteen months to bring out of chaos a perfect system of laws.

The committee feel it their duty to say that from the patient and unceasing toil of these able and distinguished men, the Code of laws, civil and penal, has reached a higher point of perfection than ever yet attained. This statement is made without reference to or comparison with other Codes, but in justice to the progressive science of the law. The commissioners are entitled to the highest praise for their unselfish and patriotic service to the State, and it is much to be regretted that their compensation, from a financial standpoint, is not commensurate with the faithful service performed.

This compilation of laws is not confined to statutes, but principles of the common law, and constructions placed by the courts upon statutes covering a broad field of legal science, making the Code of Georgia a lawyer's library, and the citizen's protector, within and of itself.

With the exceptions hereinbefore stated, the commissioners have fully discharged their duties as far as the work of compiling and codifying the laws is concerned; yet the work is of such great moment to the State, and its correct publication of such importance, the committee is unanimous in the opinion that the services of the commissioners should be requested by the State, at a reasonable and just compensation, to supervise and superintend the publication of their work. In view of the fact that the Civil Code is not ready for publication, we recommend that the civil acts of the present session of the General Assembly be incorporated therein, and that this committee be continued, or some other committee be appointed, with authority to examine and approve the work after the new acts have been incorporated and the annotations compiled.

We further recommend the acceptance of the Penal Code and annotations thereto, and its immediate publication.

We also recommend that the text of the Civil Code be accepted, and that it be published as soon as the acts of the present session of the General Assembly are incorporated therein and the annotations completed and approved.

We recommend that the General Assembly pass the bill herewith submitted by the committee, providing for the printing, binding, and distribution of the three several volumes therein specified.

H. A. JENKINS,
D. G. FOGARTY,
R. T. FOUICHE,
A. G. McCURRY,
J. H. PITMAN,

Committee on part of House of Representatives.

M. G. BOYD,
TRAMMELL STARR,
W. W. SHEPPARD,

Committee on part of Senate.

ADOPTING ACT.

An Act to approve, adopt, and make of force the Code of laws prepared under the direction and by authority of the General Assembly, to provide for the printing and publication of the same, and for making indices thereto, and for other purposes.

SECTION I. *Be it enacted by the General Assembly of the State of Georgia, That the Code of laws prepared under its authority by John L. Hopkins, Clifford Anderson, and Joseph R. Lamar, and revised, fully examined and identified by the certificate of its joint committee, and recommended and reported for adoption, and with the acts passed by the General Assembly of 1895 added thereto by the codifiers, be, and the same is, hereby adopted and made of force as the Code of Georgia.*

SEC. II. *Be it further enacted, That said Code shall be printed and published in three volumes. The first volume shall contain the laws relating to the political and public organization of the State; the second volume shall embrace the Civil Code, the Code of Practice, the rules of the Supreme and superior courts and the Constitution of the State and the United States; and the third volume shall embrace the penal laws. A separate index for each volume shall be prepared by the Code commissioners from the printed forms.*

SEC. III. *Be it further enacted, That the Governor be authorized to contract with the Code commissioners, or any or either of them, to superintend the publication and supervise the printing of said Code.*

SEC. IV. *Be it further enacted, That the Governor, Hon. John L. Hopkins, and Hon. Wm. A. Wright, Comptroller-general, be authorized to contract for and procure the printing and binding of ten thousand copies of said Code. They shall have the work done on the best terms they can get for the State, giving especial consideration to the reliability and punctuality of the contractor, the cost and character of the work, and its completion at the earliest practicable time. And they shall provide in said contract that stereotype plates shall be made by the printer, and when the work of printing the Code is completed, said plates to be the property of the State and turned over to the librarian for safe-keeping.*

SEC. V. *Be it further enacted*, That, as soon as a contract shall be made for the printing and publication of said Code, the volume embracing the penal laws and annotations shall be printed and published, and as soon as the annotations to the other volumes are prepared by the Code commissioners and approved by the joint committee of the General Assembly, said volumes shall be printed and published.

SEC. VI. *Be it further enacted*, That the Governor have the Code copyrighted for the benefit of the State.

SEC. VII. *Be it further enacted*, That the State librarian shall sell said Code to the public for cash only, at the actual cost to the State, and deposit each day the money thus received into the State treasury: *Provided*, that the librarian shall not sell the Code to any person who desires the same for resale or speculation.

SEC. VIII. *Be it further enacted*, That all laws and parts of laws in conflict with this Act be, and the same are, hereby repealed.

Approved December 16th, 1895.

BY THE CODE COMMISSIONERS.

The ruling by the Supreme Court that statutes which were not included in the Code of 1862 were presumed to have been repealed, and the action of the General Assembly in reference to those omitted from the Code of 1882, have led the commissioners to assume that new matter must be sought in acts passed since the filing of Judge Bleckley's report in the Executive office, January 26th, 1883, except in the few instances in which it has been held that prior statutes were of force notwithstanding their accidental omission from previous Codes.

The previous codification of the fundamental principles of common law and equity has so satisfactorily and adequately met the requirements of our people, that the commission has made comparatively few sections from the decisions. The comprehensiveness and excellence of the Code of 1862 is illustrated by the fact that since its adoption the great majority of questions submitted to the Supreme Court have required the application of law as therein stated, rather than the enunciation of new principles proper for insertion in this work.

The experience of every one called on to construe laws will suggest the impossibility of altering the language without in some measure changing the meaning; and an effort has been made, in the Civil Code especially, to retain the exact wording of the statutes to obviate the necessity of constant reference to the original acts for the purpose of discovering the legislative intent.

The Act under which the commissioners were appointed required the annotation of each section with explanatory decisions of the Supreme Court, and it is hoped and believed that the fullness of the notes, and the convenience of their arrangement into paragraphs, will justify the consequent enlargement of the second volume.

The divisions heretofore adopted of Political Code, Civil Code, Code of Practice, and Penal Code, are retained in the present work, but in some instances this strictly logical arrangement has been altered, in order to bring together matters upon the same and kindred subjects. The great number of statutes passed since 1882 made it impossible to retain the old numbering, but a key, showing the present number of all old sections, will obviate any inconvenience arising from these changes.

The commissioners are greatly indebted to the committees appointed by the General Assembly for their careful and patient investigation of this work. They gave special attention to all changes made in the Code of 1882 and to each new section incorporated in the Code of 1895; and, in a number of instances, where irregularity in its enactment, apparent variance between the title and the body, or other cause made an act of doubtful constitutionality, the present Code represents the concurrent views of the committee and the commissioners; but, recognizing that only the judiciary can declare an act void, in several instances sections have been retained, the validity of which may hereafter be questioned.

The general plan as to the arrangement of the text was agreed to by all the commissioners. The preparation of the text of the Civil Code was assigned to Joseph R. Lamar; the annotations to the Civil Code, to Clifford Anderson; and the text and notes of the Penal Code, to John L. Hopkins.

Criminal cases have not been exhaustively annotated in the Civil Code, except such as determine constitutional questions; indeed, with the exception named, those criminal cases decided since the Code of 1882 have not been annotated in the Civil Code except in rare instances, but will be found in the Penal Code under the appropriate provisions.

With the approval of the committee of the legislature, the annotations to the Codes of 1873 and 1882 were purchased from the owners of the copyrights, and used in the Civil Code, with slight modifications and some rearrangement; these annotations having proven entirely satisfactory to the profession and public, it was deemed best to save the very large expense and time incident to reannotating the decisions.

JNO. L. HOPKINS,
CLIFFORD ANDERSON,
JOSEPH R. LAMAR,
Code Commissioners.

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317 (e)	4213	375	4390
318	4218	376	4391
319	4219	377	4392
320	4221	378	4393
321	4222	379	4394
322	4223	384	4395
323	4224	387	4396
324	4225	388	4397
325	4226	389	4398
327	4228	390	4399
328	4229	391	4400
329	4230	392	4401
330	4231	393	4402
331	4232	394	4403
332	4233	395	4404
333	4234	396	4405
334	4235	397	4407
335	4236	398	4406
336	4237	399	4408
337	4238	400	4409
338	4240	401	4410
340	4241	402	4411
340 (a)	4080	403	4412
340 (b)	4081	404	4413
341	4247	405	4414
342	4248	406	4415
343	4249	407	4416
344	4250	408	4417
345	4368	409	4418
346	4369	410	4420
347	4370	411	4421
348	4371	412	4422
349	4372	413	4423
350	4373	414	4424
351	4374	415	4425
352	4375	416	4426
353	4376	417	4427
354	4377	418	4429
355	4378	419	4430
360	4379	420	4431
361	4380	421	4432

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422	4433	476	4097
423	4434	477	4098
424	4435	478	4099
425	4436	479	4100
426	4437	480	711
427	4438	480 (a)	712
428	4439	481	330
429	4440	482	331
430	4441	483	332
431	4442	484	333
432	4443	485	334
433	4444	486	335
434	4445	487	336
435	4051	488	337
436	4052	489	338
437	4059	490	339
438	4061	491	340
439	4062	491 (a)	375
440	4063	492	342
441	4064	493	343
442	4065	493 (a)	344
443	4066	493 (b)	345
444	4067	493 (c)	346
446	4068	494	347
447	4069	495	348
448	4070	496	351
449	4071	497	352
450	4072	498	353
451	4073	499	354
452	4075	500	358
453	4076	501	355
454	4077	502	395
455	4078	503	396
456	4079	504	359
457	4082	505	360
458	4104	506	361
459	4105	507	362
460	4106	508	363
461	4107	508 (a)	364
462	4108	508 (b)	365
463	4083	508 (c)	366
464	4084	508 (d)	367
465	4085	508 (e)	368
466	4087	508 (f)	369
467	4088	508 (g)	370
468	4089	508 (h)	371
469	4090	508 (i)	377
470	4091	508 (j)	378
471	4092	508 (k)	379
472	4093	508 (l)	380
473	4094	508 (m)	381
474	4095	508 (n)	382
475	4096	508 (o)	383

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Number of Section in Code of 1882.	Number of Section in this Code.	Number of Section in Code of 1882.	Number of Section in this Code.
508 (r)	384	550	457
508 (s)	385	551	458
508 (x)	391	552	459
508 (y)	392	553	460
508 (z)	393	554	461
508 (aa)	394	555	462
508 (mm)	758	556	463
508 (m ³)	759	557	464
508 (m ⁴)	760	558	465
508 (m ⁵)	761	559	466
509	399	560	467
510	400	561	468
511	401	563	469
512	402	564	470
513	403	565	471
514	404	566	473
514 (a)	397	567	474
515	398	568	475
516	405	569	476
517	406	570	477
518	407	571	478
519	408, 409	572	479
520	410	573	480
521	411	574	481
522	412	575	482
523	413	577	483
524	414	578	484
525	415	579	485
526	416	580	486
527	417	581	489
528	420	582	491
529	421	583	492
530	422	584	493
531	423	585	494
532	424	586	495
533	425	588	496
534	1642	588 (a)	4986
535	1524	589	497
536	1525	596	4074
537	1526	597	509
538	1527	598	510
539	1528	599	511
540	1529	600	512
541	1530	601	514
542	448	602	515
543	449	603	516
544	450	604	520
545	451	605	521
546	452	606	522
547	453	607	523
548	454	608	524
549	455	609	525
549 (a)	456	610	526

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Number of Section in Code of 1882.	Number of Section in this Code.	Number of Section in Code of 1882.	Number of Section in this Code.
611	527	662	594
612	528	663	595
613	529	664	596
614	530	665	597
615	531	666	598
616	532	667	599
616 (a)	533	668	600
616 (b)	534	669	601
616 (c)	535	670	602
616 (d)	536	671	603
617	537	672	604
618	538	673	605
619	539	674	606
620	540	675	607
621	541	676	608
622	542	677	609
623	543	678	610
624	544	679	611
625	545	680	612
626	546	681	613
627	547	682	614
628	548	683	615
629	549	684	616
630	550	685	617
631	551	686	618
632	552	687	619
633	553	688	620
634	554	689	621
635	555	690	622
636	556	691	623
637	557	692	624
638	558	693	625
639	559	694	626
640	560	695	627
641	561	696	628
642	562	697	629
643	563	698	630
644	564	699	631
645	565	700	632
646	566	701	633
647	567	702	634
648	568	703	635
649	569	704	636
650	570	705	2219
651	572	706	2220
652	753	707	2221
653	584	708	2222
654	585	709	2223
655	586	710	2224
656	587	711	2225
657	588	712	2226
658	589	713	2227
661	591	714	2228

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Number of Section in Code of 1882.	Number of Section in this Code.	Number of Section in Code of 1882.	Number of Section in this Code.
715	2229	738	679
716	2230	739	680
717	2231	740	681
718	2232	741	682
719	2233	741 (a)	4239
719 (a)	2185	744	652
719 (b)	2186	746	653
719 (c)	2187	747	654
719 (d)	2188	750	657
719 (e)	2189	752	655
719 (f)	2190, 2191	753	656
719 (g)	2192	754	426
719 (h)	2193	755	427
719 (i)	2196	756	428
719 (j)	2197	757	429
719 (k)	2198	758	430
719 (l)	2199	759	431
719 (m)	2200	760	435
719 (n)	2201	761	436
719 (o)	2210	762	437
719 (p)	2211	763	438
719 (q)	2212	764	439
719 (r)	2213	765	440
719 (s)	2214	766	441
719 (t)	2215	767	442
719 (u)	2216	768	443
719 (v)	637	769	444
719 (w)	638	770	445
719 (x)	639	771	446
719 (y)	640	773	447
719 (z)	641	774	684
719 (aa)	646	775	685
719 (bb)	647	776	686
719 (cc)	648	777	687
719 (dd)	649	778	688
720	661	779	689
721	662	780	690
722	663	781	691
723	664	782	692
724	665	783	693
725	666	784	694
726	667	785	695
727	668	786	696
728	669	786 (a)	697
729	670	786 (b)	698
730	671	786 (c)	699
731	672	787	700
732	673	788	701
733	674	789	702
734	675	790	703
735	676	791	704
736	677	792	705
737	678	793	706

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Number of Section in Code of 1882.	Number of Section in this Code.	Number of Section in Code of 1882.	Number of Section in this Code.
794	707	843	850
795	708	844	851
796	709	845	852
797	710	846	836
798	762	848	837
799	767	849	838
801	776	850	843
802	777	851	844
803	769	852	845
804	770	853	846
805	771	854	847
806	772	855	848
807	773	856	849
808	774, 941	857	854
809	775	858	859
809 (a)	790	859	860
809 (b)	791	860	861
809 (c)	792	861	862
809 (d)	793	862	863
809 (e)	794	863	864
809 (f)	795	864	865
809 (g)	796	865	866
809 (h)	797	866	867
809 (i)	798	867	868
809 (j)	799	868	869
809 (k)	800	869	870
809 (m)	801	870	855
811	802	871	856
812	883	873	820
813	885	874	207
814	886	874 (b)	821
826	805	874 (c)	910
826 (a)	780	874 (d)	857
826 (b)	781	875 (a)	858
826 (c)	782	875 (c)	809
826 (c ³)	783	875 (d)	810
826 (d)	812	875 (e)	811
826 (e)	813	876	874
826 (f)	814	877	875
826 (g)	815	878	876
827	826	879	877
828	816	880	878
829	817	881	879
830	818	882	880
831	819	883	881
832	804	884	882
833	806	885	853
833 (a)	807	886	894
834	827	886 (a)	897
839	839	887	902
840	840	888	905
841	841	888 (a)	901
842	842	889	906

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Number of Section in Code of 1882.	Number of Section in this Code.	Number of Section in Code of 1882.	Number of Section in this Code.
890	907	939	971
891	898	940 (a)	972, 973
891 (a)	888	941	979
892	912	942	980
893	913	943	981
894	914	943 (b)	983
896	899	943 (c)	993
897	908	943 (d)	985
898	909	943 (e)	992
899	911	943 (f)	994
902	918	943 (g)	995
903	919	944	996
904	920	945	997
905	921	946	998
906	922	947	999
907	923	948	1000
908	924	949	1001
909	924	950	1002
910	924	951	1003
911	925	952	1004
912	926	953	1005
913	927	954	1006
914	928	955	1007
915	929	956	1008
916	930	957	1008
917	931	958	1009
918	932	959	1010
919	933	959 (a)	1011
920	934	959 (b)	1012
921	828	959 (c)	1013
923	829	960	1014
923 (a)	831	961	1015
923 (b)	935	962	1018
923 (c)	936	963	1020
923 (d)	937	964	1021
923 (e)	938	965	1022
924	939	966	1023
925	830	967	1024
926	940	968	1025
927	942	969	1026
928	943	970	1027
929	944	971	1028
930	945	972	1029
931	946	973	1030
932	947	973 (b)	984
933	948	974	1031
934	949	975	1032
935	950	976	1033
935 (a)	951	977	1034
935 (b)	952	978	1035
936	967	979	1036
936 (a)	968	980	1037
937	969	981	1038
938	970		

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Number of Section in Code of 1882.	Number of Section in this Code.	Number of Section in Code of 1882.	Number of Section in this Code.
982	1039	1103 (aa)	1218
983	1040	1103 (bb)	1219
984	1041	1103 (cc)	1220
985	1042	1103 (dd)	1221
986	1043	1103 (ee)	1222
987	1044	1103 (gg)	1195
988	1045	1103 (hh)	1196
989	1046	1103 (ii)	1197
990	1047	1103 (jj)	1198
991	1048	1103 (kk)	1199
992	1049	1103 (oo)	1202
993	1050	1103 (pp)	1203
994	1051	1103 (ss)	1149
995	1052	1131	1183
996	1053	1132	1184
997	1054	1133	1185
998	1055	1134	1186
999	1056	1135	1187
1000	1057	1136	1188
1001	1058	1137	1189
1002	1059	1138	1190
1003	1060	1139	1191
1004	1061	1140	1192
1005	1062	1141	1193
1006	1063	1143	1165
1007	1064	1145	1166
1008	1065	1146	1167
1009	1066	1162	1229
1010	1067	1163	1224
1011	1068	1164	1230
1012	1069	1165	1231
1013	1019	1166	1225
1016	1016	1167	1226
1040 (a)	1070	1168	1227
1040 (b)	1071	1169	1232
1040 (c)	1072	1170	1233
1040 (d)	1073	1171	1234
1040 (e)	1074	1172	1235
1040 (f)	1075	1173	1236
1040 (g)	1076	1174	1237
1046	165	1175	1238
1047	167	1176	1239
1048	166, 168	1177	1228
1049	169	1178	1223
1050	170	1180	1150
1051	171	1187	1151
1103 (b)	1104	1188	1152
1103 (p)	1142	1189	1153
1103 (q)	1143	1190	1154
1103 (s)	1144	1191	1155
1103 (v)	1159	1192	1271
1103 (w)	1160	1193	1272
1103 (y)	1164	1196	1284

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1197	1285	1285	69
1199	1286	1286	70
1202	1291	1287	71
1203	1292	1288	72
1204	1293	1289	73
1205	1294	1290	75
1206	1295	1291	76
1208	1296	1292	74
1209	1297	1293	77
1210	1298	1295	78
1211	1299	1296	79
1212	1304	1297	80
1213	1305	1298	81
1214	1306	1299	72 (10)
1215	1307	1301	82
1216	1308	1305	83
1217	1309	1306	84
1218	1310	1307	85
1219	1311	1308	86
1220	1312	1309	87
1221	1313	1310	88
1222	1314	1311	89
1223	1315	1312	90
1224	1316	1313	91
1225	1317	1314	92
1226	1318	1315	93
1227	1319	1316	94
1229	1320	1317	95
1230	1321	1318	96
1231	1322	1319	97
1232	1323	1320	98
1233	1324	1321	99
1234	1325	1322	100
1235	1326	1323	101
1235 (a)	1327	1324	102
1235 (b)	1328	1325	103
1235 (c)	1329	1326	104
1235 (d)	1330	1327	105
1235 (e)	1331	1328	106
1236	1332	1330	110
1237	1333	1331	108
1238	1334	1332	109
1239	1335	1334	112
1240	1336	1335	325
1241	1337	1336	326
1242-1275	1338-1408	1337	327
1275 (b)	1397	1338	328
1276	32	1340	329
1277	33	1341	1409
1281	34	1342	1410
1282	66	1344	1411
1283	67	1344 (a)	1416
1284	68	1344 (b)	1412

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1344 (c)	1413	1409 (b)	1478
1344 (d)	1414	1409 (c)	1479
1344 (e)	1415	1409 (d)	1480
1345	1417	1409 (f)	1481
1346	1418	1410	1504
1347	1419	1411	1505
1348	1420	1413	1507
1349	1421	1414	1508
1350	1422	1415	1509
1351	1427	1417 (a)	1510
1352	1428	1419	1519
1353	1429	1420	1536
1354	1430	1421	1537
1354 (4)	1431	1422	1538
1355	1432	1423	1539
1356	1433	1424	1540
1356 (a)	1434	1425	3562
1357	1435	1426	3563
1357 (a)	1436	1427	1742
1358	1437	1428	1743
1359	1438	1429	1744
1360	1439	1430	1745
1361	1440	1431	1751
1362	1441	1432	1746
1363	1442	1433	1747
1364	1443	1434	1748
1365	1444	1435	1749
1368	1445	1436	1750
1369	1446	1437	1756
1370	1447	1438	1757
1371	1448	1439	1758
1372	1449	1440	1759
1373	1450	1441	1760
1374	1451	1442	1761
1375	1457	1443	1762
1376	1458	1444	1763
1377	1459	1444 (a)	1764
1378	1460	1445	1766
1379	1461	1446	1767
1380	1462	1447	1768
1381	1463	1448	1771
1382	1464	1449	1772
1383	1465	1450	1773
1384	1466	1451	1774
1385	1467	1452	1775
1386	1468	1453	1775, 1776
1387	1469	1455	1777
1388	1470	1455 (a)	1781
1389	1471	1455 (c)	1782
1390	1472	1455 (d)	1783
1391	1473	1455 (e)	1784
1392	1474	1455 (f)	1785
1393	1475	1455 (g)	1786
		1455 (h)	1787

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1455 (i)	1788	1511	1664
1460	1631	1514	1665
1461	1632	1515	1666
1462	1633	1518	1667
1463	2291	1519	1668
1464	2292	1521	1669
1465	1476	1522	1670
1465 (a)	1789	1523	1671
1465 (c)	1791	1524	1672
1465 (d)	1792	1525	1673
1465 (e)	1793	1526	1674
1465 (f)	1794	1527	1675
1465 (k)	1795	1528	1676
1465 (l)	1796	1529	1677
1465 (m)	1797	1530	1678
1465 (n)	1798	1531	1679
1465 (o)	1799	1532	1680
1472	1955	1533	1681
1473	1956	1534	1682
1474	1957	1536	1684
1475	1958	1537	1685
1476	1959	1538	1686
1477	1960	1539	1687
1478	1961	1540	1688
1479	1962	1541	1689
1480	1963	1542	1690
1481	1964	1553 (c)	1557
1482	1965	1553 (f)	1558
1483	1966	1554	1621
1484	1967	1555	1623
1485	1969	1556	1624
1486	1970	1557	1625
1487	1971	1558	1626
1488	1972	1559	1627
1489	1973	1560	1628
1490	1974	1561	1629
1491	1975	1562	1630
1492	1976	1563	1600
1493	1977	1563 (a)	1591
1494	1978	1564	1592
1495	1980	1564 (a)	1593
1497	498	1565	1594
1498	499	1565 (a)	1595
1499	500	1567	1596
1500	501	1568	1597
1501	502	1569	1598
1502	503	1570	1599
1503	505	1577	1588
1503 (a)	507	1578	1588
1504	1651	1579	1588
1506	1661	1580	1531
1507	1662	1581	1532
1510	1663	1584	1533

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1586	1534	1660	1814
1587 (a)	1634	1661	1816
1588	1635	1662	1817
1589	1636	1663	1818
1590	1637	1665	1819
1591	1638	1666	1820
1592	1639	1667	1821
1593	3546	1668	1822
1599	1601, 1602	1669	1823
1600	1603	1670	1831
1601	1604	1671	1832
1602	1605	1672	1833
1603	1606	1672 (a)	719
1604	1607	1672 (b)	720
1605	1608	1672 (c)	721
1606	1609	1672 (d)	722
1607	1610	1672 (f)	754
1608	1611	1673	1834
1609	1612	1674	1835
1610	1613	1675	1846
1611	1614	1675 (a)	1849
1612	1615	1676	2350
1613	1616	1676 (b)	2363
1614	1617	1677	2364
1615	1618	1678	1851
1616	1619	1679	1852
1617	1620	1679 (a)	1866
1620	1710	1679 (c)	1867
1621	1711	1679 (d)	1868
1627	2294	1679 (e)	1869
1628	2295	1680	1861
1631	1640	1681	1879
1632	1641	1682	1880
1634	1647	1683	1881
1635	1648	1684	1882
1636	1649	1685	1883
1637	1650	1686	1884
1639	281	1687	1885
1640	282	1688	1886
1641	283	1689	1887
1642	284	1690	1824
1644	285	1691	1825
1645	286	1692	1826
1646	287	1693	1827
1647	288	1694	1828
1651	1802	1695	1829
1652	1803	1696	1830
1654	1808	1697	2410
1655	1809	1698	2411
1656	1810	1699	2412
1657	1811	1700	2413
1658	1812	1701	2414
1659	1813	1702	2416

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Number of Section in Code of 1882.	Number of Section in this Code.	Number of Section in Code of 1882.	Number of Section in this Code.
1703	2417	1756	2476
1704	2418	1757	2477
1705	2419	1758	2478
1706	2420	1759	2479
1707	2421	1761	3354
1708	2422	1762 (see 2484)	3355
1709	2423	1763	4687
1710	2424	1764	4689
1711	2425	1765	4690
1712	2426	1766	4691
1713	2427	1767	4692
1714	2428	1768	4693
1715	2429	1769	4694
1716	2430	1770	4695
1717	2432	1771	4696
1718	2433	1775	2480
1719	2434	1776	2481
1720	2435	1777	2482
1721	2436	1778	2483
1722	2437	1779	2484
1723	2441	1780	2485
1724	2442	1781	2486
1725	2443	1782	2487
1726	2444	1783	2488
1727	2445	1784	2489
1728	2447	1785	2490
1729	2448	1786	2493
1730	2449	1787	2494
1731	2450	1787 (a)	2495
1732	2451	1787 (b)	2496
1733	2452	1788	2497
1734	2454	1789	2498
1735	2455	1790	2499
1736	2456	1791	2500
1737	2457	1792	2501
1738	2458	1793	2502
1739	2459	1794	2503
1740	2460	1795	2504
1741	2461	1796	2506
1742	2462	1797	2507
1743	2463	1798	2508
1744	2464	1799	2509
1745	2465	1800	2510
1746	2466	1801	2511
1747	2467	1802	2512
1748	2468	1803	2513
1749	2469	1804	2514
1750	2470	1805	2515
1751	2471	1806	2516
1752	2472	1807	2517
1753	2473	1808	2518
1754	2474	1809	2520
1755	2475	1809 (a)	2519

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Number of Section in Code of 1882.	Number of Section in this Code.	Number of Section in Code of 1882.	Number of Section in this Code.
1810	2526	1864	2582
1811	2527	1864 (a)	2583
1812	2528	1865	2588
1813	2529	1866	2589
1814	2530	1867	2590
1815	2531	1868	2591
1816	2532	1869	2592
1817	2533	1870	2593
1818	2534	1871	2598
1819	2535	1872	2601
1820	2537	1873	2602
1821	2538	1874	2603
1822	2539	1875	2604
1823	2540	1876	2605
1824	2541	1879	2599
1825	2542	1880	2600
1826	2543	1881	2606
1827	2544	1882	2607
1828	2547	1883	2608
1829	2548	1884	2609
1830	2549	1885	2619
1832	2550	1886	2620
1833	2551	1887	2626
1834	2552	1888	2627
1835	2553	1889	2628
1836	2554	1890	2629
1837	2555	1891	2630
1838	2556	1892	2631
1839	2557	1893	2632
1840	2558	1894	2633
1841	2559	1895	2634
1842	2560	1896	2635
1843	2561	1897	2636
1844	2562	1898	2637
1845	2563	1899	2638
1846	2564	1900	2639
1847	2565	1901	2640
1848	2566	1902	2641
1849	2567	1903	2642
1850	2568	1904	2643
1851	2569	1905	2644
1852	2570	1906	2646
1853	2571	1907	2647
1854	2572	1908	2650
1855	2573	1909	2651
1856	2574	1910	2652
1857	2575	1911	2653
1858	2576	1912	2654
1859	2577	1913	2655
1860	2578	1914	2656
1861	2579	1915	2657
1862	2580	1916	2658
1863	2581	1917	2659

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Number of Section in Code of 1882.	Number of Section in this Code.	Number of Section in Code of 1882.	Number of Section in this Code.
1918	2660	1970	5432
1919	2661	1971	2775
1920	2662	1972	2787
1921	2663	1973	2791
1922	2664	1974	2792
1923	2665	1975	2793
1924	2666	1976	2794
1925	2667	1977	2795
1926	2668	1978	2800
1927	2669	1979	2801
1928	2670	1980	2804
1929	2671	1981	2805
1930	2672	1982	2806
1931	2673	1983	2807
1932	2674	1984	2808
1933	2675	1985	2809
1934	2677	1986	2810
1935	2678	1987	2812
1936	2676	1988	2813
1937	2679	1989	2814
1938	2680	1990	2815
1939	2681	1991	2816
1940	2682	1991 (a)	2817
1941	2683	1992	2818
1942	2684	1993	2819
1943	2685	1994	2788
1944	2686	1995	2821
1945	2687	1996	2822
1946	2688	1997	2823
1947	2689	1998	2824
1948	2690	1999	2825
1949	2691	2000	2789
1950	2693	2001	2826
1951	2694	2002	2827
1952	2695	2003	2828
1953	2697	2004	2829
1954	2723	2005	2830
1955	2724	2006	2831
1955 (a)	2776	2006 (a)	2832
1956	2726	2007	2833
1957	2727	2008	2834
1958	2728	2009	2835
1959	2729	2010	2836
1960	2730	2010 (a)	2837
1961	2731	2011	2838
1962	2732	2012	2839
1963	2733	2013	2840
1964	2734	2016 (a)	2841
1965	2739	2019	2842
1966	2740	2022	2843
1967	2741	2023	2845
1968	2742	2024	2846
1969	2771	2025	2847

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Number of Section in Code of 1882.	Number of Section in this Code.	Number of Section in Code of 1882.	Number of Section in this Code.
2026	2848	2068	2276
2027	2849	2069	2278
2028	2850	2070	2279
2029	2851	2071	2280
2030	2852	2072	2281
2031	2853	2073	2282
2032	2854	2074	2284
2033	2855	2075	2285
2034	2856	2076	2286
2035	2857	2077	2287
2036	2858	2078	2293
2037	2859	2079	2289
2038	2860	2080	2290
2038 (a)	2861	2081	2288
2039	2862	2082	2296
2039 (a)	2863	2083	2297
2039 (b)	2864	2084	2298
2039 (c)	2865	2084 (a)	2303
2040	2866	2084 (b)	2304
2041	2867	2084 (c)	2305
2042	2868	2084 (d)	2306
2043	2869	2085	2903
2044	2870	2086	2904
2045	2871	2087	2905
2046	2872	2088	2906
2046 (a)	2873	2089	2907
2048 (a)	2874	2090	2908
2049	2875	2091	2909
2050	2876	2092	2910
2051	2877	2093	2911
2052	2879	2094	2912
2053	2880	2095	2913
2054	2882	2096	2914
2055	2883	2097	2915
2056	2884	2098	2916
2057	2885	2099	2917
2057 (a)	2886	2100	2918
2057 (b)	2888	2101	2919
2057 (c)	2889	2102	2920
2057 (d)	2890	2103	2921
2057 (e)	2891	2104	2922
2057 (f)	2892	2105	2923
2057 (g)	2893	2106	2924
2058	2894	2107	2925
2059	2895	2108	2926
2060	2897	2109	2927
2061	2898	2110	2928
2062	2899	2111	2929
2063	2900	2112	2930
2064	2896	2113	2931
2065	2263	2114	2932
2066	2264	2115	2933
2067	2236	2116	2934

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Number of Section in Code of 1882.	Number of Section in this Code.	Number of Section in Code of 1882.	Number of Section in this Code.
2117	2935	2171	2990
2118	2936	2172	2991
2119	2937	2173	2992
2120	2938	2174	2993
2121	2939	2175	2994
2122	2940	2176	2995
2123	2941	2177	2996
2124	2943	2178	2997
2125	2944	2179	2999
2126	2945	2180	3000
2127	2946	2181	3001
2128	2947	2182	3002
2129	2948	2183	3003
2130	2949	2184	3004
2131	2950	2185	3009
2132	2951	2186	3010
2133	2952	2187	3011
2135	2953	2188	3012
2136	2954	2189	3013
2137	755, 2955	2190	3014
2138	2956	2191	3018
2139	2957	2192	3019
2140	2958	2193	3020
2141	2959	2194	3021
2142	2960	2195	3022
2143	2961	2196	3023
2144	2962	2197	3024
2145	2963	2198	3025
2146	2964	2199	3026
2147	2965	2200	3027
2148	2966	2201	3029
2149	2967	2202	2610, 3030
2150	2968	2203	3031
2151	2969	2204	3032
2152	2970	2205	3033
2153	2971	2206	3034
2154	2972	2207	3035
2155	2973	2208	3036
2156	2974	2209	3037
2157	2975	2210	3038
2158	2976	2211	3039
2159	2977	2212	3040
2160	2979	2213	3041
2161	2980	2214	3042
2162	2981	2215	3043
2163	2982	2216	3044
2164	2983	2217	3016
2165	2984	2218	3045
2166	2985	2219	3049
2167	2986	2220	3050
2168	2987	2221	3051
2169	2988	2222	3052
2170	2989	2223	3053

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Number of Section in Code of 1882.	Number of Section in this Code.	Number of Section in Code of 1882.	Number of Section in this Code.
2224	3054	2277	3113
2225	3055	2278	3114
2226	1456, 3056	2279	3115
2227	3057	2280	3117
2228	3058	2281	3119
2229	3059	2282	3121
2230	3060	2283	3122
2231	3061	2284	3123
2232	3062	2285	3124
2233	3063	2286	3125
2234	3064	2287	3126
2235	3065	2288	3128
2236	3067	2289	3131
2237	3070	2290	3132
2238	3071	2291	3133
2239	3072	2292	3134
2240	3073	2293	3135
2241	3074	2294	3136
2242	3075	2295	3137
2243	3076	2296	3138
2244	3077	2297	3139
2245	3080	2298	3140
2246	3081	2299	3141
2247	3082	2300	3142
2248	3083	2301	3143
2249	3084	2302	3144
2250	3085	2303	3145
2251	3086	2304	3146
2252	3087	2305	3148
2253	3088	2306	3149
2254	3089	2307	3150
2255	3090	2308	3151
2256	3091	2309	3152
2257	3092	2310	3153
2258	3093	2311	3154
2259	3094	2312	3155
2260	3095	2313	3156
2261	3096	2314	3157
2262	3097	2315	3158
2263	3098	2316	3159
2264	3099	2317	3161
2265	3100	2318	3162
2266	3101	2319	3163
2267	3102	2320	3164
2268	3103	2321	3165
2269	3104	2322	3166
2270	3105	2323	3167
2271	3106	2324	3168
2272	3108	2325	3169
2273	3109	2326	3170
2274	3110	2327	3172
2275	3111	2328	3173
2276	3112	2329	3179

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Number of Section in Code of 1882.	Number of Section in this Code.	Number of Section in Code of 1882.	Number of Section in this Code.
2330	3180	2384	3243
2331	3182	2385	3244
2332	3183	2386	3245
2333	3184	2387	3246
2334	3185	2388	3247
2335	3186	2389	3248
2336	3187	2390	3249
2337	3188	2391	3250
2338	3189	2392	3251
2339	3190	2393	3252
2340	3191	2394	3253
2341	3192	2395	3254
2342	3193	2396	3255
2343	2353	2397	3256
2344	2354	2398	3257
2345	2355, 3194	2399	3258
2346	2356	2400	3259
2347	2357	2401	3260
2348	3208	2402	3261
2349	3209	2403	3262
2350	3210	2404	3263
2351	3211	2405	3264
2352	3212	2406	3265
2353	3213	2407	3266
2354	3214	2408	3267
2355	3215	2409	3268
2357	3216	2411	3269
2358	3217	2412	3270
2359	3218	2413	3271
2360	3219	2414	3272
2361	3220	2415	3273
2362	3221	2416	3274
2363	3222	2417	3275
2364	3223	2418	3276
2365	3224	2419	3277
2366	3225	2420	3278
2357	3226	2421	3279
2368	3227	2422	3280
2369	3228	2423	3281
2370	3229	2424	3282
2371	3230	2425	3283
2372	3231	2426	3284
2373	3232	2427	3285
2374	3233	2428	3286
2375	3234	2429	3287
2376	3235	2430	3288
2377	3236	2431	3289
2378	3237	2432	3290
2379	3238	2433	3291
2380	3239	2434	3292, 3293
2381	3240	2435	3294
2382	3241	2435 (a)	3297
2383	3242	2436	3295

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Number of Section in Code of 1882.	Number of Section in this Code.	Number of Section in Code of 1882.	Number of Section in this Code.
2437	3296	2491	3364
2438	3307	2492	3365
2439	3308	2493	3366
2440	3309	2494	3367
2441	3310	2495	3390
2442	3311	2496	3391
2444	3312	2497	3392
2445	3313	2498	3372
2446	3314	2499	3370
2447	3315	2500	3371
2448	3316	2502	3393
2449	3317	2503	3394
2450	3318	2504	3395
2451	3319	2505	3396
2452	3320	2506	3397
2453	3321	2507	3398
2454	3322	2508	3399
2455	3323	2509	3400
2456	3324	2510	3401
2457	3325	2511	3402
2458	3326	2512	3403
2459	3327	2513	3404
2460	3328	2514	3405
2461	3329	2515	3406
2462	3330	2516	3407
2463	3332	2517	3408
2464	3333	2518	3409
2465	3334	2519	3410
2466	3335	2520	3411
2467	3336	2521	3412
2468	3338	2522	3413
2469	3339	2523	3414
2470	3340	2524	3415
2471	3341	2525	3416
2472	3342	2526	3417
2473	3343	2527	3418
2474	3344	2528	3419
2475	3345	2529	3420
2476	3346	2530	3421
2477	3347	2531	3422
2478	3348	2532	3423
2479	3349	2533	3424
2480	3350	2534	3425
2481	3351	2535	3426
2482	3352	2536	3427
2483	3353	2537	3428
2484 (see 1762)	3355	2538	3429
2485	3357	2539	3430
2486	3358	2540	3431
2487	3359	2541	3432
2488	3360	2542	3433
2489	3362	2543	3434
2490	3363	2544	3435

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Number of Section in Code of 1882.	Number of Section in this Code.	Number of Section in Code of 1882.	Number of Section in this Code.
2545	3436	2597	3492
2546	3437	2598	3493
2547	3438	2599	3494
2548	3439	2600	3495
2549	3440	2601	3496
2550	3441	2602	3497
2551	3442	2603	3498
2552	3443	2604	3499
2553	3444	2605	3500
2554	3445	2606	3509
2555	3446	2607	3510
2556	3447	2608	3511
2557	3448	2609	3512
2558	3449	2610	3515
2559	3450	2611	3516
2559 (a)	3451	2612	3519
2560	3452	2613	3520
2561	3454	2614	3521
2562	3455	2615	3522
2563	3456	2616	3522
2564	3457	2617	3524
2565	3458	2618	3525
2566	3459	2619	5446
2567	3460	2620	5447
2568	3461	2621	5448
2569	3462	2622	5449
2570	3464	2623	5450
2571	3465	2624	5451
2572	3466	2625	5452
2573	3467	2626	5480
2574	3468	2627	5453
2575	3469	2628	5454
2576	3470	2628 (a)	5458
2577	3471	2628 (b)	4216
2578	3473	2629	3526
2579	3474	2630	3527
2580	3475	2631	3529
2581	3476	2632	3530
2582	3477	2633	3532
2583	3478	2634	3533
2584	3479	2635	3534
2585	3480	2636	3535
2586	3481	2637	3536
2587	3482	2638	3537
2588	3483	2639	3538
2589	3484	2640	3540
2590	3485	2641	3541
2591	3486	2642	3542
2592	3487	2643	3544
2593	3488	2644	3545
2594	3489	2645	3547
2595	3490	2646	3548
2596	3491	2647	3549

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Number of Section in Code of 1882.	Number of Section in this Code.	Number of Section in Code of 1882.	Number of Section in this Code.
2648	3550	2703	3614
2649	3552	2704	3616
2650	3553	2705	3618
2651	3555	2706	3620
2652	3556	2706 (a)	3622
2653	3558	2707	3623
2654	3559	2708	3624
2655	3560	2709	3625
2656	3561	2710	3626
2657	3564	2711	3627
2658	3565	2712	3628
2659	3566	2713	3630
2660	3567	2714	3631
2661	3568	2715	3632
2662	3569	2716	3633
2663	3570	2717	3634
2664	3571	2718	3635
2666	3572	2719	3636
2667	3573	2720	3637
2668	3574	2721	3638
2669	3575	2722	3639
2670	3576	2723	3640
2671	3577	2724	3641
2672	3578	2725	3643
2673	3579	2726	3644
2674	3580	2727	3645
2675	3581	2728	3646
2677	3582	2729	3647
2678	3583	2731	3648
2679	3584	2732	3649
2680	3585	2733	3650
2681	3586	2734	3651
2682	3588	2735	3652
2683	3589	2736	3653
2684	3591	2737	3654
2685	3592	2738	3655
2686	3593	2739	3656
2687	3594	2740	3657
2688	3595	2741	3658
2689	3598	2742	3659
2690	3599	2743	3660
2691	3601	2744	3661
2692	3602	2745	3662
2693	3603	2746	3663
2694	3604	2747	3664
2695	3605	2748	3665
2696	3606	2749	3666
2697	3607	2750	3668
2698	3608	2751	3669, 4029
2699	3609	2752	3670
2700	3610	2753	3671
2701	3611	2754	3672
2702	3612	2755	3673

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Number of Section in Code of 1882.	Number of Section in this Code.	Number of Section in Code of 1882.	Number of Section in this Code.
2756	3674	2822	2118
2757	3675	2823	2119
2773	3676	2824	2120
2774	3677	2825	2121
2775	3681	2826	2122
2776	3682	2827	2123
2777	3683	2828	2124
2778	3685	2829	2125
2779	3686	2830	2126
2780	3687	2831	2127
2781	3688	2832	2128
2782	3691	2833	2129
2783	3692	2834	2130
2783 (a)	3693	2835	2131
2783 (b)	3679	2836	2134
2784	3680	2837	2135
2785	3694	2838	2136
2786	3695	2839	2137
2787	3696	2840	2138
2788	3697	2841	2139
2789	3698	2850	2140
2790	3699	2851	3701
2791	3700	2852	3702
2792	3689	2853	3703
2793	3690	2854	3704
2794	2089	2855	3705
2795	2090	2856	3706
2796	2091	2857	3707
2797	2092	2858	3709
2798	2093	2859	3710
2799	2094	2860	3712
2800	2095	2861	3714
2801	2096	2862	3715
2802	2097	2863	3716
2803	2098	2864	3717
2804	2099	2865	3718
2805	2100	2866	3719
2806	2101	2867	3720
2807	2102	2868	3721
2808	2103	2869	3722
2809	2104	2870	3724
2810	2105	2871	3725
2811	2106	2872	3726
2812	2107	2873	3727
2813	2108	2874	3728
2814	2109	2875	3729
2815	2111	2876	3730
2816	2112	2877	3731
2817	2113	2878	3732
2818	2114	2879	3733
2819	2115	2880	3734
2820	2116	2881	3735
2821	2117	2882	3736

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Number of Section in Code of 1882.	Number of Section in this Code.	Number of Section in Code of 1882.	Number of Section in this Code.
2883	4474	2934	3788
2884	4475	2935	3789
2885	4476	2936	3790
2886	4477	2937	3791
2887	4478	2938	3792
2888	4479	2939	3793
2889	4480	2940	3794
2890	4481	2941	3795
2891	4482	2942	3796
2892	4483	2943	3797
2893	4484	2944	3798
2894	3737	2945	3800
2895	3739	2946	3801
2896	3740	2947	3803
2897	3741	2948	3804
2898	3743	2949	3805
2899	3745	2950	3806
2900	3746	2951	3807
2901	3747	2952	3808
2902	3748	2953	3809
2903	3749	2954	3810
2904	3750	2955	3811
2905	3751	2956	3812
2906	3753	2957	3813
2907	3754	2958	3814
2908	3755	2959	3815
2909	3756	2960	3816
2910	3757	2961	3817
2911	3758	2962	3818
2912	3759	2963	3820
2913	3760	2964	3821
2914	3761	2965	3822
2914 (a)	3764	2966	3823
2915	3765	2967	3825
2916	3766	2968	3826
2917	3767	2969	3827
2918	3768	2971	3828
2919	3770	2972	3830
2920	3771	2973	3831
2922	3772	2974	3832
2923	3774	2975	3833
2924	3775	2976	3834
2925	3776	2977	3837
2925 (a)	3777	2978	3838
2925 (b)	3778	2979	3839
2926	3779	2980	3840
2927	3780	2981	3841
2928	3781	2982	3843
2929	3783	2983	3844
2930	3784	2984	3845
2931	3785	2985	3846
2932	3786	2986	3847
2933	3787	2987	3848

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2988	3849	3043	2253
2989	3850	3044	2254
2990	3851	3045	2255
2991	3852	3046	2256
2992	3853	3047	2257
2993	3854	3048	2258
2994	3855	3049	2259
2995	3856	3050	2260
2996	3857	3051	3891
2997	3858	3052	3892
2998	3859	3053	3893
2999	3860	3054	3894
3000	3861	3055	3895
3001	3862	3056	3896
3002	3863	3057	3897
3003	3864	3058	3898
3004	3865	3059	3899
3005	3866	3060	3900
3006	3867	3061	3901
3007	3868	3062	3902
3008	3869	3063	3903
3009	3870	3064	3904
3010	3871	3065	3905
3011	3872	3066	3906
3012	3873	3067	3907
3013	3874	3068	3908
3014	3875	3069	3909
3015	3876	3070	3910
3016	3877	3071	3911
3017	3878	3072	3912
3018	3879	3073	3913
3019	3880	3074	3914
3020	3881	3075	3915
3021	3882	3076	3916
3022	2345	3077	3917
3023	2346	3078	3919
3025	3883	3079	3920
3026	3885	3080	3921
3027	3886	3081	3922
3028	3887	3083	3923
3029	3888	3084	3924
3030	3889	3085	3925
3031	3890	3086	3926
3033	2321	3087	3927
3034	2322	3088	3928
3035	2268	3089	3929
3036	2323	3090	3930
3037	2247	3091	3932
3038	2248	3092	3934
3039	2249	3093	3937
3040	2250	3094	3939
3041	2251	3095	3941
3042	2252	3096	3943

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3098	4901	3149 (f)	2721
3099	3944	3149 (g)	2722
3100	3945	3150	4908
3101	3946	3151	3200
3102	3947	3152	3201
3103	3948	3153	4004
3104	3949	3154	4005
3105	3950	3155	4006
3106	3951	3156	4007
3107	3952	3157	4008
3108	3958	3158	4009
3109	3960	3159	4010
3110	3961	3160	4011
3111	3962	3161	4012
3112	3968	3162	4013
3113	3969	3163	4014
3114	3970	3164	4015
3115	3971	3165	4016
3116	3972	3166	4017
3117	3973	3167	4018
3118	3975	3168	4019
3119	3976	3169	4020
3120	3977	3170	4021
3121	3978	3171	4022
3122	3979	3172	4024
3123	3980	3173	4025
3124	3981	3174	4026
3125	3983	3175	4027
3126	3984	3176	4028
3127	3985	3177	4030
3128	3986	3178	4032
3129	3988	3179	4033
3130	3989	3180	4034
3131	3990	3181	4035
3132	3991	3182	2415
3133	3992	3183	4783
3134	3993	3184	4784
3135	3994	3185	4785
3136	3995	3186	4036
3141	3996	3187	4037
3142	3997	3188	4038
3143	3998	3189	4039
3144	3999	3190	4040
3145	4000	3191	4041
3146	4001	3192	4042
3147	4002	3193	3195
3148	4003	3194	3196
3149	4904	3195	3197
3149 (a)	2716	3196	3198
3149 (b)	2717	3197	3199
3149 (c)	2718	3198	4867
3149 (d)	2719	3199	4868
3149 (e)	2720	3200	4870

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3201	4876	3256	4938
3202	4877	3257	4939
3203	4878	3258	4940
3204	4879	3259	4941
3205	4880	3260	4942
3206	4881	3261	4944
3208	4882	3262	4946
3208 (a)	4883	3263	4947
3209	4884	3263 (a)	4987
3209 (a)	4885	3264	4510
3210	4913	3265	4511
3211	4924	3266	4512
3212	4925	3267	4513
3213	5540	3268	4514
3213 (a)	5543	3269	4515
3214	5558	3270	4516
3215	5599	3271	4517
3217	4926	3272	4518
3218	4915	3273	4519
3219	4916	3274	4520
3220	4920	3275	4521
3223	4921	3276	4522
3224	4922	3277	4523
3225	4923	3278	4524
3226	4886	3279	4525
3227	4887	3280	4526
3228	4888	3281	4527
3229	4889	3282	4528
3230	4890	3283	4529
3231	4891	3284	4530
3232	4892	3285	4531
3233	4894	3286	4532
3234	4895	3287	4533
3235	4896	3288	4534
3236	4898	3289	4535
3237	4899	3290	4536
3238	5494	3291	4537
3239	5495	3292	4538
3240	5496	3293	4539
3241	4340	3294	4540
3242	4342	3295	4541
3243	4343	3296	4542
3244	4344	3297	4543
3245	4345	3297 (a)	4544
3246	4332	3298	4545
3247	4333	3299	4546
3248	4334	3300	4547
3250	4929	3301	4548
3251	4930	3302	4549
3252	4931	3303	4550
3253	4932	3304	4551
3254	4933	3305	4552
3255	4935	3306	4553

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Number of Section in Code of 1882.	Number of Section in this Code.	Number of Section in Code of 1882.	Number of Section in this Code.
3307	4555	3362	5005
3308	4556	3364	5006
3309	4557	3365	5007
3310	4558	3366	5008
3311	4559	3367	1892
3312	4560	3368	2320
3313	4561	3369	1899
3314	4562	3370	1902
3315	4563	3371	1893
3316	4564	3372	1894
3317	4565	3373	1895
3318	4566	3374	1896
3319	4567	3375	1897
3320	4568	3376	1898
3322	4569	3377	3202
3323	4570	3378	3203
3324	4571	3379	3204
3325	4572	3380	3205
3326	4573	3381	3206
3327	4574	3382	3207
3328	4575	3383	3501
3329	4576	3384	3502
3330	4577	3385	2536
3331	4578	3386	3503
3332	4960	3387	3504
3333	4973	3388	3505
3334	4974	3400	4934
3335	4981	3401	5002
3336	4982	3402	4949
3337	4983	3403	4951
3338	4984	3404	4952
3339	4985	3405	4953
3340	4988	3406	2334
3341	4989	3407	2335
3342	4990	3408	2145
3343	4991	3409	2146
3344	4993	3410	2004
3345	4994	3411	2005
3346	4995	3412	2006
3348	5014	3412 (a)	2348
3349	5015	3413	1983
3350	5009	3414	1984
3351	5010	3415	1985
3352	5011	3416	4954
3353	5012	3418	4604
3354	5013	3419	4605
3355	4996	3420	4606
3356	4997	3420 (a)	4608
3357	4998	3421	5016
3358	4999	3422	5017
3359	5000	3423	5018
3360	5001	3424	5021
3361	5003	3424 (a)	5022

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Number of Section in Code of 1882.	Number of Section in this Code.	Number of Section in Code of 1882.	Number of Section in this Code.
3425	5023	3480	5099
3426	5024	3481	5100
3427	5025	3482	5101
3428	5026	3483	5102
3429	5027	3484	5103
3430	5028	3485	5104
3431	5029	3486	5105
3432	5030	3487	5106
3434	5031	3488	5107
3435	5032	3489	5108
3436	5033	3490	5109
3437	5034	3491	5110
3438	5035	3492	5111
3439	5036	3493	5112
3440	5037	3494	5113
3441	5038	3495	5114
3442	5039	3496	5115
3443	5040	3497	5116
3444	5041	3498	5117
3445	5042	3499	5118
3446	5043	3500	5119
3447	5044	3501	5120
3448	5076	3503	5121
3449	5059	3504	5122
3450	5060	3505	5123
3452	5052	3506	5124
3453	5065	3507	5125
3454	5066	3508	5248
3455	5067	3509	5249
3456	5058	3510	5250
3457	5077, 5078	3511	5251
3458	5053	3512	5252
3459	5046	3513	5253
3460	5079	3514	5255
3461	5080	3515	5256
3462	5081	3516	5257
3463	5082	3517	5258
3464	5083	3518	5259
3465	5084	3519	5126
3466	5085	3520	5127
3467	5086	3521	5128
3468	5087	3522	5129
3469	5088	3523	5130
3470	5089	3524	5131
3470 (a)	5090	3525	5132
3471	5091	3526	5133
3472	5092	3527	5134
3473	3506	3528	5135
3474	3507	3529	5136
3475	5093	3530	5137
3476	5094	3531	5138
3478	5096	3532	4705
3479	5097	3533	4708

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Number of Section in Code of 1882.	Number of Section in this Code.	Number of Section in Code of 1882.	Number of Section in this Code.
3534	4706	3582 (a)	5354
3535	4707	3583	5355, 5356
3536	4709	3584	5357
3536 (a)	4711	3585	5358
3536 (b)	4712	3586	5432
3536 (c)	4713	3586 (a)	2446
3536 (d)	4714	3587	5362
3537	4715	3588	5363
3538	4716	3589	5364
3539	4717	3590	5365
3540	4718	3591	5366
3541	4720	3592	5367
3542	4721	3593	5368
3543	4722	3594	5369
3544	4723	3595	3987, 5370
3545	4724	3596	5371
3546	4725	3597	5374
3547	4726	3598	5375
3548	4727	3599	5376
3549	4728	3600	5359
3550	4729	3601	5360
3551	4730	3602	5361
3552	4731	3603	5377
3553	4910	3604	5378
3554	4732	3605	5379
3555	4734	3606	5380
3556	4735	3607	5381
3557	895	3608	5382
3558	896	3609	5383
3559	5329	3610	5384
3560	5330	3610 (a)	4453
3561	5332	3611	4454
3562	5333	3612	4948
3563	5334	3613	4455
3564	5335	3614	4456
3565	2438	3615	4457
3566	2439	3616	4458
3567	5336	3617	4459
3568	5339	3618	4460
3569	5340	3619	4461
3570	5341	3620	4462
3571	5342	3621	4463
3572	5343	3622	4464
3573	3508	3623	4465
3574	5344	3624	4466
3575	5345	3625	4467
3576	5346	3626	4468
3577	5348	3627	4469
3578	5349	3628	4470
3579	5350	3629	4471
3580	5351	3630	4472
3581	5352	3631	4473
3582	5353	3632	5413

Number of Section in Code of 1882.	Number of Section in this Code.	Number of Section in Code of 1882.	Number of Section in this Code.
3633	5414	3677	5387
3634	5415	3678	5388
3635	5416	3679	5389
3636	5417	3680	5390
3637	5418	3681	5391
3638	5419	3682	5392
3639	5420	3684	5393
3640	5421	3685	5394
3641	5423	3686	5395
3642	5425	3687	5396
3643	5426	3691	5497
3644	5428	3692	4341
3645	5429	3694	4269
3646	5455	3695	5397
3646 (a)	5456	3696	5401
3647	5457	3697	5402
3648 (a)	5463	3699	5403
3648 (b)	5464	3700	5404
3648 (c)	5465	3702	490
3649	5459	3703	472
3650	5460	3704	506
3651	5468	3704 (a)	5461
3652	5469	3704 (c)	5462
3653	5470	3705	5408
3654	2788, 5433	3706	5409
3655	5466	3707	5410
3656	5467	3708	5411
3656 (a)	732	3709	5412
3656 (b)	733	3711	5473
3656 (c)	734	3712	5474
3656 (d)	735	3713	5477
3656 (e)	736	3714	5478
3656 (f)	737	3715	5479
3657	5442	3716	5480
3658	5443	3717	5482
3659	5444	3718	5483
3660	5445	3719	5484
3661	5439	3720	5486
3662	5440	3721	5487
3663	5441	3722	5489
3664	4736	3723	5475
3665	4737	3724	5476
3666	4738	3725	4611
3667	4739	3726	4612
3668	903	3727	4613
3669	4740	3728	4614
3670	4741	3729	4615
3671	4742	3730	4616
3672	5435	3731	4617
3673	5436	3732	900
3674	5437	3733	4618
3675	5385	3734	4619
3676	5386	3735	4620

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3736	4621	3790	5195
3737	4622	3791	5196
3738	4623	3792	5197
3739	4624	3797	5198
3740	4625	3798	5199
3741	4626	3799	5200
3742	4627	3800	5201
3742 (a)	4628	3801	5202
3743	4630	3802	5203
3744	4631	3803	5204
3745	4632	3804	5205
3746	4633	3805	5206
3747	5142	3806	5207
3748	5143	3807	5208
3749	5144	3808	5209
3750	5147	3809	2725
3751	5148	3810	3953
3752	5149	3811	3954
3753	5150	3812	3955
3754	5154	3813	3956
3755	5156	3814	3957
3756	5158	3815	5210
3757	5159	3816	5211
3758	5160	3817	5212
3759	5161	3817 (a)	5213
3760	5162	3818	5217
3761	5164	3819	5218
3762	5166	3820	5219
3763	5167	3821	5220
3764	5168	3822	5221
3765	5170	3823	5222
3766	5171	3824	5231
3767	5172	3825	5232
3768	5173	3826	5233
3769	5174	3827	5372
3770	5175	3828	5373
3771	5176	3829	5235
3772	5177	3830	5236
3773	5179	3831	5239
3774	5180	3832	5240
3776	5181	3834	5254
3777	5182	3835	5242
3778	5183	3836	5243
3779	5184	3837	5244
3780	5185	3838	5245
3782	5186	3839	5246
3783	5187	3840	5247
3784	5189	3841	5260
3785	5190	3842	5261
3786	5191	3843	5262
3787	5192	3844	5263
3788	5193	3849	5264
3789	5194	3850	5265

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Number of Section in Code of 1882.	Number of Section in this Code.	Number of Section in Code of 1882.	Number of Section in this Code.
3851	5266	3903	3965
3852	5267	3904	3966
3853	5268	3905	3967
3854	5269	3929	4449
3854 (5)	5271	3948	4769
3855	5272	3949	4770
3856	5273	3950	4771
3857	5274	3951	4772
3858	5275	3952	4773
3859	5276	3953	4774
3860	5277	3954	4775
3861	5278	3955	4777
3862	5279	3956	4778
3863	5280	3957	4779
3864	5282	3958	4428
3865	5283	3959	4780
3866	5284	3960	4781
3867	5285	3961	4060, 4782
3868	5287	3962	2743
3869	5290	3963	2744
3870	5288	3964	2746
3871	5291-5293	3965	2747
3872	5292	3966	2748
3873	5293	3967	2749
3874	5293	3968	2750
3875	5292	3968 (a)	2392
3876	5289	3969	2751
3877	5297	3970	2752
3878	5298	3971	2753
3879	5299	3972	2757
3880	5300	3973	2758
3881	5301	3974	2759
3882	5302	3974 (a)	2760
3883	5303	3974 (b)	2761
3884	5304	3974 (c)	2762
3885	5305	3974 (d)	2763
3886	5306	3974 (e)	2764
3887	5307	3975	2765
3888	5308	3976	2766
3889	5309, 5311	3977	2767
3890	5312	3978	2768
3891	5313	3979	2769
3892	5314	3979 (a)	2770
3893	5315	3980	4743
3894	5316	3981	4744
3895	5317	3982	4745
3896	5318	3983	4746
3897	5319	3984	4747
3898	5320	3985	4748
3899	5321	3986	4750
3900	5322	3987	4751
3901	3963	3988	4752
3902	3964	3989	4753

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3990	4754	4064	4649
3991	4755	4065	4650
3992	4756	4066	4651
3995 (a)	4757	4067	4652
3995 (b)	4758	4068	4653
3995 (c)	4759	4069	4654
3996	4786	4070	4655
3997	4787	4071	4656
3998	4788	4072	4808
3999	4789	4973	4809
4000	4790	4074	4810
4001	4791	4075	4811
4002	4792	4076	4812
4003	4793	4077	4813
4004	4794	4078	4814
4005	4795	4979	4815
4006	4796	4080	4816
4007	4797	4081	4817
4008	4798	4082	4818
4024	2453	4083	4819
4031	4331	4084	4820
4032	4799	4084 (a)	4821
4033	4800	4084 (b)	4822
4034	4801	4085	4823
4035	4802	4085 (a)	4824
4036	4803	4086	4825
4037	4804	4087	4826
4038	4805	4088	4827
4039	4806	4089	4828
4040	4807	4090	4829
4041	4697	4091	4830
4042	4698	4092	4831
4043	4699	4093	4832
4044	4700	4094	4760
4045	4701	4095	4762
4046	4702	4096	4763
4047	4703	4097	4764
4048	4704	4097 (a)	4765
4049	4634	4098	4766
4050	4635	4099	4767
4051	4636	4100	4768
4052	4637	4111	4251
4053	4638	4112	4252
4054	4639	4113	4253
4055	4640	4114	4254
4056	4641	4115	4255
4057	4642	4116	4256
4058	4643	4117	4257
4059	4644	4118	4258
4060	4645	4119	4259
4061	4646	4120	4260
4062	4647	4121	4261
4063	4648	4122	4262

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Number of Section in Code of 1882.	Number of Section in this Code.	Number of Section in Code of 1882.	Number of Section in this Code.
4123	4263	4166	4159
4124	4264	4167	4160
4125	4265	4168	4161
4126	4266	4169	4162
4128	4267	4170	4163
4129	4268	4171	4164
4130	4101	4172	4165
4131	4103	4172 (a)	4166
4133	4110	4172 (b)	4167
4134	4111	4173	4168
4135	4112	4174	4169
4136	4113	4175	4960
4137	4114	4176	4962
4138	4115	4177	4971
4139	4116	4178	4841
4140	4117	4179	4843
4141	4118	4180	4844
4142	4119	4181	4969
4142 (a)	4120	4182	3959
4142 (b)	4121	4183	4950
4143	4122	4184	4973
4144	4123	4185	4975
4145	4124	4186	4967
4146	4125	4187	4968
4147	4126	4190	4970
4148	4127	4191	5047
4149	4128	4192	5048
4150	4129	4195	5056
4151	4130	4196	5068
4152	4131	4197	5061
4153	4132	4198	5062
4154	4133	4199	5063
4155	4136	4200	5064
4156	4137	4201	4847
4157	4138	4205	4848
4157 (a)	4140	4206	4849
4157 (b)	4142	4209	4852
4157 (c)	4143	4210	4850
4157 (d)	4144	4212	4851
4157 (e)	4145	4213	4853
4157 (f)	4146	4214	4855
4157 (g)	4148	4215	4857
4157 (i)	4147	4216	4858
4157 (j)	4149	4217	4859
4158	4150	4218	4860
4159	4151	4219	4861
4160	4152	4220	4862
4161	4153	4221	4863
4161 (a)	4154	4222	4864
4162	4155	4223	4865
4163	4156	4224	4866
4164	4157	4226	4486
4165	4158	4227	4487

Number of Section in Code of 1882.	Number of Section in this Code.	Number of Section in Code of 1882.	Number of Section in this Code.
4228	4488	4275	5581
4229	4489	4276	5576
4230	4490	4277	5577
4231	4491	4278	5578
4232	4492	4279	5579
4233	4493	4280	5580
4234	4494	4281	5561
4235	4495	4282	5538
4236	4496	4283	5589
4237	4497	4284	5586
4238	4498	4285	5597
4239	4499	4286	5594
4240	4500	4287	5598
4241	4501	4288	5573
4242	4502	4289	5590
4242 (a)	4503	4290	5591
4243	4504	4291	5592
4244	4505	4428 (a)	1982
4245	4506	4429	1979
4246	4507	4431	1968
4247	4508	4436	5422
4248	4485	4612 (b)	1755
4249	4509	4612 (g)	2505
4250	5526	4696 (a)	4446
4251	5527	4696 (c)	4447
4252	5533, 5539	4696 (d)	4448
4253	5537	4711	4046
4254	5541	4993	5698
4255	5542	4994	5699
4256	5544	4995	5700
4257	5545	4996	5701
4258	5546	4997	5702
4259	5547	4998	5703
4260	5550	4999	5704
4261	5551	5000	5705
4262	5554	5001	5706
4263	5552, 5553	5002	5707
4264	5555	5003	5708
4265	5556	5004	5709
4268	5559	5005	5710
4269	5560	5006	5711
4270	5583	5007	5712
4271	5582	5008	5713
4272	5563	5009	5714
4272 (a)	5566	5010	5715
4272 (b)	5570	5011	5716
4272 (c)	5567	5012	5717
4272 (d)	5571	5013	5718
4272 (e)	5572	5014	5719
4272 (f)	5574	5015	5720
4272 (g)	5575	5016	5721
4273	5557	5017	5722
4274	5568	5018	5723

SECTIONS OF CODE OF 1882.

Number of Section in Code of 1882.	Number of Section in this Code.	Number of Section in Code of 1882.	Number of Section in this Code.
5019	5724	5073	5777
5020	5725	5075	5778
5021	5726	5076	5779
5022	5727	5077	5780
5023	5728	5078	5781
5024	5729	5079	5782
5025	5730	5080	5783
5026	5731	5081	5784
5027	5732	5082	5785
5028	5733	5083	5786
5029	5734	5084	5787
5030	5735	5085	5788
5031	5736	5086	5789
5032	5737	5087	5790
5033	5738	5088	5791
5034	5739	5089	5792
5035	5740	5090	5793
5036	5741	5091	5794
5037	5742	5092	5795
5038	5743	5093	5796
5039	5744	5094	5797
5040	5745	5095	5798
5041	5746	5096	5799
5042	5747	5097	5800
5043	5748	5098	5801
5044	5749	5099	5802
5045	5750	5100	5803
5046	5751	5101	5804
5047	5752	5102	5805
5048	5753	5103	5806
5050	5754	5104	5807
5051	5755	5105	5808
5052	5756	5106	5809
5053	5757	5107	5810
5054	5758	5108	5811
5055	5759	5109	5812
5056	5760	5110	5813
5057	5761	5111	5814
5058	5762	5112	5815
5059	5763	5113	5816
5060	5764	5114	5817
5061	5765	5115	5818
5062	5766	5116	5819
5063	5767	5117	5820
5064	5768	5118	5821
5065	5769	5119	5822
5066	5770	5120	5823
5067	5771	5121	5824
5068	5772	5122	5825
5069	5773	5123	5826
5070	5774	5124	5827
5071	5775	5125	5828
5072	5776	5126	5829

SECTIONS OF CODE OF 1882.

Number of Section in Code of 1882.	Number of Section in this Code.	Number of Section in Code of 1882.	Number of Section in this Code.
5127	5830	5180	5882
5128	5831	5181	5883
5129	5832	5182	5884
5130	5833	5183	5885
5131	5834	5184	5886
5132	5835	5185	5887
5133	5836	5186	5888
5134	5837	5187	5889
5135	5838	5188	5890
5136	5839	5189	5891
5137	5840	5190	5892
5138	5841	5191	5893
5139	5842	5192	5894
5140	5843	5193	5895
5141	5844	5194	5896
5142	5845	5195	5897
5143	5846	5196	5898
5144	5847	5197	5899
5145	5848	5198	5900
5146	5849	5199	5901
5147	5850	5200	5902
5148	5851	5201	5903
5149	5852	5202	5904
5150	5853	5203	5905
5151	5854	5204	5906
5152	5855	5205	5907
5153	5856	5206	5908
5154	5857	5207	5909
5155	5858	5208	5910
5156	5859	5209	5911
5157	5860	5210	5912
5158	5860	5211	5913
5159	5861	5212	5914
5160	5862	5213	5915
5161	5863	5214	5916
5162	5864	5215	5917
5163	5865	5216	5918
5164	5866	5217	5919
5165	5867	5218	5920
5166	5868	5219	5921
5167	5869	5220	5922
5168	5870	5221	5923
5169	5871	5222	5924
5170	5872	5223	5925
5171	5873	5224	5926
5172	5874	5225	5927
5173	5875	5226	5928
5174	5876	5227	5929
5175	5877	5228	5930
5176	5878	5229	5931
5177	5879	5230	5932
5178	5880	5231	5933
5179	5881	5232	5934

SECTIONS OF CODE OF 1882.

Number of Section in Code of 1882.	Number of Section in this Code.	Number of Section in Code of 1882.	Number of Section in this Code.
5233	5935	5281	5989
5234	5936	5282	5990
5235	5937	5283	5991
5236	5938	5284	5992
5237	5939	5285	5993
5238	5940	5286	5994
5239	5941	5287	5995
5240	5942	5288	5996
5241	5943	5289	5997
5242	5950	5290	5998
5243	5951	5291	5999
5244	5952	5292	6000
5245	5953	5293	6001
5246	5954	5294	6002
5247	5955	5295	6003
5248	5956	5296	6004
5249	5957	5297	6005
5250	5958	5298	6006
5251	5959	5299	6007
5252	5960	5300	6008
5253	5961	5301	6009
5254	5962	5302	6010
5255	5963	5303	6011
5256	5964	5304	6012
5257	5965	5305	6013
5258	5966	5306	6014
5259	5967	5307	6015
5260	5968	5308	6016
5261	5969	5309	6017
5262	5970	5310	6018
5263	5971	5311	6019
5264	5972	5312	6020
5265	5973	5313	6021
5266	5974	5314	6022
5267	5975	5315	6023
5268	5976	5316	6024
5269	5977	5317	6025
5270	5978	5318	6026
5271	5979	5319	6027
5272	5980	5320	6028
5273	5981	5321	6029
5274	5982	5322	6030
5275	5983	5323	6031
5276	5984	5324	6032
5277	5985	5325	6033
5278	5986	5326	6034
5279	5987	5327	6035
5280	5988	5328	6036

REVISED CODE OF GEORGIA.

PRELIMINARY PROVISIONS.

§1. (1.) *Laws of force in this State.* The laws of general operation in this State are— Act 1784,
Cobb, 721.
§§5732, 5932,
6012.

1. As the supreme law: The Constitution of the United States, the laws of the United States in pursuance thereof, and all treaties made under the authority of the United States.

Authority of decisions of Supreme Court of United States on constitutional questions, paramount: 11 Ga. 500; 14/438; 37/135. Treaties with Creek Indians, binding as law: 3 Ga. 179.

United States Supreme Court decisions, construing act of Congress, binding on Supreme Court of Georgia: 67 Ga. 706, 707. So also as to questions peculiarly within jurisdiction of United States Supreme Court: 75 Ga. 322.

2. As next in authority thereto: The Constitution of this State. §§5933, 5733.

Constitution of 1777, Watkins's Digest, pp. 5-16; Constitution of 1789, Watkins's Digest, pp. 25-30; Constitution of 1798, Watkins's Digest, pp. 31-43, Cobb's Digest, pp. 1111-1126; Constitution of 1861, Code of 1863, pp. 960-975; Constitution of 1865, Irwin's Code, pp. 966-983; Constitution of 1868, Code of 1873, pp. 904-930; Constitution of 1877, sections 5698-5949.

Ratified December 5th, 1877; proclamation of Governor, December 21st, 1877. Constitution of 1868 was in force from July 25th, 1868: 39 Ga. 39.

Is the organic law of Georgia. Verbal changes made after the report of revision committee, presumed authorized by convention: 67 Ga. 294.

Rules for construing Constitution: 70 Ga. 390.

3. In subordination to the foregoing: All laws now of force in this State, not inconsistent with the Constitution and the ordinances of the Convention of 1877. §§5934, 5939,
1898, 4934,
2, 268.

NOTE.—LAWS OF FORCE IN THIS STATE:

(a) The Code—adopted by Constitutions of 1865 and 1868: 38 Ga. 431; 42/196.

(b) Decisions of the Supreme Court of Georgia—authority of, determined by the principle of the decision: 11 Ga. 500, 501.

Act of 1858, p. 75, was prospective: 28 Ga. 597; it converted into statutes the decisions of the Supreme Court made by a full bench: 30 Ga. 202. Such is still the law: 59 Ga. 54.

Head-notes, law only so far as supported by the decision: 26 Ga. 182; but see section 5583.

Obiter dicta do not settle the law nor create an equity in favor of a party: 25 Ga. 244; much of the law originates in: 26 Ga. 298. Dudley's Reports, Charlton's Reports, and Georgia Decisions, authority of: 13 Ga. 441.

(c) Rules of court—See Code, sections 4044 and 4332, and cases there cited. Rules adopted by State Road: Code, §1030.

(d) Provincial acts in force on May 14th, 1776, adopted: 5 Ga. 195.

(e) Common law, of England. Adopting act: See Act of 1784 (Cobb's Digest, p. 721), adopting laws of force prior to May 14th, 1776.

Crimes, none exist in Georgia by common law, but only as defined by Code: 51 Ga. 288.

English common-law decisions higher authority than the ecclesiastical: 8 Ga. 341. Prior to May 14th, 1776, not authority: 11 Ga. 500; 14/569. Conclusive only when well settled: 15 Ga. 122.

Evidence, law of, adopted: 1 Kelly, 108.

Repeal of act declaratory of common law, without more, common law in force: 54 Ga. 231.

Unsuited to this country, decision not adopted: 5 Ga. 195; 14/569; 36/199; 49/28; 58/271.

Words, meaning of, ascertained by resort to the common law: 51 Ga. 288.

Common law, how far adopted: See Code of 1863, section 1, paragraph 6.

(f) Statute law of England, prior to May 14th, 1776, unsuited to our condition, statutes not adopted: 5 Ga. 195; 36/199; 38/213; 58/271. See cases cited under section 3605.

(g) Equity, English system of—See Code, section 3945 and cases cited.

(h) Civil law—See Code of 1863, section 1, paragraph 6.

(i) Canon law—See Code of 1863, section 1, paragraph 6: 8 Ga. 341.

§§5206, 3550,
2279, 3675
(2), 5148.

4. The custom 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.

Only where contract is dubious, parol evidence admitted to explain: 8 Ga. 540. That owner is to pay only particular expenses does not supersede the legal principle: 14 Ga. 260. As to the negotiability of a note although under seal: 15 Ga. 529. Of banks, not agents, diligence by custom of another bank: 16 Ga. 38. Rates of shipment of cotton samples: 16 Ga. 558. As to extension of acts: 18 Ga. 65-90. Custom of common carriers as to delivery: 20 Ga. 574; 21/526; 28/543; 32/405. As to freights: 40 Ga. 419. Contract implied from usage: 21 Ga. 526. Proof of notice must be shown: 30 Ga. 64. As to renting of other lands: 29 Ga. 82. When not binding: 28 Ga. 543. As to payments: 31 Ga. 381. Practice makes it a part of the contract: 41 Ga. 117. Express contract supersedes: 48 Ga. 601. Lender's custom or practice, where borrower is not shown to have known it, inadmissible: 54 Ga. 545. Reclamation for false packing of cotton must be made in reasonable time according to the custom of business: 57 Ga. 362. Crop rent for one-third of the corn and one-fourth of the cotton raised, enforced: 40 Ga. 511. Sending money by mail, of merchants: 31 Ga. 378. Of storage, at the time of storage only: 35 Ga. 108. Individual habits of dealing, not binding: 37 Ga. 384-392. Clerks of boats can bind only where it is the universal custom: 41 Ga. 122. Commission merchants: 42 Ga. 535. Custom of trade, as to delivery of goods: 46 Ga. 433. Bills of lading, as to exemptions in: 33 Ga. Sup. 159-164. As to cotton receipts and warehouses: 33 Ga. Sup. 96. When not so universal as to be without exception: 64 Ga. 184-190.

Notes from decisions since Code of 1882:

Ambiguous writings, custom admissible to explain ambiguous written agreement, but not to change clear, express agreement: 92 Ga. 613.

Applicable, to defense that, by custom, physicians do not charge each other: 66 Ga. 49.

Contracts, where custom did not enter into contract of employment of fireman by city: 76 Ga. 828. Local usage not admissible in evidence where inconsistent with express terms of contract: 92 Ga. 740; see also 48 Ga. 601; 54/128; 88/321.

Damage suit, in personal-injury case, not competent to prove custom of pedestrians crossing street over car-line: 91 Ga. 466.

Existence of such custom, question for jury: 65 Ga. 210.

Incident to contract, usage of insurer in giving personal notice of premiums falling due becomes an incident to the contract: 76 Ga. 575.

Individual habits of dealing, not make such custom, nor will deviation from such custom in particular instances impair its validity: 69 Ga. 341.

Knowledge of custom, not necessary to show that it was "in the minds of both parties": 69 Ga. 438.

Local custom, transient not bound, unless has knowledge thereof; contrary if universal or general: 86 Ga. 408. Local custom of insurance companies, as to renewal of policies, invoked by agent, sued for failure to insure: 91 Ga. 478. Local custom that brokers may rescind sale and take possession of goods, not affect seller, when: 92 Ga. 105.

Parol proof, custom, which is part of contract by implication, shown by parol: 65 Ga. 210.

Reasonable custom, as to charges to be made, contracting party bound, if aware thereof: 86 Ga. 408.

"Universal practice," meaning of, whether running omnibuses to depot is, by custom, part of public stable business so that city can require only one business tax: 66 Ga. 31, 36.

§2. (2.) *Code—when and how to take effect.* This Code shall take effect on the first day of January, 1863. All offenses 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 1858,
p. 95.
1861, p. 28.
§§5935, 4934,
5934.

Code of 1863, authorized by Acts of 1858, p. 95; adopted to take effect January 1st, 1862, Acts of 1860, p. 24; time extended, so as to take effect January 1st, 1863, Acts of 1861, p. 28; ratified by Constitution of 1865, Article 5, section 1, paragraph 5; Irwin's Code of 1867, ratified by Constitution of 1868, Article 11, section 3; Code of 1873, Acts of 1872, p. 524; Code of 1882, Acts of 1880-1, p. 676; Acts of 1882-3, p. 673; Code of 1895, Acts of 1893, p. 119, adopted December 16th, 1895, Acts of 1895, p. 98.

Section cited, not retroactive: 34 Ga. 387. Liability of husband for wife's debts before the Code: 38 Ga. 258. Interest prior to the Code: 45 Ga. 520. The Act of 1869, repealing the third section of the Act of 1856, does not affect the Code provisions: 52 Ga. 410-414.

Codifiers revised and changed the law in this instance: 69 Ga. 194, 330.

Certain decisions made before adoption of Code, held not law since Code: 69 Ga. 308.

Appointment of commissioners to fill vacancies caused by resignation of two elected: 44 Ga. 83.

Authority of codifiers, not to make but to codify laws: 34 Ga. 249; 37/412; 42/195. (See Acts of 1858, p. 95.) See also 46 Ga. 16. Immaterial since adoption by the Constitution: 38 Ga. 431.

Common-law principle adopted, details incident to it presumed adopted : 37 Ga. 417.

Definitions, generally exact, but not construed as exhaustive : 42 Ga. 196 ; 51/269.

Omission of part of statute, effect of, 34 Ga. 251. Where the provision of the Code treats the entire subject-matter, what is omitted is repealed : 42 Ga. 332 ; 55/143. Where part omitted may be restored without inconsistency, no repeal : 53 Ga. 87.

Presumed to show the substance of all statutes in force at time of its adoption ; it is a legislative interpretation thereof : 34 Ga. 249.

Phraseology, change of, by Code, not held to be a change of the law unless intention apparent : 37 Ga. 412 ; 42/196 ; 51/269.

Power of sale in executor conferred by will made prior to Code, executor might sell at private sale after Code : 62 Ga. 341.

Decisions construing statutes prior to Code, applicable to similar provisions codified substantially : 62 Ga. 728. Statute omitted, but not inconsistent with any provision of the Code, still in force : 53 Ga. 675.

Statutes passed during the war, how far confirmed : 41 Ga. 231 ; 44/504.

Adoption, Constitution adopting the Code did not adopt inaccuracies, and adopted changes in the law only when clearly intended : 71 Ga. 119. Adoption of a Code, not compilation, is the legislative act : 83 Ga. 512. Act containing matter different from title, defect cured by adoption of Code : 70 Ga. 284.

Authority of codifiers, codifiers revised and changed the law in this instance : 69 Ga. 194, 330.

Decisions superseded, certain decisions made before adoption of Code, held not law since Code : 69 Ga. 308.

Statutes, in case of discrepancy between printed act and enrolled act, latter governs : 79 Ga. 718.

Statute law of England, 24 George II., chapter 44, section 1, requiring one month's written notice to justice of the peace before suing him for official act, is of force in Georgia : 67 Ga. 716 ; see also 1 Ga. 605.

Code not intended to make or change law : 96 Ga. 10 ; 42/196 ; 37/412.

Code makes few changes in the law : 42 Ga. 169, 197 ; 71/120.

Change made by Code : 73 Ga. 505, 506.

Errors not adopted by Constitution of 1868 : 71 Ga. 106, 119.

Section 3277 not law prior to Code : 92 Ga. 343.

Unconstitutional sections validated by Constitution of 1868 : 70 Ga. 284.

Dissenting opinion followed by codifiers : 80 Ga. 280.

Unauthorized change in Code not ratified by Constitution of 1868 : 78 Ga. 188.

Commendation of Code of 1862 : 34 Ga. 217.

Code intended to be declaratory of the existing law and not to make changes : 34 Ga. 249.

Discrepancies in Code to be reconciled : 47 Ga. 286.

Provisions in Code to be construed together and harmonized : 96 Ga. 11 ; 47/286.

Codifiers of Code of 1862 attempted to unify and harmonize the law : 86 Ga. 370.

Presumption that codifiers did not attempt to make law : 96 Ga. 10 ; 71/120 ; 34/249.

Presumption that omission of clause was intentional and operated as a repeal : 55 Ga. 144 ; 52/414.

Omission to codify provision of statute fairly attributable to oversight. Effect, however, being a repeal : 96 Ga. 594.

Definitions in Code not necessarily accurate: 51 Ga. 269.

Classifications of the Code are not law, nor are they accurate: 39 Ga. 407; 73/505.

§3. *State, where bound by a statute.* The State is not bound by the passage of a law unless named therein, or unless the words of the act should be so plain, clear and unmistakable as to leave no doubt as to the intention of the legislature. ^{91 Ga. 524. §§5932-5939, 268.}

State not bound by a law unless named therein, or unmistakably contemplated: 73 Ga. 30. See 54 Ga. 36.

§4. (4.) *Construction of statutes.* The following rules shall govern the construction of all statutory enactments in this State: ^{§§3675, 268.}

A statute must be construed with reference to the whole system of which it forms a part: 14 Ga. 674.

In construing statute, effect should be given to all its words: 85 Ga. 625.

Since Act of 1876, laws take effect from passage by legislature and approval by Governor: 76 Ga. 741.

1. 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. ^{§3675 (2).}

Ordinary signification: 4 Ga. 486; 49/201. The common sense of it: 46 Ga. 281. Any pistol: 61 Ga. 418.

Meaning of "retail" in act providing that certain liquors "shall not be delivered, sold or furnished by retail," etc.: 69 Ga. 444, 446.

Words are to be given their plain, obvious, and common-sense meaning: 70 Ga. 396.

Meaning of "fully cured" meat determined by experts, *i. e.*, persons in the trade: 73 Ga. 617.

"Ordinary care" equivalent to "common prudence": 79 Ga. 54.

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

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

In the sections relating to the making of wills, the masculine includes the feminine: 86 Ga. 368.

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

Stated, orphans includes orphan: 23 Ga. 383.

5. A joint authority given to any number of persons, or officers, may be executed by a majority of them, unless it is otherwise declared. ^{§4501.}

Majority: 1 Ga. 271. Three commissioners out of five, competent to act: 9 Ga. 367.

6. 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 de- ^{§§4528, 4971, 2528, 4994.}

clared void for want of such compliance, unless expressly so provided by the enactment.

Four commissioners assigning dower are sufficient: 64 Ga. 764. Illegality, judgment merely irregular, in omitting to sign it: 62 Ga. 103-106. When judge's certificate to a bill of exceptions is a substantial compliance with the law: 58 Ga. 467. As to signature of a bond in a garnishment case: 55 Ga. 617.

Tax *fi. fa.* directed to "any lawful officer," held a substantial compliance with section 894: 68 Ga. 174.

Where more than two-thirds of qualified voters voted in favor of measure, irregularity in publication did not invalidate: 86 Ga. 605.

Derogatory of common law, strictly construed: 72 Ga. 187; 71/678; 77/684.

The statute providing for receivers of insolvent traders must be strictly complied with: 71 Ga. 679.

Legislative act authorizing closing street, strictly construed: 84 Ga. 372.

Summary statutory remedies, strictly construed: 73 Ga. 233; see also 45 Ga. 161; 60/105; 66/732.

§§3765, 263,
13, 2528,
2554, 3398.

7. 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.

An undertaking in writing without a seal is sufficient: 48 Ga. 631-641. Where bond subscribed: 9 Ga. 501. Instrument with a scrawl is a bond: 29 Ga. 427.

Though not purporting in body thereof to be under seal, binding: 94 Ga. 37. Filling in blank in bond with name of surety already subscribed thereto, not invalidate: 94 Ga. 37.

§§4456, 3693.

8. 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.

Paper dates from its delivery: 38 Ga. 459. In the five days for sheriffs to serve writs, the return day excluded from the computation: 33 Ga. 146. Sunday counted when in the thirty days within which the judge is to certify a bill of exceptions: 14 Ga. 122. Sunday not counted as one of the four days within which to appeal: 12 Ga. 93. Sunday not counted as one of the five days for the sheriff to serve a writ: 23 Ga. 49. From and after excludes the last day, *certiorari*: 28 Ga. 41. No notice of fractions of a day: 38 Ga. 459. Judgment of a justice of the peace nineteen days from the date of the summons, is void: 56 Ga. 282.

Railroad-ticket issued 6th of December, to be used within two days, good until 12 o'clock night, 8th of December: 68 Ga. 219.

Brief of evidence to be filed, etc., within thirty days after court, last day falling on Sunday, brief filed on Monday: 75 Ga. 886.

Execution issued July 30th, upon justice-court judgment rendered July 26th, was premature but not void: 83 Ga. 564.

When last day for tendering bill of exceptions is Sunday, following day superadded: 94 Ga. 353.

§3675 (5).

9. 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.

Rules to interpret: 2 Ga. 85. Intent from the act, and other acts: 3 Ga. 146. Intent controls where there are several acts: 33 Ga. 344. Intention governs, and implied repeals not favored: 15 Ga. 361. Intention to be arrived at by the surroundings at the time of the passage of the act: 29 Ga. 621. One legislature cannot bind another by contract, where act of Congress revocable: 33 Ga. Sup. 39. Laws of other States recognized by comity: 49 Ga. 110. Intention governs: 49 Ga. 54. Where two affirmative statutes not repugnant, the one not repealed by the other: 49 Ga. 152-159. Charters expire in thirty years where silent as to their continuance: 49 Ga. 151.

Legislative resolution, instructing public officer as to duties under convict-lease act and contract, looked to in determining legislative intention in such act: 65 Ga. 67.

Legislative intent contrary to previous legislation, not implied from doubtful expressions admitting of different interpretations: 76 Ga. 182.

Testimony of member of legislature, or comptroller-general, inadmissible to show intent in tax act: 93 Ga. 12.

The cardinal rule is to have regard to old law, mischief, and remedy: 67 Ga. 293.

Special act executed, no further authority thereunder: 86 Ga. 94.

GENERAL NOTE. *Notes embraced in Code of 1882:*

Construction liberal, but not too much latitude: 3 Ga. 152. Must regard substance, and not cling too closely to the letter of the law: 13 Ga. 55.

Construction, legislative, revenue statutes, and those in derogation of common rights, strictly construed: 8 Ga. 23; 4/208. Of a doubtful law, where it interferes with no vested rights, has retroactive efficacy: 9 Ga. 213. Cannot enact that the law was such, in some past time: 39 Ga. 48. Nor retrospectively: 40 Ga. 341.

Construction, contemporary, history of legislation in reference to particular matter looked to: 8 Ga. 23; 4/208. Affirmance of what the law has been in the past: 39 Ga. 48. Different provisions of the Code and common law considered with the statute: 40 Ga. 341. Regard to construction placed by sages of the law who lived at the time, or soon after: 13 Ga. 441.

Corporations, statutes in favor of, strictly construed: 7 Ga. 221; 8/23; 9/212.

Charters of banks, as contracts: 19 Ga. 325. Acts not warranted by: 40 Ga. 103. Need not recite in the title its powers: 62 Ga. 485.

Constitutionality presumed—not declared unconstitutional except in clear cases: 16 Ga. 102; 9/253. Duty of judiciary as to unconstitutional legislation: 13 Ga. 83. Courts reluctant to declare acts unconstitutional: 34 Ga. 309. Except when absolutely necessary to do otherwise: 35 Ga. 124. Where the legislature not rightfully in session, how it affects legislation: 44 Ga. 77. When presumption in favor *res judicata*: 44 Ga. 649.

Confirmatory statutes in regard to bank assignments: 30 Ga. 770.

Derogatory of common right—must be strictly construed: 1 Ga. 51; 18/318. As to eminent domain: 3 Ga. 31. Making party plaintiff witness against himself on a usurious contract, and admitting defendant's oath in support of his plea: 4 Ga. 474-492. As to grants, strictly construed: 9 Ga. 475. Extended no farther than the words clearly import: 30 Ga. 527; 1/533; 8/23.

Distribution—acts changing the law of descent without consent of the individual, are wrong: 8 Ga. 211.

Exceptions and provisos, when not exceptions: 2 Ga. 92-103. How stated in an indictment: 22 Ga. 545; 13/435. As regards the statute of limitations: 15 Ga. 1. Different rule in civil from criminal cases: 17 Ga. 625. Proviso: 21 Ga. 366. Indictment need not negative the proviso in the law: 26 Ga. 593. Proviso void because repugnant to the body of the act: 33 Ga. 302. Body of the act not different from the title: 22 Ga. 203.

Expressio unius, etc., meaning of: 1 Ga. 403, 404. Constitutional provision, effect on the legislative branch: 39 Ga. 265.

Fraud, suppression of, liberally construed: 9 Ga. 253. Where *dehors* the grant, voidable only on suit: 10 Ga. 192.

General terms, discussion in reference to the Penal Code: 12 Ga. 36-40. "Other writing" will not include a record: 21 Ga. 16. Act of Congress, the general expression "or other property," what it covers: 34 Ga. 199.

Interpretation, an equitable construction within the mischief, if not within the words: 17 Ga. 456. The phrase "in operation" defined: 9 Ga. 286.

In pari materia, several acts on the same subject and of doubtful meaning, general intent controls: 33 Ga. 344. Different statutes made at different times construed together: 1 Ga. 32; 2/85, 43. Acts of 1810 and 1820 construed, as to returns to the court of ordinary, with reference to whole system of which it is a part: 10 Ga. 68; 14/674. Intention gathered from all the other acts *in pari materia*: 3 Ga. 146.

Legitimizing statutes, where the only effect was to change the party's name: 7 Ga. 512. Assent of reputed father to legitimizing act necessary: 10 Ga. 342. To enable illegitimates to inherit: 25 Ga. 636.

Liberty, personal, in favor of, acts for the relief of honest debtors: 20 Ga. 474. Common law and the Constitution of the State, together with the statute: 21 Ga. 139-143. Insolvent laws liberally construed in favor of: 27 Ga. 224.

Omission of word in, word "grant" omitted in one part, explained in another part of the statute: 2 Ga. 143.

Penal statutes, although construed strictly, yet not so as to defeat the intention of the legislature: 3 Ga. 18-23; 34/455. Lotteries under Act of 1833, only civil remedy for: 29 Ga. 616. So strict that ordinary signification of the law would reach the offense: 33 Ga. 229. In favor of life: 38 Ga. 571.

Private statutes import verity, but attackable for fraud: 8 Ga. 211.

Proceedings *ex parte*, great strictness required: 31 Ga. 710.

Remedial statutes are to receive an equitable construction or interpretation: 2 Ga. 85. Against fraud, liberally construed; *qui hæret in litera, hæret in cortice*: 2 Ga. 254, 5. Enlarging common-law rights of all as to assigning and transferring judgments and executions: 5 Ga. 364-368. Where there is a right of action created in favor of individuals: 12 Ga. 104. Even if retrospective, not void, if do not impair contracts or vested rights, and do affect the remedy: 12 Ga. 437. May be retrospective and yet constitutional: 23 Ga. 183.

Rights vested, not divested without compensation: 23 Ga. 407. Construed as executed contracts, and when not, an act of Congress: 33 Ga. Sup. 39.

Repealed, impairing obligation of contracts: 39 Ga. 307. Rights under temporary statutes continue, although the law expires: 30 Ga. 581. Repeals generally: 1 Ga. 32; 14/391. Affirmative statute repealing a former affirmative statute by implication: 49 Ga. 173. Reserving right of repeal in a statute, can then repeal by implication: 14 Ga. 328; 12/404. By implication, not favored: 15 Ga. 361. Can repeal where do not impair the obligation of contracts: 17 Ga. 56. As to stock killed by railroad, repealing the old law: 21 Ga. 104-107. Of prior act, as to the punishment, not a repeal of the act itself: 23 Ga. 9, 10. No repeal by implication where it operates in future: 24 Ga. 356. Two

affirmative statutes not repugnant, do not repeal: 26 Ga. 120-122. Only a repeal so far as repugnant: 27 Ga. 407. Demurrer testing the question as to the law being repealed: 28 Ga. 85.

Title looked to, not where the words of the enacting clause are clear and positive: 1 Ga. 157; 31/605. Of amending act, looked to: 25 Ga. 610.

Trade, restraining of, strictly construed: 8 Ga. 23.

Taxes, strictly construed: 8 Ga. 23. Prior to the Code: 34 Ga. 370. Intention in an act of Congress: 35 Ga. 315.

Working forfeiture, strictly construed: 25 Ga. 344.

Notes from decisions since Code of 1882:

Amending act, valid, although rendering nugatory the act amended: 92 Ga. 693, 694; see also 85 Ga. 19.

Construction, contemporary, on question whether title to Christ Church cemetery, Savannah, was in church or city, colonial and subsequent statutes looked to in light of that period: 82 Ga. 660.

Costs and salaries, acts providing for, strictly construed: 73 Ga. 807.

Derogation of common law, statute in derogation of common law strictly construed: 71 Ga. 678; 77/684; 72/187.

Forfeitures, not favored; statute which may be construed to give or withhold penalty, latter construction preferred: 74 Ga. 619.

Implication, repeals by, not favored; under Constitution of 1877, questionable whether repeals by implication now possible: 74 Ga. 42; see also 71/461; 15/361; 49/173. Act passed at subsequent session of legislature, inconsistent with prior act, to that extent repeals latter: 92 Ga. 694; see also 85 Ga. 19.

In pari materia, several acts on same subject construed *in pari materia*: 68 Ga. 687. Consistent powers conferred on municipality by successive statutes, construed *in pari materia*: 91 Ga. 268.

Literal compliance with limitations imposed by statute for removal of causes to Federal courts, required: 76 Ga. 679.

Tax exemption, *inclusio unius exclusio alterius*, applied to exemption from taxation under contract with city. Exemption strictly construed: 66 Ga. 107, 110.

§5. (5.) *Meaning of certain words.* The following meaning shall be given to each of the following words in all statutes, unless a different meaning is apparent from the context:

Property includes real and personal property.

This section and clause cited: 48 Ga. 137; see also 66 Ga. 711, 712.

Person includes a corporation.

§§1802, 1831.

“Persons” includes corporations, as banks: 60 Ga. 134. As to torts, there is the same rule: 58 Ga. 219. As to corporations, that applies to persons: 18 Ga. 412. Railroads on same footing as persons: 24 Ga. 356. Taxes apply to corporations the same as to persons: 44 Ga. 397. Fraud in corporations treated just as with individuals: 54 Ga. 636.

Cited, “person” including railroad company: 72 Ga. 294.

“Person” includes both sexes: 74 Ga. 795.

Writing includes printing and all numerals.

Oath includes affirmation.

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

Where officer could not write, entry written at his instance and in his presence, signed with mark, good: 66 Ga. 62.

Lunatic, Insane, or Non compos mentis, each includes all persons of unsound minds.

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.

Aforesaid: 35 Ga. 181.

As to the meaning and signification of these words "preceding" and "aforesaid": 35 Ga. 180.

§5458.
Act 1838,
Cobb, 536.

Month means a calendar month.

Year means a calendar year.

Act 1838.
Cobb, 274.
§§505, 182.

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.

Seal of a corporation presumed to have been properly placed there: 58 Ga. 547. Official seal of clerk should be affixed to his certificate: 13 Ga. 253. Scroll with word "seal" written in it opposite name on bond, sufficient: 12 Ga. 459. Same rule applies to the seal of a corporation as to that of an individual: 25 Ga. 316.

Recital "witness our hand and seal," without more, does not make a sealed instrument: 72 Ga. 898.

Printed "L. S.," after signature, good seal: 81 Ga. 453; 82/883.

§509.

Highway, or Road, includes bridges upon the same.

Other words.—Month: 59 Ga. 393. In operation: 9 Ga. 286. All: 15 Ga. 518. Either: 20 Ga. 120. When: 20 Ga. 584. Provided: 22 Ga. 206. Shall: 34 Ga. 18–122. Corporation: 35 Ga. 318. Banks: See section 1967. May, permissive and discretionary with the court: 34 Ga. 18. When may construed to mean must or shall: 38 Ga. 545; 7/89; 33/419.

"All" in statute may be restricted by general form and scheme of enactment: 90 Ga. 680; citing 15 Ga. 518.

"Estate" means quantity of interest in property; "property" includes both realty and personalty: 82 Ga. 694.

"The" is definite and means "all the": 87 Ga. 24.

"Trinkets" includes fans and parasols; "laces" includes lace shawls: 90 Ga. 747.

§§5730, 5982.

§6. (6.) *Future operation of laws*. 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 offenses entered into or 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.

Obligation of contracts not violated in reference to a grant: 2 Ga. 143-147; where remedial, not unconstitutional: 5 Ga. 239. License obtained from the inferior court cannot be affected subsequently by any action of a city: 5 Ga. 447. Law not affecting vested rights can be retroactive: 9 Ga. 213. Act of the legislature, when a contract, not affected subsequently: 10 Ga. 190. Remedial retrospective law, where does not impair contracts, not illegal: 12 Ga. 437; 13/306. Changing county-site did not impair vested rights: 17 Ga. 56. When no contract existed made by the State: 17 Ga. 179-182. An act of limitations not unconstitutional: 18 Ga. 171. Exemptions to a fire company revoked, held not unconstitutional: 20 Ga. 448. As to State's power over incorporated academy endowed by the State: 22 Ga. 506. Refers to contracts at the time of the passage of the law: 23 Ga. 51. Where the franchises being of a different character, the one did not infringe on the other: 25 Ga. 445. Where only changes a rule of evidence, not objectionable: 35 Ga. 26. State may vary the remedy if so chooses: 38 Ga. 356. Denying remedy impairs the obligation of the contract: 44 Ga. 295.

Retrospective operations, where only gives additional remedy: 1 Ga. 78. Where only prospective: 1 Ga. 173. When not retrospective and not impairing the obligation of contracts: 4 Ga. 208. Retrospective statutes forbidden generally: 8 Ga. 23, 24. When not retroactive: 12 Ga. 353. When registry law allows a reasonable time to record, not objectionable: 13 Ga. 1. *Ex post facto* law defined: 16 Ga. 102. Where operates only on the remedy: 16 Ga. 151. A statute of limitations not objectionable where a reasonable time allowed: 20 Ga. 408. When only prospective law: 28 Ga. 597. Confirmatory, retroactive law as to taxes, legal: 30 Ga. 845-852. *Ex post facto* and retroactive law is void: 35 Ga. 298. Where no legal vested rights affected, not objectionable: 36 Ga. 51. Where a law in regard to smallpox was held not retroactive: 36 Ga. 422. Legal-tender law of Congress is right although retrospective: 37 Ga. 503. Law making that clear heretofore doubtful, not objectionable: 39 Ga. 48. Inheritance allowed by a retrospective law: 40 Ga. 341. As affecting the Western and Atlantic Railroad, held a correct law: 40 Ga. 418. As to taxes on railroads: 40 Ga. 652. Not so unless where language so demands: 43 Ga. 388-390. When not affected by: 43 Ga. 480.

Remedy may be left generally to the legislature's discretion: 7 Ga. 163. And the mode and manner also are under legislative control: 9 Ga. 253. When not intended to be retrospective as to judgments rendered before the passage of the act: 15 Ga. 497. Claims before the passage of the act collectible where only remedy changed: 25 Ga. 243. So remedy not rendered nugatory by changing: 28 Ga. 345. When does not impair the remedy: 44 Ga. 420.

See notes to sections 5730 and 5982.

Act of March 2d, 1875, requiring registration, etc., of past matured bonds does not repudiate bonds, take away remedy, nor impair obligation of contracts: 68 Ga. 711, 716.

Act of November 12th, 1889, applies only to such telegraph companies as construct their lines after its passage: 86 Ga. 104.

Amending statutes, statute amending prior statute operates on future transactions only, unless contrary plainly expressed: 91 Ga. 841.

Homesteads, homestead acts void as against obligations incurred prior to Constitution of 1868; applied where attorney received claim prior to 1868, and collected it after said year: 69 Ga. 186. Date of contract, not breach, governs: 69 Ga. 188. See notes to section 2827, catchwords "Impairing Obligation."

Exemption of personalty not valid for more than \$1,000, as against debt antedating Constitution of 1877: 69 Ga. 605.

Obligation of contracts, legislative resolution instructing public officer as to duties under convict-lease act and contract, cannot impair obligation of contract: 65 Ga. 67.

Regulating statutes, statutes regulating court procedure, applying to cases then pending, but depriving parties of no substantial rights, not void: 91 Ga. 142; see also 87 Ga. 296, 297; 16/102, 151.

Retroactive, statutes never construed to be retroactive unless such construction imperatively demanded: 73 Ga. 577.

Telegraph penalty Act, repeal of, abates pending suits for the penalty: 95 Ga. 809.

§§22, 1815,
4954, 268.

§7. (7.) *Ignorance of law.* Laws, after promulgation, are obligatory upon all inhabitants of this State, and ignorance of the law excuses no one.

Plea of ignorance of the law not upheld: 58 Ga. 126. Difference between ignorance and mistake: 7 Ga. 70. Does not excuse a sheriff: 32 Ga. 362. Ignorance of law as affecting the jury: 30 Ga. 385; see also 65 Ga. 158.

Ignorance of law does not commend a complainant seeking injunction: 70 Ga. 611.

§§2880, 3655,
3291, 3297,
2706.

§8. (8.) *Lex loci.* The validity, form and effect 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.

As to indorsement, remedy is governed by the *lex fori*, and construction by the *lex loci*: 2 Ga. 158. Where the indorsement is here, it is governed by the law here: 4 Ga. 1; 27/243. Wills of personalty governed by party's domicile, and realty by the *lex loci*: 3 Ga. 432. Who are heirs: 29 Ga. 311. *Lex loci* governs as to the nature, construction and obligation of contracts: 2 Ga. 159. Priorities depend on the law of the place where the property is: 7 Ga. 359. *Lex loci* governs as to the interpretation, and the *lex fori* as to the remedy: 18 Ga. 725. *Lex loci* only avails where it does not affect law of this State, or have immoral tendency: 34 Ga. 407. South Carolina mortgage only a security here: 36 Ga. 152. Remedy governed by the *lex fori*: 2 Ga. 159; 37/428. Where it was contemplated that the contract should go into effect, controls its construction: 12 Ga. 583. Case of an assignment: 35 Ga. 177. Place of performance governs as to interest: 21 Ga. 135. Divorce governed by the *lex fori*: 31 Ga. 223. But marriage and legitimacy, etc., by the *lex loci*: 34 Ga. 407. *Lex loci* applied to United States courts in Georgia: 35 Ga. 320. Agreements as to arbitration construed according to law where made: 37 Ga. 456. Presumed that *lex loci* is same as our own, as to Sunday contracts: 41 Ga. 449. Common law presumed in force, if not shown what law of another State is: 43 Ga. 461. Note in South Carolina payable there, governed by the law there: 50 Ga. 434, 425. Will of lands governed by the *lex loci*: 52 Ga. 476. Procedure where suit is brought, but rights determined according to law where damage done: 49 Ga. 106. Law of the place forms part of the contract: 49 Ga. 152. Contracts governed by the law of State where to be performed: 62 Ga. 241; 31/210. Where the law placed in evidence, the *lex loci* governs: 64 Ga. 184; 38/132.

Marriage: see note to section 2420.

Notes from decisions since Code of 1882 :

Administrator's bond, although *non est factum* pleaded to suit on administrator's bond, original being in Alabama court, certified copy admissible without other proof, Alabama statute controlling: 67 Ga. 167, 168.

Assignment, legal in New York, where executed, not intended to have effect in Georgia, held valid, though no schedule, etc., attacked: 82 Ga. 142; see also 12 Ga. 586.

Common lawsuit, right of action arising at common law, governed by statute of State where suit brought: 77 Ga. 204.

Construction and remedies, law of place of execution governs: 71 Ga. 630.

Domicile, cited, and held that personalty here was to be distributed by law of State of intestate's domicile: 71 Ga. 231. *Situs* of debt follows creditor; law of his domicile prevails where he and debtor reside in different States: 82 Ga. 142.

Inspection of fertilizers, Georgia statutes as to, have no extraterritorial force: 82 Ga. 438. Order on South Carolina house by letter, filled, purchase-money notes mailed thither, sale valid: 82 Ga. 438; see also 77 Ga. 257.

Lex fori, amendments and mode of procedure controlled by *lex fori*, suit here on right of action arising under South Carolina statute: 68 Ga. 572.

Material-man's lien, contract made in Alabama for material to improve real estate in Georgia, gives lien for same under laws of Georgia: 71 Ga. 628.

Mortgage, if valid at place where executed, is valid everywhere: 76 Ga. 177.

Personal injuries, law of State where personal injury occurred, applied, except as to modes of procedure and practice: 49 Ga. 107; 68/384.

Place of delivery here governs: 77 Ga. 257.

Place of performance, contracts governed by law of place of performance, only when legal where made: 84 Ga. 481.

Railroads, conductor's contract with railroad company made in one State, and injury occurring in another, *quære* as to what law applicable: 68 Ga. 384.

Rate of interest generally controlled by law of place of performance, intention controls: 91 Ga. 507; see also 84 Ga. 481; 87/1; 88/756; 96/227.

Reason of rule, that local usage or understanding of words is admissible to explain intention of parties, probably a leading reason for adopting rule of this section: 74 Ga. 215; citing 71 Ga. 231.

Statute of limitations, where action for tort under Alabama statute was not limited otherwise than by general State statute of limitations, Georgia limitation law governed: 83 Ga. 621; distinguishing 49 Ga. 107.

Wills, non-resident's will to realty in Georgia construed in accordance with laws of Georgia: 68 Ga. 464. Words "my own right heirs," ambiguous: 73 Ga. 506. Parol evidence that testator lived in Pennsylvania when will executed, and had realty and personalty there, and that under Pennsylvania law full-brother inherited to exclusion of half-brother, competent: 73 Ga. 506.

§9. (9.) *Comity of States.* The laws of other States and foreign nations shall have no force and effect of themselves within this State, further than is provided by the Constitution of the United 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.

§§1817, 1846,
2706, 4527,
5148, 2060,
5600, 4410-
4412.

By comity the citizen of a foreign State cannot be made a party to a suit here so as to estop him by such judgment: 5 Ga. 505. Laws of other States—

how far respected: 5 Ga. 511. Comity as affecting a home judgment on property: 7 Ga. 359. As regards slaves escaping: 9 Ga. 555. Fugitives from justice: 13 Ga. 97. *Lex loci* not enforced when immoral: 34 Ga. 407. As to injuries done in Alabama: 43 Ga. 463. Judgment lien on property removed, and then returned to this State: 17 Ga. 491. Administrations and successions: 18 Ga. 561. Foreign administrator, comity is reciprocity: 34 Ga. 518. Not required by comity to enforce what is not law in another State: 36 Ga. 390. Suing foreign executors in this State: 56 Ga. 326-329.

Foreign administrator's liability depends on law of State where appointed: 70 Ga. 528.

Cited, as to law of distribution of another State governing personalty located in Georgia: 71 Ga. 231.

Marriage settlement, executed between persons who were then and continued to be citizens of South Carolina, applied to lands situated in Georgia according to South Carolina inheritance laws: 74 Ga. 210.

Alabama judgment, construing Alabama charter, with respect to powers conferred therein, followed here: 73 Ga. 1.

Plaintiff relying on foreign statute for right of action, must plead it: 83 Ga. 660.

Statutory exemptions from garnishment have no extraterritorial force *per se*; "reciprocity is comity": 73 Ga. 338.

Common law presumed to prevail in another State, unless contrary appears: 70 Ga. 271; 92/237, 241.

Law of another State controlling; courts here governed by construction of common law by highest court of such State: 68 Ga. 384.

Supreme Court not bound by foreign court's interpretation of common law; *aliter*, as to local statutes: 77 Ga. 203.

§§ 5731, 5732,
5692.

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

Section construed: 50 Ga. 471. Waiver by not requiring a seal on a receipt: 57 Ga. 469-473. Cannot waive a law so as to make an experimental case: 59 Ga. 11. May waive time as being of the essence of the contract: 60 Ga. 459. Homestead waiver: 59 Ga. 558. Homestead waiver good, in a mortgage by the husband as against the wife: 61 Ga. 195. Intoxication does not prevent: 62 Ga. 449. Of jury trial: 62 Ga. 398. Of fraud: 47 Ga. 26. Of amendments: 47 Ga. 596; 60/421; 61/483. Constitutional right may be waived: 25 Ga. 37. As in case where eminent domain exercised: 30 Ga. 154. May waive any right as to service: 39 Ga. 595. Irregularity may be waived, but not complete defect: 13 Ga. 217, 218. Cannot waive the pleadings: 56 Ga. 225. Waivers by prisoner: 39 Ga. 719; 43/220; 28/576, 581; 41/583.

Failure to object to motion for new trial, for not filing during term, amounts to waiver: 76 Ga. 329.

Where defendant in error, by his acts, waived objection that brief of evidence not filed in time: 80 Ga. 46.

In case litigated for several years without objection, too late to object on ground that pleadings not filed in time: 80 Ga. 49.

Where party may waive irregularities in tax returns, by pointing out property on which *fi. fa.* to be levied: 80 Ga. 55.

Refusal of telegraph company to pay damage on oral demand, on ground of non-liability, waives formal demand in writing: 85 Ga. 425.

Agent of telegraph company, at station where message sent, competent to waive written demand for damage: 85 Ga. 425.

Stipulation that company not liable unless claim made in sixty days, binds sender and receiver, where telegram relates to business of both: 90 Ga. 254. See 86 Ga. 104; 94/339; 85/425.

Where motion argued and granted, propriety of remedy waived: 65 Ga. 252.

Consent judgment at first term, good as to parties, but not against third persons: 68 Ga. 518.

Act barring right as well as remedy must be pleaded, otherwise it is waived: 72 Ga. 331.

Not applicable to general waiver of laborer's exemption from garnishment: 75 Ga. 471.

Demand, as a condition to trial by jury, constitutional: 86 Ga. 652.

§11. (11.) *Local laws.* If there is a law in force at the time of ^{§5935.} the adoption of this Code, having entirely a local application, such local law is not repealed by this Code, unless so expressly declared.

§12. (12.) *Bonds of public officers.* All bonds taken from public ^{Acts 1853-4,} officers shall be kept in the places specified by law, and copies ^{p. 57.} thereof shall be furnished to any person desiring them. Suits ^{§§257, 264,} thereon may be brought by any person aggrieved by the official ^{3795, 4779,} misconduct of the officer, in his own name, in any court having ^{243, 5345.} jurisdiction thereof, without an order for that purpose.

Where sheriff neglects to serve process and make return thereof: 62 Ga. 168. Formerly order necessary to sue on sheriff's bond: 15 Ga. 159. Where order to sue on sheriff's bond was correct: 15 Ga. 433.

For illegal removal of stranger to writ of possession, sheriff liable; no recovery against sheriff needed before suit on his bond: 81 Ga. 716.

§13. (13.) *Bonds taken by officers.* All bonds taken by public ^{§§4939, 4(7),} officers, under the laws of this State, shall be returned to the offices ^{4779, 5345,} specified by law; and any person interested therein may bring suit ^{3398, 243-} thereon, in his own name, in any court having jurisdiction thereof. ^{274.}

Plaintiff in execution could sue in own name on claim forthcoming bond: 75 Ga. 529.

Usee is real party plaintiff in suit on claim forthcoming bond: 77 Ga. 656.

§14. (14.) *Inspection of public books.* All books kept by any pub- ^{Act 1831,} lic officer under the laws of this State, shall be subject to the in- ^{Cobb, 196,} spection of all the citizens of this State, within office hours, every ^{§269.} day except Sundays and holidays.

But private citizen cannot make abstract of record, when: 51 Ga. 393.

§15. *Licenses revocable.* Where, in the exercise of the police power, ^{87 Ga. 120,} a license is issued, the same is not a contract, but only a permission ^{82 Ga. 224,} to enjoy the privilege for the time specified, on the terms stated. It ^{§§5734, 268,} may be abrogated.

GENERAL NOTE.—*As to when law takes effect (section 3, Code of 1882).*—Where no time fixed, it takes effect from its passage: 8 Ga. 380. Retrospective laws, registry of marriage settlements: 16 Ga. 102. Where there is a penalty, takes effect after being duly published: 34 Ga. 270. Law, prior to the Code, took effect from the date of its passage: 36 Ga. 538.

As to abolishing county court: 70 Ga. 547.

When act passes both houses and is approved by Governor, publication complete; in absence of enrolled act, printed act looked to, but former authoritative: 79 Ga. 718. Special note of city ordinance unnecessary to bind railroad and employees: 87 Ga. 386.

THE POLITICAL CODE.

THE POLITICAL AND PUBLIC ORGANIZATION OF THE STATE.

FIRST TITLE.

DIVISIONS; OF THE BOUNDARY, SOVEREIGNTY, AND JURISDICTION OF THE STATE.

CHAPTER 1.

THE BOUNDARY OF THE STATE.

§16. (15.) *Boundaries of the State.* 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 of April, 1802, the Resolution of the General Assembly of December 8th, 1826, and the adjudications and compromises affecting Alabama and Florida, are as follows: Act 1788,
Cobb, 150.

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 the Chattahoochee river, called Miller's Watkins's
Digest,
713-762.

 The sovereignty and jurisdiction of the State.

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 seacoast.

Acts 1887,
p. 122.

§17. (16.) *Line between Georgia and South Carolina.* 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 State at Beaufort on the 28th of April, 1787.

Acts 1887,
p. 105.

§18. (17.) *Line between Georgia, North Carolina, and Tennessee.* 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.

Acts 1889,
p. 121.

§19. (18.) *Line between Georgia and Alabama.* The boundary line between Georgia and Alabama shall be the line described from Nickajack to Miller's Bend on the Chattahoochee, and down said river to its junction with the Flint.

Acts 1859,
p. 23.

§20. (19.) *Line between Georgia and Florida.* 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 Ellicott's Mound, on the St. Mary's river; thence down said river to the Atlantic ocean.

 CHAPTER 2.

THE SOVEREIGNTY AND JURISDICTION OF THE STATE.

§§5699, 25.

§21. (20.) *Sovereignty and jurisdiction.* The sovereignty and jurisdiction of this State extend to all places within the limits of her boundaries, except so far as she has voluntarily ceded the same to the United States, or adjacent States, over particular localities.

 The sovereignty and jurisdiction of the State.

Mechanic's lien enforced against property of foreign corporations within the State, for work thereon: 65 Ga. 496.

§22. (21.) *As to persons.* The jurisdiction of this State and its laws extend to all persons while within its limits, whether as citizens, denizens, or temporary sojourners. §§1815, 4954,
7, 5700-
5702.

Only parties here made and served are concluded by the judgments: 5 Ga. 497; 8/83. As to non-residents, must have possession of person or property: 19 Ga. 277. A non-resident passing through the State can be sued here: 18 Ga. 690. The person must be here or have property here, to confer jurisdiction: 25 Ga. 473; 30/440. Appearing and answering to a suit waives jurisdiction: 31 Ga. 140. When foreign administrator not suable here: 34 Ga. 511-519; 56/328. Tribunal first obtaining jurisdiction retains it, as between State and United States courts: 40 Ga. 362. Sovereignty united with domain establishes exclusive jurisdiction of State as to crimes: 13 Ga. 97.

See notes to section 4954.

§23. (22.) *Governor must defend suits, when.* When any suit is instituted against the State, or against any person, in the result of which the State has an interest, under pretense of any claim inconsistent with its sovereignty, jurisdiction or rights, the Governor shall, in his discretion, provide for the defense of such suit, unless otherwise specially provided for. §§136, 126.

State not sued without her consent; did it apply to the Western and Atlantic Railroad? 23 Ga. 436-438. Same rule as to Georgia Military Institute: 31 Ga. 277. Western and Atlantic Railroad cannot be garnished: 37 Ga. 240. State cannot be sued without the Governor's consent: 25 Ga. 374. When the State is not properly made a party to a suit: 43 Ga. 605. The State must consent to be made a party to a suit: 45 Ga. 365.

Attorney-general's appearance by demurrer for sheriff, in suit to enjoin enforcement of Governor's *fi. fa.* against treasurer, etc., sufficient representation of Governor: 66 Ga. 408.

Courts restricted to stipulations of resolution of General Assembly authorizing suit against State: 66 Ga. 673.

§24. (22 a.) *Trial of cases when State is party.* The judges of the superior court and of the Supreme Court in this State, where cases are pending in said courts in which the State is a "party plaintiff" in civil cases, shall give preference over any and all cases so pending to such cases, and use all the power vested in them by law to bring such cases to a speedy trial; and shall, whenever required so to do by counsel for the State, take up said cases for trial, and proceed to try the same, unless the defendant can show some good cause for continuance, when the case shall be continued to a future time in the same term, or to the next term, in the discretion of the court: *Provided*, nothing in this section contained shall affect the right of the State to continuance on a proper showing. §1970.
Acts 1876,
p. 104.

CHAPTER 3.

JURISDICTION CEDED TO THE UNITED STATES OVER CERTAIN LAND.

Acts 1890-1, §25. *Cession to United States of land for public buildings.* The jurisdiction of the State is ceded to the United States of America in such land, not to exceed one acre in any one tract, that may be purchased in this State, upon which to erect public buildings. The State of Georgia so far retains a concurrent jurisdiction with the United States, that all civil and criminal process issued under the authority of this State may be executed therein, in like manner as if this section were not of force. The State retains its civil and criminal jurisdiction over persons and citizens in said ceded territory, as over other persons and citizens in this State. Nothing herein shall interfere with the jurisdiction of the United States over any matter or subjects set out in the Acts of Congress donating money for the erection of public buildings for the transaction of its business in this State; or with any laws, rules or regulations that Congress may hereafter adopt for the preservation and protection of its property and rights in said ceded territory, and the proper maintenance of good order therein: *Provided*, such cession shall not take effect until the United States shall have acquired title to said lands.

Acts 1882-3, §26. *Lands condemned for United States lighthouses, etc.* The agent of the United States, and the mayor of any incorporate city, in the county in which it is proposed to erect lighthouses, beacons or range-lights, or any other structure designed to assist the navigation of the waters of this State, authorized by the government of the United States, shall mark out, by metes and bounds, the land necessary to be taken, and advise the respective owners thereof. If the agent of the United States and the owners cannot agree upon the compensation to be paid for taking the land, the Governor shall appoint one person and the owner of the land another, and these two shall select a third person, who shall constitute a commission to assess the just and adequate compensation to be paid, according to the general method of condemning land in this Code provided.

Act 1847, §27. (23.) *Coast-surveyors.* Any person employed under the Act of the Congress of the United States, providing for a survey of the coasts, may enter upon lands and clear or cut timber within this State 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.

§4685. §28. (24.) *Damage to landowners.* If the parties representing the government of the United States, and the owner or possessor of the

Counties.

land so entered upon, cannot agree upon the amounts to be paid for the same, the damages shall be assessed as in this Code provided.

CHAPTER 4.

COUNTIES.

§29. (28.) *Names of counties.* The State is divided into one hundred and thirty-seven counties, whose boundaries and limits shall be ascertained by the several acts laying off the same, and those amendatory thereof. The names of the counties are as follows: §§5924-5928,
5745-5748.
Cobb,
pp. 1144-
1210.

COUNTY.	ORGANIZED UNDER ACT.	MADE FROM.
Appling,	December 15, 1818.	Appling.
Baker,	December 12, 1825.	Early.
Baldwin,	May 11, 1803.	Baldwin.
Banks,	December 11, 1858.	Habersham and Franklin.
Bartow,	{ December 3, 1832, } { December 6, 1861. }	Murray.
Berrien,	February 25, 1856.	Irwin, Lowndes, and Coffee.
Bibb,	December 9, 1822.	Monroe.
Brooks,	December 11, 1858.	Lowndes and Thomas.
Bryan,	December 19, 1793.	Bryan.
Bulloch,	February 8, 1796.	Bulloch.
Burke,	{ Constitution of } { Georgia, 1777. }	Parish of St. George.
Butts,	December 24, 1825.	Henry and Monroe.
Calhoun,	February 20, 1854.	Early and Baker.
Camden,	{ Constitution of } { Georgia, 1777. }	{ St. Thomas's and St. Mary's } { Parishes. }
Campbell,	December 20, 1828.	{ Coweta, Carroll, DeKalb, and } { Fayette. }
Carroll,	December 11, 1826.	Carroll.
Catoosa,	December 5, 1853.	Walker and Whitfield.
Charlton,	February 18, 1854.	Camden.
Chatham,	{ Constitution of } { Georgia, 1777. }	{ St. Philip's and Christ Church } { Parishes. }
Chattahoochee,	February 13, 1854.	Marion and Muscogee.
Chattooga,	December 28, 1838.	Floyd and Walker.
Cherokee,	December 26, 1831.	Cherokee and Campbell.
Clarke,	December 5, 1801.	Jackson.
Clay,	February 16, 1854.	Early and Randolph.
Clayton,	November 30, 1858.	Henry and Fayette.
Clinch,	February 14, 1850.	Ware and Lowndes.
Cobb,	December 3, 1832.	Cherokee.
Coffee,	February 9, 1854.	Clinch, Ware, Telfair, and Irwin.
Colquitt,	February 25, 1856.	Thomas and Lowndes.
Columbia,	December 10, 1790.	Richmond.
Coweta,	December 11, 1826.	Coweta.
Crawford,	December 9, 1822.	Crawford.
Dade,	December 25, 1837.	Walker.

Counties.

COUNTY.	ORGANIZED UNDER ACT.	MADE FROM.
Dawson,	December 3, 1857.	Lumpkin and Gilmer.
Decatur,	December 8, 1823.	Early.
DeKalb,	December 9, 1822.	Henry.
Dodge,	October 26, 1870.	{ Pulaski, Telfair, and Montgom- ery.
Dooly,	May 15, 1821.	Dooly.
Dougherty,	December 15, 1853.	Baker.
Douglas,	October 17, 1870.	Campbell and Carroll.
Early,	December 15, 1818.	Early.
Echols,	December 13, 1858.	Lowndes and Clinch.
Effingham,	{ Constitution of } { Georgia, 1777. }	{ Parishes of St. Matthew and St. Philip.
Elbert,	December 10, 1790.	Wilkes.
Emanuel,	December 10, 1812.	Montgomery and Bulloch.
Fannin,	January 21, 1854.	Gilmer and Union.
Fayette,	May 15, 1821.	Fayette.
Floyd,	December 3, 1832.	Cherokee.
Forsyth,	December 3, 1832.	Cherokee.
Franklin,	February 25, 1784.	Franklin.
Fulton,	December 20, 1853.	DeKalb.
Gilmer,	December 3, 1832.	Cherokee.
GlascocK,	December 19, 1857.	Warren.
Glynn,	{ Constitution of } { Georgia, 1777. }	{ Parishes of St. David and St. Patrick.
Gordon,	February 13, 1850.	Floyd and Cass.
Greene,	February 3, 1786.	Washington.
Gwinnett,	December 15, 1818.	Gwinnett.
Habersham,	December 15, 1818.	Habersham.
Hall,	December 15, 1818.	Hall.
Hancock,	December 17, 1793.	Washington.
Haralson,	January 26, 1856.	Polk and Carroll.
Harris,	December 14, 1827.	Muscogee and Troup.
Hart,	December 7, 1853.	Franklin and Elbert.
Heard,	December 22, 1830.	Carroll, Troup, and Coweta.
Henry,	May 15, 1821.	Henry.
Houston,	May 15, 1821.	Houston.
Irwin,	December 15, 1818.	Irwin.
Jackson,	February 11, 1796.	Franklin.
Jasper,	{ December 10, 1807. } { December 10, 1812. }	Baldwin.
Jefferson,	February 20, 1796.	Burke and Warren.
Johnson,	December 11, 1858.	{ Laurens, Emanuel, and Wash- ington.
Jones,	December 10, 1807.	Baldwin.
Laurens,	December 10, 1807.	Washington and Wilkinson.
Lee,	December 11, 1826.	Lee.
Liberty,	{ Constitution of } { Georgia, 1777. }	{ Parishes of St. John, St. An- drew, and St. James.
Lincoln,	February 20, 1796.	Wilkes.
Lowndes,	December 23, 1825.	Irwin.
Lumpkin,	December 3, 1832.	Cherokee.
Macon,	December 14, 1837.	Houston and Marion.

Counties.

COUNTY.	ORGANIZED UNDER ACT.	MADE FROM.
Madison,	December 11, 1811.	{ Oglethorpe, Jackson, Clarke, Franklin, and Elbert.
Marion,	December 14, 1827.	Muscogee and Lee.
McDuffie,	October 18, 1870.	Columbia and Warren.
McIntosh,	December 19, 1793.	Liberty.
Meriwether,	December 14, 1827.	Troup.
Miller,	February 26, 1856.	Baker and Early.
Milton,	December 18, 1857.	Cherokee, Cobb, and Forsyth.
Mitchell,	December 21, 1857.	Baker.
Monroe,	May 15, 1821.	Monroe.
Montgomery,	December 19, 1793.	Washington.
Morgan,	December 10, 1807.	Baldwin.
Murray,	December 3, 1832.	Cherokee.
Muscogee,	December 11, 1826.	Muscogee.
Newton,	December 24, 1821.	Henry, Jasper, and Walton.
Oconee,	February 25, 1875.	Clarke.
Oglethorpe,	December 19, 1793.	Oglethorpe.
Paulding,	December 3, 1832.	Cherokee.
Pickens,	December 5, 1853.	Cherokee and Gilmer.
Pierce,	December 18, 1857.	Ware and Appling.
Pike,	December 9, 1822.	Monroe.
Polk,	December 20, 1851.	Paulding and Floyd.
Pulaski,	December 13, 1808.	Laurens.
Putnam,	December 10, 1807.	Baldwin.
Quitman,	December 10, 1858.	Randolph and Stewart.
Rabun,	December 21, 1819.	Rabun.
Randolph,	December 20, 1828.	Lee.
Richmond,	{ Constitution of } { Georgia, 1777. }	Parish of St. Paul.
Rockdale,	October 18, 1870.	Newton and Henry.
Schley,	December 22, 1857.	Marion and Sumter.
Screven,	December 14, 1793.	Burke and Effingham.
Spalding,	December 20, 1851.	Pike, Henry, and Fayette.
Stewart,	December 23, 1830.	Randolph.
Sumter,	December 26, 1831.	Lee.
Talbot,	December 14, 1827.	Muscogee.
Taliaferro,	December 24, 1825.	{ Wilkes, Greene, Oglethorpe, Warren, and Hancock.
Tattnall,	December 5, 1801.	Montgomery.
Taylor,	January 15, 1852.	Talbot, Macon, and Marion.
Telfair,	December 10, 1807.	Wilkinson.
Terrell,	February 16, 1856.	Lee and Randolph.
Thomas,	December 23, 1825.	Decatur and Irwin.
Towns,	March 6, 1856.	Union.
Troup,	December 11, 1826.	Troup.
Twiggs,	December 14, 1809.	Wilkinson.
Union,	December 3, 1832.	Cherokee.
Upson,	December 15, 1824.	Crawford and Pike.
Walker,	December 18, 1833.	Murray.
Walton,	December 15, 1818.	Walton.
Ware,	December 15, 1824.	Irwin.

Congressional districts.

COUNTY.	ORGANIZED UNDER ACT.	MADE FROM.
Warren,	December 19, 1793.	Warren.
Washington,	December 25, 1784.	Washington.
Wayne,	May 11, 1803.	Wayne and Appling.
Webster,	{ December 16, 1853, } { February 21, 1856. }	Lee.
White,	December 22, 1857.	Habersham.
Whitfield,	December 30, 1851.	Murray.
Wilcox,	December 22, 1857.	Irwin, Dooly, and Pulaski.
Wilkes,	{ Constitution of } { Georgia, 1777. }	Wilkes.
Wilkinson,	May 11, 1803.	Wilkinson.
Worth.	December 20, 1853.	Dooly and Irwin.

§§34, 60.

§30. (35.) *Counties divided by water.* Whenever a stream of water is the boundary of a county, the jurisdiction of the county shall extend to the center of the main channel of such stream.

GENERAL NOTE.—Where new county organized, cases transferred.—Ejectment suit, records moved to the new county: 18 Ga. 719. DeKalb county claimed costs from fines, etc., in Fulton county, before the county was divided: 26 Ga. 328. Transfer of a case about a will from Henry to Spalding county: 27 Ga. 633. Lost court papers established before transfer of case to the new county: 30 Ga. 703. Land in suit, cut off in a new county: 43 Ga. 535.

CHAPTER 5.

CONGRESSIONAL DISTRICTS.

Acts 1890-1,
p. 193.

§31. (40.) *Congressional districts.* The State is divided into eleven Congressional districts, each of which is entitled to elect one representative in the Congress of the United States. The districts shall be composed of the following counties, respectively:

First District.—Chatham, Burke, Screven, Emanuel, Bulloch, Effingham, Bryan, Tattnull, Liberty, and McIntosh.

Second District.—Quitman, Clay, Randolph, Terrell, Calhoun, Dougherty, Worth, Early, Baker, Miller, Mitchell, Colquitt, Berrien, Decatur, and Thomas.

Third District.—Stewart, Webster, Sumter, Lee, Dooly, Wilcox, Schley, Pulaski, Twiggs, Houston, Macon, Taylor, and Crawford.

Fourth District.—Muscogee, Marion, Talbot, Harris, Meriwether, Troup, Coweta, Heard, Carroll, and Chattahoochee.

Fifth District.—Fulton, Douglas, Campbell, Clayton, DeKalb, Rockdale, Newton, and Walton.

Sixth District.—Bibb, Baldwin, Jones, Monroe, Upson, Pike, Spalding, Fayette, Henry, and Butts.

Congressional districts.

Seventh District.—Haralson, Paulding, Cobb, Polk, Floyd, Bartow, Chattooga, Gordon, Walker, Dade, Catoosa, Whitfield, and Murray.

Eighth District.—Jasper, Putnam, Morgan, Greene, Oconee, Clarke, Oglethorpe, Madison, Elbert, Hart, Franklin, and Wilkes.

Ninth District.—Fannin, Union, Towns, Rabun, Habersham, White, Lumpkin, Dawson, Gilmer, Pickens, Cherokee, Forsyth, Milton, Gwinnett, Jackson, Hall, and Banks.

Tenth District.—Richmond, Columbia, Lincoln, Jefferson, Glascock, McDuffie, Warren, Taliaferro, Washington, Wilkinson, and Hancock.

Eleventh District.—Glynn, Johnson, Laurens, Montgomery, Dodge, Telfair, Irwin, Coffee, Appling, Wayne, Pierce, Ware, Clinch, Echols, Lowndes, Brooks, Charlton, and Camden.

SECOND TITLE.

ELECTIONS BY THE PEOPLE.

CHAPTER 1.

QUALIFICATION OF VOTERS.

§§1541, 5737,
72.

§32. (1276.) *Qualification of voters for members of legislature.* The qualification of voters for members of the General Assembly is contained in the following sections of the Constitution of this State, to wit:

1. Every male citizen of the United States (except as hereinafter provided), twenty-one years of age, who shall have resided in this State one year next preceding the election, and shall have resided six months in the county in which he offers to vote, and shall have paid all taxes which may hereafter be required of him, and which he may have had an opportunity of paying, agreeably to law, except for the year of the election, shall be deemed an elector: *Provided*, that no soldier, sailor or marine in the military or naval service of the United States, shall acquire the rights of an elector, by reason of being stationed on duty in this State; and no person shall vote who, if challenged, shall refuse to take the following oath, or affirmation: "I do swear (or affirm) that I am twenty-one years of age, have resided in this State one year, and in this county six months, next preceding this election. I have paid all taxes which, since the adoption of the present Constitution of this State, have been required of me previous to this year, and which I have had an opportunity to pay, and I have not voted at this election."

2. But the following classes of persons shall not be permitted to vote: (1) Those who shall have been convicted in any court of competent jurisdiction of treason against the State, of embezzlement of public funds, malfeasance in office, bribery or larceny, or of any crime involving moral turpitude, punishable by the laws of this State with imprisonment in the penitentiary, unless such person shall have been pardoned; (2) idiots and insane persons.

Legislature may constitutionally provide that voter shall vote only in his militia district: 71 Ga. 206.

Municipal registration law here added no new qualifications to voters, and valid: 66 Ga. 217.

Registration adds no qualification to voters, but only serves to identify them as persons qualified to vote: 88 Ga. 699; 90/820.

Registration of voters; to what elections applicable. Voters book, when to be opened.

Per diem of election-managers chargeable both for election day and next day when needed to complete count: 94 Ga. 680.

§33. (1277.) *Such electors may vote for all other officers.* Persons §§5737, 72. 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.

§34. (1281.) *Voters transferred from one district or county to another.* §§60, 61, 30. When any portion of a county is changed from one county or one district to another, the persons who would have been qualified to vote for members of the General Assembly in the county or district from which taken, at the time of any election, shall vote in the county or district 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 2.

REGISTRATION OF VOTERS.

ARTICLE 1.

TO WHAT ELECTIONS APPLICABLE.

§35. *No person to vote without registering.* No person shall be permitted to vote in any election in the State for presidential electors, for members of Congress, for Governor, for State-house officers, for members of the General Assembly, for county officers, county commissioners, for justices of the peace, for constables, for members of the county board of education, where chosen by the people, nor in any other popular election to fill any other State or county office now existing or hereafter created, nor in any State or county election for any purpose whatever, unless such person shall have been registered as hereinafter provided. Acts 1894, p. 115. §§5738, 1204, 378.

ARTICLE 2.

VOTERS BOOK, WHEN TO BE OPENED.

§36. *Tax-collector to open voters books.* On the first day of January of each year, the tax-collector of each county in this State shall open a book or books, to be designated as “voters books,” con- Acts 1894, p. 116. §§5737, 46.

Method of registering on voters book.

taining, on the first page thereof, or near the first page thereof, the following oath, to wit: "I do swear, or affirm, that I am a citizen of the United States; that I am twenty-one years of age, or will be on the — of — of this calendar year; that I have resided in this State for one year, and in this county for six months, immediately preceding the date of this oath, or will have so resided on the — of — of this calendar year; that I have paid all taxes which, since the adoption of the Constitution of 1877, have been required of me, except taxes for this year, and that I am not disfranchised from voting by reason of any offense committed against the laws of the State. I further swear, or affirm, that I reside in the — district, G. M., or in the — ward of the city of —, at number —, on — street; my age is —, my occupation —."

Acts 1894,
p. 117.

§37. *Special periods for keeping books open.* In addition to keeping said voters books open for signatures during the usual hours of business daily, from January 1st, as heretofore required, the tax-collector shall, for a period of thirty days, beginning fifty days prior to the first Wednesday in October of 1896, and each second year thereafter (the same being the dates of the general State elections), keep said voters books open for signatures, at his office at the county-site, from nine o'clock A. M., to four o'clock P. M., each day, Sundays only excepted. And he shall observe the same hours for a similar period of thirty days, beginning fifty days prior to the Tuesday next after the first Monday in November of 1896, and each second year thereafter (the same being the date of Federal elections).

Acts 1894,
p. 122.

§38. *When election held at other time.* When an election is to be held for any purpose at any time other than the first Wednesday in October and the Tuesday next after the first Monday in November, the provisions of this Chapter shall apply in all respects.

Acts 1894,
p. 116.

§39. *Books to be kept open.* Said tax-collector may open as many of said voters books as he may deem necessary, and he shall always keep one of such voters books open for signatures, at his office at the county-site, at any and all times when his office is open for the payment of taxes or other business; and he shall also carry with him and keep open for signatures one such voters book, in each and all of his visits to the several militia districts of his county for the purpose of collecting taxes.

ARTICLE 3.

METHOD OF REGISTERING ON VOTERS BOOK.

Acts 1894,
p. 116.

§40. *Who may take charge of books and administer oaths.* Said tax-collector, or any clerk employed by him and authorized by him to

Method of registering on voters book.

receipt for taxes in the usual course of his employment, is hereby empowered to take charge of said voters books, and to administer said oath. When the signature of any person is not clearly legible, the officer in charge of the voters book shall, at the time the signature is made, write out the same in clearly legible letters opposite or under said signature.

§41. *Application and method of registering.* Any male person desiring to be registered as a voter, may apply to the tax-collector, or his clerk as above described, and after reading said oath, or having same read to him, shall subscribe the same by signing his name in said voters book, underneath the written or printed oath above described, or on some page following the one on which said oath is printed or written; a memorandum or entry of the district or ward (giving the name of the street, and the number of his residence, if any, his age and occupation) in which affiant lives being first made by the officer in charge of the book, or by the affiant above the place of signature of the affiant. And when affiant is not twenty-one years old at the date of taking the oath, a similar entry or memorandum shall, in like manner, be made, showing the date in that year when he will reach twenty-one; and when the affiant has not resided in the State one year or in the county six months at the date of taking the oath, a similar entry or memorandum shall be made, showing the date in that year when he will have resided in the State one year and in the county six months.

Acts 1894,
p. 116.

§42. *Oath to be read or repeated at request of applicant.* Upon request of the applicant, the officer in charge of the book shall read or repeat said oath distinctly to the applicant, and if the applicant cannot sign his name, the said officer shall sign it for him, the applicant making his mark thereto.

§43. *Signatures prima facie evidence.* The signatures so made in said voters books shall be *prima facie* evidence that the person so signing swears, or affirms, the truth of every material fact contained in said oath, and also of the said written memoranda or entries preceding his signature.

§44. *Race to be noted on book.* For the purpose of more easily identifying voters, the officers in charge of the voters book shall note thereon, in connection with each signature, the race of the person signing—that is to say, whether white or colored.

§45. *Collector must be satisfied applicant entitled to register.* No tax-collector shall allow any person to sign his name in the voters book unless he is satisfied, at the time, that the taxes due by said voter are paid, and that he is otherwise qualified.

§§5737, 72
(11).

§46. *Separate printed oath may be used.* The tax-collector may use a separate printed oath for each person, instead of the books herein-

Acts 1894,
p. 122.
§36.

Lists from voters book and tax defaulters furnished registrars.

before named; said printed oaths to be pasted into a suitable book, from which the list provided for shall be taken. Signing one of said separate printed oaths shall be, in all respects, equivalent to signing in said "voters books."

ARTICLE 4.

LISTS FROM VOTERS BOOK AND TAX DEFAULTERS FURNISHED REGISTRARS.

Acts 1894,
p. 117.

§47. *List to be filed with county registrars.* At the end of each period of thirty days and twenty days, said tax-collector shall file with the county registrars an accurate and complete list of all the names signed in said voters books since January first of that year, the names to be arranged in alphabetical order and by militia districts and city wards; and also showing the dates in that year when persons will arrive at full age or will have resided in the State and county the requisite time, as sworn to in the voters books. And said list shall also show the race of each person—that is to say, whether white or colored—his age, occupation, and residence.

§48. *List of persons disqualified to be filed.* The tax-collector, the ordinary, and the clerk of the superior court of each county shall, on or before July first of each year, prepare and file with the county registrars and tax-collector a complete list, alphabetically arranged, of all persons living in the county on January first of that year, who are disqualified from voting in that year by reason of non-payment of taxes since 1877, or by reason of idiocy, insanity, or conviction of a crime whose penalty is disfranchisement, unless such convict has been pardoned and the right of suffrage restored to him; and said list shall also show the race of each person—that is to say, whether white or colored.

Acts 1894,
p. 118.

§49. *Preparation of such list.* In preparing said list of disqualified persons, the said tax-collector, ordinary, and clerk of the superior court shall act upon the best evidence obtainable by them, and they shall especially examine and consider the records of the criminal courts of the county, the insolvent tax-lists, tax digests, and tax execution-dockets and tax executions, wherever they may be. In the event that there is a difference of opinion among said three officers as to whether any name or names shall be placed on said list of disqualified persons, the concurrent votes of any two shall control in the matter.

ARTICLE 5.

COUNTY REGISTRARS, APPOINTMENT AND OATH.

§50. *Appointment of county registrars.* Within thirty days after January 1st, 1895, and biennially thereafter, the judge of the superior court of each county shall appoint three upright and intelligent citizens of said county as county registrars, and have the appointment entered on the minutes of the court. Said appointment shall be for a term of two years and until their successors are appointed and qualified. The said judge shall have the right, however, to remove said registrars at any time in his discretion, with or without cause, and at once appoint a successor.

§51. *Board to be bipartisan.* Said judge shall not appoint all the registrars from any one conflicting political interest or party, and if at any time it shall appear that all the registrars are from one conflicting political interest or party, then one of said registrars shall at once be removed and a successor appointed, so as to maintain a bipartisan board.

§52. *Oath of registrars.* Before entering upon his duties each of the county registrars shall take the following oath before some officer authorized to administer an oath under the laws of this State, to wit: "I do solemnly swear that I will faithfully and impartially discharge, to the best of my ability, the duties imposed upon me by law as county registrar."

ARTICLE 6.

LIST OF REGISTERED VOTERS, HOW PREPARED.

§53. *Examination of lists by registrars.* Fifteen days before the October and November elections, and immediately upon receipt of the list of names taken from the voters books by the tax-collector, the county registrars shall proceed to examine said list and compare the same with the list of disqualified persons, prepared and filed by the tax-collector, the ordinary, and the clerk of the superior court, and shall proceed to make up a list to be known as "registered voters," in alphabetical order of names and by militia districts and city wards, distinguishing in said lists between the white and colored voters, said list to show the age, occupation and residence of said voters.

§54. *Registered voters.* All names appearing on the lists taken from the voters books, and not appearing on the list of disqualified voters, shall be entered on the list of "registered voters" unless

Acts 1894,
p. 118.
§§ 47-49.

Acts 1894,
p. 119.

Hearing before registrars.

withheld therefrom as hereinafter provided. No name appearing on the list of disqualified voters shall be entered on the list of registered voters, unless placed thereon as hereinafter provided. A name appearing on the list taken from the voters books, and not appearing on the list of disqualified voters aforesaid, shall be withheld from the list of registered voters when the county registrars are convinced by sufficient legal proof that such person is, in fact, not qualified to vote. A name appearing on the list of disqualified voters shall be entered on the list of registered voters when said name appears on the list taken from the voters books, and when, in addition thereto, the county registrars are convinced, by sufficient legal proof, that such person was not disqualified, or that his disqualification has been removed. No name shall be entered on the list of registered voters unless it was signed in the voters books as shown by the list taken therefrom.

ARTICLE 7.

HEARING BEFORE REGISTRARS.

Acts 1894,
p. 119.

§55. *Person unlawfully denied right to sign voters book.* Any person, who, after application, was unlawfully denied the right to sign the voters book, may have his name placed upon the list of registered voters, upon satisfactory showing made to the registrars that he is entitled to be registered. The county registrars shall not be confined to the evidence furnished by the list of disqualified voters, but may have access to the original papers or books from which said lists were compiled, and may hear any competent written evidence or oral testimony, under oath, concerning the disqualification of any person whose name appears on the list taken from the voters books. The county registrars may likewise hear any competent written evidence or oral testimony, under oath, concerning the removal of the disqualification of any person whose name appears on the list of disqualified voters. The names of all persons who were not of age, or who had not resided in the State and county the requisite time at the date of signing the oath in the voters books, shall be placed on the proper lists prepared for any election occurring after the date when such persons reached full age or have resided in the State and county the requisite time.

Acts 1894,
p. 119.

§56. *Production of books, etc., may be required.* For the purpose of determining the qualification or disqualification of persons as aforesaid, the county registrars shall have the power to require the production of books, papers, etc., upon one day's notice, and, upon like notice, to subpoena and swear witnesses. If the county registrars

List of voters furnished election-managers. Ballots, by whom and where cast.

shall differ among themselves upon any question coming before them, the concurrent votes of two of said registrars shall control.

§57. *Service of summons, etc.* The sheriff, his deputy, or any lawful constable of said county may serve all summons, notices, and subpoenas, as issued by said county registrars, and receive such compensation as is customary for like services. Acts 1894, p. 120.

§58. *Disputed right to have name on book placed on list.* If the name of any person appears on the voters book whose right to have his name placed upon the list of registered voters is questioned by the registrars, said registrars shall give said person at least one day's notice of the time and place of hearing the question; which notice shall be in writing and served upon said person, either personally or by leaving the same at his most notorious place of abode. Acts 1894, p. 120.

ARTICLE 8.

LIST OF VOTERS FURNISHED ELECTION-MANAGERS.

§59. *Lists to be furnished election-managers.* The county registrars shall, at or before the hour appointed for opening the polls, place in possession of the managers of the election at each voting precinct in the county one or more printed or clearly written copies of the lists of registered voters for such militia district or city ward in which the voting precinct is situated, said lists to contain all the information hereinafter provided for; and the county registrars shall, in like manner, place in possession of the election-managers of the voting precinct at the court-house, at the county-site, proper lists for each militia district, the voting precinct of which is situated outside of an incorporated town. Said lists of registered voters shall be duly authenticated by the signature of two of said county registrars. Acts 1894, p. 120. §§66-78.

ARTICLE 9.

BALLOTS, BY WHOM AND WHERE CAST.

§60. *No one may vote whose name not on list.* All persons whose names appear on the list of registered voters placed in possession of the election-managers, and no others shall be allowed to deposit their ballots according to law, at the voting precinct of the militia district or city ward in which they are registered, but not elsewhere, except as hereinafter provided. If in any city ward or militia district a voting precinct is not established and opened, the county Acts 1894, p. 120. §§34, 72 (1).

Lists returned by managers. Payment of tax-collectors, registrars, etc.

registrars shall furnish to the election-managers at the voting precinct at the court-house, at the county-site, the lists of registered voters of such ward or militia district, and persons whose names appear on such lists shall be allowed to vote at the voting precinct at the court-house, at the county-site, under the same rules that would have governed if a voting precinct had been established and opened in said ward or militia district.

Acts 1894,
p. 120.
§72 (4).

§61. *Oath to be taken in such cases.* If any person shall offer to vote at the precinct at the court-house, at the county-site, whose name does not appear on the lists for that ward or militia district, but does appear on the lists for one of the militia districts in which the voting precinct is situated outside of an incorporated town, such person shall be allowed to vote at the court-house, at the county-site, upon taking the following oath, to be administered by one of the managers: "I swear, or affirm, that I have not voted elsewhere in this election."

ARTICLE 10.

LISTS RETURNED BY MANAGERS.

Acts 1894,
p. 121.
§72 (12).

§62. *Return of lists by election-managers.* The managers of the elections at the different precincts shall return the lists of registered voters to the clerk of the superior court, by which officer said lists shall be kept open for public inspection, and by said officer placed with the foreman of the next grand jury for such action as may be deemed proper by the grand jury. Said list is not to be placed with said clerk until after examination by the board of consolidation.

ARTICLE 11.

PAYMENT OF TAX-COLLECTORS, REGISTRARS, ETC.

Acts 1894,
p. 121.
§§5892, 5402.

§63. *Compensation.* For each name signed in the voters books, the tax-collector shall receive the sum of five cents. For each name on the list of disqualified voters, the tax-collector, ordinary, and clerk of the superior court shall each receive the sum of one and one-half cents. For each day the county registrars may be actually engaged in the discharge of their duties, they shall each receive the sum of two dollars. All of said sums are to be paid out of the county treasury as other county bills are paid: *Provided, however,* that the county commissioners of any county shall have the power to fix a different compensation for the above-named officers in their respective

Inspection of lists and books. Elections for members of the General Assembly; managers, oath, etc.

counties; and in counties having no county commissioners, such power to change the compensation herein provided shall belong to that officer or officers exercising the power usually vested in county commissioners. The cost of the voters books and of printing the lists provided for shall be paid out of the county treasury as other county bills are paid.

ARTICLE 12.

INSPECTION OF LISTS AND BOOKS.

§64. *Inspection of books, etc.* Said voters books and lists taken therefrom, said lists of disqualified persons, said lists of registered voters, shall be at all times open to reasonable inspection of any citizen of the county, but shall not be removed for such inspection from the custody of the ordinary or other officer in charge. At the end of each year the tax-collector shall file all said voters books in the office of the ordinary of the county, and the county registrars shall also file, at the end of each year, in the office of the ordinary, certified copies of the lists of registered voters prepared for each election. Acts 1894, p. 121. §14.

§65. *Proceedings of registrars to be public.* All the duties herein required of the county registrars and all hearing of evidence upon the qualifications of voters shall be discharged and had in public. Acts 1894, p. 122.

GENERAL NOTE.—Registration adds no new qualifications to voters: 66 Ga. 217; 90/820; 88/699.

CHAPTER 3.

ELECTIONS FOR MEMBERS OF THE GENERAL ASSEMBLY.

ARTICLE 1.

MANAGERS OF ELECTION; QUALIFICATIONS AND OATH.

§66. (1282.) *Superintendents of elections for members of the legislature.* The persons qualified to hold such elections are ordinaries, justices of the peace, and freeholders. There must be three superintendents, and one must either be an ordinary or a justice of the peace, except in a certain contingency hereinafter to be set forth. Persons who cannot read and write shall not be competent to serve as managers of elections in this State. Acts 1880-1, p. 151. §§80, 96, 104.

Election precincts. Elections; when, where, and how held.

Election held by three persons, one of whom is neither an ordinary, justice of the peace, nor freeholder, invalid: 78 Ga. 165.

§102.

§67. (1283.) *Superintendents to take oath.* 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 ordinaries, 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.

§68. (1284.) *Oath of superintendent, before whom taken.* 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.

ARTICLE 2.

ELECTION PRECINCTS.

Acts 1893,
p. 29.
§§5780,
4238 (4),
60, 61.

§69. (1285.) *Election precincts.* Such elections 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, except in militia districts lying in whole or in part in incorporated cities, towns and villages, in which militia districts as many precincts may be established as may be necessary and convenient for the holding of such elections. Such precincts are established, changed, or abolished by the ordinaries at a regular term of their court, descriptions of which must be entered on the minutes at the time.

ARTICLE 3.

ELECTIONS; WHEN, WHERE, AND HOW HELD.

Acts 1865-6,
p. 24.
§§5750, 60,
61.

§70. (1286.) *Elections, how and when held.* The day of holding such elections is the first Wednesday in October, 1880, and biennially thereafter, and the time of day for keeping open the elections is

Elections; when, where, and how held.

from seven o'clock A. M., to six o'clock P. M., at the court-house, and from eight o'clock A. M., to three o'clock P. M., at the precincts.

In matters of law, sun time, not standard time, controls: 84 Ga. 159.

§71. (1287.) *Three freeholders may superintend election.* If by ten o'clock A. M., on the day of 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.

In matters of law, sun time, not standard time, controls: 84 Ga. 159.

§72. (1288.) *Manner of conducting elections.* All superintendents shall have such elections conducted in the following manner:

1. *Ballot.* The vote shall be given by ballot. §60.

2. *Superintendents and clerks.* 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.

3. *Ballots marked.* 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.

4. *Challenge.* When any voter is challenged and sworn, it shall be ^{§61.} so written opposite his name on the list, and also on his ballot.

5. *Preservation of order.* In order to promote the more efficient ^{Acts 1869,} preservation of peace and good order on all days of election in this _{p. 23.} State, the managers of elections shall be authorized to employ, when deemed necessary, a sufficient number of temporary police, whose duty it shall be to guarantee all legal voters, irrespective of race or color, the free exercise of the right of franchise: *Provided*, that this provision shall not refer to cities and towns having a legalized police force.

6. *Count, when to begin.* 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.

7. *Tally-sheet.* When the votes are all counted out, there must be a certificate, signed by all of the superintendents, stating the number of votes each person voted for received; and each list of voters and tally-sheet must have placed thereon the signature of the superintendents.

8. *Tally-sheet sent to county-site.* The superintendents of the precincts must send their certificates, and all 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.

Managers of election shall consolidate the vote; applied to “fence or no fence” election: 71 Ga. 210.

§§5743, 81. 9. *Consolidation and returns to Governor.* 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, and 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.

§§5807, 5809, 185. 10. (1299.) *Separate consolidation of vote for Governor.* At the election for Governor a third package must be made up, containing a certificate for 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 and Speaker of the House of Representatives, and transmitted to the secretary of State.

Acts 1874, p. 111. §45. 11. *Illegal votes to be rejected.* If any voter shall vote who has not paid his taxes, and been registered, his vote shall be illegal, and the commissioners who consolidate their returns of the election shall not count such votes in making out the returns.

§§5743, 62. 12. *Ballots not to be examined.* 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. Such clerk 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, is liable to a fine.

 Penalty for managers' default. Examination of election papers by grand jury. Election blanks.

ARTICLE 4.

PENALTY FOR MANAGERS' DEFAULT.

§73. (1289.) *Penalty where superintendents fail.* 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. Any superintendent of an election, failing to discharge any duty required of him by law, is liable to a like proceeding and penalty. ^{§§80 (5), 115.}

§74. (1292.) *In case superintendents make false return, etc.* 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 offense one hundred dollars, to be recovered by information, and if the person be a justice, he forfeits his office on proceedings for removal. ^{§§80 (5), 115.}

ARTICLE 5.

EXAMINATION OF ELECTION PAPERS BY GRAND JURY.

§75. (1290.) *Grand jury to examine lists.* 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 the superintendents fail to return, as required, the lists and the ballots, they must be presented. ^{§§80 (4), 115, 108.}

ARTICLE 6.

ELECTION BLANKS.

§76. (1291.) *Blanks to be furnished by Governor and ordinary.* The Governor shall furnish the several ordinaries all blank forms necessary for said elections, which they shall furnish the justices of the peace, or notaries public who are *ex officio* 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. ^{Acts 1895, p. 23. §§80 (5), 4238.}

Freedom from arrest. Elections to fill vacancies. Elections for Governor, etc. ; provisions applying to all.

ARTICLE 7.

VOTERS' FREEDOM FROM ARREST.

§§ 5739, 3857, 80 (7). §77. (1293.) *Privileges of an elector.* 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 the 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. Electors shall, in all cases except treason, felony, larceny, or breach of the peace, be privileged from arrest during their attendance on elections and in going to and returning from the same.

ARTICLE 8.

ELECTIONS TO FILL VACANCIES.

§5816. §78. (1295.) *Election to fill vacancy for members of legislature, notice.* 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 ordinary 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.

§§ 5816, 4238 (5), 80 (4), 82. §79. (1296.) *Elections to fill vacancies, etc.* All the provisions of this Chapter apply equally to elections to fill such vacancies and any other special elections.

CHAPTER 4.

ELECTIONS FOR GOVERNOR, MEMBERS OF CONGRESS, ELECTORS FOR PRESIDENT AND VICE-PRESIDENT, TREASURER, COMPTROLLER-GENERAL, ATTORNEY-GENERAL, AND COMMISSIONER OF AGRICULTURE.

ARTICLE 1.

PROVISIONS APPLICABLE TO ALL.

§§ 66, 96. §80. (1297.) *Provisions applicable to all elections.* The elections 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.

For Governor.

2. In the class of persons to hold the election 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. §§79, 75.

5. In the several penalties attached to the superintendent or other persons. §73.

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. §76.

ARTICLE 2.

FOR GOVERNOR.

§81. (1298.) *Governor elected, when.* 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 Constitution and the regulations of this Code elsewhere in conformity thereto. §§72 (9), 66, 80, 5806-5809.

§82. (1301.) *Vacancy, how filled.* Whenever a vacancy shall occur in the office of Governor by death, resignation, or otherwise, the President of the Senate, or Speaker of the House of Representatives, as the case may be, exercising the executive powers of the government, as provided by the eighth paragraph of the first section of the Fifth Article of the Constitution of this State, shall issue his proclamation, immediately upon his assumption of the duties of the Executive, ordering a special election for Governor, to fill the vacancy so occasioned, for the unexpired term, to take place at a time not less than thirty, nor more than sixty days from the date of such proclamation; and shall convoke the General Assembly in extra session to receive the returns and declare the result of such special election, or to elect a Governor in case no person shall receive a majority of the whole number of votes cast at such special election, as provided in the Constitution of this State. Said extra session of the General Assembly to convene within fifteen days from the date of such special election: *Provided, nevertheless,* that if such vacancy occurs within six months next preceding the time prescribed by law for the regular election for Governor, there shall be no special election, but the President of the Senate, or Speaker of the House of Representatives, as the case may be, shall exercise the executive powers of the government until such vacancy is filled by a regular election. Acts 1872, p. 31. 1878-9, p. 173. §§79, 80, 5812, 5811.

For members of Congress. For presidential electors.

ARTICLE 3.

FOR MEMBERS OF CONGRESS.

Acts 1872, §83. (1305.) *Time of electing congressmen.* Members of the House of Representatives of the United States Congress shall be elected on Tuesday after the first Monday in November of the year 1872, and on the same day in every second year thereafter.

§5816. §84. (1306.) *Governor must order an election, when.* 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.

§5952 §85. (1307.) *Candidates must reside one year in district, to be eligible.* 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.

§5816. §86. (1308.) *Governor to count up votes, etc.* 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 United States, and for what period.

§5816. §87. (1309.) *In case of a tie, new election ordered.* 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.

§§121, 225. §88. (1310.) *Members elect to apply for commission in thirty days; vacancies.* 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 in the preceding section, and vacancies for any cause are filled in like manner.

ARTICLE 4.

FOR PRESIDENTIAL ELECTORS.

§§86, 6025. §89. (1311.) *Presidential electors, when chosen.* On Tuesday after the first Monday in November, 1868, and every fourth year thereafter, until altered by act of Congress, there shall be an election for electors of President and Vice-President of the United States.

For presidential electors.

§90. (1312.) *Meeting of electors.* 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 second Monday in January next following their appointment, to meet at 12 m., and give their votes for President and Vice-President of the United States, and all acts and proceedings of said electors and others officers of this State, relating to the electoral votes thereof, shall conform to the Acts of Congress approved February 3d, 1887, and October 19th, 1888.

United States Revised Statutes, Sec. 135. Acts 1880-1, p. 67. 1888, p. 33. §6025.

In matters of law, sun time, not standard time, controls: 84 Ga. 159.

§91. (1313.) *Proceedings on failure to elect, or in case of vacancy.* 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.

§92. (1314.) *On failure of majority of electors to attend, etc.* 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.

§93. (1315.) *Electors shall choose a presiding officer, etc.* 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.

§94. (1316.) *Electors to choose a messenger.* 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.

§95. (1317.) *Pay of electors.* The pay of electors shall be fifty dollars each for the whole time they are required to remain at the capital on their mission, and ten cents for each mile traveled by the

Acts 1882-3, p. 54.

For ordinary and county officers. For justices of the peace and constables.

nearest practicable route in going to and returning from the capital; the pay of the secretary shall be eight dollars per day for every day required in attending the electoral college as secretary thereof; all of which is to be either paid out of the contingent fund or out of any money in the treasury not otherwise appropriated, in the discretion of the Governor.

CHAPTER 5.

FOR ORDINARY AND COUNTY OFFICERS.

§§66, 80,
5929. §96. (1318.) *General provisions.* Section 80 applies to the officers whose elections are provided for in this Chapter.

Acts 1894,
p. 40.
§§5929, 5737. §97. (1319.) *County officers, when elected.* All county officers shall be elected on the first Wednesday in October of the years in which, under the Constitution and laws of this State, elections should be held to fill such offices, beginning on the first Wednesday in October, 1896, for terms beginning in January thereafter.

Section cited, and a *quo warranto* decided, as to who should be ordinary of Sumter county, in favor of the respondent: 49 Ga. 180.

Acts 1872,
p. 32. §98. (1320.) *Official term of county officers.* The terms of sheriffs, clerks of the superior courts, tax-collectors, tax-receivers, county treasurers, county surveyors, and coroners, began on the first day of January, 1873, and expired on the first day of January, 1875. And all succeeding terms of said officers shall begin on the first day of January and expire on the first day of January two years next thereafter.

§80. §99. (1321.) *Other county elections.* 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.

§4238 (5). §100. (1322.) *Who to give notice of elections.* When either of the officers mentioned are to be elected, the ordinary shall 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 gazette printed in the county, if any.

CHAPTER 6.

FOR JUSTICES OF THE PEACE AND CONSTABLES.

Acts 1869,
p. 22.
§§4061-4065. §101. (1323.) *Time and place of election of justices of the peace.* Justices of the peace shall be elected on the first Saturday in January, 1873, and every fourth year thereafter, by the voters of their respective

Contested elections; in cases where Governor commissions.

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' courts for the district; if none, then at the election precinct; if no election precinct, then at some place in the district named by the ordinary, of which ten days written notice must be given in the district.

§102. (1324.) *Who shall superintend elections.* Such elections shall §80. be superintended by three freeholders of the district, who shall take the oath required in section 67.

§103. (1325.) *Returns, to whom made.* Said superintendents shall §§4062, 4063. 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.

§104. (1326.) *Elections, how governed.* The laws governing the elec- §§66, 80. tions 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.

§105. (1327.) *Time of constables' elections, etc.* Constables are §4083. 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.

§106. (1328.) *Who to preside at constables' elections.* Their elections Acts 1893, are to be conducted in the same manner as those of justices of the p. 30. peace, with the exception that the returns must be made to the ordinary of the county. §§4238, 66, 80.

Where justice of peace acted as presiding officer for but part of day, election illegal: 65 Ga. 260.

CHAPTER 7.

CONTESTED ELECTIONS.

ARTICLE 1.

IN CASES WHERE GOVERNOR COMMISSIONS.

§107. *Proceedings in contested elections.* In all cases when the elec- Acts 1893, tion of a person by the people to any office requiring a commission p. 124. from the Governor is contested, the following shall be the proceedings in all contests arising therefrom: §121.

1. *Notice to Governor to withhold commission.* The contestant or his attorney shall give written notice to the Governor of an intention to contest, and upon receipt of such notice the Governor shall withhold the issuing of a commission until the contest is decided, or until the time hereinafter prescribed shall have elapsed without the filing of

In cases where Governor commissions.

such contest. In all cases the Governor shall withhold the issuing of commissions to persons elected, five days after said election shall have been held.

2. *Notice to adverse party.* Such contest shall be begun by giving the adverse party five days notice in writing, stating the grounds of contest, the time and place where the contestant intends to take testimony, and the judicial officer before whom the testimony will be taken: *Provided*, for providential cause or other sufficient reason, any other judicial officer than that named in the notice, qualified to act, may preside at the taking of such testimony, the cause of such change being made to appear by the affidavit of the contestant and to be made a part of the record in said case. Said notice may be served by the sheriff, his deputy, or any constable of the county where the contest is pending, who shall be paid by the party cast in the contest two dollars for service of notice of contest and fifty cents for each subpoena served.

3. *Testimony, how and before whom taken.* Any judicial officer of the county, where the testimony is taken, may preside, to preserve order, to swear witnesses, to see that the testimony is fairly and impartially taken and reduced to writing. Said officer shall have power to subpoena witnesses and compel their attendance, if in this State, and to issue commission to take testimony of persons out of this State, and to adjourn from day to day: *Provided*, all testimony submitted on the part of the contestant shall be taken within thirty days from the day of the election contested. The contestee shall be allowed ten days after the closing of the contestant's testimony, to submit and take testimony in rebuttal or on cross-grounds of contest. The judicial officer presiding shall be allowed two dollars per day for his services, and the clerk who takes down the testimony two dollars per day for his services, which, with the cost of service of notice and subpoenas herein provided for, may be enforced by execution issued by the judicial officer presiding in said contest against the party cast in the contest.

4. *Examination of witnesses.* Either party may appear by himself or attorney, or both, and cross-examine the witnesses and have noted and certified all legal exceptions to the admissibility of testimony submitted by the opposite party, which exceptions shall be passed upon by the court finally determining said contest.

5. *Countercharge by contestee and notice thereof.* The contestee may file cross-grounds of contest, in which case he shall give like notice to the contestant as is required to be given to the contestee, and the testimony on such cross-grounds of contest shall be taken after the close of contestant's testimony, and within ten days thereafter, in

Election of member of General Assembly.

the same manner as is herein prescribed for the taking of testimony for the contestant, and certified by the presiding officer as such.

6. *No contest after commission has been issued.* No proceedings can be begun to contest an election after the Governor has issued the commission in such case.

7. *Record, when to be transmitted to judge of superior court.* All papers and proceedings, or copies of them duly certified by the presiding officer, or agreed to by the parties in writing, must be transmitted within five days after the closing of the testimony, to the judge of the superior court of the circuit wherein the contest may arise, who shall hear and determine the same, either in term time or in chambers, after giving reasonable notice to the parties concerned, or their counsel, of the time and place of hearing.

§108. (1331.) *When suspected ballots may be examined.* When an election is contested on the ground of illegal votes, any of which 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. If any clerk of the superior court, who by law is intrusted with the ballots of any election, shall fail or refuse to deliver up such ballots where the same are demanded of him in accordance with the laws of this State, where such ballots are required as evidence in any contested-election case, such clerk of the superior court, so failing or refusing, shall be guilty of a misdemeanor.

Acts 1851-2,
p. 84.
1880-1, p. 95.
§§75, 72 (12).

§109. (1332.) *Illegal votes may be proven, etc.* 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.

Acts 1851-2,
p. 79.
§§75, 72 (11).

This proceeding, and not a bill in equity, is the proper proceeding to contest the election: 58 Ga. 419, 420. Office of the justice of the peace contested by a *quo warranto* after commission had been issued: 63 Ga. 593–596.

ARTICLE 2.

ELECTION OF MEMBER OF GENERAL ASSEMBLY.

§110. (1330.) *Proceedings when seat of a member of legislature is contested.* The proceedings to contest the seat of a member of the General Assembly are the same, as stated in the preceding Article, and

Acts 1894,
p. 41.
§107.

Other contested elections. Election not set aside for formal defects, when.

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.

ARTICLE 3.

OTHER CONTESTED ELECTIONS.

Acts 1893,
p. 124.

§111. *Contests in other elections.* Whenever any contest arises over an election of any constable, municipal officers, or other officers not hereinbefore provided for, the same shall be filed with, heard and determined by the ordinary of the county wherein such contest may arise, under the same rules and regulations as to the mode of procedure as prescribed in contests where commission is issued by the Governor. The ordinary shall be entitled to a fee of two dollars per day for each day occupied in hearing said contest, to be taxed as costs, which may be enforced by execution against the party cast in the contest.

Constitutional for judicial officers to determine election contests; jury trial may be refused: 72 Ga. 812; 90/822.

Judge tries, but not judicial officer: 96 Ga. 280.

No bill of exceptions to decision: 96 Ga. 280.

ARTICLE 4.

ELECTION NOT SET ASIDE FOR FORMAL DEFECTS, WHEN.

§72.

§112. (1334.) *Election not void by reason of formal defects.* 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 proper compliance.

Election held at a place other than that established according to law as an election precinct, illegal: 78 Ga. 165.

Where more than two-thirds of qualified voters voted in favor of measure, irregularity in publication not invalidate: 86 Ga. 605.

CHAPTER 8.

PRIMARY ELECTIONS.

§113. *Primary elections, how conducted.* Every political primary election held by any political party, organization or association, for the purpose of choosing or selecting candidates for office, or the election of delegates to conventions in this State, shall be presided over and conducted in the manner and form prescribed by the rules of the political party, organization or association holding such primary elections, by managers selected in the manner prescribed by such rules. Such managers shall, before entering upon the discharge of their duties, each take and subscribe an oath that he “will fairly, impartially and honestly conduct the same according to the provisions of the law providing how primary elections shall be held in this State, and in accordance with the laws of this State governing regular elections for the offices of this State.” Should one or more of the managers thus appointed to hold such elections fail to appear on the day of election, the remaining manager or managers shall appoint others in their stead and administer to them the oath herein prescribed. The managers shall take the oath before the notary public, or other officer authorized to administer oaths, but if no such officer can be conveniently had, the managers may administer the oath to each other. Such oath, after being made and subscribed, shall be filed in the office of the clerk of the superior court of the county in which such primary election shall be held, within five days after an election.

§114. *Exhibition of ballot-box.* Before any ballots are received at such primary elections, and immediately before opening the polls, such manager shall open each ballot-box to be used in such election, and shall exhibit the same publicly, to show that there are no ballots in such box. They shall then close and lock or seal up such box, except the opening to receive the ballots, and shall not again open the same until the close of the election. They shall keep a list of voters voting at such election, and shall, before receiving any ballot, administer to the voter an oath, provided such voter’s vote is challenged, that he is duly qualified to vote according to the rules of the party, and according to the election laws of said State, and that he has not voted before in such primary election then being held. At the close of the election the managers shall proceed publicly to count the votes and declare the result. They shall certify the result of such election, and transmit such certificate with the tally-sheet or poll-list, together with the ballots cast, and all other papers relating to such primary election, within the time prescribed, and to the person or

Primary elections.

persons designated by the rules of the party, organization or association holding such election.

Acts 1890-1,
p. 210.
§§72-74.

§115. *Tally-sheets.* Every such primary election shall be held at the time and place, and under the regulations prescribed by the rules of the party, organization or association holding the same, and the return shall be made and the result declared as prescribed in the foregoing section. And the returns of the managers with the tally-sheets or poll-list, together with all other papers connected with such election, shall all be filed in the office of the clerk of the superior court for the county in which such election is held, within four days after the final declaration of the result thereof, and shall remain there for public inspection.

Law governing primary elections valid: 91 Ga. 740.

GENERAL NOTE ON SECOND TITLE.—*Mandamus*, election of the clerk of the ordinary on the second Monday in January, 1849, by the old justices, between election and qualification of their successors, was valid: 7 Ga. 473. A non-resident of a municipal corporation sworn in, having received the highest number of votes, and the charter not prohibiting it: 12 Ga. 23. The treasurer of Muscogee county is an officer of that county; *mandamus* refused: 33 Ga. 332. A *quo warranto* refused to contest the election of a mayor: 63 Ga. 208. As to officer of a benevolent society: 61 Ga. 86-91. Requiring the registration of voters at a municipal election, is constitutional: 66 Ga. 217; 88/699; 84/630.

THIRD TITLE.

OF THE EXECUTIVE DEPARTMENT.

CHAPTER 1.

THE GOVERNOR.

ARTICLE 1.

INAUGURATION AND OATH.

§116. (49.) *Governor's inauguration.* 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 twelve o'clock, meridian, on Saturday of that week, unless prevented by providential causes. §§5804, 72 (10).

§117. (50.) *His oath, when taken.* The oath prescribed by the tenth paragraph of the first section of the Fifth Article of the Constitution of this State, and the oath to support the Constitution of the United States, shall be taken by the Governor elect in the presence of the General Assembly. §§5813, 6012.

ARTICLE 2.

COMMANDER-IN-CHIEF, DUTY IN CASE OF INSURRECTION.

§118. (51.) *May call out military.* 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 due enforcement of the process of the courts is so resisted and set at defiance as to require such interposition. §§5814, 1095.

See 66 Ga. 427.

§119. (52.) *In case of insurrection or invasion.* In case of invasion or insurrection, the Governor has power to call out all volunteer military companies, or the militia, or both, for the defense 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.

ARTICLE 3.

APPOINTMENT OF COMMISSIONER OF DEEDS.

Act 1829,
Cobb, 174.
§3621.

§120. (59.) *May appoint commissioners of deeds.* He shall have power to appoint, in other States and Territories of the United States, commissioners to take and certify the acknowledgment 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.

May take affidavit or administer oath as a magistrate here: 13 Ga. 462. Cannot certify to the official character of a foreign officer: 24 Ga. 489. As to attesting a mortgage of realty in New York: 46 Ga. 450.

See notes to section 3621.

ARTICLE 4.

COMMISSIONS WHAT OFFICERS.

§§107, 5817.

§121. (60.) *Must grant commissions.* 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.

Dedimus potestatem to ordinary does not authorize him to take a county treasurer's bond with the condition that the sureties are not to be bound till others sign: 70 Ga. 497.

Quo warranto will not lie against officer holding under Governor's commission: 77 Ga. 544.

So far as returns alone evidence county election, commission final, where no hearing sought before Governor before it issued; whether returns sent up be complete or not: 83 Ga. 180.

Duty as to property of State.

ARTICLE 5.

DUTY AS TO PROPERTY OF STATE.

§122. (61.) *Shall issue grants.* He shall issue all grants to lands ^{§§3211, 3219,} under the laws of this State, but such shall not be conclusive, but _{181 (2).} 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.

§123. (62.) *Shall supervise public property.* He shall have general ^{§279.} 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.

When the Governor can order a suit to be brought: 56 Ga. 485.

§124. *Insure certain property.* The Governor shall keep insured, at ^{Acts 1882-3,} one-half their value, all of the public buildings of the State and li- _{p. 26.} brary, except the State arsenals at Milledgeville and Savannah, the penitentiary at Milledgeville, and the buildings of the Western and Atlantic Railroad.

§125. *Draw warrant to pay premium.* He is authorized to draw his ^{Acts 1882-3,} warrant upon the treasury annually for the sum of five thousand _{p. 26.} dollars, or for so much as may be necessary to carry into effect the foregoing section.

§126. (63.) *May sue for dues to the State.* Whenever the Governor, ^{Acts 1872,} after consulting with the attorney-general, or without, if there is no _{pp. 39, 40;} such officer, shall deem it proper to institute a suit for the recovery _{§23.} of a debt due the State or money or property belonging to the State, he is authorized and required to institute such suit in the proper court of this State, with the same rights as any citizen, and to require the aid of the attorney-general to begin and carry on such suits where practicable, and if not, some other suitable and competent attorney, on such terms, as to compensation, as he may agree upon, but the fees of such attorney shall be conditional.

May order suit: 56 Ga. 485.

Governor has no power to compromise claims due State by penitentiary company, for negligent escapes: 85 Ga. 159.

ARTICLE 6.

PROPERTY PURCHASED, WHEN.

Acts 1873, §127. (64.) *Governor may buy property in certain cases.* At all sheriff's sales under any *fi. fa.* in favor of the State or the Governor, the Governor may, by himself, or any one authorized by him, purchase the property so sold: *Provided*, in no case shall more be bid for such property than the amount due the State upon such *fi. fa.*
 p. 49.

Acts 1873, §128. (65.) *Titles, how made.* The property so purchased shall be for the use of the State, and the title thereto shall be made to the Governor and his successors in office and assigns.
 p. 49.

§129. (66.) *The Governor may rent or sell the property.* The Governor may rent out said property, or sell the same at public outcry to the highest bidder, upon such terms as he may deem for the interests of the State, and may make the necessary conveyances for the same: *Provided*, such sale shall be advertised in the same manner and for the same time as sheriff's sales.

§130. (67.) *Removal of liens.* In case there be any exemption of any part of the property purchased, or the proceeds thereof, or any lien or incumbrance of superior dignity to the lien of the State, the Governor may pay the amount so exempted, or the said lien or incumbrance, to the person entitled thereto.

§5863. §131. (68.) *Purchase to be reported.* The Governor shall report to the General Assembly at its following session, any purchase, lien, or sale, made under the foregoing provisions, giving full particulars of the transaction.

ARTICLE 7.

APPOINTMENTS AND VACANCIES.

§§5863, 121, §132. (69.) *Shall appoint officers and fill vacancies.* 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.
 5817.

Section cited: 44 Ga. 76; 58/517.

Cited, where law provided for appointment of registrars for Savannah by judge superior court, judge city court, and ordinary: 69 Ga. 216.

Acts 1871-2. §133. (70.) *Mode of filling certain vacancies.* In case of a vacancy from any cause in any office, the full term of which, by the Constitution, is to be filled by the Governor with the advice and con-
 p. 284.
 §5817.

Suspension of treasurer or comptroller.

sent of the Senate, the Governor shall appoint and commission some qualified person to supply it until the next meeting of the General Assembly, when said vacancy shall be filled in the manner described in the Constitution for filling the full term of such office. All vacancies which may hereafter occur during the session of the General Assembly, or may then exist, shall be filled in pursuance of the provisions of this section.

§134. (72.) *May appoint and remove secretaries and others.* 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.:

Two secretaries of the Executive Department. §§5822, 981.

A messenger for his office. §144.

A State librarian. §149.

A guard for the capitol buildings. §144.

A person to keep the capitol grounds and other State property at the seat of government in proper order.

§135. (73.) *Shall appoint officers named in the Code.* He shall also appoint 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:

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 and Atlantic Railroad.

Keepers of the arsenal and public arms.

§136. (74.) *May employ agents.* 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. §§24, 1970, 126.

May bring suit: 56 Ga. 485.

ARTICLE 8.

SUSPENSION OF TREASURER OR COMPTROLLER.

§137. (114 b.) *Governor may suspend treasurer or comptroller.* Whenever the Governor has trustworthy information that the State treasurer or comptroller-general is insane, or has absconded, or grossly neglects his duties, or is guilty of conduct plainly violative of his duties, or demeans himself in office to the hazard of the public funds Acts 1878-9, p. 30. §§5821, 305, 193, 215.

Collection of taxes, when suspended. Warrants on treasury. Records to be kept in Executive office.

or credit of the State, the Governor shall suspend said treasurer, or comptroller-general, as the case may be, and report his reasons for such suspension to the General Assembly. Said suspension shall continue until the General Assembly shall otherwise direct.

Acts 1878-9,
p. 30.

§138. (114c.) *Officers pro tem. in cases of such suspension.* Whenever the State treasurer or comptroller-general shall be suspended, the Governor shall appoint some suitable person to discharge the duties of the office of treasurer, or comptroller-general, as the case may be, until the suspended official is restored by law, or until his successor is elected and qualified. And the person so appointed shall take the oath and give the bond required by law of the regular incumbent.

ARTICLE 9.

COLLECTION OF TAXES, WHEN SUSPENDED.

Act 1821,
Cobb, 1025.
§926.

§139. (75.) *May suspend collection of taxes.* 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 no longer; nor shall he otherwise interfere with the collection thereof.

Cannot compromise taxes due the State: 70 Ga. 11.

ARTICLE 10.

WARRANTS ON TREASURY.

Act 1836,
Cobb, 1028.

§140. (76.) *Payments from the treasury.* 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.

Warrants revocable until they are paid: 56 Ga. 674.

ARTICLE 11.

RECORDS TO BE KEPT IN EXECUTIVE OFFICE.

§141. (77.) *Shall cause to be kept a journal of his official acts.* The Governor shall cause to be kept and preserved in the Executive office the following books of record:

Executive seal.

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

2. *Appropriation book.* 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.

3. *Public debt.* 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 drawn.

4. *Bonds of officers.* 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.

5. *Commissions.* A book of commissions, showing the dates when ^{§121.} issued, for all officers, civil and military, in this State.

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

7. *Land books.* 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.

8. *All documents to be filed.* 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 keep a book as an index or key to the same.

9. *Other records.* And any other books or files that, in his judgment, his department needs.

ARTICLE 12.

EXECUTIVE SEAL.

§142. (78.) *Executive seal.* 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.

ARTICLE 13.

THE EXECUTIVE OFFICE AND RESIDENCE OF THE GOVERNOR.

§143. (79.) *Executive office and residence.* 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. The Governor shall reside at the seat of government during his term of office.

ARTICLE 14.

GOVERNOR'S MESSENGER, AND STATE-HOUSE GUARD.

§134. §144. (124.) *May appoint messenger.* 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 to him, and when so performed it must be done without additional compensation.

§145. (125.) *Duties of messenger.* When there is a messenger, he shall perform such duties for the Executive office, the other officers 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.

§146. (126.) *If there is no messenger.* Where 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.

§147. (127.) *Guard of capitol.* 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.

§148. (128.) *Governor's power over guard.* 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.

ARTICLE 15.

OF THE STATE LIBRARIAN, AND DISTRIBUTION OF LAWS.

SECTION 1.

LIBRARIAN AND HIS DUTIES.

§149. *State librarian, his appointment and term.* The Governor shall present, for confirmation by the Senate, some fit and competent person to serve as State librarian, whose term of office shall be four years, and until his successor shall have been chosen and confirmed in like manner. Acts 1880-1, p. 69. §§154, 981 (6).

§150. *Salary of librarian and assistant.* The salary of the State librarian shall be eighteen hundred dollars per annum, and the salary of the assistant librarian eight hundred dollars per annum. Acts 1889, p. 153. §5829.

§151. (115.) *Must give bond.* 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. Act 1847, Cobb, 1037.

§152. (116.) *Must keep library.* 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. Acts 1851-2, p. 17.

§153. (117.) *For inspection.* 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.

SECTION 2.

DISTRIBUTION OF BOOKS.

§154. (118.) *Distribute laws, etc.* The distribution of the laws and journals, reports of the Supreme Court decisions, laws of the United 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. He shall mail the Acts 1868, p. 195. §160.

Catalogue; official annual reports filed with librarian. Printing and distribution of Georgia Reports.

decisions of the Supreme Court, as follows: One copy of each to the judges of the Supreme and superior courts, the clerk of the Supreme Court, the clerks of the superior courts, and the ordinaries of this State. The remaining copies he shall keep in the State library for use, and for exchange, as is required in this Code.

SECTION 3.

CATALOGUE; OFFICIAL ANNUAL REPORTS FILED WITH LIBRARIAN.

§155. (120.) *Must take and file receipts.* 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 the clerks of courts, or other distributees, their receipts therefor; likewise all other books required to be distributed. He must receive and take receipts on the distribution, and keep in his office a file of such receipts.

§156. (119.) *Keep a catalogue.* 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.

§§202, 208,
233, 216.

§157. (79 b.) *Certain reports to be filed with librarian.* The Governor, comptroller-general, treasurer, and all other officers who are, or may be, required to make reports to the General Assembly, shall furnish the State librarian with at least ten copies each of said reports, and he shall have the same bound and preserved in the library for public use.

SECTION 4.

PRINTING AND DISTRIBUTION OF GEORGIA REPORTS.

Acts 1882-3,
p. 32.
§154.

§158. *Proceeds from Supreme Court reports.* The money arising from the sale of Supreme Court reports is appropriated for the purpose of making a permanent fund for purchasing and binding books for the State library.

§154.

§159. (121.) *Exchange reports with other States.* 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.

Acts 1878-9,
p. 158.
§§154, 170.

§160. (228 d.) *Sale of reports.* The Governor shall ascertain the cost to the State, per volume, of the whole edition of any given volume of the reports published, which shall in no case be less than

Supervision and removal of librarian by Governor.

one thousand copies, and notify the State librarian of the cost per volume; and the State librarian shall sell to the public, for cash only, the portion of the reports allotted for that purpose, at the actual cost to the State, and deposit each day the money thus received into the State treasury before the expiration of the business hours of that department. Until six months from the issuance of any volume, the librarian shall sell only one copy thereof to the same purchaser. After the expiration of such period, the librarian, under the direction of the judges of the Supreme Court, may exchange such copies as are not likely to be sold, for reports of the highest courts of other States, or such other law-books as said judges may select, and upon such terms as they may direct.

§161. (228 h.) *Electrotyped, when.* Whenever the librarian of the State shall report to the Governor that there are not more than twenty-five copies of any electrotyped volumes on hand, the Governor shall have five hundred additional copies struck off, and shall draw his warrant upon the printing fund for the expense thus incurred. Acts 1880-1, p. 141. §5515.

§162. (228 i.) *Plates, how kept.* When the first edition of each volume is printed, the printer shall carefully box up the plates and turn them over to the State librarian, who shall preserve them for further use. Acts 1880-1, p. 141. §1089.

SECTION 5.

SUPERVISION AND REMOVAL OF LIBRARIAN BY GOVERNOR.

§163. (122.) *His office subject to Governor's supervision.* 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.

§164. (123.) *Must deliver contents of office to successor.* 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. §269.

ARTICLE 16.

PRINTING AND DISTRIBUTION OF LAWS AND OTHER DOCUMENTS.

SECTION 1.

DISTRIBUTION OF LAWS AND JOURNALS TO COUNTY OFFICERS.

§165. (1046.) *Laws and journals to be distributed.* 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.

Acts 1889,
p. 181.
1861, p. 75.
1884-5,
p. 134.

§166. (1048.) *Number of journals printed.* There shall be compiled, printed and bound (such binding to be the same as that of the Acts of the General Assembly) not more than five hundred copies of the journals of each branch of the General Assembly; and it shall be the duty of the State librarian to distribute the same as follows: One copy of the journal of each branch of the General Assembly to the ordinary of each county in this State, whose duty it shall be to keep and preserve the same for the use of the public, and also one copy to each member of the General Assembly. The remainder of the copies shall be retained by the librarian for exchanging with the various States, and for such other use and disposition as the Governor of the State may authorize and direct. The librarian shall always keep on hand, for the use of the library, at least ninety-five copies of such journals.

Acts 1861,
p. 75.

§167. (1047.) *Copies of laws for each county.* 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 ordinary.

Acts 1889,
p. 181.

§168. (1048.) *Copies of journals for each county.* The copy of the journals of each branch of the General Assembly, shall remain on deposit in the office of the ordinary, and to which the citizens of the county shall have free access; each county is also entitled to a copy of the laws and journals for each member of the General Assembly.

§169. (1049.) *Journals to be bound.* One copy of the journal of each branch of the General Assembly, as well bound as the Acts, shall be securely kept, and not permitted to go out of the ordinary's office.

Reserved copies. Acts of Congress, how distributed. Books furnished University of Georgia.

SECTION 2.

RESERVED COPIES.

§170. (1050.) *Reserved copies.* The librarian shall reserve five hundred copies of the Acts for such further distribution as the General Assembly may order, of which number four hundred shall be held by said librarian for sale to the people of this State, any citizen thereof having the right to buy one copy at the actual cost thereof, and said librarian, upon being so requested, shall send by mail to any such citizen a copy of said laws upon prepayment of the postage thereon and the price. And the librarian at the end of every six months shall pay all moneys received from the sale of said laws to the State treasurer, taking his receipt therefor, and immediately after such payment, report to the Governor in writing the number of copies sold, and when and to whom, and the sum so paid to the treasurer, with the date of such payment.

Acts 1878-9,
p. 179.
§160.

SECTION 3.

ACTS OF CONGRESS, HOW DISTRIBUTED.

§171. (1051.) *Acts of Congress, etc., how forwarded.* Each county is entitled to two copies of the Acts of Congress to be kept in the office as the journals are. The librarian, under the supervision of the Governor, as soon as the laws and journals of each session are published, shall forward by express, prepaid to the nearest office of each ordinary in the State, the number of the laws and journals each county may be entitled to: *Provided*, when the ordinary of any county shall be at any actual and necessary expense in getting the books from the express office, he shall give an order on the county treasurer for said sum, and the county treasurer shall pay the same. And the librarian, as soon as he shall have expressed said laws and journals, shall notify each ordinary thereof by mail, and also notify him of the office to which said laws and journals have been sent.

Acts 1874,
p. 25.

SECTION 4.

BOOKS FURNISHED UNIVERSITY OF GEORGIA.

§172. *Books furnished University of Georgia.* Volumes of the Supreme Court reports, and such other public books as are furnished by the State to the several counties, shall be furnished to the University of Georgia.

Acts 1884-5,
p. 139.

Counties supplied with Georgia Reports. Secretary of State, etc.; election, bond, and compensation.

SECTION 5.

COUNTIES, HOW SUPPLIED WITH GEORGIA REPORTS.

Acts 1882-3,
p. 24.
§160.

§173. *Librarian to supply county with certain reports.* Whenever the Governor shall have satisfactory evidence that the Supreme Court reports, or any of them, have never been furnished by the State to any county of this State, it shall be his duty to cause the librarian to furnish such county with such volumes as have not been furnished with the same.

Acts 1882-3,
p. 24.
§160.

§174. *Librarian furnish reports destroyed by fire.* Whenever the ordinary of any county shall furnish the Governor with satisfactory evidence that the Supreme Court reports furnished by the State to such county, or any part of such reports, have been destroyed by fire or by the soldiers of either army during the war, it shall be the duty of the Governor to cause the librarian to furnish one copy of each report so destroyed to the clerk of the superior court of such county: *Provided*, no reports shall be furnished to supply the place of such as may be destroyed after September 21st, 1883. In no event shall any books be furnished to supply the place of books that have been lost or destroyed other than by the soldiers of either army or destroyed by fire.

Acts 1882-3,
p. 24.

§175. *Governor draw warrant.* Whenever the Governor shall decide that any county is entitled to be supplied with any number of Supreme Court reports, he shall draw his warrant upon the treasurer for the amount required for the same: *Provided*, that not more than two hundred and fifty dollars shall be drawn to supply reports to any one county.

CHAPTER 2.

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

ARTICLE 1.

OF THE SECRETARY OF STATE.

SECTION 1.

ELECTION, BOND, AND COMPENSATION.

§§5823, 1904.

§176. (80.) *Secretary of State, his election and term.* There shall be a secretary of State, elected by persons qualified to vote for mem-

Duties of secretary of State.

bers of the General Assembly, at the same time and in the same manner as the Governor.

§177. (81.) *Must give bond.* 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, 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. Act 1843, Cobb, 1034.

§178. (82.) *Shall keep his office in the capitol.* He shall be provided with suitable apartments in the State capitol, furnished at the State's expense. He shall reside at the capital, and keep his office open daily, Sundays and holidays excepted. Acts 1861, p. 72. §§187, 198, 226.

§179. (83.) *Shall furnish copies of records.* 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. §187.

Cited: 68 Ga. 135.

§180. (84.) *Shall have no perquisites.* He shall receive no perquisites for any official act, but the fees prescribed shall be collected by him and paid into the State treasury. Act 1826, Cobb, 1027. §§981, 5829.

SECTION 2.

DUTIES OF SECRETARY OF STATE.

§181. (85.) *Duty of secretary of State.* The offices of secretary of State and surveyor-general are consolidated, and the secretary of State is required to discharge the duties of both of said offices. Act 1838, Cobb, 1030. Acts 1865-6, p. 249. 1861, p. 72. §§981, 308.

1. *Care of seal and records.* It is his duty to keep 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 original journals of both houses are deposited in and kept in his office.

2. *Affixing great seal.* He shall attest all grants, and other public documents requiring the great seal of the State, issuing from the Executive of the State. §§3211, 3219, 122.

Great seal of the State, and its custody.

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

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

5. *Stationery, etc., for use of General Assembly.* 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.

Acts 1873,
p. 26.
§§ 4238, 76,
80 (6).

6. *Election-blanks.* At least thirty days previous to the day of election of Governor, members of the General Assembly, representatives to Congress, electors of President and Vice-President of the United States, and county officers, he shall furnish each ordinary of the State with printed forms of returns, certificates and directions, together with any advice he may deem necessary to secure proper returns; and he shall provide and keep on hand a sufficient quantity of self-sealing envelopes of uniform appearance and suitable size and quality for use in the elections aforesaid.

§208.

§182. (88.) *Shall not speculate in wild lands.* 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.

Acts 1878-9,
p. 434.
§72 (10).

§183. (88 a.) *Quadrennial destruction of election returns.* The secretary of State shall destroy, quadrennially, all returns of elections, on file in his office, of those officials whose terms of office have expired.

SECTION 3.

GREAT SEAL OF THE STATE, AND ITS CUSTODY.

§227.

§184. (86.) *Great seal to be kept in his office.* He shall keep the great seal of the State adopted February 8th, 1799, and now on deposit in the office of the secretary of State. It is as follows:

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

§§ 996, 5830,
5.

2. The device on one side is, a view of the seashore, with a ship bearing the flag of the United States riding at anchor near a wharf, receiving on board hogsheads 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 hogsheads, etc., on board, representing her internal traffic; in the back part of the same

 Duties of surveyor-general imposed on secretary of State.

side a man in the act of plowing, 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 having engraven on it "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 defense of the Constitution; the motto, "State of Georgia, 1799."

 SECTION 4.

DUTIES OF SURVEYOR-GENERAL IMPOSED ON SECRETARY OF STATE.

§185. (87.) *Duties heretofore devolving on the surveyor-general.* The secretary of State shall also discharge the following duties, heretofore devolving on the surveyor-general, to wit: Act 1783,
Cobb, 665.

1. *Care of plats.* 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.

2. *Record of plats.* 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 attach the originals thereof to the grants.

3. *Maps of surveys, etc.* 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.

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

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

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

7. *Certificates.* He must certify under his official seal, as the comptroller-general is directed.

GENERAL NOTE.—Grants are enrolled in the office of the secretary of State: 17 Ga. 551.

ARTICLE 2.

OF THE STATE TREASURER.

SECTION 1.

ELECTION AND RIGHTS.

§§981 (3),
1921, 1518. §186. (89.) *Election and term of office.* There shall be a treasurer of the State, who shall be elected at the same time and in the same manner with the Governor. He shall hold his office for two years, and until his successor is elected and qualified. His salary shall be two thousand dollars per annum.

Act 1826,
Cobb, 1027.
§§981 (3),
1923, 197,
205, 226. §187. (91.) *His rights and duties.* His rights and duties are the same as those of the secretary of State, set forth in sections 178 and 179, 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.

SECTION 2.

APPROVAL, LIEN, AND RECORD OF TREASURER'S BOND.

Acts 1876,
p. 126.
§5823. §188. (90.) *Treasurer's oath and bond.* Before entering on the duties of his office, the State treasurer shall take an oath before the Governor, or one of the judges of the Supreme or superior courts of this State, to support the Constitution of the United States, and the Constitution of the State of Georgia, and faithfully to execute the duties of his office, which oath shall be in writing, and subscribed to by the State treasurer, and filed and recorded in the Executive office. He shall also give bond to the State of Georgia, with security or securities, approved by the Governor, in the sum of two hundred thousand dollars, conditioned as follows :

1. That he will faithfully discharge, execute and perform all and singular the duties of him required, and which may be required by the Constitution and laws.

2. That he will faithfully account for and pay over all moneys that may be received by him from time to time, by virtue of his office.

3. That he will safely deliver to his successor all books, moneys, vouchers, accounts and effects whatsoever belonging to his said office.

Approval, lien, and record of treasurer's bond.

Bond signed by sureties, but not treasurer, and never accepted by Governor, had no validity: 66 Ga. 409.

§189. (91 a.) *Securities on bond; bond a lien.* Each security on the bond of the treasurer shall make oath that he is *bona fide* worth, over and above his debts, exemptions and liabilities of all kind, property in realty and personalty not less than some specified sum to be stated in said oath, which oath shall be attached to said bond, and recorded therewith. He may, by express stipulation in writing, limit his liability to a specific sum to be stated in said bond; and all the property of the treasurer to the full amount of said bond, and the property of the securities to the amount for which they may be severally bound, shall be liable for the faithful performance by the treasurer of the duties of his office, from the date of the execution of said bond; and a lien is hereby created in favor of the State upon the property of the treasurer to the amount of said bond, and upon the property of the securities upon his said bond to the amount for which they may be severally liable, from the date of the execution thereof.

Acts 1876,
p. 127.
§§ 246, 199,
924, 456,
927.

This provision mandatory, and failure to require affidavit of each surety discharges others, unless they are estopped from setting up defense: 66 Ga. 409.

This applies to bond of State depository: 72 Ga. 511.

Surety's name forged, State has no lien on his property: 72 Ga. 515.

§190. (91 b.) *Governor's approval of bond.* The Governor shall not approve any bond of the treasurer unless the sums so sworn to, and the specific sums in which the security or securities have limited their liability, shall in the aggregate, at least, equal two hundred thousand dollars and he shall be satisfied of the responsibility of each security.

Acts 1876,
p. 127.
§§ 248-266.

This applies to bond of State depository: 72 Ga. 511.

§191. (91 c.) *Record of bond.* The bond of the treasurer, when duly executed and approved, shall be recorded in the secretary of State's office, and filed in the Executive office, and a copy thereof, certified by one of the Governor's secretaries, under the seal of the Executive Department, or a certified copy taken from the records of the secretary of State's office, shall be received in evidence, in lieu of the original, in any of the courts of this State.

Acts 1876,
p. 127.

Not executed and recorded within time, and sureties not having made affidavit of worth, etc., not good statutory bond, and not affected by Code, section 263: 66 Ga. 409.

SECTION 3.

NEW BOND REQUIRED, WHEN.

Acts 1876,
p. 127.

§192. (91 d.) *Insufficiency of security.* The Governor, at all times when, in his opinion, the security or securities of any treasurer have or are likely to become invalid or insufficient, shall demand and require such treasurer forthwith to renew his bond to the State of Georgia, in the penalty and according to the form prescribed in this Article, and in case of neglect or refusal by any treasurer to give bond, with security or securities, within ten days after the same shall be demanded and required by the Governor, such neglect or refusal shall be a disqualification under the law, and shall create a vacancy in said office of treasurer; and the Governor shall proceed forthwith to appoint a fit and proper person to fill the vacancy occasioned thereby, until the next session of the General Assembly thereafter; and such appointee shall give like bond and security, and in the same manner, and upon the same terms as prescribed for the treasurer.

SECTION 4.

SUSPENSION OF TREASURER.

Acts 1876,
p. 127.
§§ 187, 5821,
305.

§193. (92.) *Suspension of treasurer.* Upon representation made to the Governor by any person under oath, or where the Governor has received reliable information from any source, that the treasurer is insane, or manifestly insolvent, or that he has absconded or concealed himself, or is guilty of conduct which is to the hazard of the public treasury, he shall call a council to be composed of the attorney-general, secretary of State, and comptroller-general, and if they, or a majority of them, after an examination into the truth of such representation, shall find the same to be true, the Governor shall suspend the treasurer from office until the next session of the General Assembly and issue proclamation thereof, and he shall submit to said body his action in the premises and the reasons therefor. In the event of a suspension of the treasurer, the Governor shall appoint some fit and proper person to discharge the duties of said office during the period of such suspension, who shall take an oath and give bond and security upon like terms and in the same manner as provided for the treasurer elected by the people.

Acts 1876,
p. 128.

§194. (93.) *The Governor to exercise general superintendency over.* The Governor may exercise a general superintendency 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, in writing, of such treasurer, to withdraw the public funds from any place of deposit deemed unsafe by him.

SECTION 5.

EXECUTION AGAINST SECURITIES.

§195. (97 b.) *Failing to perform duties; fi. fa. instanter.* If the treasurer fails to perform the duties of his office, misapplies or uses the funds of the State, fails to account for and pay over any moneys that he may have received by virtue of his office, whereby he becomes liable to the State, it shall not be necessary to sue his official bond, but the Governor may issue a *fi. fa. instanter* against the treasurer and his securities for the amount due the State by the treasurer, with the penalties and costs; said *fi. fa.* to be directed to all and singular the sheriffs of said State, and shall be executed by them; and the treasurer and his securities shall have only those defenses now allowed tax-collectors against *fi. fas.* issued by the comptroller-general against them.

Acts 1876,
p. 132.
§§ 189, 305,
137.

SECTION 6.

RESIGNATION OR DEFAULT OF TREASURER.

§196. (94.) *Treasurer resigning or removing.* If the treasurer resign or is removed, he must, within ten days thereafter, state his accounts to the comptroller-general, and deliver the books, papers and money of the treasury to his successor, taking his receipt therefor; and the comptroller-general must record a statement of such settlement and receipt in his office, and report the same forthwith to the Governor.

Acts 1876,
p. 128.

§197. (95.) *Treasurer in default or absenting himself.* 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 twenty 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, or if none appear, in the presence of the attorney-general, to state his account and deliver the books, papers, money, and all other appurtenances of his office to his suc-

Acts 1876,
p. 128.
§305.

cessor, taking his receipt therefor, and record and file such statement and receipt in his office, and report forthwith to the Governor.

SECTION 7.

OFFICES, FEES, AND CLERK.

Acts 1876,
p. 128.
§§981 (3),
187, 178,
5829.

§198. (96.) *Office, where kept; clerk.* He shall be provided with suitable apartments in the State capitol, furnished at the State's expense. He shall reside at the capital, and keep his office open daily (Sundays and holidays excepted), and he shall furnish to all applicants, upon the payment of the prescribed fees, copies of all records and public documents within his office. 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 may employ a suitable person as clerk to assist him in the duties of his office, and remove him at his pleasure; and such clerk shall receive a salary of sixteen hundred dollars per annum.

SECTION 8.

DUTIES OF TREASURER.

Acts 1876,
p. 129.
§2393.

§199. (97.) *Duties of treasurer.* It is the duty of the State treasurer—

1. *Money and warrants.* To receive and keep safely all the money which shall be paid to him in behalf of the State (giving certificates therefor, which shall specially set forth the amount, on what account, and by whom paid, and shall be lodged as vouchers in the comptroller's office), and to pay out the same only upon the warrants of the Governor, when countersigned by the comptroller-general, excepting the draft of the President of the Senate, and Speaker of the House of Representatives, for sums due to the members and officers of their respective bodies.

Not ministerial duty of treasurer to pay State bonds, until appropriation made, executive warrant issued, and countersigned by comptroller-general: 68 Ga. 711. See 56 Ga. 676.

2. *Book of accounts and warrants.* He shall keep a durable book, wherein he shall enter each day, in charge against himself, all and every sum of money received by him, stating from whom and on what account received, and *per contra* crediting himself with any and all sums disbursed by him in any manner, stating to whom paid,

Duties of treasurer.

when paid, and on what account or purpose paid; and for all disbursements whatsoever, he shall take receipts or other vouchers therefor. He shall also keep a true and faithful record in a book of all warrants drawn by the Governor on the treasury, stating the number of the warrant, the amount, the date and the payee of the same, and to what fund the same is chargeable, and he shall carefully keep on file said warrants.

3. *Ledger and entries therein.* The treasurer shall keep a general ledger of accounts, into which he shall post all the receipts and disbursements of his office, arranging the receipts and disbursements under the heads to which they properly belong. He shall open in said ledger, an account with each appropriation made by the General Assembly, and with each salaried officer of the State, in which he shall credit the object for which the appropriation was made with the amount appropriated to the object, and shall charge such appropriation with the payments made by him upon the same. He shall open in said ledger a general account of receipts and disbursements; which last-mentioned account he shall compare with the books kept by the comptroller in his office, on the last day of each quarter of the fiscal year; and, after having compared them, shall strike the balance on said account, showing the amount at that time in the treasury to the credit of the State, and he shall carry said balance forward on the book to the general account for the next quarter.

4. *Bank accounts.* The treasurer shall keep accounts in the books ^{§982.} of his office with the different banks in which the public revenue or money is deposited, on which balances shall be struck at the aforesaid periods, showing the amount in bank to the credit or debit of the State; but the deposits of the public revenue or money shall be made only in such bank or banks as the treasurer may select, with the approval of the Governor, and the written approval of the Governor designating the depository or depositories of the public funds shall be entered of record in the Executive office. The bank or banks where public deposits are made by the treasurer, or by any other person by the direction of the treasurer, shall transmit to the comptroller-general and treasurer monthly statements of the deposits, checks and drafts received and paid by them on account of the treasury.

5. *Cash accounts; quarterly balancing.* The treasurer shall also ^{Acts 1876,} keep a general cash account, which shall be balanced at the expiration of each quarter of the fiscal year, showing the balance in the treasury at the end of each quarter. ^{p. 129.}

6. *Check-book and stubs.* The treasurer shall also keep check-books, within which there shall be suitable margins. The checks shall be numbered by numbers in the margins corresponding with the

Duties of treasurer.

numbers upon the checks; and he shall note in the margin the date and amount of the check, the appropriation to which it shall be charged, and the person to whom it shall be issued; and he shall balance his accounts with all banks or other depositories holding State deposits as often as once in each month.

§§202, 211,
209.

7. *Estimates and annual report to Governor.* 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 source of income and the probable amounts to be received therefrom; also the objects of appropriation and the probable necessities of the treasury.

§§206 (7),
463, 720.

8. *Payment only to purpose for which fund appropriated.* He shall 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.

§5902.

9. *Quarterly report to Governor.* At the end of every quarter of the year, he shall make a written report, under oath, to the Governor, of the several amounts received by him during the three months preceding such report; and he shall also submit to the Governor itemized monthly reports of the condition and transactions of the treasury, and the information contained in such monthly reports may be given to the public from time to time at the discretion of the Governor.

10. *Deposit in bank; supervision thereof by Governor.* He shall 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, with the approval 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. If, at any time when the legislature is not in session, the Governor be of opinion that the safety of the public funds requires it, he shall, by his order in writing, direct the treasurer to transfer the money held by any depository or depositories, on account of the treasury, to any other safe and proper depository or depositories, as the treasurer may select, with the approval of the Governor, which approval shall be in writing, and shall designate the depository or depositories thus selected, and the treasurer shall thereupon transfer the same as directed; but all such orders shall be duly recorded

Duties of treasurer.

in the Executive office, and, as soon as possible thereafter, be submitted to the legislature, with the reasons therefor.

11. *Use of public funds for private purposes forbidden.* The treasurer 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 five hundred dollars, as a penalty, or a forfeiture of his salary, if said forfeiture will pay the penalty incurred. ^{§§5827, 5829, 5896, 205.}

No recovery in suit against treasurer on his bond, for interest on funds deposited without executive approval. Same would be violation of this statute, for which penalty collectible as provided in section 199; bondsmen not liable for penalty: 74 Ga. 618.

12. *Payment of salaries in advance forbidden.* He is authorized to pay all officers of the State, whose salaries are fixed by law, seventy-five per cent. of the amount for which service has been actually rendered at the date of said payment, taking receipts for the same, which shall be his vouchers and exhibits to executive warrants for said salary; and may also pay members of the General Assembly in the same way, where their accounts are duly audited, unless prevented by the resolution of either or both branches of the General Assembly. ^{§206 (2).}

13. *Report of State debt.* 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 on each kind of bonds, the amount of each rate paid; also the exchange, if any; premiums on gold, if any; and the aggregate amount of interest paid in each year, and the probable amount due and unpaid at each semi-annual payment, and the reasons for such non-payment, as far as can be ascertained by him. ^{§§200-202.}

14. *Cancellation of bonds and coupons.* When he pays the interest or principal of the State debt, upon a warrant issued in his favor, he shall stamp or mark, in a plain and indelible manner, the coupons or bonds on which the payments are made, "paid," and deposit the same in the vault of the treasury, to be preserved in the treasurer's office with the same care as the funds of the State, subject to the order of the General Assembly. ^{§201.}

15. *Lapsed appropriations.* He shall not pay any appropriation due and not called for within six months after the expiration of the fiscal year for which it is appropriated, but it reverts to the general fund in the treasury. ^{§§202, 465.}

16. *Reports filed, when.* All annual reports required to be made to the Governor by the treasurer shall be made on or before the thirty-first day of December, and shall be filed in his office, and by him laid before the General Assembly, in connection with his first annual message thereafter. ^{§§157, 211.}

Bond-book and fiscal year.

Warrants are revocable: 56 Ga. 674.

Cited: 69 Ga. 329.

Governor not proper party defendant to suit to enjoin enforcement of execution against State treasurer and sureties, sheriff as defendant: 66 Ga. 408.

Bondsmen not liable for penalty herein provided: 74 Ga. 619.

As to defenses which may be urged, and judicial interference with enforcement of *fi. fa.*: 66 Ga. 408, 409, 429 *et seq.*

SECTION 9.

BOND-BOOK AND FISCAL YEAR.

Acts 1889,
p. 644.
§§1012.

§200. *Form of bond-book.* The dates and maturity of all bonds and coupons, the authority under which they were issued, by whom negotiated, or to whom sold, when negotiated and sold, shall be, as far as practicable, incorporated in a bond-book to be provided by the treasurer, and the paid and canceled bonds and coupons of this State, when paid, shall be pasted in such bond-book in such manner that they can, at all times, be referred to and verified.

Acts 1889,
p. 44.
1873, p. 15.
§§199 (13),
(14), 304.

§201. (97 a.) *Canceled bonds.* All bonds, and coupons of bonds, which shall be paid by the treasurer, after having been canceled, shall be pasted in the spaces provided in said book, according to their respective numbers; and it shall be the duty of the committees of the legislature appointed to make examinations of the treasurer's office, to make a memorandum by numbers and dates of all past due bonds and coupons that are outstanding and unpaid, and report the same to the General Assembly, and furnish to the treasurer a copy of such memorandum. The treasurer shall exhibit the same to each successive committee of each legislature, and such committee shall check the same, so as to verify such bonds or coupons as have been paid since the date of said memorandum.

Acts 1881,
p. 29.
§§233, 157,
199 (13),
(15), (7).

§202. (79 a.) *Fiscal year begins, when.* The fiscal year in this State shall commence on the first day of January, and end on the thirty-first day of December, of each year; and all public officers of this State shall keep their official accounts in accordance therewith.

ARTICLE 3.

OF THE COMPTROLLER-GENERAL.

SECTION 1.

ELECTION, BOND, AND RIGHTS.

§203. (98.) *Comptroller, election and term.* There shall be a comptroller-general elected by persons qualified to vote for members of the General Assembly, at the same time and in the same manner as the Governor. §§5823, 1904.

§204. (99.) *Bond of comptroller.* 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. Act 1843, Cobb, 1034. §136.

§205. (100.) *His rights and duties.* His rights and duties are the same as those of the secretary of State, set forth in sections 178 and 179, 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. Act 1826, Cobb, 1027. §§187, 5827, 5829, 5896.

SECTION 2.

DUTIES OF COMPTROLLER.

§206. (101.) *Account of appropriations and other duties.* It is more over the duty of the comptroller-general— Act 1799, Cobb, 1022. Act 1821, Cobb, 1023. Act 1823, Cobb, 1025. §§302-304.

1. *Account of appropriations.* To keep an account showing the several appropriations authorized by law, the time when the same are drawn from the treasury, in whose favor and to what fund charged.

2. *Countersign warrants.* To examine, check, and countersign all warrants upon the treasury drawn by the Governor, President, and Speaker, and charge the amount thereof to the funds on which they may be respectively drawn, previous to their being presented to the treasurer for payment. Act 1838, Cobb, 1029. Act 1839, Cobb, 1031. Acts 1861, p. 81. §199 (12).

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

4. *Examination of tax digests.* 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.

Wild lands.

5. *Settlement with tax-collectors.* To settle with the several tax-collectors and all other persons indebted to the State, and in all cases where payments may be made at the treasury, to give receipts for the same, founded on the treasurer's certificates.

§§924, 189,
416.

6. *Executions against defaulting tax-collectors.* To collect all amounts due from defaulting collectors of taxes, and issue execution therefor against them and their securities.

Execution not to be issued against party who is not legal tax-collector: 3 Ga. 233. Execution issued by: 27 Ga. 69. Courts cannot enjoin an execution issued by: 46 Ga. 350.

§§199 (8),
463.

7. *Warrants only on fund appropriated.* 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.

8. *Dividends.* 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.

9. *Debts due State.* 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.

10. *Report from solicitors-general.* 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.

11. *Book of bonds taken.* 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.

12. *Index to records.* To have made suitable indexes to the record-books in his office.

13. *Agents, accounts audited.* To audit the accounts of all agents disbursing public money.

SECTION 3.

WILD LANDS.

Acts 1880-1,
p. 45.
§§3448, 182.

§207. (874.) *Comptroller to furnish list of wild lands.* The comptroller-general shall furnish to each clerk of the superior court of

the several counties of this State, a list, such as he has in his office, of all the lots of wild lands lying in the county of such clerk, and it shall be the duty of the clerk of each county to fully prepare and keep a book of record of such wild lands in his county, properly indexed, so that the same may be readily referred to.

Under Act of 1874, comptroller-general could issue tax execution only against unimproved land: 73 Ga. 95. Sale under execution against cultivated land was void: 73 Ga. 95.

Improved land listed as wild land, and sold for taxes as such, sale void: 85 Ga. 603.

§208. (112.) *Shall not speculate in wild lands.* 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. §§182, 468.

SECTION 4.

ANNUAL REPORT OF COMPTROLLER TO GOVERNOR.

§209. (102.) *Shall report to the Governor annually.* He shall make a report annually to the Governor, showing—

1. *Account current.* An account current, from his books, between the treasurer and the State, of all receipts and payments, including amounts paid in the drafts of the President and Speaker, as reported to him by the treasurer. Act 1821, Cobb, 1024. Act 1828, Cobb, 1027. Act 1839, Cobb, 1032. Act 1843, Cobb, 1033. §§5902, 157, 211, 199 (7).

2. *Taxes paid, in default, etc.* 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. *Claims due State.* 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. *Educational fund.* A statement of the educational fund of the State, its annual income, the amounts paid out, when and to whom.

5. *Public debt.* A statement of the condition of the public debt of the State, the amount of interest paid, and the fund from which paid.

6. *Disbursing agents.* 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. *Salaries of public officers.* The salaries and pay of all officers of the State.

Authority of comptroller. Records of bonds, warrants, and appropriations.

8. *Incidental expenses.* The incidental expenses of the General Assembly, executive and judicial departments.

9. *All other payments.* All sums paid or due to individuals by special contract.

SECTION 5.

AUTHORITY OF COMPTROLLER.

§210. (103.) *Authority of comptroller.* He has authority—

1. *Settle up business of prior years.* To settle up the business of the office for previous years.

Acts 1855-6,
p. 276.
§§87.

2. *Allow commissions.* 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. *Collect unpaid taxes.* To collect all unpaid taxes of previous years.

Acts 1878-9,
p. 180.

4. *Administer oaths.* To administer oaths to all persons in like manner as judges of the superior courts and justices of the peace.

Act 1821,
Cobb, 1024.
§§199 (16),
(7).

§211. (104.) *May suggest improvements in revenue laws.* 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.

SECTION 6.

RECORD OF BONDS, WARRANTS, AND APPROPRIATIONS.

Act 1839,
Cobb, 1031.

§212. (105.) *Must record appropriations and warrants.* 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 whose favor drawn; and make all entries necessary to a true exhibit of the finances of the State.

Acts 1855-6,
p. 276.
1873, p. 21.
§§210 (3),
5829.

§213. (106.) *Must record tax collector's and receiver's bonds.* 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.

Seal, copies of records, and clerk. Settlement with successor. Report to General Assembly.

SECTION 7.

SEAL, COPIES OF RECORDS, AND CLERK.

§214. (107.) *Must give copies of papers.* 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.

§215. (108.) *Official seal of the comptroller.* The seal of the comptroller-general's office is as follows: Circular in form, one and a half inches in diameter, made of brass, with a human hand holding a pen in the attitude of writing, in the center, surrounded by the words, "Comptroller-General's Office, State of Georgia." Acts 1870, p. 12.

§216. (113.) *May appoint and remove clerk.* He is allowed a clerk, to be appointed and removable by him; and such clerk shall receive an annual salary of sixteen hundred dollars. Acts 1862-3, p. 56. 1865, p. 250. §282.

SECTION 8.

SETTLEMENT WITH SUCCESSOR.

§217. (109.) *Must settle with successor.* 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 absents 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. §137.

SECTION 9.

REPORT TO GENERAL ASSEMBLY.

§218. (111.) *His report and what it must contain.* The comptroller-general must make out, for the use of the General Assembly— Acts 1859, p. 67. §§157, 211, 199 (16), (7).

1. *Taxable property.* 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. *Other items.* 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

Of the attorney-general.

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 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 scrip," 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.

ARTICLE 4.

OF THE ATTORNEY-GENERAL.

§5860.

§219. (367.) *How elected.* There shall be an attorney-general of the State, who shall be elected by the people, at the same time, for the same term, and in the same manner as the Governor.

Act 1799,
Cobb, 574.
§4933.

§220. (369.) *Duties, etc.* It is the duty of the attorney-general when required so to do by the Governor—

Acts 1873,
p. 31.

1. *Written opinion.* 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.

2. *Preparation of contracts.* To prepare all contracts and writings in relation to any matter in which the State is interested.

3. *Attends trial of what cases.* 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.

§4933.

4. *In Supreme Court.* It shall be the duty of the attorney-general to act as the legal adviser of the Executive Department, to represent the State in the Supreme Court in all capital felonies, and in all civil and criminal cases in any court when required by the Governor, and to perform such other services as shall be required of him by law.

§221. (370.) *May be required to attend circuits.* 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

Of the attorney-general.

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.

§222. (371.) *Comptroller-general may require his services.* 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 and all of such cases, or of the solicitors-general in their respective circuits.

GENERAL NOTE.—Attorney-general cannot bind State by settling tax executions in litigation, at less than full amount: 66 Ga. 403.

Cannot compromise debt due the State: 70 Ga. 11.

Attorney-general's appearance by demurrer for sheriff, in suit to enjoin enforcement of Governor's *fi. fa.* against treasurer, etc., sufficient representation of Governor: 66 Ga. 408.

FOURTH TITLE.

GENERAL REGULATIONS AS TO ALL OFFICERS AND OFFICES,

CHAPTER 1.

OF ELIGIBILITY, QUALIFICATIONS, AND COMMISSIONS OF OFFICERS, AND
VACATION OF OFFICES.

ARTICLE 1.

ELIGIBILITY AND QUALIFICATION.

Act 1787,
Cobb, 366.
Act 1823.
Cobb, 209.
§§5168, 5740,
5741, 5754,
242.

§223. (129.) *Persons ineligible; de facto officers.* The following persons are held and deemed ineligible to hold any civil office in this State, and the existence of either of the following states 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.:

One's right to, when colorably in, tested by *quo warranto*: 7 Ga. 473. Sheriff giving no bond, yet is a good officer *de facto*: 9 Ga. 314. *De facto* officer presumed right: 5 Ga. 239. Acts of a *de facto* deputy-sheriff held right: 11 Ga. 423. Acting notoriously as a public officer is *prima facie* evidence that he is such: 14 Ga. 185; 21/217. One acting by color of appointment: 20 Ga. 746. Notary public *de facto*: 44 Ga. 454. When county commissioners are officers *de facto*: 52 Ga. 234. Town officers: 63 Ga. 527.

Constable appointed by justice of peace to fill vacancy, who acted without taking oath and giving bond, is officer *de facto*, and acts valid: 67 Ga. 725.

De facto board of education competent to act: 72 Ga. 546.

Court has prescribed jurisdiction, although judge merely *de facto*: 93 Ga. 1.

City-court judge appointed and qualified during recess of Senate, judge *de facto*: 93 Ga. 1.

When a court was abolished, the judge ceased to be an officer even *de facto*: 70 Ga. 547.

§§6080, 5737,
1811.

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

§§5740, 5738.

2. *HOLDERS OF PUBLIC MONEY.* 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.

Eligibility and qualification.

3. *Persons convicted of crime.* Any person convicted and sentenced ^{§5738.} finally for any felony, under the laws of this or any other State, involving moral turpitude, the offense 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.

4. *Holding other offices.* Persons holding any office of profit or ^{§5754.} trust under the government of the United States (other than that of postmaster), or of either of the several States, or of any foreign state.

5. *Insane persons.* Persons of unsound mind, and those who, from ^{§1812.} advanced age or bodily infirmity, are unfit to discharge the duties of the office to which they are chosen or appointed.

6. *Denizens.* 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.

7. *Must be citizen of county.* No person shall be eligible to hold ^{§5929.} any county office in any county of this State, unless he shall have been *bona fide* a citizen of the county in which he shall be elected at least two years prior to his election, and is a qualified voter.

8. *Constitutional privileges.* All persons from any cause constitu- ^{§§5929, 1808.} tionally 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.

Section cited: 58 Ga. 517.

Right of judge to hold office not made in case tried before him, and decision excepted to: 93 Ga. 34.

§224. *Only one county office to be held.* No person shall hold, in any ^{Acts 1890-1,} manner whatever, or be commissioned to hold at one time, more ^{p. 102.} than one county office, except by special enactment of the legisla- ^{§§4230, 3390,} ^{4339, 5929,} ^{1808.} ture heretofore or hereafter made; nor shall any commissioned officer be deputy for any other commissioned officer, except by such special enactment.

§225. (131.) *Failing to obtain commission.* Persons who, after an ^{§229 (6).} election, fail to comply with all the prerequisites 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.

§226. (132.) *Officers of this State must reside therein, hold until suc- ^{Acts 1851-2,} cessor is qualified, and keep seal.* All officers of this State must reside ^{p. 77.} therein, at such places as are designated by law, and discharge the ^{§§178, 187,} duties of their office until their successors are commissioned and ^{229 (5),} qualified; and all officers whose certificate of records or other papers ^{230, 5505.} are admissible in evidence in any court in this State must have and keep an official seal.

How commissioned. Vacancies.

Section cited: 58 Ga. 517.

Commercial notary holds until successor appointed: 74 Ga. 416.

Ordinary not required to have seal in 1851: 80 Ga. 505.

ARTICLE 2.

HOW COMMISSIONED.

§§184, 121,
132.

§227. (133.) *What officers must be commissioned under the great seal.* 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, and comptroller-general, and all military officers of the grade of general, either of division or brigade. Those of all Federal or judicial officers above enumerated must be on parchment.

§§142, 121.

§228. (134.) *What officers commissioned under Executive seal.* 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 ordinary; and such certificate shall operate as their commission. All officers of the militia 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.

The Governor's commission is only *prima facie* evidence of title: 8 Ga. 360.

ARTICLE 3.

VACANCIES.

§§267, 133.

§229. (135.) *Offices, how vacated.* All offices in the State are vacated—

When a court is abolished, the judge ceases to be an officer: 70 Ga. 547.

1. *Death.* By the death of the incumbent.

2. *Resignation.* By resignation, when accepted.

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

§223.

4. *Incapacity.* By voluntary act or misfortune of the incumbent, whereby he is placed in either of the conditions specified of ineligi-

Resignations.

bility to office, which shall operate from the time the fact is ascertained and declared by the proper tribunal.

5. *Removal.* 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.

6. *Failing to obtain commission.* 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.

A valid statutory bond by a tax-collector: 11 Ga. 207. Bond not given in time, yet valid as a common-law bond: 1 Ga. 574; 9/314. Official common-law bonds enforced as at common law: 3 Ga. 499. Office not forfeited by not giving bond and making oath in time: 44 Ga. 501. Sheriff failing to give other security cannot exercise the office: 46 Ga. 635.

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

County treasurer abandoning office: 65 Ga. 553.

§230. (138.) *Term of officers to fill vacancies.* In all cases where the office of Governor, senators or representatives, judge of the Supreme Court, judge of superior court, attorney-general, solicitor-general, secretary of State, treasurer, comptroller-general, surveyor-general, ordinary, sheriff, clerk of the superior court, tax-collector, tax-receivers, county treasurer, county surveyor, or coroner, or either of them, shall become vacant by resignation, death or the removal of the officer before the expiration of his term, the successor to said officer shall be elected or appointed only for the remainder of said unexpired term.

ARTICLE 4.

RESIGNATIONS.

§231. (136.) *Resignation of the Governor.* 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 capital 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 hav-

ing 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.

§§4238, 4350,
451.

§232. (137.) *What officers report their resignation to the Governor.* 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 5.

ANNUAL REPORTS.

§§202, 157,
364, 460.

§233. (79 a.) *Annual reports.* There shall be a year for official reports distinct from the fiscal year; said official-report year to include the twelve months ending thirty days next preceding the regular meeting of the General Assembly; and all the public officers of this State shall make and publish, annually, their official reports in accordance with the official-report year herein provided for.

CHAPTER 2.

OFFICIAL OATHS.

§§4358, 4371,
4221, 4311.

§234. (139.) *Additional oath of public officers.* 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 of trust under the government of the United States (except postmaster), nor either of the several States, nor of any foreign state, and is otherwise qualified to hold said office according to the Constitution and laws of Georgia, and will support the Constitution of the United States and of this 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).

§§121, 244.

§235. (140.) *Form of oath to be sent with dedimus.* 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 commission, before the officer to whom the same is directed, and in conformity to the directions.

§121.

§236. (141.) *Official oaths, before whom taken.* When not otherwise provided by law, and not directed in the *dedimus potestatem*, the

Official oaths.

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.

§237. (142.) *Official oaths must be filed in Executive office, when.* Such oaths, when taken by an 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.

§238. (143.) *Official oaths filed in ordinary's office, when.* When taken by the ordinaries and the clerks of the superior courts, they must be filed in the office of the clerk of the superior 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 ordinary, 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 ordinary, who must enter them on the minutes of his court.

§239. (144.) *Official oaths, time of filing.* The officer in whose office §250. such oaths are filed must indorse thereon the day and year of filing.

§240. (145.) *Oath of deputies.* All deputies, before proceeding to §259. 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 indorsement thereon; but these provisions do not apply to any deputy who may be employed in particular cases only.

Constable made a *de facto* deputy-sheriff: 61 Ga. 272.

§241. (146.) *Failure to file official oath.* No officer or deputy, re- §252. quired by law to take and file such oaths, shall enter upon the duties of his office without first taking and filing the same in the proper office.

§242. (147.) *Official acts of officers valid, when.* The official acts of §223. an officer are not the less valid for his omission to take and file the oath, unless in cases where so specially declared.

A de facto deputy-sheriff: 61 Ga. 272.

Constable is officer *de facto*, and his acts valid although he has not taken oath and given bond: 67 Ga. 725.

CHAPTER 3.

OFFICIAL BONDS AND SURETIES THEREON.

ARTICLE 1.

EXECUTION AND APPROVAL.

§§12, 4 (7),
256.

§243. (148.) *Official bonds, to whom payable.* 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 are 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.

Bond passes to successor without assignment: 1 Ga. 574; 15/423. Payable rightfully to the Governor: 2 Ga. 371. Public officers defined: 33 Ga. 332.

State depositories are not public officers in the sense of this and following sections: 72 Ga. 501.

§§240 (3),
121.

§244. (149.) *Official bond, sent with dedimus.* 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*.

§245. (150.) *Official bonds must be approved.* The approval of all official bonds shall be in writing, indorsed on the bond, and should show the day and year on which the same were approved, and shall not be filed until thus approved.

Dedimus potestatem to ordinary does not authorize him to take a county treasurer's bond with the condition that the sureties are not to be bound till others sign: 70 Ga. 497.

ARTICLE 2.

SURETIES ON BONDS.

Acts 1863-4,
p. 124.
1889, p. 45.
§§189, 4 (7).

§246. (151.) *Sureties on official bonds.* Such bonds shall not be approved by the approving officers unless they have at least two good and solvent sureties (who shall be worth the amount of said bond, over and above the homestead, in case of county officers), and not more than twenty, all of whom must be permanent residents of the State, and two also of the county, and freeholders thereof. When

said approving officers do not of their own knowledge 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.

§247. *Guarantee companies may become surety on bonds of officers.* ^{Acts 1889, p. 178.} ^{§2141.} Guarantee or security companies incorporated under the laws of this State may become security upon the bonds of all State or county officers, and the various officers of this State, whose duty it is to approve the sureties upon such bonds, are authorized to accept such company or companies as one of the sureties or the only surety upon such bond as the solvency of such company may warrant.

§248. (152.) *Officers shall not be surety for each other.* ^{Acts 1876, p. 13.} No attorney at law or county officer shall be received as security on the bond of any county officer.

ARTICLE 3.

POWER OF ATTORNEY.

§249. (153.) *Attorney in fact may execute official bond.* When an official bond is signed by an attorney in fact, the power of attorney must be attested by the ordinary and filed and recorded as the bond is.

ARTICLE 4.

FILING OFFICIAL BONDS.

§250. (154.) *Within what time official bonds must be filed.* ^{§239.} 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 court or ordinary, within thirty days therefrom; in all other cases within twenty days therefrom.

The office is not avoided because bond not filed within time: 44 Ga. 501–504.

§251. (155.) *Failure to file official bond.* When any officer of whom ^{§229 (6).} 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.

§241. §252. (156.) *Acting before filing bond.* No public officer required by law to give bond shall perform any official act before his bond is approved and filed as required.

Cited, to show that a bank which is a State depository is not a public officer: 72 Ga. 509.

§253. (157.) *Indorsement on official bond.* Every officer in whose office the official bond of any public officer is filed, must indorse on such bond the day and year when the same was filed, and sign his name to such indorsement.

§254. (158.) *Notice of failure to file bond.* 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.

§255. (159.) *Penalty for failure to mark-file and give notice.* 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.

ARTICLE 5.

BONDS; HOW FAR, AND FOR WHAT, BINDING.

§§12, 4 (7),
265, 243. §256. (160.) *Official bonds obligatory.* Every official bond executed under this Code is obligatory on the principal and sureties thereon—

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

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

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.

§262. 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.

A plaintiff in error injured by negligence of clerk of superior court may recover of him personally, or on official bond: 73 Ga. 106.

For illegal removal of stranger to writ of possession, sheriff liable: 81 Ga. 716.

Bonds to be recorded. Bond of deputy.

Liable in damages for failing to perform, or negligent performance of duties, allegations here sufficient: 66 Ga. 203.

No recovery against sheriff needed before suit on his bond: 81 Ga. 716.

ARTICLE 6.

BONDS TO BE RECORDED.

§257. (161.) *Official bonds, by whom approved and recorded.* The official bonds of the clerks of the superior court, of sheriffs, coroners, county surveyors, county treasurers, tax collectors and receivers, given for county taxes, must be approved by the ordinary and filed in his office, and by him recorded. The bonds of tax collectors and receivers for State taxes, after being likewise approved, must be recorded by the ordinary, and the original bond must be by him transmitted to the Governor for deposit in the comptroller-general's office.

Ordinary acts ministerially, as public agent, in accepting the bond and cannot make private arrangement with sureties whereby delivery is conditional: 70 Ga. 496.

§258. (162.) *Ordinary must certify to the Governor.* Such ordinary must sign a certificate to the Governor, stating that the clerks of the superior courts, the sheriffs, coroners, and county surveyors have taken the oaths and given the bonds sent from the Executive Department, 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 clerk of said court, and by him immediately transmitted to the Governor.

ARTICLE 7.

BOND OF DEPUTY.

§259. (163.) *Bond of deputy, to whom payable.* When deputies ^{§4378.} 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.

Surety on deputy's bond can make any defense that principal could have made: 13 Ga. 389.

§260. (164.) *Deputy suable same as principal.* It shall be at the ^{§§4371, 4378,} option of any person who claims damages of any principal officer for _{256 (2).}

Satisfaction and discharge of bonds. Informalities do not vitiate bonds.

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.

When not, as to deputy-sheriff: 59 Ga. 180.

ARTICLE 8.

SATISFACTION AND DISCHARGE OF BONDS.

Act 1847,
Cobb, 502.
§5345.

§261. (165.) *Bond, when discharged.* 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.

There can be only one recovery on a common-law bond: 3 Ga. 499. When the penalty of sheriff's bond is exhausted: 8 Ga. 570. Sheriff not required to follow the requirements of an unconstitutional act, as defense to a suit on his bond: 12 Ga. 36.

§§4779, 256,
12, 4 (7).

§262. (166.) *Officer liable though penalty exhausted.* 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.

ARTICLE 9.

INFORMALITIES DO NOT VITIATE BONDS.

§§4 (7), 12,
13.

§263. (167.) *Bonds valid though not in conformity to law.* 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 condition being broken, to all the remedies, including the several recoveries, which the persons aggrieved might have maintained on the official bond.

Official bond not conforming to statute requiring it: 1 Ga. 574; 3/499. When only enforceable according to common-law rules: 3 Ga. 499. Section cited and construed: 56 Ga. 292.

This provision not applicable to State treasurer's bond; statutory provisions must be strictly complied with: 66 Ga. 409.

Does not apply to bond of State depository: 72 Ga. 512.

Tax-collector elected January 1st, bond given July 23d, not void: 73 Ga. 665; citing 44 Ga. 501; distinguishing 66 Ga. 408.

Measure of damages on bonds. Provisions applicable to all official bonds. Sureties, how relieved.

Misnomer, in name of decedent, in administrator's bond, not render bond void: 85 Ga. 555.

Filling in blank bond with amount of penalty, not release sureties already subscribed: 94 Ga. 37.

ARTICLE 10.

MEASURE OF DAMAGES ON BONDS.

§264. (168.) *Measure of damages.* 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. §§3795, 5345,
3797, 3796.

Measure of damages is the injury sustained: 6 Ga. 244. Is the amount of the execution: 7 Ga. 445. But see 17 Ga. 521–624. Sheriff's bond only recoverable on, to the extent of the party's damage: 17 Ga. 522. Constable's bond, the measure of damages on, is the injury sustained: 17 Ga. 624–632. Suit on sheriff's bond: 34 Ga. 177. Penalty only recoverable from the security on the bond: 59 Ga. 205.

See notes on bonds of sheriff and other officers.

ARTICLE 11.

PROVISIONS APPLICABLE TO ALL OFFICIAL BONDS.

§265. (169.) *This and the preceding Article apply to all official bonds.* All the provisions of this Chapter apply to the oaths of office and the official bonds of all public officers of this State, or those whose office may be established hereafter, unless the contrary is expressly provided. §§12, 5345,
256.

ARTICLE 12.

SURETIES, HOW RELIEVED.

§266. (170.) *Sureties, how relieved.* 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 Act 1845,
Cobb, 1036.

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.

Discharged surety released from future liability; the substituted one liable for the future and the past liability: 1 Ga. 84. Decree against guardian on his bond is *prima facie* evidence against his security: 1 Ga. 356. Outgoing sheriff's surety on bond liable only for sheriff's acts while in office: 2 Ga. 248.

§229.

§267. (171.) *Officer failing to give new bond when required.* 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.

CHAPTER 4.

POWERS OF PUBLIC OFFICERS LIMITED.

§3040.
85 Ga. 171.
§§3, 7.

§268. *Powers of public officers.* Powers of all public officers are defined by law, and all persons must take notice thereof. The public cannot be estopped by the acts of any officer done in the exercise of a power not conferred.

What officers cannot authorize they cannot ratify: 85 Ga. 734.

The public cannot be estopped by illegal action or non-action of officers: 92 Ga. 549.

No statute of limitations or prescription can abridge the powers of the State: 93 Ga. 73.

An illegal license to use the streets revocable: 93 Ga. 68.

Permission on part of city to obstruct public street is void and should be revoked: 86 Ga. 756.

Persons dealing with a public agent must take notice of the extent of his powers at their peril: 86 Ga. 758.

Where a power to consent actually exists the city may be estopped to revoke a previously granted permission: 86 Ga. 758; 93/68.

The Governor has no authority to compromise or release a debt due to the State: 70 Ga. 112.

Public not liable for torts of public agents: 62 Ga. 290.

Action of public officers should be proved by records, or the records accounted for: 62 Ga. 532.

Attorney-general cannot settle a tax execution for less than the face thereof: 66 Ga. 403.

Such authority must come from the State in order to make the settlement valid: 66 Ga. 403.

De facto officers are recognized from necessity, and on consideration of public policy only: 74 Ga. 416.

Courts are slow to accept ignorance of law for official misconduct: 73 Ga. 235 (1 b).

Prescription does not run against State in any case: 67 Ga. 760.

CHAPTER 5.

OF DELIVERY OF BOOKS AND PROPERTY TO SUCCESSORS.

§269. (172.) *Officer must deliver books, etc., to successor.* 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. ^{§§14, 156, 164.}

§270. (173.) *Other persons having office property.* 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. ^{§4238(1).}

Courts will not go behind new officer's commission: 44 Ga. 501.

§271. (174.) *Proceedings against person in possession of, and refusing to deliver, office and contents.* If any person neglects or refuses so to do, after demand made, the successor shall make complaint to the ordinary 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. ^{Acts 1853-4, p. 27.}

§272. (175.) *Persons failing to comply with the order, how punished.* 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 *instanter* 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 discharged 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 of the Penal Code on this subject.

§273. (176.) *Officers retiring must deliver books to successors.* All judicial or ministerial officers or State's attorneys, who by law are

Inventory annually to be made.

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.

§14.

§274. (177.) *Penalty for failure to deliver books to successor.* 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.

CHAPTER 6.

INVENTORY ANNUALLY TO BE MADE.

Acts 1882-3,
p. 126.

§275. *Annual inventory of public property.* All State and county officers, on or before the fifteenth day of January of each year, shall make a complete inventory on oath of all the public property in their charge, and shall enter the same in a book kept for that purpose.

Acts 1882-3,
p. 126.

§276. *Successor's receipt and record of same.* When any officer shall vacate his office, he shall take a receipt from his successor for all property turned over to said successor, which receipt shall be entered in said book, and he shall satisfactorily account to the proper authority for any not turned over.

§277. *Successor's duty.* Every officer, within three months after taking charge of his office, shall examine the inventories of his predecessor, and make a report upon the same to the proper authority, especially reporting each article and its value not turned over or satisfactorily accounted for.

§278. *Unserviceable property sold.* When any public property shall become unserviceable, it may be sold or otherwise disposed of, by order of the proper authority, and an entry of the same shall be made in said book, and the money received therefrom shall be paid into the treasury.

§§4238, 5930,
5879.

§279. "*Proper authority.*" The "proper authority" referred to in this Chapter is the Governor of the State, for all officers of the State; and the county commissioners, or other officers having charge of county matters, for all officers of the county.

Acts 1882-3,
p. 126.
§4774.

§280. *Public officer liable to rule.* Any public officer who shall violate any one or more of the provisions of this Chapter, shall be liable to be ruled by the proper authority, as aforesaid, in the superior courts, in the same manner as the sheriffs of the State, and be

Salaries and fees of officers; executive officers.

subject to an action on his bond for the value of all public property not turned over or satisfactorily accounted for: *Provided*, this and the preceding sections of this Chapter shall not be construed to repeal any existing laws for the recovery of public property, or the value thereof, or for the punishment of any public officer who shall refuse, fail or neglect to turn over or satisfactorily account for the same as aforesaid.

CHAPTER 7.

SALARIES AND FEES OF OFFICERS.

ARTICLE 1.

EXECUTIVE OFFICERS.

§281. (1639.) *Annual salaries appropriated.* The various sums of the annual salaries of all the officers of this State, whose salaries are fixed by law, are hereby appropriated annually to pay said officers, until they are altered by law.

Acts 1865-6, pp. 11, 12. §303.

§282. (1640.) *Salaries of executive officers.* The salaries per annum, of such officers, respectively, are as follows:

The Governor	\$ 3,000 00	Acts 1873, p. 8.
The attorney-general	2,000 00	
The Governor's secretaries, each	1,800 00	
The Governor's messenger	950 00	
The comptroller-general	2,000 00	
The clerk of the comptroller-general	1,600 00	
The commissioner of agriculture	2,000 00	
The State treasurer	2,000 00	
The clerk of the State treasurer	1,600 00	
The secretary of State	2,000 00	
The clerk of the secretary of State	1,000 00	
The State librarian	1,800 00	Acts 1873, p. 8.
The assistant librarian	800 00	

§283. (1641.) *Pay of the officers whose salaries are not fixed.* 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 funds.

§§5402, 5904.

Officers appointed by Governor. Officers of Lunatic Asylum. Legislative officers. Judiciary officers.

ARTICLE 2.

OFFICERS APPOINTED BY GOVERNOR.

§284. (1642.) *Salaries.* The salary per annum of such officers is as follows:

Acts 1873, p. 60.	The trustees of the Lunatic Asylum, each	\$ 150 00
	The principal keeper of the penitentiary	2,000 00
	The assistant keeper of the penitentiary	1,200 00
1865-6, p. 16.	The bookkeeper and salesman of the penitentiary	1,200 00
	The tanner of the penitentiary	1,200 00
	The overseer of the penitentiary	800 00
	The physician of the penitentiary	500 00
	The chaplain of the penitentiary	150 00

ARTICLE 3.

OFFICERS OF THE LUNATIC ASYLUM.

§285. (1644.) *Salaries.*

The superintendent and principal physician of the Lunatic Asylum	\$ 2,500 00
The assistant physician	1,250 00

ARTICLE 4.

LEGISLATIVE OFFICERS.

§286. (1645.) *Salaries and fees.*

Acts 1878-9, p. 185. §828.	The secretary of the Senate, per day for each session	\$ 60 00
	The clerk of the House of Representatives, per day for each session	70 00
	The fees of said officers are—	
	For every extract of a private nature, per copy sheet	15
	For certifying an extract of a private nature	50
	For certifying an act for the benefit of an individual, or corporation, or society	3 00

ARTICLE 5.

OFFICERS CONNECTED WITH THE JUDICIAL DEPARTMENT.

§287. (1646.) *Salaries of judges and solicitors-general.* The salaries per annum of such officers are as follows:

Officers connected with the judicial department.

The judges of the Supreme Court, each	\$ 3,000 00	
The reporter of the Supreme Court	2,000 00	
The judges of the superior courts, each	2,000 00	Acts 1878-9, p. 159.
The solicitors-general of the several circuits, each	250 00	1871-2, p. 8.

The fees of such officers for civil matters are as follows:

1. Solicitor-general—

For each proceeding to enforce a recognizance	5 00
For every amount collected on such proceedings	5 per cent.
For every proceeding instituted to forfeit a charter	100 00
For plain collections for the State	5 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 Gov- ernor, not exceeding	50 00

Prisoner escaping, solicitor-general not entitled to his full costs: 57 Ga. 332.
 The fee of the solicitor-general is \$30.00 in larceny from the house, a felony reduced to a misdemeanor under the Act of 1866: 58 Ga. 139. The solicitor-general, and not the solicitor in the county court, is entitled to the fee for drawing the bill in the case of a true bill for misdemeanor in the superior court transferred to the county court: 61 Ga. 70, 71.

Where case transferred to county court, solicitor-general of circuit preferred to county solicitor in matter of fees: 76 Ga. 493.

§288. (1647.) *Certificate of services and cases where no fee allowed.* Solicitors shall not be paid fees for litigation without the certificate of the presiding judge that they are properly and faithfully claimed as such, nor on any bill for any species of gaming, where the same is entered *nol. pros.*

FIFTH TITLE.

LEGISLATIVE DEPARTMENT.

CHAPTER 1.

OF THE GENERAL ASSEMBLY.

ARTICLE 1.

ANNUAL SESSION AND ORGANIZATION.

Acts 1890-1, §289. (178.) *Legislature meets, when.* The General Assembly shall meet on the fourth Wednesday in October, and annually thereafter on the same day, until the day shall be changed by law. The hour of meeting shall be ten o'clock in the forenoon, and the place at the capitol.
p. 55.
§5750.

Acts 1890-1, §290. (179.) *Length of session.* Each session shall not continue longer than fifty days, except when an impeachment trial is pending at the end of fifty days the session may be prolonged until the completion of said trial.
p. 55.
§5751.

Acts 1890-1, §291. *Apportionment.* The House of Representatives shall consist of one hundred and seventy-five members, apportioned as follows: To the six largest counties, to wit, Fulton, Chatham, Richmond, Bibb, Burke, and Floyd, three representatives each; to the twenty-six next largest counties, to wit, Muscogee, Thomas, Washington, Coweta, Cobb, Carroll, Sumter, Houston, Meriwether, Troup, Bartow, Decatur, Gwinnett, Jackson, Monroe, Wilkes, Dooly, Hall, Walton, Jefferson, DeKalb, Hancock, Greene, Oglethorpe, Pulaski, and Harris, two representatives each; and to the remaining one hundred and five counties, one representative each.
p. 192.
§5747.

§§5744, 5752. §292. (180.) *General Assembly, how organized.* 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 officers, their assistants may officiate. In the absence of both, the body may appoint a chairman whose powers and duties are the same.

§293. (181.) *Oath of members.* 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. §5753.

§294. (182.) *President of the Senate and Speaker of the House, how elected.* The President of the Senate and Speaker of the House are elected by their respective bodies *viva voce*, 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.

ARTICLE 2.

ELECTIONS BY GENERAL ASSEMBLY IN JOINT SESSION.

§295. (183.) *Elections by the General Assembly.* All elections, except for United States senator, by the General Assembly, are to be conducted as follows: §§325, 5789,
329.

1. The elections shall be *viva voce*, and the vote shall appear on the journal of the House of Representatives. When the Senate and House of Representatives unite for the purpose of elections, they shall meet in the Representative Hall, and the President of the Senate shall in such cases preside and declare the result.

2. 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.

3. The Senate and House of Representatives shall meet in joint session in the hall of the House of Representatives on the first Monday of every session at 10 o'clock A. M., for the purpose of electing such officers of said State as are now or may hereafter be required to be elected by the General Assembly. Said joint session shall continue in morning and afternoon sessions from day to day until all of said officers are elected. Acts 1880-1,
pp. 178,
179.
§5789.

4. The first business in order for said joint session shall be the election of judges of the Supreme Court, and after that, judges and solicitors of the various circuits. Before the election of judges and solicitors shall be commenced, the Speaker of the House of Representatives shall prepare slips of paper of the same size, on which he shall write the names of the various circuits for which elections are to be held, and place the same in a box and hand the same to the President of the Senate, who shall, without inspecting the said slips of paper, draw them out, one at a time, and when each slip is drawn said President of the Senate shall announce to the joint session the Acts 1880-1,
pp. 178,
179.
§5789.

Doorkeeper and messenger. Subletting offices forbidden; other officers.

name of the circuit drawn, and the election for judges and solicitors of said circuit shall be in order if either or both said offices are vacant. The President of the Senate shall continue to draw out the names of circuits from said box until all of said judges and solicitors are elected.

ARTICLE 3.

DOORKEEPER AND MESSENGER.

Acts 1862-3,
p. 139. §296. (184.) *Doorkeeper and messenger.* Each house is entitled to a doorkeeper and messenger, to perform such duties as may be required of them, who shall be elected as provided for the election of clerk and secretary, and who shall receive the same pay as the members of the General Assembly.

ARTICLE 4.

SUBLETTING OFFICES FORBIDDEN; OTHER OFFICERS.

Acts 1889,
p. 173. §297. *Subletting offices prohibited.* No doorkeeper, or other employee of the House of Representatives or Senate, shall sublet his employment or contract in any way, nor shall the person having the appointment of any of said employees consent to any substitution of any other person for any of said employees.

§298. *Office vacant when original employee cannot discharge duties.* Whenever for any reason the person appointed to any of said positions cannot personally discharge the duties of the same, said office shall become vacant, and it shall be the duty of the person in whom is vested the appointing power, to appoint another person for such time as the original employee cannot discharge his duties, and the compensation shall, from the date of such new appointment, be paid to the new employee for the time he shall serve.

§299. *Employing substitutes, penalty.* Whenever the provisions of this Chapter are violated, and any person is substituted for another in violation of the same, neither the person so substituted, nor the person for whom he is substituted, shall receive any compensation out of the State treasury; and it shall be the duty of the treasurer whenever any change is made in any of the persons filling any of said positions, to ascertain that the change was made according to the provisions of this Chapter, before paying any money to the new officer or employee.

§300. *Officers, how paid.* All officers and employees provided for in this Chapter shall be paid for their services by the treasurer only,

upon the approval of their accounts by the auditing committee of the Senate and House of Representatives.

§301. (185.) *Appointments for special purposes.* When it shall be necessary to carry into effect the seventh section of the Third 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.

ARTICLE 5.

APPROPRIATION BILLS.

§302. (186 a.) *Book of appropriation bills to be furnished annually.* The clerk of the House of Representatives shall provide, out of the contingent fund of the House, a well-bound book, which he shall deliver to the chairman of the House finance committee, as soon as such chairman shall be appointed, and said chairman shall enter or cause to be entered in such book, in the order of their introduction, all bills seeking, directly or indirectly, to obtain appropriations from the State treasury, with a brief statement of the contents of such bill, together with the number thereof, the name of the introducer, and any other facts developed before the committee that will throw any light on the nature of the legislation proposed by the bill. After the expiration of the legislature, said chairman shall deposit said book with the secretary of State, who shall deliver the same to each successive chairman of said committee as soon as he shall have been appointed.

Acts 1880-1,
p. 175.
§§5772, 206,
281.

§303. *Permanent appropriations included in general bill.* All general appropriation bills shall, in addition to the customary itemized statements of the amounts appropriated for the usual expenses of the executive, legislative, and judicial departments of the government, and for the support of the public institutions and educational interests of the State, contain also a like itemized statement of all amounts appropriated by any previous law, to be paid annually out of the treasury; and such amounts so appropriated by previous laws shall not be paid from the treasury, unless they are embraced in the general appropriation Act.

Acts 1889,
p. 15.
§§5772, 206,
281.

ARTICLE 6.

FINANCE COMMITTEE'S REPORT.

§304. (186.) *Joint finance committee.* It is part of the duty of the joint standing committee of finance to examine the accounts and

§§206, 201.

Suspension of comptroller or treasurer. Unfinished business, engrossed bills, etc.

vouchers of the comptroller and treasurer as to all moneys 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, 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.

ARTICLE 7.

SUSPENSION OF COMPTROLLER OR TREASURER.

Acts 1878-9, §305. (114 a.) *Suspension of comptroller or treasurer.* The General Assembly may suspend from the functions and duties of office either the treasurer or the comptroller-general (by joint resolution duly adopted after being read one time in each house on different days, and by a two-thirds vote of members voting on the same), whenever the interests of the State, or the proper administration of the law, demand such suspension.

Acts 1878-9, p. 30.
§§ 137, 5821, 193-195.

ARTICLE 8.

UNFINISHED BUSINESS, ENGROSSED BILLS, ETC.

§306. (187.) *Duty of the secretary and clerk at close of the session.* 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.

Acts 1892, §307. *Unfinished business of first session goes over to next.* All bills, resolutions and other matters pending at the end of the first session of each General Assembly, shall go over to the next session as unfinished business, and occupy the same places on the calendar of the second session as such matters occupied at the first session.

Acts 1892, p. 102.

§§ 1, 323, 181 (1). §308. (188.) *Engrossed copies of laws, etc.* 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.

ARTICLE 9.

PAY OF MEMBERS.

§309. (189.) *Per diem.* The *per diem* of members of the General Assembly shall not exceed four dollars, and mileage shall not exceed ten cents for each mile traveled, by the nearest practicable route, in going to and returning from the capital; but the President of the Senate and the Speaker of the House of Representatives, shall each receive not exceeding seven dollars per day. ^{§5788.}

§310. (190.) *Sick members.* 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.

§311. (191.) *If a member die during the session.* 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.

§312. (192.) *Accounts of members and officers, how audited.* 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 accounts duly audited.

ARTICLE 10.

RESOLUTIONS APPROPRIATING MONEY.

§313. (193.) *Appropriations of money by resolution.* All resolutions which may grant money out of any fund, shall be treated in all respects, in the introduction and form of proceeding on them, in a similar manner with bills; they shall originate in the House of Representatives, and shall receive three readings previous to their being passed, but the Senate may propose or concur in amendments, as in case of bills. ^{Act Feb. 24th, 1873, p. 14. §5783.}

ARTICLE 11.

LOCAL BILLS AND NOTICE THEREOF.

Acts 1878-9,
p. 176.
§5778.

§314. (193 a.) *Notice of local bills.* Notice of an intention to apply for the passage of a local or special bill shall be given in the following manner: The title of the bill shall be published once in the newspaper in which the sheriff's sales are advertised, and shall be posted at the door of the court-house in the county or counties of the residence of the person or persons, natural or artificial, to be affected thereby, or in which the locality or municipality is situated, thirty days before the introduction of such bill: *Provided*, that where there is no newspaper published in the county where local legislation is asked, notice of said bill shall be published in the paper where sheriff's sales are published, and in all notices to be published under this section, no newspaper shall charge more than one dollar per square for said notice, and in case of refusal to publish at said rates, then a publication in any other newspaper having a circulation in the county where the local legislation is desired, shall be sufficient. And the production of the newspaper dated thirty days prior to the introduction of such bill into the General Assembly, containing the notice required by this section, with the certificate of the ordinary that the notice has been posted, shall be sufficient evidence that notice has been given in accordance with the requirements of the Constitution.

Evidence, outside journals of legislature, as to whether proper notice of local legislation was given, not admissible: 85 Ga. 49.

CHAPTER 2.

SECRETARY OF SENATE AND CLERK OF THE HOUSE.

§5789.

§315. (194.) *Secretary of the Senate and clerk of the House.* There shall be a secretary of the Senate and clerk of the House of Representatives, elected by the members of each house respectively, *viva voce*, and a majority of votes cast is necessary to elect. Their terms of office shall be the time for which the members of the General Assembly are elected.

§316. (195.) *Oath of secretary and clerk and their assistants.* 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.

Secretary of Senate and clerk of the House.

§317. (196.) *President and Speaker may administer oaths.* The President of the Senate and Speaker of the House are to administer the oaths required to the subordinate officers of their respective houses.

§318. (197.) *Pay of secretary and clerk and their assistants.* The compensation of the secretary of the Senate shall be sixty dollars per day for each session, and the compensation of the clerk of the House of Representatives shall be seventy dollars per day for each session. Acts 1878-9, p. 185. §§5787, 286, 323.

§319. (197 a.) *Assistant clerks.* Said secretary and clerk shall each select and appoint such assistants as may be necessary for the performance of the clerical work of their respective houses, including clerks for such standing or special committees as may be allowed a clerk by order of their respective houses; the compensation of their said assistants to be fixed by said secretary and clerk respectively, and to be paid out of the amounts allowed said secretary and clerk respectively in the preceding section: *Provided, however,* that if either house shall for any purpose employ a stenographic reporter, the cost of such reporter shall not be considered a part of the clerical expenses of such house, but shall be provided for by a special appropriation. Acts 1878-9, p. 185.

§320. (198.) *Must give bond.* Immediately after their election, said secretary and clerk shall each give bond and security in the sum of five thousand dollars, payable to the Governor and his successors in office, and conditioned for the faithful discharge of their respective duties, said bonds to be approved by the President of the Senate and Speaker of the House respectively. Acts 1878-9, p. 185.

§321. (199.) *Qualification and removal of certain clerks.* 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.

§322. (200.) *Secretary and clerk must file papers and documents.* The secretary of the Senate and the 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.

§323. (201.) *Secretary and clerk shall not be paid until they have filed papers.* 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 complied §286.

Elections by the General Assembly; for United States senators.

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

§324. (202.) *Secretary must aid when both houses meet.* When there is a meeting of both branches of the General Assembly in 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.

CHAPTER 3.

ELECTIONS BY THE GENERAL ASSEMBLY.

ARTICLE 1.

FOR UNITED STATES SENATORS.

Act of Con-
gress, 1866.
§§5754, 5789,
295.

§325. (1335.) *United States senators, when elected.* The legislature of each State, which shall be chosen next preceding the expiration of the time for which any senator was elected to represent said State in Congress, shall, on the second Tuesday after the meeting and organization thereof, proceed to elect a senator in Congress, in the place of such senator so going out of office.

Act of Con-
gress, 1866.
§5863.

§326. (1336.) *Election, how conducted.* Said election for such senator shall be conducted in the following manner: Each house shall openly, by a *viva voce* of each member present, name one person for senator in Congress from said State, and the name of the person so voted for who shall have a majority of the whole number of votes cast in each house, shall be entered on the journal of each house by the clerk or secretary thereof; but if either house shall fail to give such majority to any person on said day, that fact shall be entered on the journal. At twelve o'clock meridian of the day following that on which proceedings are required to take place, as aforesaid, the members of the two houses shall convene in joint assembly, and the journal of each house shall then be read, and if the same person shall have received a majority of all the votes in each house, such person shall be duly declared elected senator to represent said State in the Congress of the United States; but if the same person shall not have received a majority of the votes in each house, or if either house shall have failed to take proceedings as required in this section, the joint assembly shall then proceed to choose, by a *viva voce* vote of each member present, a person for the purpose aforesaid; and the person having a majority of all the votes of the said joint

For other officers.

assembly, a majority of all the members elected to both houses being present and voting, shall be declared duly elected; and in case no person shall receive such majority on the first day, the joint assembly shall meet at twelve o'clock meridian of each succeeding day during the session of the legislature, and take at least one vote, until a senator shall be elected.

§327. (1337.) *Elections to fill vacancies.* Whenever, on the meeting of the legislature of any State, a vacancy shall exist in the representation of such State in the Senate of the United States, said legislature shall proceed, on the second Tuesday after the commencement and organization of its session, to elect a person to fill such vacancy, in the manner hereinbefore provided for the election of a senator for a full term; and if a vacancy shall happen during the session of the legislature, then, on the second Tuesday after the legislature shall have been organized and shall have notice of such vacancy. Act of Congress, 1866.

§328. (1338.) *Election, how certified.* It shall be the duty of the Governor of the State from which any senator shall have been chosen, as aforesaid, to certify his election, under the seal of the State, to the President of the Senate of the United States; which certificate shall be countersigned by the secretary of State. Act of Congress, 1866.

ARTICLE 2.

FOR OTHER OFFICERS.

§329. (1340.) *Other officers, when elected.* 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. §§5789, 295.



SIXTH TITLE.

COUNTY ORGANIZATION.

CHAPTER 1.

MILITIA DISTRICTS.

ARTICLE 1.

DEFINED.

§§5891, 4107,
4238 (4). §330. (481.) *Militia districts, how divided.* Each county of this State is divided into militia districts according to their respective territory and population.

§4107. §331. (482.) *Districts to remain.* Such districts as at present organized are to remain the same until changed in the manner hereinafter prescribed.

§332. (483.) *Must contain how many male residents.* Each district hereafter organized or changed must contain within its limits at least one hundred male persons over twenty-one years of age, resident at the time of the organization, liable to militia duty, and in its formation must not leave any older district with a less number.

ARTICLE 2.

NEW MILITIA DISTRICTS, HOW LAID OUT.

Act 1839,
Cobb, 186.
Act 1840,
Cobb, 187.
§§4107, 4238
(4). §333. (484.) *How laid out or changed.* Whenever it may be necessary and expedient to lay out a new militia district, or to change the lines of old ones, the ordinary 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 said ordinary.

Law for changing lines of militia district is general law: 91 Ga. 141.

Since Code, ordinary has power to establish new district either in term or vacation: 67 Ga. 36.

Commissioners are agents to lay off lines, etc.; the ordinary determines expediency of creating new district: 67 Ga. 254.

New militia districts, how laid out.

Acts in political or legislative, not judicial capacity, and no provision for trial or review: 84 Ga. 432.

Proceedings not judicial, and not reviewable by *certiorari*: 93 Ga. 631.

Special notice to justice of the peace in old district, whose fees will be diminished, unnecessary: 67 Ga. 36.

§334. (485.) *Survey, etc.* 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 same compensation county surveyors have for similar services rendered a citizen. ^{Act 1839, Cobb, 187.}

They are not limited to county surveyor: 68 Ga. 354.

§335. (486.) *Proceedings recorded.* If the ordinary approves their report, he shall have all proceedings in the matter entered on his minutes, after which the district laid out, or line changed or defined, shall be known and regarded accordingly. ^{Act 1839, Cobb, 187.}

Although lines matter of record, competent to show how residence of defendant affected by change in line: 68 Ga. 354.

§336. (487.) *Proceedings transmitted to Governor.* It is the duty of such ordinary, if a new district is laid out, to transmit *instantly* to the Governor such proceedings from his minutes, duly certified, and to publish them for thirty days at the door of the court-house and in the public gazette where he does his official advertising. ^{Act 1840, Cobb, 187.}

§337. (488.) *Ordinary must order an election, when.* As soon as such is done, such ordinary must immediately order an election for a justice of the peace and two constables for such district, after advertising the same for thirty days in three of the most public places of the new district.

§338. (489.) *Making or changing districts, consequences.* 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 or appointed are included in the new district, or cut off from the district for which they were elected or appointed, they have authority to discharge their duties for the district for which they were elected or appointed, until their terms of office expire and their successors in such district are qualified, unless elected or appointed to the same office in the new district to which they are eligible.

§339. (490.) *Suits pending.* Suits pending in any justice's 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.

GENERAL NOTE.—Where militia district lines legally changed, territory added becomes subject to fence law in such district: 91 Ga. 141; see also 84 Ga. 432.

CHAPTER 2.

INCORPORATION OF COUNTIES, COUNTY CONTRACTS, PROPERTY AND CLAIMS.

ARTICLE 1.

COUNTIES ARE CORPORATE BODIES.

§§1832, 4240,
4238, 5891,
5924.

§340. (491.) *Each county a body corporate.* Every county in this State is a body corporate, with power to sue or be sued in any court. And all inhabitants of counties in this State, who are competent jurors in other cases, are declared and shall be holden to be competent jurors in any case, in any court, where such counties are parties to the suit or interested therein in their capacity as corporations or *quasi* corporations.

Citizens of the county competent jurors to try issues on executions against tax-collector and sureties: 11 Ga. 207. Interest of citizens of a county in the result of the suit equally balanced, are competent jurors: 15 Ga. 39-73. Competent jurors to try defendant, charged with burning the county jail: 29 Ga. 105. Section cited, may be tried in the United States courts: 49 Ga. 467. Suits for a county may be brought by the ordinary or the commissioners: 54 Ga. 163-165. Section cited and construed: 45 Ga. 326.

Each county a separate corporate existence, with power to manage its own finances: 69 Ga. 326.

County not liable for unlawful beating of a convict by a guard: 72 Ga. 188.

Action against county for damage to property, in building bridge, maintainable: 85 Ga. 420.

ARTICLE 2.

SUITS AGAINST COUNTIES.

72 Ga. 188.
79 Ga. 127.
§§443, 602,
623.

§341. *County, when liable to suit.* A county is not liable to suit for any cause of action unless made so by statute.

Liability of counties to be sued is statutory only; not liable to suit at common law: 80 Ga. 489.

County not subject to suit except by statutory provision: 81 Ga. 48.

Acts 1872,
p. 39.
§§1899, 4238,
5880, 5924,
5930.

§342. (492.) *Suits against counties, how brought and served.* Suits by or against a county must be in the name of the county, and in all cases in which a county may be a party defendant, service perfected upon the ordinary and clerk of the court of ordinary, if there be a clerk, and if no clerk, then upon the ordinary alone, shall be deemed sufficient; except that in those counties where the fiscal affairs of

Contracts, how made by counties.

the county are committed to a board of commissioners, service perfected upon a majority of said commissioners shall be sufficient.

Section cited and construed: 54 Ga. 27, 165.

Suit against county commissioners, designed as against county, bad, not amendable: 75 Ga. 782.

Suit by commissioners of one county against ordinary of another, for claim by the one county against the other, demurrable: 85 Ga. 435.

ARTICLE 3.

CONTRACTS, HOW MADE BY COUNTIES.

§343. (493.) *Contracts with ordinary.* All contracts entered into by the ordinary with other persons in behalf of the county must be in writing and entered on their minutes. §§ 4238, 367, 372.

Parol contract for building a bridge: 20 Ga. 328. Section cited and construed, and in suits against the county pleadings must show that the contract sued on was entered on the minutes of the inferior court: 46 Ga. 462-464. Must be entered in writing on the minutes: 54 Ga. 69.

§344. (493 a.) *Mode of contracting in certain cases.* Whenever it becomes necessary to build or repair any court-house, jail, bridge, causeway, or other public works in any county in this State, the officer having charge of the roads and revenues and public buildings of such county shall cause the same to be built or repaired by letting out the contract therefor to the lowest bidder, at public outcry, before the court-house door, after having advertised the letting of said contracts as hereinafter provided: *Provided*, that such county authorities shall have authority to reject any and all bids at such public letting, and if in their discretion the public interest and economy require it, such county authorities may build or repair any public buildings, bridges, causeways, or other public property in the county, by contract or sealed proposals, to be invited under the same provisions as to specifications and like informations as are provided in the following sections. Acts 1878-9, p. 159. 1880-1, p. 183. §§ 5880, 368-371.

§345. (493 b.) *What notice shall be given.* Whenever the contract is likely to cost a sum greater than five thousand dollars, the proper officer shall give notice in the public gazette wherein the sheriff's sales are advertised, once a week for eight weeks, and by posting a written notice at the court-house door for a like time, which notice and advertisement shall embrace such details and specifications as will enable the public to know the extent and character of the work to be done, and the terms and time of payment. When the work to be done is likely to amount to less than five thousand dollars, the notice shall be published once a week for four weeks, and by posting Acts 1878-9, p. 160.

County property.

notice for the same period; and such officer shall make out and post conspicuously in his office, complete and minute specifications of the proposed public work, which shall be open to the inspection of the public.

Acts 1878-9,
p. 159.
1889, p. 49.
§389.

§346. (493 c.) *Contractors to give bond.* Contractors who are awarded contracts shall be required to give bond in double the amount of the bid, with two good and solvent securities, for the faithful performance of the contract, and to indemnify the county for any damages occasioned by a failure to perform the same within the prescribed time. And it shall be unlawful to let out any contract for building or repairing any public building, bridge, or other public work, unless the provisions of these sections are complied with; and any contractor or doing, or having done, any work of the kind in any other manner, shall not be entitled to receive any pay therefor: *Provided*, that the requirements of these sections shall not apply to the building or repairing of any public bridge, building, or other work when the same can be done at a less cost than three hundred dollars, but such officer may have such work of building or repairing done by hiring hands and furnishing materials.

ARTICLE 4.

COUNTY PROPERTY.

§347. (494.) *Deeds for benefit of county.* 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, vest in such county the title as fully as if made to such county by name.

§§4238, 270,
279.

§348. (495.) *County property, how controlled.* The ordinary has 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 the titles thereto, and the conveyance of such commission in accordance with such order vests the grantee or vendee with the title of the county.

Control of county property: 9 Ga. 486. Formerly by judges of inferior court: 13 Ga. 502. Ordinary now: 45 Ga. 325. Section cited and construed: 64 Ga. 331.

Acts 1882-3,
p. 132.
§§4238, 124.

§349. *Public laws and Supreme Court reports to be insured.* The officer having charge of the financial affairs of each county shall keep insured at a fair valuation against loss by fire all volumes of the public laws and decisions of the Supreme Court which have been furnished to the ordinaries and clerks of the superior courts of their respective counties.

County buildings, care and inspection thereof.

§350. *Policies in name of county.* The policies of insurance shall ^{Acts 1882-3, p. 132.} be in the name of the county and the premiums therefor paid out of the finances of each county respectively, and in case of any loss or damage by fire, the county authorities shall proceed to collect the amount of loss or policy, and when so collected the proceeds thereof shall be used in supplying new books of the kind lost or injured, as far as such proceeds may be sufficient.

ARTICLE 5.

COUNTY BUILDINGS, CARE AND INSPECTION THEREOF.

§351. (496.) *County buildings, etc.* The county buildings are to ^{§395.} be erected and kept in order and repaired at the expense of the county, under the direction of the ordinary, who is authorized to make all necessary contracts for that purpose.

Ordinary's power as to tax for repairing and erecting public buildings: 47 Ga. 639-641. All in his discretion, supervised by the judge of the superior court: 52 Ga. 233. Illegality dismissed as against a tax *fi. fa.*: 60 Ga. 350.

§352. (497.) *Public buildings and records.* It is the duty of the ^{Act 1796, Cobb, 182. §§4315, 395.} ordinaries 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 officers' 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.

Public agents are not individually liable: 2 Ga. 214. Discretion as to tax by ordinary, for: 52 Ga. 233. Illegality dismissed against a *fi. fa.* for taxes, decisions relative to, discussed: 60 Ga. 350. Ordinary's power to tax for these purposes: 47 Ga. 641. Section cited: 64 Ga. 501.

County commissioners having bought bridges adjoining and touching city, have right to rebuild same when washed away: 76 Ga. 766.

§353. (498.) *Court-house rooms.* Such ordinaries 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.

§354. (499.) *Court-houses, jails, etc.* The court-houses, as well as ^{§4315.} jails, the public grounds and other county property, are placed in the keeping of the sheriff of their respective counties, subject to the

County buildings, care and inspection thereof.

order of such ordinaries, and it is their duty to preserve them from injury or waste and to prevent intrusions upon them.

Construing Act of 1796 as to jails and jailers: 5 Ga. 186.

§355. (501.) *Jails, how constructed.* The county jails hereafter constructed must be of sufficient size and strength to contain and keep securely the prisoners which may be confined therein, and must contain at least two apartments, properly ventilated, so as to secure the health of those confined therein—one for males, and one for females.

Where the county was not liable for an insufficient jail: 19 Ga. 97. County should keep good jail, and if guard needed for, should pay for: 9 Ga. 109. Not responsible to sheriff for damages for insufficient jail: 20 Ga. 845. County jail unsafe, can order prisoner to another county: 26 Ga. 276.

Acts 1887,
p. 102.

§356. *Grand juries inspect jails.* The grand juries shall carefully inspect the sanitary condition of the common jails of their respective counties at each regular term of the superior court, and make such recommendations to the ordinaries of their counties in their general presentments as may be necessary to provide for the proper heating and ventilation of such jails, which recommendations it is hereby made the duty of the several ordinaries of this State to observe and strictly enforce; such grand juries shall make such presentments in regard to the general sanitary condition of their jails and the treatment of the inmates of the same as the facts may justify.

§357. *Preceding section specially charged.* The judges of the superior courts shall give the preceding section in special charge to the grand juries in each county in this State at each regular term of the superior court held in such counties.

§358. (500.) *Injuries to public buildings.* If any person designedly destroy, injure or deface any public building, the appurtenances thereto, or the furniture inside, or shall use either for any indecent purpose, such person shall be guilty of a misdemeanor, besides being liable for the damages.

§359. (504.) *Public buildings and records, how inspected.* 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 ordinaries 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.

§360. (505.) *Duty of judge of the superior court.* The judges of the superior court shall, when necessary, call the attention of the grand jury to the duties required of such ordinaries in this Chapter.

ARTICLE 6.

CLAIMS AGAINST COUNTIES.

§361. (506.) *County orders must specify the fund on which they are drawn.* The ordinaries must audit all claims against their respective counties, and every claim, or such part as may be allowed, must be registered, and he or his clerk must give the claimant an order on the treasurer for the same, and in the order he shall specifically designate upon what particular fund such order is drawn, and out of which payment is to be made. Acts 1871-2, p. 69. §§4238, 407, 206 (7), 199 (8).

Section construed: 39 Ga. 58. Cited: 71 Ga. 857.

Claim for injuries from falling of bridge must be audited before sued: 65 Ga. 216.

Claim for damages presented to ordinary within twelve months to be audited and refused, then sued in superior court: 68 Ga. 51; see also 65 Ga. 741.

§362. (507.) *Claims to be presented, when.* 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. §4238.

Where it was held not barred until twenty years from the time of the assessment of damages: 43 Ga. 259-261. Section cited and construed, as to the bar of the statute of limitations in a suit brought by a county: 62 Ga. 231.

Cited: 68 Ga. 52, 53.

Applies to claim for injuries from falling of bridge: 65 Ga. 216.

Claim must be presented in writing, within twelve months from its accrual, to the ordinary or county commissioners. Conversations about compromise, with individual commissioner, not prevent bar: 71 Ga. 587.

Claim not presented within a year, is barred: 71 Ga. 857.

§363. (508.) *Judgment vs. county.* 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. §342.

County not liable for damages caused by neglected bridge; two exceptions: 74 Ga. 358. See 41 Ga. 225; 54/25; 70/714; 59/833; 64/69; see also section 3602 *et seq.* and notes.

ARTICLE 7.

ANNUAL REPORTS OF COUNTY OFFICERS.

§364. (508 a.) *County officers to make annual returns.* The ordinaries, county treasurers, clerks of the superior courts, and sheriffs of the various counties of the State, shall make a return, under oath, Acts 1876, p. 13. §§233, 418.

Bridges between counties.

to the grand jury of their respective counties on the first day of each term of the superior court, a just and true statement of the amount of money received by them belonging to the county, the source from which the same was received; also, their expenditures, accompanied with proper vouchers.

Acts 1876,
p. 13.

§365. (508 b.) *Duty of grand juries.* When the returns provided for in the preceding section shall have been made, the grand jury shall examine the same, and if found correct, indorse their approval thereon, and attach the same to their general presentments, to be filed in the clerk's office of the superior court. But if found incorrect, the grand jury, through their foreman, shall return said returns to the officer making the same, plainly and distinctly setting forth in writing the grounds of their disapproval, and require said officer to appear before said jury and explain the errors complained of.

Acts 1876,
p. 14.

§366. (508 c.) *Officer failing to make returns, how dealt with.* Should any officer fail or refuse to make the return required by section 364, the foreman of the grand jury shall notify the presiding judge of said failure *instanter*; and said judge shall issue an order requiring said delinquent officer to come forward and make the return as required by said section, or in default, be attached for contempt.

ARTICLE 8.

BRIDGES BETWEEN COUNTIES.

Acts 1880-1,
p. 132.
§§4238, 523,
610, 372,
343.

§367. (508 d.) *Bridges between counties, how built.* Whenever it becomes necessary to build or repair any public bridge over any watercourse in this State which divides one or more counties from each other, the ordinary, commissioners of roads and revenues, or other county officers having in charge the roads, bridges and revenues of said counties joining at such watercourse, shall cause the same to be built or repaired by letting out the contract therefor to the lowest bidder, at public outcry, at the location of such bridge, after having advertised the letting out of said contract as hereinafter provided.

County not bound to supervise contractor's work; nor liable to mill-owner for damage by obstruction due to faulty bridge-building. "*Respondeat superior*" inapplicable: 79 Ga. 125.

Acts 1880-1,
p. 132.
§344.

§368. (508 e.) *Notice required.* Whenever the contract is likely to cost a sum greater than five thousand dollars, the proper officers of said counties shall give notice in the public gazettes wherein the sheriff's sales for such adjoining counties are advertised, once a week for eight weeks, and by posting a written notice at the court-house door of said adjoining counties, which advertisement and notice shall embrace such details and specifications as will enable the pub-

lic to know the extent and character of the work to be done, and the terms and time of payment. When the work to be done is likely to cost less than five thousand dollars, the notice shall be published, as provided in this section, once a week for four weeks, and by posting, as heretofore provided, for a like period of four weeks; and said officers shall make out, and post conspicuously in their said offices, complete and minute specifications of the proposed work, which shall be open to the inspection of the public, and said officers may in their discretion employ some competent engineer or builder to examine and prepare plans and specifications of such proposed work, for which service he shall be paid reasonable compensation by the said counties in the same proportion as said counties are required to pay for said work.

§369. (508 f.) *Bond of contractors.* Contractors who are awarded contracts under this and the two preceding sections shall be required to give bond in double the amount of the bid, with two good and solvent securities, who shall justify before signing said bond, conditioned for the faithful performance of the contract, and to indemnify the counties for any damages occasioned by a failure to perform said contract within the time provided, and keep said bridge, or repairs made thereon, in good condition for a period of time not less than seven years, and there shall be as many originals of said bond executed as there are counties interested in said bridge; one of said originals shall be filed with the proper authority representing each of said counties, to be kept as other official bonds.

Acts 1880-1,
p. 132.
§346.

Mandamus granted against ordinary refusing to comply herewith: 75 Ga. 369.

§370. (508 g.) *Repairs under five hundred dollars.* The provisions of these sections shall not apply to the repairing of any bridge when the same can be done at a less cost than five hundred dollars; but such officers may have such repairing done by hiring hands and furnishing material, or by private contract for such repairs.

Acts 1880-1,
p. 132.
§§344-346.

§371. (508 h.) *Payment, how made.* The payment for all work done under the provisions of the four preceding sections, shall be in accordance with the provisions of section 610 of this Code, and the remedy to enforce payment from any of said counties shall be as provided in section 611 of this Code: *Provided*, that nothing in these sections shall affect any counties having local laws affecting this subject.

Acts 1880-1,
p. 132.
§344.

ARTICLE 9.

BRIDGES IN WHICH UNITED STATES AND OTHER STATES ARE INTERESTED.

Acts 1895,
p. 78.
§367.

§372. *Bridges connecting border counties with adjacent States.* Counties lying adjacent to any river on the border, or forming the boundary between this State and another, shall have the same power, acting by and through the proper county authorities, to build and maintain bridges over such river as the counties of this State now have to build and maintain bridges over streams lying wholly within their borders: *Provided*, that this power shall not be exercised except to co-operate with the proper authorities of the adjacent State in building and maintaining such bridges, and on the principle that each State is to build simultaneously from its own bank to the middle of the river and afterwards maintain and keep up the part of bridge which it has built; no bridge shall be erected under this section at any point where the river exceeds, at low-water mark, one thousand feet in breadth.

Acts 1895,
p. 76.
§367.

§373. *Contract with United States for building bridges, when.* Commissioners or other authorities having jurisdiction of roads and revenues of any county in this State, may contract and pay out of the funds of their respective counties such sums of money as they may deem equitable and just to the authorities of the United States for the fair proportion of such county for the cost of building any bridge that said commissioners or other county authorities may deem necessary to erect across any stream that may divide any county, or part of any county, from lands the jurisdiction over which may have been ceded to the government of the United States for any purpose: *Provided*, it shall forever thereafter be the duty of such authorities of the United States to keep such bridges in repair, and renew them as often as may be necessary, and keep them open for the free and uninterrupted travel of the public.

§§25-28.

§374. *Jurisdiction of United States.* The United States are hereby vested with full and complete jurisdiction over grounds necessary for the erection of piers and approaches to such bridges on each side of such streams, so far as may be necessary for the erection, repair, and protection of such bridges and approaches.

ARTICLE 10.

SYSTEM OF COUNTY DRAINAGE.

Acts 1878-9,
p. 171.
§§3062, 4238.

§375. (491 a.) *System of drainage may be established.* Each county is empowered, whenever the constituted authorities thereof shall

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judge the same to be proper, to establish and maintain a system of drainage of the lowland thereof, and for that purpose may acquire the right of way and other easements necessary for the construction of the canals, ditches, dams, drains, trunks, and other appurtenances incident to such a system. The right of way may be acquired from the landowners with their consent for the consideration of the benefits conferred on them by the drainage established. Whenever a county has already established a system of drainage, and for that purpose acquired easements and made constructions of the character herein specified, the action of such county, and grants of easements made to it, are valid.

§376. *Condemnation for drainage purposes by coast counties.* When-^{Acts 1893,} ever the right to construct public drains cannot be acquired from^{p. 112,} the landowner by contract or grant, it shall be lawful for the coast^{§4685.} counties of this State to construct such drains over any lands belonging to other persons, upon payment or tendering to the owner thereof, or to his legally authorized agent, just and adequate compensation for the right of way, which compensation, when not otherwise agreed on, shall be assessed and determined in the manner provided in this Code for condemning property.

GENERAL NOTE.—*Mandamus* granted against the inferior court to compel them to levy a tax for expenses of a county-site: 5 Ga. 522; 36/398. Where the removal of a county-site was not an impairing of the obligation of contracts: 17 Ga. 56. Discretion of commissioners as to selection of a county-site: 17 Ga. 612. Injunction against an alleged illegal selection of a county-site: 44 Ga. 163. See general note on Municipal Corporations under section 1833.

Failure for forty years, by county authorities, etc., to recognize legislative change in county boundary, not affect right to recognize true boundary, assess taxes, etc.: 92 Ga. 549.

Act of 1828, cutting off from Habersham and adding to Rabun county, contemplated a ridge-line, not an air-line: 79 Ga. 248.

CHAPTER 3.

COUNTY AND MUNICIPAL BONDS.

§377. (508i.) *Notice of election on issue of bonds.* When any county, municipality or division shall desire to incur any bonded debt, as^{Acts 1878-9,} prescribed in paragraphs 1 and 2, section 7, Article 7 of the Consti-^{p. 40.} tution of 1877, the election required shall be called and held as fol-^{§§758, 1866,} lows, to wit: The officers charged with levying taxes, contracting^{5893, 341.} debts, etc., for the county, municipality or division, shall give notice for the space of thirty days next preceding the day of election, in the newspaper in which the sheriff's advertisements for the county are published, notifying the qualified voters that on the day named

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an election will be held to determine the question whether bonds shall be issued by the county, municipality or division. In said notice he shall specify what amount of bonds are to be issued, for what purpose, what interest they are to bear, how much principal and interest to be paid annually, and when to be fully paid off.

Act of October 14th, 1879, is constitutional: 79 Ga. 152.

To have work done to be paid for at completion, or by installments during progress, money ready at time of payment, is not incurring debt: 67 Ga. 106, 107.

This and following sections carry out sections 5893 and 5894 of Constitution: 71 Ga. 485.

Election on February 5th, after publication but twice, to wit, January 21st and February 4th, not compliance with law. That local act itself published before election day described the bonds, not a compliance herewith; nor did fact that only seventeen out of one hundred and eighty-nine voted against bonds cure defective notice: 79 Ga. 709.

Where more than two-thirds of qualified voters voted in favor of measure, irregularity in publication not invalidate: 86 Ga. 605.

Bonds enjoined, if this section not complied with, by notice specifying amount, purpose, terms, etc., of the proposed bonds: 79 Ga. 709.

The notice must specify how much principal and interest would be paid annually: 89 Ga. 674.

Denial, by election, of power to issue school bonds, no denial of right to tax for schools, under city charter previously ratified: 95 Ga. 555, 556.

Acts 1878-9,
p. 40.

§378. (508 j.) *Election, how held.* Said election shall be held at all the voting or election precincts within the limits of the county, municipality or division, and shall be held by the same persons, and in the same manner, under the same rules and regulations that elections for officers of said county, municipality or division are held, and the returns shall be made to the officers calling or ordering the election, who shall, in the presence and together with the several managers (who bring up the returns), consolidate said returns and declare the result.

Acts 1878-9,
p. 40.

§379. (508 k.) *Bonds may be issued, when.* When said notice is given and said election held in accordance with the preceding section, if the requisite two-thirds of the voters of the county, municipality or division at said election vote for bonds, then the authority to issue the bonds in accordance with paragraphs 1 and 2, section 7, Article 7 of the Constitution is hereby given to the proper officers of said county, municipality or division.

Acts 1878-9,
p. 40.

§380. (508 l.) *Number of votes, how ascertained.* In determining the question whether or not two-thirds of the qualified voters in said county, municipality or division voted in favor of the issuance of said bonds, the tally-sheets of the last general election held in said county, municipality or division shall be taken as a correct enumeration of the qualified voters thereof.

 Change of county lines.

Where registration law provided for city, number of voters registered true test whether two-thirds qualified voters favor issue of municipal bonds: 86 Ga. 132.

Registration of voters not the test of number of qualified voters here; this section furnishes test: 91 Ga. 139; see also 89 Ga. 476.

§381. (508 m.) *Collection of bonds.* The owners of said bonds, when due, may, if necessary, enforce the collection thereof by suit in the proper court. Acts 1878-9, p. 40. §341.

GENERAL NOTE.—Election to issue bonds to repair county bridges must be held under general law: 76 Ga. 766.

Issuance of city bonds enjoined for irregularity in advertising election, and for want of authority: 92 Ga. 560-563.

 CHAPTER 4.

CHANGE OF COUNTY LINES.

§382. (508 n.) *Change of county lines.* Whenever a citizen or any number of citizens of any county shall desire to have the boundary line of the county of his or their residence changed, they shall file in the office of the ordinaries of the counties to be affected, at least ninety days before the first day of the next term of the superior court of the counties whose boundaries are to be affected, a petition in writing, setting forth the exact character of the change to be made, specifying particularly the situation, direction and existing marks and monuments, if any, of the original line, and describing particularly the direction, location and length of the proposed new line, and setting forth the reasons for such change. The person or persons applying for such change shall also give notice of the intention to apply for such change, by publishing the same for at least thirty days next preceding the terms of the superior court to be held in the counties to be affected, which terms shall be those occurring next after the filing of the petition with the ordinaries, by publishing such notice in a public gazette having general circulation in each of the counties to be affected by the change, and by posting at the door of the court-house in each of such counties, and at three public places in every militia district adjacent to the line to be changed, a like notice of the intention to apply for such change, and such posting shall be for a period at least of thirty days next preceding the terms of the superior court to be held in the counties next after the posting of the notice aforesaid. Acts 1880-1, p. 52. §526.

§383. (508 o.) *Change, how effected.* It shall be the duty of the ordinaries of the counties whose dividing line is sought to be changed, to lay before the grand juries of their respective counties, on the first day of the term of the superior courts to be held next after the Acts 1880-1, pp. 52, 53.

Settling disputed county lines.

publication of the notice and the filing of the petition provided for in the preceding section, the original petition, together with all maps, plats and other papers that may have been filed therewith, and if such grand juries shall, by a two-thirds vote of their respective bodies, approve the change applied for, they shall so declare in their general presentments, and this action of the grand juries shall be certified at once by the clerks of such superior courts to the ordinaries, board of commissioners of roads and revenues, or other officer having the control of county business in the counties to be affected, who shall, within thirty days from the date of such certification, approve or disapprove the application, and certify their action to the ordinaries of their respective counties. When said ordinaries shall have satisfactory evidence of the concurrent approval of the grand juries, and of the officer or officers charged with the control of county business in the counties to be affected, they shall cause to be published for at least thirty days, in a public gazette having general circulation in their respective counties, an official notice of such concurrent approval and a description of the line approved.

Acts 1880-1,
p. 53.

§384. (508 r.) *Change effected, when.* When all the proceedings shall have been had in the manner prescribed in the preceding sections, and when the same shall have been fairly recorded by said ordinaries on the minutes of their respective courts, the new line or lines shall be held to have been established in lieu of the original line or lines.

Acts 1880-1,
p. 53.

§385. (508 s.) *Costs to be paid by applicant.* The entire costs of advertising and recording the petition, descriptions and all other papers and proceedings relating to the proposed change, shall be paid by the person or persons applying therefor.

CHAPTER 5.

SETTLING DISPUTED COUNTY LINES.

Acts 1887,
p. 106.
§30.

§386. *Proceedings to settle dispute as to county lines.* Wherever the boundary line between two or more counties in this State shall be in dispute, and the grand jury of either county shall present that the same requires to be marked out and defined, it shall be the duty of the clerk of the superior court in the county where such presentments were made to certify such presentments to the Governor, and the Governor shall appoint some suitable and competent surveyor who shall not reside in either county, to survey, mark out and define the boundary line in dispute, and return such survey with plat to the secretary of State's office to be recorded in a book to be kept for that purpose.

Change of county-sites.

§387. *Survey final.* When such survey shall have been made, returned and recorded, as provided in the preceding section, it shall be final and conclusive as to the boundary line in dispute. Acts 1887, p. 106.

§388. *Compensation of surveyor.* The surveyor shall receive as compensation the sum of ten dollars per day while actually engaged in making the survey; he shall not be allowed more than five dollars per day for the paying of chain-carriers, flag-bearers and other laborers necessary to clearly mark out and define such line. Acts 1887, p. 106.

§389. *Paid by each county.* The fees and expenses allowed in the preceding section shall be divided equally and chargeable to the counties interested in the establishment of such line, upon the affidavit of the surveyor. Acts 1887, p. 106.

§390. *Notice of survey.* Before the surveyor shall proceed to make the survey, he shall by mail or personally give the authorities having charge of the revenues of the counties at least ten days notice of the time and place intended to commence the survey. Acts 1887, p. 106.

CHAPTER 6.

CHANGE OF COUNTY-SITES.

§391. (508 x.) *Application for change, how made.* Whenever two-fifths of the poll-taxpayers (as shown by the tax-receiver's digest last made out) of any county in this State shall petition the ordinary for the removal or change of the county-site of said county, said ordinary shall at once grant an order directing an election to be held at the various election precincts in said county, not less than forty, nor more than sixty days thereafter, notice of which election shall be published weekly for four weeks, in the newspaper in which the sheriff publishes his legal notices, previous to the day of said election; all persons qualified to vote for members of the General Assembly are qualified to vote at said election: *Provided*, that elections under this section shall not occur oftener than once in five years. Acts 1878-9, p. 44. 1887, p. 39. §5927.

§392. (508 y.) *Election, how conducted.* Said election shall be held and conducted, and returns made thereof, as is provided by law for members of the General Assembly. Acts 1878-9, p. 44.

§393. (508 z.) *Indorsement on ballots.* At said election all voters in favor of removal, and to what place, shall indorse on their ballots "For removal," and those who are opposed to removal shall indorse on their ballots "Against removal," and if two-thirds of the votes cast at said election are in favor of removal to any one particular place, the General Assembly next convening after said election, may provide for the removal of said county-site by appropriate legislation. Acts 1878-9, p. 44.

County revenue; from taxation; special and extra tax.

Acts 1878-9,
p. 44.

§394. (508 aa.) *Evidence of election.* The certificate of the secretary of State, showing that said election was held, and that two-thirds of the qualified voters of said county (as indicated by the tax digest) voted at said election in favor of "removal," shall be sufficient evidence of the holding of said election and the number of votes cast.

CHAPTER 7.

COUNTY REVENUE.

ARTICLE 1.

FROM TAXATION.

SECTION 1.

SPECIAL AND EXTRA TAX.

§§4238, 771,
5892, 404.

§395. (502.) *Extra tax, how levied.* The ordinaries of the several counties have the power to levy an extra tax sufficient to carry into effect sections 351 and 352, without a recommendation by the grand jury, whenever the necessities arise.

Section cited and construed: 47 Ga. 639; 64/501. Illegality to tax *fi. fa.* dismissed, and various decisions relative to, discussed: 60 Ga. 351.

County compellable by *mandamus* to pay judgment for injury from defective bridge. Under Constitution (section 5892) and this section, tax therefor leviable: 78 Ga. 28.

§§399, 403,
903, 415.

§396. (503.) *On failure to levy an extra tax.* If such ordinaries 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.

When order of ordinary levying extra tax is not void: 53 Ga. 194. Discretion of ordinary as to tax can be reviewed by the superior court by injunction or *mandamus*: 52 Ga. 233. As to the extra tax: 60 Ga. 351.

In discretion of county commissioners whether to pay for repairs by levying tax or issuing bonds under the law: 76 Ga. 766.

Conduct of county commissioners of Chatham county reviewed in same manner as ordinary's: 77 Ga. 336.

Acts 1880-1,
p. 49.
§5892.

§397. (514 a.) *Tax for support of paupers.* The county authorities who are charged with the control of the finances of their county are

Tax for county purposes, generally; how levied.

authorized to levy a tax for the support of the paupers of their county, which shall not exceed twenty-five per cent. upon the amount of the State tax for the year such pauper tax is levied.

§398. (515.) *Tax not sufficient.* 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.

SECTION 2.

TAX FOR COUNTY PURPOSES, GENERALLY; HOW LEVIED.

§399. (509.) *Tax for county purposes.* The ordinaries have power to raise a tax for county purposes, over and above the tax they are hereinbefore 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. Act 1821,
Cobb, 184.
§§4238, 5892.

Bond taken from the tax-collector for the due collection of such tax, as well as all proceedings on the bond, void, where this has been done before such recommendation: 18 Ga. 47. A tax levied wrongfully for school fund, under this section, cannot be directed to county purposes, *nunc pro tunc*: 20 Ga. 102-104. A tax for public buildings, assessed under an act authorizing an extra tax for county purposes, is void: 27 Ga. 354. There is no power to levy an extra tax for county purposes on the capital stock of a bank: 28 Ga. 121. By virtue of the power granted in this section, a tax so recommended might be imposed to pay petit jurors, and for paling in the court-house: 34 Ga. 370. Abuse of the taxing power will not be presumed: 34 Ga. 370. Power as to taxation enlarged by the Code: 34 Ga. 370. What not subject to county tax, where capital stock of a railroad taxed as specified in the charter, any other like property taxed by the county: 40 Ga. 647. Where an extra tax, not to exceed fifty per cent. of the amount of the State tax for the year it is levied: 47 Ga. 639. Injunction against tax: 42 Ga. 229. One hundred per cent. of the county tax of 199 per cent. was recommended by the grand jury, and the rest of the tax authorized by the local act: 60 Ga. 349. Refers to this last case above, and is governed by it: 60 Ga. 298. Tax for the smallpox; the third section of the Act of 1866 authorizing a tax for, is law although it was not inserted in the Code of 1873: 52 Ga. 406.

County taxes are not due the State, and are not preferred like State taxes in distribution of decedent's estate: 69 Ga. 326.

§400. (510.) *Duty of ordinary.* It is the duty of such ordinaries to see that by the time of the organization of such grand jury they shall have prepared 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

Purposes for which county tax may be assessed.

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.

Acts 1880-1,
p. 41.

§401. (511.) *Failure of grand jury to recommend.* If from any cause such grand jury is not impaneled, 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 ordinaries may levy the necessary tax without such recommendation. And in all cases when the spring term of the superior court of any county in this State be adjourned before the grand jury shall have made their general presentments, the officer whose duty it may be to levy a county tax shall levy the same to the full extent and for any purpose that a recommendation of such grand jury would have authorized: *Provided*, such tax shall not exceed the levy last recommended by a grand jury for such county.

Under this section the ordinary had in this case only the right to levy such tax, not exceeding fifty per cent. of the State tax: 42 Ga. 229. Where part of the tax was recommended by the grand jury, and the rest was authorized by the local act: 60 Ga. 351. Refers to above case, and that seventy-five per cent. of the tax in that case was for bridges, which needed no recommendation of the grand jury: 60 Ga. 298. Construing this section and section 399 limits the tax still to fifty per cent. on the State tax: 52 Ga. 234-238.

§402. (512.) *Where there are several grand juries.* Where there are several grand juries impaneled 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.

§403. (513.) *County creditors and taxpayers.* The right of a creditor of a county to compel such tax levied, or of a taxpayer to resist it, is the same as set forth in section 396, touching tax for building.

SECTION 3.

PURPOSES FOR WHICH COUNTY TAX MAY BE ASSESSED.

§§4238, 395,
5892.

§404. (514.) *Objects of county tax.* County taxes shall be assessed for the following purposes:

Every order assessing a tax should specify the per cent. laid for each of nine specific purposes mentioned in this section: 39 Ga. 56-58.

§§381, 341.

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.

Assessment and collection of taxes.

Where seventy-five per cent. of the tax was for bridges, which needed no recommendation of the grand jury: 60 Ga. 298. As to what limits in the tax for bridges: 34 Ga. 370.

Taxing power of counties sufficiently broad to raise revenue to pay damage caused by constructing bridge or road: 85 Ga. 420.

3. To pay sheriffs', jailers', or other officers' fees that they may be legally entitled to, out of the county.

The legislature may provide for the payment of such costs as are not paid by the fines and forfeitures fund, by a levy of a tax: 39 Ga. 578.

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.

Section cited and construed: 48 Ga. 349. No pay to non-resident witnesses of the county for testifying before a committing court: 65 Ga. 384. List of statutes relating to this subject: 34 Ga. 370. Tax for the county poor: 34 Ga. 370. Tax raised illegally: 20 Ga. 102. On this section and section 405: 39 Ga. 56. Tax to compensate the owners of town lots for damages sustained by removal of the county-site: 43 Ga. 258.

6. To pay jurors a *per diem* compensation.

7. To pay expenses incurred in supporting the poor of the county, §426. 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.

No authority of law for publishing grand-jury presentments at public expense: 82 Ga. 252.

Claim against public treasury must be clearly referable to a law authorizing it: 82 Ga. 252; see also 60 Ga. 612; 58/384.

Taxing power of counties sufficiently broad to raise revenue to pay damage caused by constructing bridge or road: 85 Ga. 420.

SECTION 4.

ASSESSMENT AND COLLECTION OF TAXES.

§405. (516.) *Order must specify.* As soon as the county tax is assessed for the year, it shall be done by order of such ordinaries 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. Acts 1862-3, p. 60. §4238.

On this section and section 514: 39 Ga. 56. Section cited, and the order should specify the object and purposes for which the extra tax was levied: 47

Assessment and collection of taxes.

Ga. 639. The section cited, and the Constitution of 1877 in regard to taxes commented on: 64 Ga. 498-500.

§406. (517.) *Order to be advertised.* The ordinaries 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.

§§361, 199
(8).

§407. (518.) *Taxes for specified purposes.* 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.

§894.

§408. (519.) *How collected and paid out.* All taxes 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.

§468.

§409. (519.) *Jury certificates to be received.* It shall be the duty of the tax-collector to receive jury certificates when properly authenticated, as far as they will go toward paying the county tax of the person holding the same, for all taxes due by the taxpayers of this State to their respective counties.

Cited: 74 Ga. 817.

§410. (520.) *Collector's fees.* The tax-collectors 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.

Acts 1861,
p. 81.
§§967, 774,
941.

§411. (521.) *Commissions, how assessed.* The ordinaries, in allowing collectors their commissions for collecting the taxes levied by their respective counties, are authorized and required to aggregate the taxes for the various purposes levied, and to allow commissions on the whole amount, in accordance with the schedule from which the comptroller-general is authorized to allow commissions to collectors for collecting the State tax.

Act 1796,
Cobb, 182.
Act 1815,
Cobb, 1062.
Act 1825,
Cobb, 1066.
§§894-908,
874-879.

§412. (522.) *Payment, how enforced.* 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 ordinaries.

The Act of 1796 was constitutional as far as it conferred the right to issue executions against collectors, receivers, etc.: 5 Ga. 186-193. When the comptroller-general could not issue an execution against one purporting to be a tax-collector, and who was in default: 3 Ga. 233-238. Section cited and commented on: 47 Ga. 639-642. Section cited, and no notice need be given where *tax fi. fa.* against tax-collectors and sureties: 60 Ga. 296.

§416.

§413. (523.) *Fi. fa. against persons holding county money.* Such ordinaries shall also have authority to compel all persons, their heirs, executors or administrators, who have or may have in their

Assessment and collection of taxes.

hands any county money, collected for any county purpose whatever, to pay over the same.

The law in this section discussed: 11 Ga. 335. A *fi. fa.* issued by the ordinary against the administratrix of a former tax-collector and his sureties for his default: 60 Ga. 298.

§414. (524.) *On failure to pay.* On failure to pay the same, such ^{Act 1796,} ^{Cobb, 182.} ^{§§924, 469,} ^{206 (6).} ordinaries shall 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.

The Act of 1796 was constitutional, so far as it gave the right to issue executions against collectors, receivers, etc.: 5 Ga. 186—193.

Section cited: 60 Ga. 298; 68/666.

Execution against tax-collector and sureties as on bond, not good against tax-collector's estate, he not having signed bond: 68 Ga. 665, 667, 668.

§415. (525.) *Illegality.* If such execution shall issue for too much, ^{§§903, 396.} or if defendant 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.

Act of 1804 (Cobb, 1051), prohibiting judicial interference with the collection of taxes, does not extend to county taxes: 27 Ga. 354—357. A tax-collector should not say the tax was illegal: 60 Ga. 297. A *fi. fa.* against the ordinary may be contested by illegality: 54 Ga. 498. Affidavit of illegality by administratrix of a collector: 60 Ga. 296; 68/666.

Conclusions of witnesses irrelevant on trial of illegality: 77 Ga. 163.

Defense available only to sureties, not set up by principal: 77 Ga. 164.

County execution against tax-collector *prima facie* case for county; met by illegality, issue made should be tried; dismissal for absence of county attorney without excuse, error: 83 Ga. 275.

§416. (526.) *Persons borrowing county money.* The provisions of the ^{§§413, 418.} foregoing 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.

§417. (527.) *County tax may be remitted.* In all cases where persons ^{Act 1845,} ^{Cobb, 1077.} ^{§§819-853,} ^{139.} have been overtaxed, or for any other cause taxes are claimed to be remitted, refunded, or in any manner claimed against, the ordinaries shall be authorized to hear and determine such application to the extent of the interest of the county therein.

SECTION 5.

PROCEEDINGS AGAINST DEFAULTING TAX-COLLECTORS AND TREASURERS.

Acts 1882-3,
p. 82.
§§ 412-416,
894-908,
874-879.

§418. *Tax-collectors and treasurers to make account of actings.* The officers in the several counties, who by law are authorized to bring defaulting tax-collectors and treasurers to a settlement of their accounts with the county, shall also have power and authority, and it shall be their duty, to compel the tax-collectors and treasurers of their respective counties to come before them at such times as may be designated by them, not less than twice in each year, to render an account of their official actings and doings respecting the county tax and funds, and to make a full and complete exhibit of their books, vouchers, accounts, and all things pertaining to their several offices.

§419. *Failure to account, malpractice.* The failure or refusal of any tax-collector or county treasurer to render the account and make the showing provided for by the preceding section, after being notified so to do by the proper officer or officers, shall constitute malpractice in office, and a conviction therefor shall subject the offender to removal from office. Pending the continuance of such failure or refusal after the notice aforesaid, the officer or officers aforesaid, who are by law authorized in the several counties to bring defaulting tax-collectors and treasurers to a settlement, shall have power and it shall be their duty, to suspend the said tax-collector or treasurer from duty; and in the case of the tax-collector, to appoint some competent person in his stead to collect the county tax pending such suspension and until the question of removal can be passed upon and decided by the proper tribunal; and in case of the treasurer, to appoint some fit and proper person to take charge of the county funds, and perform the duties of his office, pending such suspension and until the question of his removal can be passed upon and decided by the proper tribunal. Proper bonds shall be taken from the persons so appointed, as now provided by law: *Provided, nevertheless,* that the power given by this and the preceding section to inquire into the affairs of the tax-collector and treasurer of the county, and to suspend them from office in certain cases, shall in no way affect their own liability, or that of the sureties on their official bonds.

GENERAL NOTE.—Failure for forty years by county authorities, etc., to recognize legislative change of county boundary, not affect right to recognize true boundary, assess taxes, etc.: 92 Ga. 549.

From liquor licenses and other sources than taxation.

ARTICLE 2.

FROM LIQUOR LICENSES AND OTHER SOURCES THAN TAXATION.

§420. (528.) Sources of county revenue. All sums which are paid into the county treasury for the following accounts make a part of the county revenue, viz.:

Section cited: 64 Ga. 501.

- 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 liquors in any quantity. \$1519.
- 5. From estrays.
- 6. From licenses to peddle.

Section cited: 55 Ga. 686.

Cited: 69 Ga. 743.

- 7. From any other sources.

§421. (529.) Retail licenses, exhibitions, etc. The county charges for such licenses are as follows:

To sell liquors	\$ 25 00	Acts 1890-1. p. 128.
To peddle within the county, unless otherwise provided by the ordinary under the law	50 00	Act 1820, Cobb, 184. Act 1835, Cobb, 185.
To exhibit shows with horses	10 00	\$1526.
To exhibit animals, beasts, and the like	10 00	
To exhibit any pictures or figures	5 00	
To exhibit any other show, not less than \$5.00, nor more than \$25.00, as the ordinary may order.		
To exhibit theatricals or musical entertainments for profits to the proprietor, not more than \$5.00 on each exhibi- tion, and subject to contract with the court.		

Cited: 69 Ga. 743.

No application to the employer of peddler, or others than peddler himself: 84 Ga. 754.

§422. (530.) Licenses for one year. All such licenses, except exhibitions, are for the term of one year, extending to the county limits; but license to sell 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.

License for four months illegal, and will not protect from prosecution: 65 Ga. 157.

§423. (531.) Selling without license. If any person sells liquors without first obtaining license, or, having obtained it, sells at any other or more places than the one fixed in the license, or transfers

County poor; jurisdiction of ordinary.

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.

§424. (532.) *Exhibitions, etc., without license.* 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.

§425. (533.) *Peddling without license.* If any person, except a disabled soldier of this State, peddles without first obtaining such license in counties where the ordinaries 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.

Section cited, who are peddlers, forfeiture: 55 Ga. 686.

Traveling lightning-rod dealer who puts up the rods he sells, is mechanic and not peddler: 76 Ga. 817.

An itinerant, trading by sample, a peddler: 84 Ga. 754.

No application to the employer of peddler, or others than peddler himself: 84 Ga. 754.

License as prerequisite to peddling, where interstate commerce involved, unconstitutional: 84 Ga. 754.

CHAPTER 8.

COUNTY POOR.

ARTICLE 1.

JURISDICTION OF ORDINARY.

Act 1792,
Cobb, 346.
Act 1818,
Cobb, 347.
§401 (7).

§426. (754.) *Paupers.* The general supervision of all paupers is vested in the ordinaries of each county.

The acts cited on the margin confer the right to inquire into the circumstances of the poor, to elect who shall be treated as paupers, and who shall become chargeable to the county, and until this has been done by some act or order, no person can properly be said to be thus chargeable: 16 Ga. 89. Prior to the Code the tax for the support of paupers might extend to one-eighth of one per cent.: 34 Ga. 370.

§427. (755.) *Poorhouses.* They have authority to purchase lands for a poorhouse, 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.

Acts 1865-6,
p. 230.
§404 (7).

§428. (756.) *Pauper farms.* Upon the recommendation of the grand juries of their respective counties, said ordinaries shall have power and authority to purchase a house and farm in their respective counties, upon which farm they may require all paupers in said counties to labor who are not, from old age and disease, unable to work.

Relief to poor Confederate soldiers. Commissioner of the poor and his duty.

§429. (757.) *Tax.* The said ordinaries have authority to lay and collect a tax for the purpose of purchasing said house and farm.

§430. (758.) *Regulation of.* They are also authorized to establish all necessary rules and regulations in the management of said farms.

§431. (759.) *Workshops, etc.* They are further authorized to establish any workshops, and schoolhouses, or churches, on said farms, as they may deem proper, and may do any and everything necessary to carry out the provisions of this and the three sections preceding it.

ARTICLE 2.

RELIEF TO POOR CONFEDERATE SOLDIERS.

§432. *Poor fund to relieve ex-Confederates.* Each and every county in this State is authorized and directed to use so much of the poor fund raised by taxation as may be necessary to provide food and clothing for any ex-Confederate soldier of this State, who may become chargeable upon the poor fund, without compelling him to become an inmate of the poorhouse or poor-farm of said county. Acts 1893,
p. 118.

§433. *Regulations to discover whether applicant entitled.* Whenever any ex-Confederate soldier shall apply to the proper county authority for assistance from the poor fund, it shall be the duty of said county authorities to ascertain whether he is properly entitled to assistance contemplated by the preceding section. Acts 1893,
p. 118.

§434. *Assistance in food and clothing.* The assistance to be rendered shall not be by payments of money, but shall be made in provisions of food and a proper amount of comfortable clothing, to be used wherever he may see fit to reside; it being the intent that no ex-Confederate soldier of Georgia shall be forced to become an inmate of any poorhouse or poor-farm in this State in order to obtain relief from the authorities of the county in which he may reside. Acts 1893,
p. 118.

ARTICLE 3.

COMMISSIONER OF THE POOR AND HIS DUTY.

§435. (760.) *Commissioners of the poor.* The ordinaries shall, if necessary, appoint a commissioner of the poor, and the money arising from the poor tax shall be paid into the hands of the county treasurer, on orders granted in his favor by such ordinaries, or in favor of any other person.

§436. (761.) *Receiver and disburser.* Whoever receives and disburses such fund must, once in every year, at the time such ordina-

Paupers.

ries may order, or oftener if they require, make up his account 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 for the amount as an officer of court.

§437. (762.) *Application of pauper.* Application to be provided for as a pauper may be made at any time to the commissioner of the poor or the ordinary, upon which a hearing must be had, with the least possible delay, by the ordinary, and the person to whom such application is made is authorized to provide for such applicant as other county poor until a hearing is had.

ARTICLE 4.

PAUPERS.

§438. (763.) *Who are paupers.* No person shall be entitled to the benefits of the provision for the poor who is able to maintain himself or herself by 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.

§§2501, 2506,
2508.

§439. (764.) *Parents and children bound to support each other.* 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 this 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: *Provided, always,* the person sued was possessed of such ability.

§440. (765.) *Certificate of the ordinary.* On the trial, the certificate of the ordinary 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.

Act 1863-4,
p. 60.

§441. (766.) *Paupers, how buried.* Whenever any person shall die in this State, whose family and immediate kindred are indigent and unable to provide for the decent interment of such deceased person, and where the deceased is a pauper and destitute of the means of paying for decent interment, the ordinary of the county where said death shall occur, in case there be any pauper funds belonging to the county unexpended, shall appropriate a sufficient amount thereof to provide a decent interment for such deceased pauper, or to reimburse such person as may have expended the same voluntarily—said appropriation not to exceed what is necessary to defray the ordinary funeral expenses of persons dying in humble circumstances in this State.

Paupers.

Where coroner was entitled to reimbursement for burying victims of storm, not as "costs" but under this section: 73 Ga. 806.

§442. (767.) *Persons removing paupers, liability.* 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.

§443. (768.) *County liable, when.* If the person so engaged in^{§341.} 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.

§444. (769.) *Paupers left by migratory companies, etc.* If any person commanding any vessel, or the manager or proprietor of any theatrical, circus, or any other migratory company, or their agent, 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.

§445. (770.) *May be required to give bond.* If such officer is satisfied that such person is or probably will 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 sureties resident in this 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.

§446. (771.) *Such bond to be filed in the office of the ordinary.* Said bond must be filed in the office of the ordinary 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 properly contributed to the maintenance of such pauper.

§447. (773.) *Lunatics.* 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.

CHAPTER 9.

COUNTY OFFICERS.

ARTICLE 1.

COUNTY TREASURER.

SECTION 1.

ELECTION AND OATH.

Act 1825, §448. (542.) *Election and term of treasurer.* County treasurers are
 Cobb, 211. elected by the qualified voters of their respective counties, and hold
 Acts 1827, their offices for two years and until their successors are elected and
 p. 82. qualified.
 §5929.

§449. (543.) *Oath and bond.* No appointment or election is ef-
 fectual until bond and security is given and oath of office taken.

Giving bond and security is a condition precedent before a county treasurer
 can enter on his office (citing Act of 1825, Cobb, p. 211): 9 Ga. 185.

Act 1821, §450. (544.) *How removed.* They may be removed in the same
 Cobb, 211. manner that clerks of the superior courts may be.
 §4366.

§§4238, 4350, §451. (545.) *Vacancies.* Vacancies are filled as vacancies in other
 230. county offices are filled.

§452. (546.) *Qualifications.* No other conditions of eligibility are
 required save those that apply to all other officers, but no other of-
 ficer can be county treasurer.

Act 1838, §453. (547.) *Oath and bond, where filed.* His oath of office must
 Cobb, 215. be entered on the minutes of, and filed in the office of, the ordinary,
 and his official bond must be filed and recorded in said office.

§234. §454. (548.) *Oath.* 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 faith-
 fully collect, disburse, and account for all moneys or other effects of
 the county, and otherwise faithfully discharge all the duties re-
 quired of me by law as county treasurer. So help me God."

SECTION 2.

BOND OF COUNTY TREASURER AND ITS LIEN.

Acts 1889, §455. (549.) *Amount of bond.* They shall also, within thirty days
 p. 51. from their election or appointment, give a bond payable to the ordi-

Duty of county treasurer.

nary of the county, with securities to be by him approved, in a sum which, in his judgment, will be double the amount of the county tax for the ensuing year, receipts from other sources, and cash on hand.

§456. (549 a.) *Bond a lien from time of signature.* When any official bond is executed by any county treasurer, or any person acting as such, the property of said treasurer, or any person so acting, as well as the security or securities on said bond, shall be bound from the time of the execution thereof, for the payment of any and all liability arising from the breach of said bond. Acts 1876, p. 16. §§189, 927.

Sureties not allowed to show by parol that bond was delivered to ordinary with understanding that they were not to be bound till others signed it: 70 Ga. 486.

§457. (550.) *Appointees to fill vacancies must give bond.* The bonds of appointees to fill vacancies shall be likewise in his discretion, taking into consideration the amount that may come into their hands, and for double such amount.

SECTION 3.

DUTY OF COUNTY TREASURER.

§458. (551.) *County funds.* 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.

When the county treasurer is not entitled to commissions out of the county funds: 60 Ga. 556. Since the Act of 1872, the county commissioner, and not the county treasurer, is the legal custodian of the school fund: 60 Ga. 558.

Cited: 69 Ga. 329.

§459. (552.) *Office, where kept.* He must keep his office at the county-site, or at some place within one mile of the court-house. §226.

§460. (553.) *Duty of county treasurers.* It is their duty—

1. To diligently collect from all officers and others all county dues.

Section cited: 64 Ga. 679.

Act 1825,
Cobb, 211
Act 1838,
Cobb, 216.
Acts 1859,
p. 25.

2. To examine the minutes and execution dockets of the different courts of the counties, to demand and receive all moneys appearing to be due thereon, and to institute proceedings against defaulters.

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.

Section cited: 64 Ga. 679.

4. To take a receipt on each order when paid and carefully file it away.

County orders.

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.

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 ordinary levying county taxes.

Failure to keep proper records will not justify offering lower evidence: 77 Ga. 163.

§233.

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 ordinary 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.

8. To appear before the ordinary or grand jury to render an account of his actings and doings as county treasurer, and to exhibit his books and vouchers whenever notified.

Section cited: 64 Ga. 679.

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 ordinary.

§461. (554.) *Books, etc., furnished by the county.* All books and stationery the county treasurer may require must be furnished at the expense of the county.

§462. (555.) *Books, etc., when deposited.* 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 ordinary and afterwards be part of his records.

SECTION 4.

COUNTY ORDERS.

§§199 (8),
206 (7), 720.

§463. (556.) *Order in which the county debts are paid.* 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

County orders.

dates, all such may be likewise paid indiscriminately; when there is not enough to pay all of equal degree, they shall be paid ratably; under all other circumstances, they shall be paid in the order of their dates.

Section construed as to the order of payment: 39 Ga. 56-58.

§464. (557.) *County orders.* No order shall be paid until after five days from its date and delivery, unless otherwise specially ordered, that the ordinary 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.

§465. (558.) *Failure to present county orders.* 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. ^{§199 (15).}

§466. (559.) *Want of funds.* 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. ^{§199 (8).}

§467. (560.) *County orders negotiable.* All county orders are negotiable by delivery or indorsement, and the indorser liable according to the terms of his indorsement, 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 are not legal tender: 63 Ga. 311.

§468. (561.) *Treasurer shall not purchase orders at a discount.* Such treasurer is forbidden 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. ^{§§208, 182.}

Section construed, and cannot show in defense that the one from whom he purchased had not a good title: 47 Ga. 522.

SECTION 5.

PROCEEDINGS AGAINST DEFAULTING TREASURER.

Act 1825,
Cobb, 212.
§§ 924, 206,
416.

§469. (563.) *Treasurer failing to pay over money.* 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 ordinary may issue execution against him and his sureties for the amount due, as against a defaulting tax-collector.

Ten days notice required by the Act of 1825, before execution can issue: 9 Ga. 186-188. *Mandamus* against the county treasurer, and when no order from the inferior court was necessary: 9 Ga. 367-371. *Certiorari* is not the proper remedy where such execution was improperly issued: 29 Ga. 155. County treasurer should not refuse to pay a certificate because there were outstanding claims to the title thereof: 9 Ga. 334-337. Execution against a defaulting tax-collector's estate: 60 Ga. 298. Section cited and commented on: 64 Ga. 679.

Execution issued by ordinary against treasurer abandoning office, legal: 65 Ga. 553.

Defendant entitled to trial by jury after execution issued, and having had such, cannot complain that he did not have it before; execution issued by county commissioners and signed by clerk: 67 Ga. 220.

Separate *fi. fas.* issued against treasurer and his sureties, met by separate affidavits of illegality, and referred to an auditor to take account: 70 Ga. 486.

Homestead of surety on county treasurer's bond subject to *fi. fa.* issued upon failure of treasurer to pay moneys to successor: 76 Ga. 352.

Notice not condition precedent to issuing execution: 77 Ga. 163.

SECTION 6.

FINAL SETTLEMENT AND FEES.

§470. (564.) *Books must be turned over to successor.* 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 ordinary.

§471. (565.) *Final settlement.* 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 court of ordinary, and be final, except for fraud.

Where the tax-collector pays money to the county treasurer by mistake, and can recover it back: 3 Ga. 90. Defense by the county treasurer to a claim against the county, order having been given by the inferior court to pay the

County surveyor and his fees; election, oath, and bond.

creditor, such treasurer cannot go behind the order: 8 Ga. 560. Election of the treasurer of Muscogee county, who is an officer of that county: 33 Ga. 332.

On the Act of 1868, as to the payment of orders: 39 Ga. 56. The county treasurer, and not the ordinary, is now by law the treasurer of the board of education: 45 Ga. 498.

§472. (3703.) *Fees of county treasurer.* County treasurers in the several counties of this State are entitled to receive two and one-half per cent. commission for receiving, and two and one-half per cent. commission for paying out, all sums up to ten thousand dollars; and one and one-fourth per cent. for receiving, and one and one-fourth per cent. for paying out, the excess over ten thousand dollars, for receiving and paying out county funds: *Provided*, that in no case shall the compensation of county treasurers exceed the sum of three thousand dollars per annum.

Acts 1874, p. 20. 1890-1, p. 76.

For making his returns to the grand jury \$ 1 00
For making his returns to the ordinary 1 00

County treasurer entitled to two and one-half per cent. for receiving public funds, and two and one-half per cent. for paying out the same: 54 Ga. 172, 252. No commissions to be retained by county treasurer for money borrowed without authority of law for it: 60 Ga. 556.

ARTICLE 2.

COUNTY SURVEYOR AND HIS FEES.

SECTION 1.

ELECTION, OATH, AND BOND.

§473. (566.) *How elected.* County surveyors are elected, commissioned, qualified, and removed as clerks of the superior courts are, and hold their offices for two years.

§474. (567.) *Failure to elect.* In case there is a failure to elect a person who is commissioned and qualified at the regular time, or a vacancy occurs, the ordinary must appoint such surveyor, until the vacancy is filled according to law.

§4238.

§475. (568.) *When appointed by the court.* If a county surveyor derives his authority from appointment, he needs no commission beyond the order of such ordinary entered on his minutes, of which appointment the Governor of the State must be informed without delay.

§476. (569.) *Oath and bond.* 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, to the best of my skill and knowledge, discharge the duties of surveyor of — county, and that

Act 1847, Cobb, 217.

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.

§477. (570.) *May be removed.* Whether appointed or elected, besides the causes of removal which apply to all officers, he may be removed by the ordinary for want of capacity, on the same proceeding before him, and by him to be decided, that officers are removed in the superior court.

Act 1783,
Cobb, 665.
Act 1784,
Cobb, 670. §478. (571.) *One for each county.* 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.

§479. (572.) *Must take an oath.* 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 ordinary.

SECTION 2.

DUTIES OF COUNTY SURVEYOR.

§480. (573.) *Office, where kept.* The county surveyor may keep his office at his place of abode, if within the limits of the county.

Act 1785,
Cobb, 672.
Act 1838,
Cobb, 215.
§3231. §481. (574.) *Duties.* It is his duty—
1. To punctually observe and carry into effect all such orders as he may receive from the officer who may lawfully command him.

2. To admeasure and lay off dower, to partition lands, to make resurveys, to give plats of all surveys, and to administer all oaths required by law in such cases.

Act 1783,
Cobb, 668. 3. To survey county lines and district lines, or other surveys, in which his county may be interested, whenever required by the ordinary.

Commissioners to lay out militia district, etc., not limited to county surveyor: See section 334; 68 Ga. 354, 358.

§5686. 4. To execute all surveys required by the rule of any court of competent jurisdiction.

Rule of survey taken out pending an action of ejectment should be limited to the purpose for which it was intended: 28 Ga. 465.

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

Duties of county surveyor.

his successor, and when full shall be deposited in the office of the ordinary.

§482. (575.) *Fees.* 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 ordinary, 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.

§483. (577.) *Payment of fees.* If after a county surveyor has made a survey for any person, who neglects to pay him, such surveyor upon making oath before the ordinary of his county of the performance of such service and its value, such ordinary shall issue a *fi. fa.* in the name of the ordinary, for the use of such surveyor, against such defaulter, who may defend himself therefor, in the same manner as persons against whom executions issue who detain county funds.

§484. (578.) *Surveys, when evidence.* 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. §§5686-5690.

Survey by the county surveyor alone is evidence: 58 Ga. 315.
Cited: 71 Ga. 627.

§485. (579.) *Where there is no surveyor.* 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 an adjoining county may officiate.

§486. (580.) *Persons acting.* 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.

§487. *When surveyor disqualified.* When any county surveyor is interested in any survey to be made, the judge of the superior court or the ordinary of the county in which the land is located, upon the application of any party in interest, shall appoint a competent, disinterested surveyor to make the survey, or the order may, in his discretion, be directed to the surveyor of any adjoining county. If the surveyor appointed is not a county surveyor, he shall, before entering on said survey, subscribe before some judicial officer of the county the oath now required of county surveyors. Acts 1882-3,
p. 104.

Coroners.

§488. *Such surveyor's rights.* The rights, powers and duties of the surveyor so appointed shall be the same as those of the county surveyor, and the return of such surveyor shall have the same force and effect as other surveys.

§489. (581.) *False survey.* 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.

Act 1792,
Cobb, 350.

§490. (3702.) *Fees of county surveyors.* 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 one hundred acres	. 3 50
For each hundred acres after the first	. . . . . 1 00
For making a plat, recording, advertising, and transmitting the same to the secretary of State's office	. . . . . 1 25
For entering a <i>caveat</i> , 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 resurvey of land by order of court, of or under one hundred acres, for the first one hundred acres	. . . . . 3 50
For every one hundred acres after the first	. . . . . 1 00
For every other resurvey 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 chain-bearer and provisions	. . . . . 8 00
For each plat of homestead, affidavit and return	. . . . . 5 00
For each additional plat where more than one lot	. . . . . 3 00

Acts 1870,
p. 68.

GENERAL NOTE.—This certificate when not evidence to prove possession: 21 Ga. 113. Also see rules of superior court 55 to 59 inclusive.

ARTICLE 3.

CORONERS.

§491. (582.) *How elected.* Coroners are elected, commissioned, qualified, and removed as clerks of the superior courts are, and hold their offices for two years.

§4238.

§492. (583.) *Ordinaries may appoint.* The ordinaries appoint coroners on the same terms and in the same manner that they do county

Coroners.

surveyors, which appointments take effect as those of county treasurers.

§493. (584.) *Oaths.* Before entering on the duties of his office, §234. 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 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 pretense, 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."

§494. (585.) *Bond.* He must likewise, at the same time, give Act 1823, bond and surety in the sum of five hundred dollars, which may be Cobb, 539. for a greater or less amount, according to the local law now or hereafter in force. He is liable for retaining moneys collected, or otherwise failing to do his duty, as sheriffs are, and is subject to the same proceedings.

On the Acts of 1823 and 1809 (Cobb, p. 200): 12 Ga. 41.

§495. (586.) *Additional bond.* When a coroner has to act in the place of a sheriff, generally or specially, the ordinary may require of him an additional bond, in such sum and with such sureties as in his discretion he may think sufficient to meet the contingency.

§496. (588.) *Shall serve process.* When a sheriff is disqualified, §4781. 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.

Service of process from justice's court on sheriff by constable, good: 66 Ga. 150, 151.

Coroner could not levy *fi. fa.* against sheriff, without this affidavit, *fi. fa.* being directed to all the sheriffs: 72 Ga. 96.

§497. (589.) *Inquests.* It is the duty of the coroner to take inquests as provided in the Penal Code.

Has no vested right to hold inquest and charge the county therefor, unless the law so requires: 50 Ga. 581.

Justice of peace acting as coroner not entitled to costs, unless contingencies provided for in section 4074 existed: 94 Ga. 679.

Notaries public.

CHAPTER 10.

NOTARIES PUBLIC.

Acts 1868,
p. 130.

§498. (1497.) *Notaries public, by whom and when appointed.* The power to appoint notaries public is vested in the judges of the superior courts, and may be exercised by them in vacation as well as in term time.

Acts 1868,
p. 130.

§499. (1498.) *Oath of notaries public.* Before entering on the duties of their office, they shall take and subscribe before the clerk of the superior court the following oath, which shall be entered on his minutes: "I, —, do solemnly swear, or affirm, that I will well and truly perform the duties of a notary public for the county of —, to the best of my ability; and I further swear, or affirm, that I am not the holder of any public money belonging to the State, and unaccounted for. So help me God."

Act 1824,
Cobb, 210.
Acts 1868,
p. 130.

§500. (1499.) *Their term of office.* They hold their offices for four years, revocable at any time by said judges, 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.

Commercial notary holds until successor appointed: 74 Ga. 416.

§501. (1500.) *Age and character of notary.* A notary must be twenty-one years old, or an attorney at law, and of good moral character.

§502. (1501.) *Where their office may be exercised.* Their notarial acts can only be exercised in the county of their residence and appointment. Removal from the county vacates the office.

§§5235, 3620.

§503. (1502.) *Authority of notaries.* They have authority—

1. To take the acknowledgments of all writings relating to commerce or navigation, and to witness such deeds and papers as they are permitted to by law.

May make an affidavit before, to require bail in a trover case, without it being attested under his seal: 58 Ga. 388.

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.

Where no protest legally required, no expense for protest, etc., can be recovered: 29 Ga. 259.

3. To certify to all official acts when required.

Acts 1863-4,
p. 59.

4. To administer oaths in all matters incident to them as commercial officers, and all other oaths which are not by law required to be administered by a particular officer.

Notaries public.

Bail and trover: 58 Ga. 383. Affidavit for the foreclosure of a mortgage is a ministerial act, and can be made before a notary who does not appear to be the attorney's clerk or employee: 50 Ga. 426-434.

5. To exercise all other powers incumbent upon them by commercial usage or the laws of this State.

What a notarial certificate should state, to be sufficient notice of the dishonor of a draft: 1 Ga. 306. Certificate of a notary under the Act of 1836 (Cobb, p. 273), is evidence of non-payment and of notice, where those facts are stated in the certificate: 3 Ga. 486. A notary public also the attorney at law cannot qualify a party to an affidavit for an attachment and take the bond and issue the attachment in a case in which he is employed: 37 Ga. 678. Neither can such an one qualify his client to probate of a mortgage: 46 Ga. 253.

§504. *Not lawful to issue attachments, etc.* It shall not be lawful ^{Acts 1893,} for commercial notaries public to issue attachments or garnishments ^{p. 117.} or to subscribe affidavits or approve bonds for the purpose of issuing ^{§4511.} attachments or garnishments.

§505. (1503.) *Notarial seal and register.* For the authentication of ^{Acts 1863-4,} their notarial acts each notary must provide a seal of office, which ^{p. 59.} shall have for its impression his name officially, and the name of ^{§§5, 226.} the State and county for which he was appointed. After the first of January, 1863, a scrawl shall not be a sufficient notarial seal. No seal is required to his attestation of deeds. He must keep a fair register of all his notarial acts signed by him, together with the date of the transaction.

Need not affix his seal to probate of a deed by the subscribing witness: 46 Ga. 253. Only notarial acts require a seal; so an affidavit for bail in a trover case need not be attested under notary's seal: 58 Ga. 383. No seal required to an affidavit swearing one to a bill in equity: 56 Ga. 578-581. As to certificate of notice and proper evidence of a mailing, to show notice to indorsers: 60 Ga. 347, 348. It is a ministerial act for a son, a notary public, to issue a distress warrant for his father, and this does not vitiate it: 55 Ga. 608. When a seal of, to a paper out of the State, is not sufficient authentication of its being a claim affidavit and bond: 56 Ga. 612.

§506. (3704.) *Fees of notaries public.* The fees of notaries public ^{Act 1792,} are as follows, to wit: ^{Cobb, 352.}

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 to 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

Roads, bridges, ferries, turnpikes, causeways, crossings, etc.; public roads; classification of roads, etc.

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.

Acts 1878-9,
p. 80.

§507. (1503 a.) *Fees of clerks.* The clerk of the superior court shall be entitled to two dollars for all services in issuing certificates of appointment of commercial notaries public, administering the oath and recording the same, which sum shall be in full of all costs in such cases.

CHAPTER 11.

ROADS, BRIDGES, FERRIES, TURNPIKES, CAUSEWAYS, CROSSINGS, ETC.

ARTICLE 1.

PUBLIC ROADS.

SECTION 1.

CLASSIFICATION OF ROADS AND DISTRICTS.

93 Ga. 462. §508. *Rule of the road.* The rule of the road requires travelers with vehicles when meeting to each turn to the right.

§§2233, 5. §509. (597.) *Public roads.* All roads laid out for public use by an Act of the General Assembly, if not otherwise provided, or by an order of the ordinary, are declared to be public roads.

When a neighborhood road is not a public road: 61 Ga. 156; 55/310.

Act 1799,
Cobb, 943.
Acts 1877,
p. 14.
Act 1800,
Cobb, 945.
Act 1818,
Cobb, 949.

§510. (598.) *Size, extent, foot-logs, etc.* Public roads 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. And at all places on said public roads, where water may pond or flow, during any season, or for any considerable period in each year, so as to prevent the dry and convenient passage of pedestrians, the road hands shall place foot-logs or other convenient passways; the same to be so constructed as to be at all times above high-water mark at such place or places.

Public road register.

§511. (599.) *Roads may be classified.* The several ordinaries of this State, with the concurrence of a majority of the road commissioners of their respective counties, shall designate such public roads in their respective counties, as in their discretion should be so designated, as second-class roads. Acts 1870, p. 397.

§512. (600.) *Width of second-class roads.* All roads so designated shall be cleared of all stumps, trees, grubs, and bushes, at least twenty feet, and of such limbs of trees as may inconvenience horsemen or carriages; the stumps to be cut as nearly even with the surface as possible, and the carriage-track must be at least five feet and six inches wide; said roads shall be managed according to the road laws of this State, as far as the same may be applicable. Acts 1870, p. 397.

§513. *Third-class roads.* Third-class roads shall be cleared of all stumps, trees, grubs, and bushes, at least sixteen feet wide, and of all limbs of trees that may inconvenience horsemen or carriages; the stumps to be cut as near the surface as possible, and the carriage-track must be at least five feet and six inches in width; and said roads shall be changed, worked, and managed according to the road laws of this State, as far as the same may be applicable. Acts 1894, p. 100.

§514. (601.) *Bridges and causeways.* All bridges or causeways over small watercourses, and causeways over swamps or lowlands, 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. Act 1818, Cobb, 949.

§515. (602.) *Road districts and apportionment of hands.* The ordinaries must lay off their respective counties into road districts, and apportion the roads and hands so as to divide the labor and expenses on account of roads, causeways and bridges, equally throughout said counties; all of which proceedings must be entered on the minutes. Act 1818, Cobb, 946.

SECTION 2.

PUBLIC ROAD REGISTER.

§516. (603.) *Public road registers.* The county commissioners, and the ordinaries where there are no county commissioners, shall prepare and keep in their offices, open to the inspection of the public, a well-bound book, to be known as the "Public road register," in which they shall have entered a list of all the public roads and road districts in the county subject to be worked at the county expense. Said register shall correctly show the length, and define the width of each road, together with a general description of every public road on said list; and shall also contain a plat of each road, whenever such plat may Acts 1890-1, p. 134.

Public road register.

be necessary to clearly and accurately define its line. Said register shall be altered from time to time by said commissioners or ordinaries, as new roads are established, or old ones altered or discontinued. It shall be unlawful for the county authorities having charge of working the public roads of the county to work, directly or indirectly, any road or part of road that is not found on said register, or to continue to work any road or part of road after the same has been stricken from said register by said county commissioners or ordinaries.

Acts 1890-1,
p. 134.

§517. *Penalty for encroaching on registered road.* If any person shall encroach upon any public road that has been registered as aforesaid, by erecting thereon, or upon any part thereof, a fence or building, or part of any fence or building or other structure, or if he shall in any other manner appropriate to his own exclusive use any part of any road registered as aforesaid, and shall fail to remove such fence, building or other structure or encroachment upon the lines of such registered roads, within two days after being notified to do so by any road overseer, superintendent of roads, or road commissioner of the county, he shall be guilty of a misdemeanor.

Discontinuance of road to be registered : 70 Ga. 704.

Acts 1890-1,
p. 134.

§518. *Obstructing such road.* If any person shall obstruct any road registered as aforesaid, by building a fence, or felling a tree, or cutting a ditch in or across it, or any part of it; or shall make or place in or across any such registered road, or part thereof, any obstruction of any kind which renders the use of said road unsafe or inconvenient; or shall dig or plow up the surface of any registered public road or remove any dirt or rocks from the same; or shall fill with dirt or obstruct any side ditch or drain of any public road, such person shall be guilty of a misdemeanor: *Provided*, that this section shall not prohibit the duly authorized acts of the public officers of the county.

Acts 1890-1,
p. 134.

§519. *Objections by landowners.* Whenever any landowner shall believe that the lines of any public road registered as aforesaid encroach upon his property, he shall apply in writing to the county commissioners, or to the ordinary in counties where there are no county commissioners, to re-establish the lines of said road so far as the same touches his land, and no work shall be done on said road, upon the part thereof in dispute, until the issue thus raised has been finally determined. If on such application such landowner is dissatisfied with the decision made by the commissioners or ordinary, he shall at once petition such commissioners or ordinary to issue a warrant directed to the sheriff of the county to summon from the vicinage a jury of freeholders to try such question of the true lines of said road, and the subsequent proceedings shall be the same as

Roads; how laid out, altered, or discontinued.

now prescribed in cases of landowners aggrieved by reason of any road proposed to be laid out through their lands: *Provided, however,* that this and the three preceding sections shall not become operative in any county until the grand jury of said county shall so recommend.

SECTION 3.

ROADS; HOW LAID OUT, ALTERED, OR DISCONTINUED.

§520. (604.) *Public roads, how laid out or altered.* On application for any new road, or alteration in an old road, the ordinary 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 ordinaries that it was laid out and marked conformably to law. Act 1818,
Cobb, 947.
§§ 509, 584.

What is an order for the alteration of a road, and where an injunction was refused: 22 Ga. 369. *Certiorari* is the remedy in road cases: 22 Ga. 369. To open a road which has ceased to be public, and remove fences, are trespasses: 22 Ga. 369. Indispensable that the commissioners take the oath: 30 Ga. 723. Construed, and it is discretionary with the county authorities, where they follow the law: 54 Ga. 187-189. The only legal alteration of a road must be by order of the court or permanent user: 48 Ga. 568, 569.

Petitioners for new road incompetent, when objected to, to pass on damages between landowner and county: 78 Ga. 199.

Public road laid off in accordance with law, landowner's sole remedy is damages: 85 Ga. 697.

Report merely discontinuing old road, incomplete; if county commissioners adopt different scheme, their judgment should show where new road would run: 79 Ga. 792.

§521. (605.) *Notice of application.* If such ordinaries, on the investigation had, are willing to grant such road, or make alteration in an old road, they shall 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. §1685.

Certiorari is the remedy to correct any errors, and if new road applied for or any alteration therein, there should be a citation for thirty days published: 54 Ga. 189.

County must pay for land used in widening road, not more than public needs, though more than recited in order, and though order requires no expense to county: 89 Ga. 615.

Work on public roads.

§522. (606.) *Persons in possession to be notified.* 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 be forever after estopped.

Section cited: 48 Ga. 566-569.

Recital that notice given, in order of road board, is not evidence of the fact: 89 Ga. 615.

§523. (607.) *Void roads.* All public roads established without a substantial compliance with the provisions of the last-named sections, are void.

§524. (608.) *Discontinuance of roads.* Applications for the discontinuance of an old road, in whole or in part, must likewise be made to such ordinaries in writing, and likewise published, before it shall take effect.

When a citation to alter a road may involve the discontinuance thereof: 54 Ga. 189.

Opening of a more direct road does not operate as a discontinuance: 70 Ga. 704.

Abandonment of road is not a forfeiture; to discontinue, proceedings must be had: 70 Ga. 704.

Act 1818,
Cobb, 951.

§525. (609.) *Public roads must be laid out the nearest and best way.* 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 inclosed grounds.

SECTION 4.

WORK ON PUBLIC ROADS.

Act 1818,
Cobb, 947.
Acts 1865-6,
pp. 23, 78.
1870, p. 399.
1871-2, p. 19.
1876, p. 20.

§526. (610.) *Persons subject to road duty, and who exempt.* All male inhabitants, in this State, between the ages of sixteen and fifty years, shall be subject to work on the public roads, except ordained ministers of the gospel, who are in the regular discharge of ministerial duty, and in charge of one or more churches, and all men who have lost one arm or one leg. It shall be the duty of the superintendent of the Lunatic Asylum, Asylum for the Deaf and Dumb, and the Academy for the Blind, to furnish, under oath, to the ordinary or the commissioners of roads and revenues, where such officers exist, and where these institutions are located, a list of guards, watchmen, cooks, nurses and attendants employed on the first day of April of each year, and all such employees shall be exempt from road duty.

Work on public roads.

The lessees of the penitentiary convicts are required to furnish to the officers in charge of the roads in each county of the State where they are employed, a list, under oath, of all guards employed, and said guards or convicts shall be exempt by paying one dollar per day for each day of road working for which they are summoned and said roads are worked.

§527. (611.) *When hands are compelled to work.* 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, or be the nearest public road to their residence, except in opening a new road, when all the road hands of the road district are subject to work upon it. Acts 1878-9, p. 48.

§528. (612.) *Length of time to work.* Road hands are not required to work exceeding five days at one time consecutively, or 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. Act 1818, Cobb, 947.

§529. (613.) *List of hands.* The several managers and employers of male persons shall, whenever required, furnish the overseers of the road district with a list (in writing) of those who are liable to work on the public roads, signed by them, under a penalty of paying three dollars for each male person of color so liable to road duty, and whose names are not furnished, to be collected as fines for not working the roads. Acts 1865-6, p. 23.

§530. (614.) *Road hands, how summoned.* 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.

Notice need not be in writing. One day here does not mean twenty-four hours, but the day before: 72 Ga. 437.

§531. (615.) *What the notice must contain.* Such summons must state the road to be worked, the time and place for meeting, and the implements required.

Summons need not be in writing: 72 Ga. 437.

§532. (616.) *Overseer, his duty.* 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, and report all hands who may be in default, upon their several roads, without receiving therefor any part of the fines which may be collected from said defaulters; and, upon failure to report any defaulter or defaulters (and upon conviction thereof before the commissioners), shall be fined five dollars for each defaulter he so fails to return. Acts 1876, p. 19.

Work on public roads.

Acts 1880-1,
p. 139. §533. (616 a.) *Extraordinary work.* The county authorities of the several counties, having charge of the roads and revenues of each of said counties, are authorized and required to provide for the grading of the public roads of their respective counties, where said roads are too steep, too rough or too boggy for practical use or the hauling of ordinary loads; and said officials are authorized and required to provide for any other extraordinary work on the public roads of their respective counties which cannot be done by the road hands subject to road duty under the laws of this State.

Acts 1880-1,
p. 139. §534. (616 b.) *By what means to be done.* Said officials may have said work enumerated in the preceding section done by use of the county chain-gang, by contract let to the lowest and best bidder, or otherwise as may be to the best interest of their respective counties; and said officials shall be authorized to pay for said work out of any funds of their said counties not otherwise appropriated.

Acts 1880-1,
p. 139. §535. (616 c.) *Selection of roads by grand jury.* The grand juries of the respective counties are authorized to select such roads or sections of roads, if in their judgment any such roads exist in their respective counties, as cannot be made passable by the hands accessible thereto, and shall recommend to the ordinaries, or boards of roads and revenues, or county judges (as the case may be), existing in their respective counties, to have said road put in proper order as provided in the two preceding sections, and they shall also recommend the manner in which said work may be done or contract let out.

Acts 1880-1,
p. 139.
1890-1, p. 63. §536. (616 d.) *Culverts, bridges, and new roads.* The provisions of the three preceding sections shall also apply to such culverts and short bridges not less than ten feet in length, and all new roads to be opened in said county, as the grand juries may recommend, as provided in the preceding section.

§537. (617.) *Roads, etc., suddenly becoming impassable.* When any road, or bridge, or causeway may become suddenly impassable, it is the duty of such overseer to call out as many hands as necessary to repair the same, after giving one day's notice.

Fine imposed by road commissioners on road overseer for failure to work abutments of certain bridges, was no abuse of discretion: 73 Ga. 146.

§538. (618.) *Special work deducted.* 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.

Acts 1865-6,
p. 23. §539. (619.) *Defaulters may be fined.* Every individual 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

Apportionment of roads.

work, shall be fined not less than one nor more than three dollars for every day he or they fail to work, or be imprisoned, at the discretion of the commissioners.

Section cited; City of Dalton's mayor and council may assess fine for neglect to work streets, the same as road commissioners could do: 53 Ga. 426–428. Does not apply to a party under section 541 of the Code, but must be proceeded against under section 591: 56 Ga. 689.

Failing to work, without excuse, and imprisoned in default of paying fine, legal: 70 Ga. 407.

Fine may be collected by execution, or defaulter imprisoned: 72 Ga. 437.

§540. (620.) *Extraordinary tools, how obtained.* If any other instruments than ordinary farming tools are necessary to keep the roads in repair, the overseers may receive them in exchange for labor of hands, or may apply to the road commissioners in the district in which said instruments are needed, who shall apply to the commissioners of roads and revenues where such exist, otherwise to the ordinary, who may, in their discretion, issue to said road commissioners the needed instruments, taking their receipt for the same, to be returned during the month of January thereafter, or become responsible for the value of the same. Acts 1890-1, p. 64.

SECTION 5.

APPORTIONMENT OF ROADS.

§541. (621.) *Roads may be apportioned.* When a person liable to road duty makes an application to the road commissioners for a proportion of the road for himself and hands to work and keep in repair, they may, in their discretion, parcel off to such applicant some equal and just portion of said road, to be increased or diminished according to the number of hands, to be judged of by the commissioners: *Provided*, that said hands accepting such apportionment shall be amenable and subject to the direction and control of road commissioners, and subject to the same fines or imprisonment, in common with the other road hands, the same as though they had not accepted such apportionment of road. Act 1826, Cobb, 954. Acts 1884-5, p. 55.

Becomes *quasi* road commissioner, and liable to same penalties and punished for neglect of duty in the same way as road commissioners: 56 Ga. 689.

§542. (622.) *Duty of persons to whom apportioned.* 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 com-

 Proceedings against defaulters.

pelled to do any other road work, so long as they perform their work satisfactorily to the commissioners.

§543. (623.) *Persons refusing to accept apportionment.* If the applicants do not accept the portion of road assigned to them by the commissioners, they must still work in common with the other hands of their road districts.

§544. (624.) *Penalty for failure to work.* 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.

Commissioners' court has no jurisdiction of such a case: 56 Ga. 689.

§545. (625.) *Complaint against commissioners.* If such commissioners assign any person a portion of road thus to work, which, taking into consideration his number of hands as compared to the number liable to do road duty on such road, is not an equal share of the labor, any male road-worker of the same road and district may complain to the ordinary at any time, and on giving such persons three days notice thereof, in writing, such ordinary may summarily hear all the evidence, and if they believe the complaint is just, they shall revoke such grant by the commissioners, and have them instantly informed.

 SECTION 6.

PROCEEDINGS AGAINST DEFAULTERS.

§589.

§546. (626.) *Defaulters may file excuse.* 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.

That overseer threatened to report one for tardiness, no excuse for his refusing to work and going home: 72 Ga. 437.

If notice given and defaulter attended, that court not held at proper time immaterial: 72 Ga. 437.

Notice given before Act of 1881 by posting, sufficient: 72 Ga. 437.

Act 1839,
Cobb, 957.
Acts 1865-6,
p. 23.

§547. (627.) *Executions against defaulters.* Such commissioners must issue executions under their hands and seals, or their warrants of arrest, as the case may be, against each defaulter who fails to render a good excuse, directed to any lawful constable, who shall levy and collect the same as executions issued from the justices' courts, or, as the case may be, arrest the defaulter and bring him before the commissioners to abide the judgment of the same.

Duty of overseers; mile-posts; sign-boards, etc.

Arrest under warrant for failing to work, and imprisonment, legal: 70 Ga. 407.

One arrested, etc., under this section, cannot have reviewed, in commissioners' court, judgment previously rendered declaring him defaulter: 95 Ga. 702.

§548. (628.) *Fines, how disposed of.* When such *fi. fas.* or warrants are collected within ten days thereafter, the amounts must be paid to any one of the commissioners. Act 1839, Cobb, 957.

§549. (629.) *Constables may be ruled.* If constables neglect their duty in collecting such *fi. fas.* or fail to pay over the money, or fail to make such arrests and bring the parties arrested before the commissioners, they shall be subject to rule and suit at the instance of such commissioners, as though the *fi. fas.* or warrants had issued from a justice's court. In all cases where executions may be issued against road-hands in the employment of others, notice to the employers of the existence of such execution shall have the force and effect of a garnishment, and shall operate as a lien on what is due or to become due from such employer to such employee, and may be collected as in cases of garnishment. Act 1818, Cobb, 948. Acts 1865-6, p. 23. §4097.

§550. (630.) *Lien of commissioners' judgment.* The lien 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 justice's court in which the road district is situated in whole or in part. §2827.

SECTION 7.

DUTY OF OVERSEERS; MILE-POSTS; SIGN-BOARDS, ETC.

§551. (631.) *Timbers may be used.* Overseers are authorized to make use of any timbers for the use of the roads, and may make contracts with owners of land for such 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, with a certificate of the overseer that he used the timber assessed, must be allowed by the ordinary and paid out of the county treasury. Act 1818, Cobb, 949. §1685.

§552. (632.) *Road to be measured.* 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 Act 1818, Cobb, 951.

Duty of railroads as to roads. Damages, how assessed.

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.

Act 1818,
Cobb, 951.

§553. (633.) *Sign-boards.* 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.

§554. (634.) *Overseers failing to put up posts and boards.* If any overseer fails to comply with the provisions of the two preceding sections, he forfeits not exceeding fifty dollars, to be imposed and collected as other fines against him.

§555. (635.) *Overseers in default.* 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 extremely bad weather or other providential cause, he shall be indicted, and is also liable for all damages at the suit of any person injured by such omission.

SECTION 8.

DUTY OF RAILROADS AS TO ROADS.

Act 1845,
Cobb, 958.
Acts 1851-2,
p. 283.
1859, p. 65.
1860, p. 57.
1872, p. 10.
§571.

§556. (636.) *Railroad hands exempt, when.* Hands liable to road work, employed as laborers on the line of any railroad in 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, is paid one dollar per day for each hand so liable, which money shall be expended in hiring hands to work on the roads.

SECTION 9.

DAMAGES, HOW ASSESSED.

Act 1799,
Cobb, 944.
Acts 1851-2,
p. 280.
§4685.

§557. (637.) *Landowners aggrieved, how redressed.* 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 ordinary, who shall

Damages, how assessed.

issue a warrant under his hand, 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.

It is indispensable that the assessors of damages be sworn: 30 Ga. 723. When compensation for damages is to be given, where there was no evidence that the road had existed for seven years: 36 Ga. 393.

Section cited: 74 Ga. 341.

Public road laid off in accordance with law, landowner's sole remedy is damages: 85 Ga. 697.

§558. (638.) *Jurors incompetent, when.* 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.

§559. (639.) *Trial, how conducted.* 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.

§560. (640.) *Notice of trial.* 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.

§561. (641.) *Time and place of trial.* 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.

§562. (642.) *Objections to jurors.* At the trial any person in interest may object to the impaneling of any juror for cause, and if from this or any other cause there are not twelve jurors impaneled and sworn, the sheriff must proceed to procure tales jurors.

§563. (643.) *Trial may be postponed.* 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.

§564. (644.) *Mistrial.* If a mistrial 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.

Such proceedings legal: 32 Ga. 414.

Section cited: 74 Ga. 341.

§565. (645.) *Certiorari.* The judgment in such cases may be ^{§4829.} *certiorated* 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.

Overseers' neglect; proceedings against railroads and others for obstructions, etc.

Certiorari is the remedy for errors in road cases: 22 Ga. 369. Construed: 57 Ga. 495; 54/189.

§566. (646.) *Order for damages.* When such judgment becomes final, all the papers appertaining thereto must be filed in the office of the ordinary, who must grant an order for the damages assessed in favor of the landowner; but if such ordinary is satisfied that such damages transcend the utility of such road, or that part of it, he 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 the ordinary may think just.

§1685. §567. (647.) *Value of land, how estimated.* 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.

§§3798, 636. §568. (648.) *Consequential damages.* 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.

Case of land taken for a bridge, the prospective and consequential damages for the same, where they are plain: 17 Ga. 30.

Incidental benefit to one from construction of railroad over his lands, not set-off against damage from negligent construction: 69 Ga. 396.

SECTION 10.

OVERSEER'S NEGLECT; PROCEEDINGS AGAINST RAILROADS AND OTHERS FOR OBSTRUCTIONS, ETC.

Act 1818,
Cobb, 948. §569. (649.) *Overseer neglecting duty, etc.* 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.

Acts 1859,
p. 65. §570. (650.) *Altering or obstructing public road, penalty.* 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 shall be liable besides, by suit, for all damages any person may sustain thereby.

Alternative road law.

To maintain an action for an injury received from an obstruction, two things must concur—an obstruction in the road by the fault of the defendant, and no want of ordinary care to avoid it on the part of the plaintiff: 17 Ga. 136.

§571. *Commissioners or ordinary may sue railroads.* Commissioners of roads and revenues, or ordinaries in counties where there are no commissioners, are empowered to bring any action against any railroad corporation that may be necessary or proper to sustain the rights of the public in and to any highway in any county, and to enforce the performance of any duty enjoined upon any railroad corporation in relation to any highway in any county in this State, and to maintain action for damages or expenses which any county may sustain or may be put to in consequence of any act or omission of any such corporation in relation to highways. Acts 1889, p. 102. §§2233, 556.

§572. (651.) *Obstructions not removed, fine, etc.* 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 a convenient way, at the time of the obstructions, 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. Act 1818, Cobb, 949. Acts 1853-4, p. 98.

GENERAL NOTE.—How the State may construct roads: 6 Ga. 130. Where injunction granted against the opening of a public road over the uninclosed land of a citizen: 9 Ga. 341–358. Discontinuance of an old road: 20 Ga. 126. Jurisdiction over roads vested formerly in the inferior court: 22 Ga. 369. Use of a road by the public for thirty years authorizes the presumption of a grant to the public: 26 Ga. 665. Private road: 26 Ga. 665. The public has only a restricted prescriptive right to a road where passage has been permitted by the owner, he keeping gates at both ends of the road: 30 Ga. 896. There being no evidence that the road in controversy existed for seven years, it is not to be declared a public road without providing compensation to the landowners for damages sustained: 36 Ga. 393. When it is no breach of warranty that there exists a public road on the land purchased: 56 Ga. 515.

See note to section 3591.

Discontinued by proper authority, no right to use as private way survives to one who has long used it as one of public: 67 Ga. 761.

ARTICLE 2.

ALTERNATIVE ROAD LAW.

§573. *County authorities to lay out roads.* The commissioners of roads and revenues, ordinary, or such other officer as has charge of county matters of each county in this State, shall have the sole right to lay out, open, change or discontinue public roads therein, Acts 1890-1, p. 135.

Alternative road law.

and the sole management of the working of said roads; and said authorities shall have authority to appoint a superintendent of public roads when necessary, and also to appoint all overseers, guards and officers that may be required to successfully carry out the provisions of this Article, to prescribe the duties of said superintendent, guards and officers, fix the terms of office of the same, and to prescribe and pay said appointees such salaries or wages as may be deemed proper.

Acts 1890-1,
p. 135.

§574. *Who subject to road duty.* Each male citizen between the ages of sixteen and fifty years shall be subject to road duty (except those who are now exempt by law), and shall be required, when notified or summoned, to work on the public roads of the county of his residence for such length of time in each year as may be fixed, or to pay such commutation tax as may be fixed by said authorities: *Provided*, that no one shall be required to work for longer than ten days in any one year, nor shall said commutation tax be fixed at a sum that will amount to more than fifty cents *per diem* for the number of days work required.

Acts 1890-1,
p. 135.

§575. *County tax for roads.* The commissioners of roads and revenues, or ordinary, as the case may be, shall levy a tax additional to any now authorized by law, of not more than two-tenths of one per cent. on all the taxable property of the county, and the funds raised by said taxation, together with the commutation tax heretofore provided for, shall be known as the "Public Road Fund" of the county, and shall be used and expended for the purposes of paying the salaries and wages, and for working, improving and repairing the public roads, as herein set forth.

Acts 1890-1,
p. 135.

§576. *Provision for working.* Said authorities are authorized to work, improve, and repair the public roads, as follows:

1. They may work a chain-gang (which said authorities are hereby empowered to organize; said gang to consist of the misdemeanor convicts of the county, or of any other county in this State that may be obtained without cost or for hire) and those who do not pay the commutation tax: *Provided*, that the convicts and those who do not pay the said tax shall not be worked together.

2. They may work free hired labor and those who do not pay the commutation tax.

3. They may have said roads worked, improved or repaired, by contracting for the same in such manner as they may deem fit, with private parties, or corporations: *Provided*, that if the work is done by contract, the contractors shall be required to employ the chain-gang, if established, and the labor of those who do not pay the commutation tax, and to pay for the same.

4. They may employ or combine any or all of said three above-mentioned methods, or may use any other method or sytem that may be desired for accomplishing the work necessary to put and keep the public roads in good condition.

§577. *Machinery, tools, etc.* Said authorities may purchase any and all machinery, implements, tools, wagons and stock necessary and required for working said roads, and may build such houses or stock-ades, and purchase any thing or article necessary and useful in handling and working the chain-gang. Acts 1890-1, p. 135.

§578. *Fund, how spent.* Said authorities shall expend said public road fund in any manner they may deem best for putting and keeping the roads in thorough condition and repair. Acts 1890-1, p. 135.

§579. *Residents of cities not affected.* The citizens of cities and towns shall not be required to work the public roads outside the corporate limits, nor to pay the commutation tax. Acts 1890-1, p. 135.

§580. *Defaulters.* Any person who has failed or refused to pay the commutation tax when demanded by the officer appointed by the authorities to make such demand, and who shall, without a good excuse, fail or refuse to appear at the time and place appointed to work, when summoned or notified by the officer whose duty it is to give said summons or notice by the rules of the authorities having charge of the public roads, or who shall fail or refuse to do faithful work as ordered by the officers in charge of the work when he has appeared, shall be fined not less than one dollar nor more than five dollars for each day he fails to work, or be imprisoned in the common jail, at the discretion of the authority trying the case, or be sentenced to work in the chain-gang for not longer than ninety days. Acts 1890-1, p. 135.

§581. *Defaulters, by whom tried.* One or more of the commissioners of roads and revenues in counties having commissioners, and the ordinaries in counties where the ordinary has charge of county matters and public roads under this Article, and the county judge in counties where said judge has charge of county matters and public roads, are empowered to try all defaulters, and said authority shall hold court or courts for the trial of said defaulters, at any time or times, and at any place or places in the county that may be fixed by said authority: *Provided*, that ten days notice be given of the time and place, or times and places, to defaulters. Acts 1890-1, p. 135.

§582. *Summoned by whom.* Defaulters shall be summoned for trial by, or arrested by, such officer or officers as the commissioners or ordinary or county judge may appoint, or by any lawful constable of the county. Acts 1890-1, p. 135.

§583. *Provision of force on recommendation of grand jury.* This Article shall not go into effect in any county in this State until it is recommended by the grand jury of said county, said recommendation Acts 1890-1, p. 135. 1893, p. 125.

Commissioners of public roads; appointment and obligation to serve. Duty of road commissioners.

to be made at any term of court, and the operation of this Article shall be suspended in any county of this State upon a like recommendation of the grand jury made at any term of court.

Not unconstitutional: 91 Ga. 770.

ARTICLE 3.

COMMISSIONERS OF PUBLIC ROADS.

SECTION 1.

APPOINTMENT AND OBLIGATION TO SERVE.

Act 1818,
Cobb, 947.

§584. (653.) *Three commissioners for each district, two may act.* 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.

§585. (654.) *How appointed.* Such commissioners are appointed or reappointed by the ordinary biennially, and, whenever necessary, to fill vacancies at any time.

Act 1818,
Cobb, 947.
Acts 1878,
p. 67.

§586. (655.) *Compelled to serve.* Those thus appointed are compelled to serve, unless excused by such ordinary, who shall receive for such excuse providential cause only: *Provided*, that those who have served two years consecutively shall have the right to resign a third appointment, if made immediately after two years consecutive service.

§587. (656.) *Notified in writing.* As soon as appointed, they shall be notified thereof in writing within ten days thereafter by the ordinary, and if such appointees do not, within ten days after receiving such notice, file their excuse in writing, under oath, in such ordinary's office, they shall be considered as having accepted.

§588. (657.) *Exemptions of commissioners.* Such commissioners, while in office, are exempt from all jury, patrol, militia, and other road duty.

SECTION 2.

DUTY OF ROAD COMMISSIONERS.

Act 1818,
Cobb, 947,
948.

§589. (658.) *Duties.* It is their duty—

1. To appoint, within fifteen days, one or more persons in their respective districts as overseers of the road.

Duty of road commissioners.

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.

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 within twenty days after every road-working, or as often as emergencies may require, and to issue executions or other process against the convicted.

This should read "within twenty days" instead of "twenty days after." But time of holding court immaterial, if defaulter attended. Fine may be collected by execution or defaulter imprisoned: 72 Ga. 437.

4. To expend as in their judgment will best serve the public good, all moneys coming into their hands from defaulting road hands, and from fines imposed upon and collected from overseers: *Provided*, that such moneys are to be applied to improvement respectively of the roads whereon such defaulters may have been required to serve. Acts 1876, p. 19.

5. To cause to be served upon road defaulters three days notice in writing, of the time and place of the meeting of such commissioners for the trial of defaulters. Such notice to be served by the overseer of roads or the constables of their respective militia districts upon such defaulters personally or by leaving the same at their most notorious place of abode. Acts 1880, p. 146. §547.

6. To keep a book in which to enter—

(1) 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.

(2) A list of all defaulters and persons fined, the amounts fined, amounts paid, what disposition made of the money, what executions issued and unpaid.

7. 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 ordinary the condition of the public roads and bridges in their respective districts, the state of the finances, what executions are outstanding and unpaid, and their condition.

8. 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.

 Proceedings against road commissioner.

9. 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 offenses set forth in the road laws.

10. To administer all oaths relative to the road laws, connected with their duties.

Acts 1882-3,
p. 79.

§590. *May punish for contempt.* All road commissioners' courts in this State, when convened as such, may fine for contempt in any amount not to exceed five dollars or imprisonment not to exceed five hours, and any constable of the county in which the road commissioners' court is held is empowered to execute sentence of said courts.

 SECTION 3.

PROCEEDINGS AGAINST ROAD COMMISSIONER.

Acts 1866,
p. 18.
1884-5, p. 41.

§591. (661.) *Proceedings against commissioners for neglect of duty.* Whenever the grand jury in any county in this State shall present any road commissioners for neglect of duty generally, or in any particular, it shall thereupon be the duty of the clerk of the court to issue a summons in writing, directed to such commissioners, commanding them to be and appear at the next term of the superior court in which the presentment is made, to answer the accusation of the grand jury, which said summons shall be served by the sheriff upon the commissioners at least twenty days before the court to which the same is returnable; and if, upon the investigation of the case, it shall appear that the accusation is made out by the proof, the judge shall thereupon impose upon such commissioners a fine not less than ten dollars nor more than two hundred dollars.

Proceeding under this section not technically a criminal proceeding, but one against a public agent for neglect of duty, and the presentment need not be the form required for a violation of the criminal law: 40 Ga. 680. In such cases road commissioners are not entitled to demand jury trial: 40 Ga. 680. It is error to compel defendant to answer questions, the answer to which may subject to a fine, forfeiture or penalty: 40 Ga. 688. Under section 541 of the Code he is a *quasi* commissioner and liable according to the terms of this section: 56 Ga. 690.

Acts 1884-5,
p. 136.

§592. *Complaint against road commissioners.* Any citizen, by petition in writing to the ordinary, judge of the county court, or board of commissioners of roads and revenue, as they may respectively have jurisdiction over the appointment of road commissioners, may make complaint against any road commissioners appointed for any road district of the petitioner's county, for neglect of duty generally or in any particular, which petition shall be sworn to, and it shall thereupon be the duty of the officer to whom such petition is addressed to

Roads, how assigned; discharge of commissioner.

issue a summons in writing, directed to such defaulting commissioners, commanding them to be and appear before such county authorities, at the usual place of sitting, on a day certain, to answer the accusation in the petition contained, which summons shall be served by the sheriff or his deputy upon the commissioners complained against, at least twenty days before the day of hearing; and if, upon investigation of the case it shall appear that the accusation is made out by the proof, the county authorities shall impose a fine upon such commissioners of not less than ten dollars nor more than two hundred dollars. If such commissioners have been duly cited and served and fail to appear, the tribunal to which such summons is made returnable may proceed *ex parte*, and execution shall issue against such commissioners for any fine imposed, which shall be executed by the sheriff or his deputy, and the lien of such execution and the property subject thereto shall be the same as against defaulting road-workers.

§593. *Penalty.* Upon the hearing of the case against such defaulting commissioners, it shall be lawful for the tribunal trying the case to impose an alternative punishment of imprisonment in the county jail for a term not exceeding ten days, and if the tribunal hearing the case shall fine such commissioners, they shall thereupon be removed from office, and other commissioners shall be forthwith appointed in their place.

§594. (662.) *Failure to appear.* If they have been duly cited and served and fail to appear, the court may proceed *ex parte*.

§595. (663.) *Clerk shall issue execution.* The clerk of the 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.

SECTION 4.

ROADS, HOW ASSIGNED; DISCHARGE OF COMMISSIONER.

§596. (664.) *A public road being a district line.* When any public road may be on a road-district line, and the ordinary has 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. Act 1818, Cobb, 949.

§597. (665.) *Books, who furnishes.* The book such commissioners are required to keep must be furnished by the ordinary, at the expense of the county, and out of the road money, if any, and when full must be deposited in his office.

Bridges, ferries, turnpikes, and causeways; classification. Jurisdiction of ordinary.

§598. (666.) *Commissioners, by whom discharged.* After the commissioner has faithfully served through the term of his appointment, he may obtain from the ordinary a certificate of such fact.

GENERAL NOTE.—A plank road cannot appropriate the whole of a highway without express authority in their charter: 9 Ga. 475.

ARTICLE 4.

BRIDGES, FERRIES, TURNPIKES, AND CAUSEWAYS.

SECTION 1

CLASSIFICATION.

Act 1799,
Cobb, 943.
§5780.

§599. (667.) *Public bridges, ferries, causeways, etc.* 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 ordinaries, for public purposes, are declared to be public.

When a county liable for a bad bridge although it is in a town: 54 Ga. 79; 55/609.

§600. (668.) *Bridges, ferries, etc.* They are divided—

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

§626.

SECTION 2.

JURISDICTION OF ORDINARY.

§601. (669.) *Ordinary may establish for benefit of county.* The ordinary 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.

Section cited and construed: 54 Ga. 25.

County not liable for damages on free bridges: 77 Ga. 249.

Jurisdiction of ordinary.

§602. (670.) *Power of ordinaries over public bridges, ferries, causeways, etc.* The ordinaries of the several counties have authority—
 Section cited and construed: 54 Ga. 25.

Act 1805.
Cobb, 945.
Act 1818,
Cobb, 952.
§4238.

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.

Section cited; *certiorari*: 64 Ga. 70, 71. Section cited and construed: 52 Ga. 540. Power of taxation for public bridges seems to have no limit except the cost of erecting the bridge: 34 Ga. 370. Damages for the neglect of the ordinary to repair a bridge do not lie except where the bridge is a toll-bridge or built by contract: 41 Ga. 225–228. When no exclusive right could be granted: 48 Ga. 367.

Where bid other than lowest accepted, injunction against paying contractor more than lowest bid, comprehensive enough, without enjoining all payment whatever: 78 Ga. 230.

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. §§603, 622.

In suit against the county under this section, the declaration should allege that the bridge was erected by letting it out to the lowest bidder and no bond taken from the contractor: 54 Ga. 25.

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.

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 usual on such watercourses: *Provided*, such charges are not specially regulated by the General Assembly in some act of incorporation to the exclusion of such ordinaries.

Private party cannot charge toll on bridge used by public road, except by license from ordinary or charter from legislature: 76 Ga. 645.

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 security 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.

As to the obligation by law on the owners of toll-bridges: 52 Ga. 540.

Plaintiff in damage suit must allege special neglect of duty by county: 77 Ga. 249. See 74 Ga. 358, and cases cited, and notes to section 363.

Contractor's liability and bond.

SECTION 3.

CONTRACTOR'S LIABILITY AND BOND.

Acts 1888,
p. 59.
§§622, 623.
602 (2).

§603. (671.) *Condition of contractor's bond.* 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: *Provided*, that such contract may be let out under existing laws without requiring the aforesaid condition in the contractors' bonds, if, in the opinion of the commissioners of roads and revenue, or of the ordinary in counties where there are no such commissioners, it would be to the public interest to dispense with said condition in said bond: *Provided, however*, that in every case the county shall be primarily liable for all injuries caused by reason of any defective bridges, whether erected by contractors or county authorities.

Construed: 95 Ga. 218.

Section cited and construed: 54 Ga. 25-27. Section construed; county liable for injury even after the seven years, if there has been a failure to take the requisite bond of the contractor: 59 Ga. 832-835. If the county undertakes itself to keep a county bridge in repair, it is liable in damages for failure so to do: 64 Ga. 69-71. When a county was held not liable, according to the averments made in the declaration in the suit: 41 Ga. 225-228.

Not applicable to contracts let before passage of act: 92 Ga. 130.

County failing to take from contractor bond to keep bridge in repair, travelers still bound to ordinary care: 74 Ga. 107; citing 17 Ga. 136; 58/238.

County failing to take bond not liable for damage occurring ten years after bridge built: 80 Ga. 489.

Bond only taken for three years, party injured by defect within that period, contractor, not county, primarily liable: 92 Ga. 130.

Proviso not applicable to bridges built before its enactment; under prior law county not liable: 90 Ga. 72; 94/698.

§602 (2).

§604. (672.) *Bond must be approved.* All bonds taken from contractors or proprietors must be approved by the ordinary, filed in his office and by him recorded in books kept for that purpose.

§§622, 623.

§605. (673.) *Additional bond may be required.* 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 ordinary, the license must be revoked.

§606. (674.) *Roads, bridges, etc., to be kept in repair.* 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.

§607. (675.) *Repairs, by whom to be made.* If such repairs are not made within the time required they shall employ some other per-

Bridges and ferries between different counties.

son forthwith to make them, and upon report to the ordinary of their cost, he shall issue an execution against such contractor and his sureties for the expense of such repairs and the costs.

Liability of county failing to repair, not affected by Constitution of 1877: 70 Ga. 714.

§608. (676.) *If defendant resists payment of such execution, how tried.* If the defendant resists the payment of said execution at law, it must be returned for trial by jury, if demanded, either to the justice's 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.

§609. (677.) *Contractors cannot be road commissioners.* 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 ordinary must declare a vacancy and appoint some other persons in their stead. Act 1818, Cobb, 949.

SECTION 4.

BRIDGES AND FERRIES BETWEEN DIFFERENT COUNTIES.

§610. (678.) *Bridges, etc., crossing county lines, how kept up.* When a bridge or ferry is necessary over any watercourse which divides one county or more counties from each other, each county must contribute equally toward 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 construction of bridges and other passways. Act 1818, Cobb, 949. §367.

One county held liable for damage from defect in bridge over stream dividing from another county: 95 Ga. 218.

§611. (679.) *The remedy when one county refuses to contribute.* 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. Act 1824, Cobb, 953.

§612. (680.) *Toll-bridges, etc., crossing county lines, how licensed.* The toll-bridges or ferries over watercourses 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.

SECTION 5.

PRIVATE FERRIES AND BRIDGES; TOLLS, ETC.

§613. (681.) *No private ferry shall be established, when.* No private ferry charging toll shall be established on any watercourse 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.

This section does not prohibit the establishment of private ferry within three miles of a public one; injunction refused: 47 Ga. 282.

§3063.

§614. (682.) *Distance, how computed.* 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.

Distance is to be computed by the stream's course: 9 Ga. 213-215.

Act 1808,
Cobb, 946.
Acts 1859,
p. 65.
1889, p. 52.
§619.

§615. (683.) *Posting rates of toll.* 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, on which shall be the various rates of toll.

Act 1850,
Cobb, 958.
§§3063, 620,
621.

§616. (684.) *Landowner may construct bridges, etc., on his own land.* 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.

Construed in connection with section 3035, and applies to private ferries only: 47 Ga. 282.

Effect of section 3053 on one who erected toll-bridge under this section: 74 Ga. 342.

Owner of charter to build bridge, etc., who was member of legislature which granted charter, not estopped here from asserting he built bridge under Act of 1850. Such bridge is a public bridge: 75 Ga. 815.

Private parties have no right to charge toll on bridge over which public road passes, although bridge owned by them: 76 Ga. 645.

§§619, 615.

§617. (685.) *Excessive rates shall not be demanded.* If such person shall demand excessive rates, any person may complain to the ordinary of the county, and if the rates are excessive, he must reduce and fix them.

§618. (686.) *Rates to be examined annually.* The ordinary 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.

Private ferries and bridges; tolls, etc.

§619. (687.) *Persons making excessive charges, how punished.* If any person shall charge more than the lawful rates, or more than indicated by the board, for the second offense, in addition to the fine, he forfeits his franchise. Acts 1859, p. 66. §615.

§620. (688.) *Fords, bridges, etc., not to be obstructed.* 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. §616.

§621. (689.) *Bridges, etc., not to be discontinued.* 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. §673.

§622. (690.) *Proprietors liable for neglect.* 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. Act 1805, Cobb, 945. §§603–609, 602 (2).

Where the county was held liable for damages, a *certiorari*: 64 Ga. 69–71. When the proprietor of a toll-bridge is not liable for damages while repairing the bridge: 52 Ga. 540. Where the jury alone should settle the doubts as to the negligence of the proprietor of a toll-bridge: 63 Ga. 489, 490. Damages against a county for defective construction of a bridge: 59 Ga. 832. As to the degree of care the owner of a bridge franchise should exercise, and when he alone is liable: 53 Ga. 47. Proprietor of a toll-bridge only responsible for ordinary care and diligence, and beyond this is not an insurer: 64 Ga. 312.

Admissions by defendant, some time prior to tort, not sufficient alone to charge him as owner of ferry upon which tort committed: 91 Ga. 422.

Owner of land upon which public ferry situated, liable for torts of ferryman, when: 91 Ga. 423.

City of Augusta liable for unsafe condition of South Carolina abutments of its toll-bridge over Savannah river: 88 Ga. 600.

City liable for injuries from failure to have proper guard-rails on toll-bridge, charged with notice from long existence of defect: 94 Ga. 135.

§623. (691.) *On failure to take bond the county is liable.* The provisions of the preceding section apply to all contractors for the establishment of such, when damages accrue from want of good faith in performing their several contracts, and if no bond or sufficient guarantee has been taken by the ordinary, the county is also liable for the damages. §§603–609, 341, 602 (2).

Construing this section: 59 Ga. 832–835. Where the county was held not liable under the allegations of the declaration in the suit: 41 Ga. 225–228. County liable where it attempts to keep the bridge in repair: 64 Ga. 69–71. Section construed—failure to take bond, and as to how the county should be served: 54 Ga. 25–27.

Cited; county liability is statutory: 72 Ga. 188.

Liability for detention, defective bridge, excessive toll, etc.

County not liable for neglected bridge; two exceptions: 74 Ga. 358.

See also cases cited in 74 Ga. 358, 70/714, and notes to section 602 *et seq.*

Plaintiff in damage suit, must allege special neglect of duty by county: 77 Ga. 249.

County failing to take bond not liable for damage occurring ten years after bridge built: 80 Ga. 489.

County failing to take bond primarily liable: 81 Ga. 730

One county held liable for damage from defect in bridge over stream dividing from another county: 95 Ga. 218.

SECTION 6.

LIABILITY FOR DETENTION, DEFECTIVE BRIDGE, EXCESSIVE TOLL, ETC.

§624. (692.) *Persons shall not be detained at public crossings.* 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.

§641. §625. (693.) *Persons charging toll after charter expires.* 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 fails 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.

§600 (3),
(4). §626. (694.) *Private ferries.* 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.

Acts 1872,
p. 83. §627. (695.) *Remedy against delinquent bridge owners.* If any owner of any chartered toll-bridge or turnpike road, the charter of which was granted by any of the courts, or by the legislature of this State, shall fail or refuse to keep the same in good repair, and in terms of the provisions of its charter, it shall be the right of any person to file with the ordinary of the county in which such charter was granted, a petition (in writing) setting forth the parties and the facts, and praying for the remedy hereinafter set forth.

Acts 1872,
p. 83. §628. (696.) *Citation, service and jury.* On the filing of said petition with the ordinary, he shall issue a citation, directed to the sheriff of said county, his deputy, or any lawful constable, requiring the defendant to appear before him at the court-house of said

Liability for detention, defective bridge, excessive toll, etc.

county, on a day therein named, to defend said suit. A copy of said petition and citation shall be served upon the defendant, either in person or by leaving the same at his most notorious place of abode, or, if he be without the county, then upon the gate-keeper, at least fifteen days before the time for trial. And said ordinary shall also cause a jury of twelve men to be summoned to try the issue in such case.

§629. (697.) *Issue, oath of jury, continuance.* When said cause is called and set down for trial, the ordinary shall cause an issue of facts to be made upon the pleadings and tried before said jury. The jurors shall take the general oath prescribed for jurors in common-law actions in the superior courts of this State: *Provided*, that either party shall have the same rights of continuance as in other cases at common law, and, in case of continuance, the ordinary shall fix the time of hearing the same. Acts 1872, pp. 38 39.

§630. (698.) *Verdict, and its effects.* On the return of the verdict of the jury, if the issue be found in favor of the defendant, judgment shall be entered against the plaintiff for costs of suit; but if the issue be found against the defendant, judgment shall be entered against said defendant for costs of suit, and also suspending his right to collect further tolls on said bridge or road until after the next term of the superior court of said county, after which it shall not be lawful for any tolls to be collected on any such bridge or road during the operation of said judgment: *Provided, however*, that the owner or any person interested in such toll-bridge or turnpike road may afterwards put the same in good repair, and on making the same clearly appear to the ordinary, said ordinary may enter an order vacating said judgment, so far as the same operates as a suspension of the right to collect tolls. Acts 1872, p. 39.

§631. (699.) *Proceedings may be at any time; fees.* All the proceedings set forth in the four preceding sections may be had in term time or during vacation; and the fees of the ordinary for the whole service shall be five dollars, the jurors one dollar each for every day engaged, and the sheriff's or constable's fees—the usual fees for like services. Acts 1872, p. 39.

§632. (700.) *Injuries; avoiding payment.* 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.

SECTION 7.

RIGHT OF WAY; GRANTS, HOW CONSTRUED.

§§661, 4685. §633. (701.) *Right of way.* Damages for the right of way are to be assessed in the manner prescribed for public roads and private ways.

§3063. §634. (702.) *Grants to land.* Grants to land on watercourses, with the appurtenances, convey no right of public bridge or ferry.

Right to establish a public ferry by a private individual must be by grant actual or implied: 6 Ga. 130. Seven years of uninterrupted possession of a ferry right implies a grant: 7 Ga. 348. Grant of land, etc., from the State on a watercourse, conveys no right to a public ferry: 9 Ga. 359.

§§3064, 3221. §635. (703.) *Grant for ferry.* The grant of a ferry franchise conveys no right to build a bridge, or the contrary.

Grants strictly construed, and no grant of exclusive ferry franchise by implication: 9 Ga. 517. Stated and construed: 14 Ga. 1. Section cited and construed, where in a grant of power to a city as to streets it did not give power to establish or work a ferry: 53 Ga. 639. As to a bridge and ferry franchise proving not exclusive: 56 Ga. 73.

§§568, 3798. §636. (704.) *Value of land, how estimated.* 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.

GENERAL NOTE.—Damages not recoverable against a city for delay in erecting a bridge: 57 Ga. 114. Right of the State to erect bridges: 6 Ga. 130. When implied trusts as to ferry rights are created: 7 Ga. 348. Power by contract not conferred on the commissioners of roads and revenues of Chatham county to repair bridges across a canal: 14 Ga. 391. No grant of public ferry rights by implication: 9 Ga. 359. Builders of a bridge on the lands of another knowingly, have no lien against the owner of such lands thereby: 19 Ga. 427. Parol contract for building bridges is within the power of the justices of the inferior court: 20 Ga. 328. On the Act of 1806, authorizing a toll-bridge across the Great Ogeechee at a particular place to the exclusion of any other for five miles above or below it: 25 Ga. 445-453. How damages are to be estimated in an action for *mesne* profits for a ferry landing, what must be proven: 20 Ga. 523. What is a ferry defined: 20 Ga. 529. A tax levied for a turnpike fund and subsequently ratified by the legislature, is valid: 34 Ga. 370. As to a grant of an exclusive right to build and establish a bridge was not in the power of the inferior court of Floyd county: 48 Ga. 367. A declaration in an action against a county for the falling of a bridge must aver that the claim had been presented to the ordinary for auditing within twelve months from the injury suffered: 65 Ga. 216.

See note on Municipal Corporations (section 1833), as to bridges in towns and cities.

ARTICLE 5.

TURNPIKE COMPANIES.

§637. (719 v.) *Commissioners of turnpikes.* There shall be in each ^{§2368.} county of this State, through which any turnpike road passes, or through which any part of any turnpike road passes, a board of commissioners, to be known as commissioners of turnpikes.

§638. (719 w.) *Number and election.* Said board shall consist of ^{Acts 1878-9, p. 74.} three persons, to be elected by the grand juries of each county through which any turnpike road, or any part of the same, passes, at their first session; and any person qualified to vote and hold office under the Constitution and laws of this State, shall be eligible as such commissioner.

§639. (719 x.) *Report and certificate of election.* The several grand ^{Acts 1878-9, p. 74.} juries so electing commissioners shall report the fact of such election in their general presentments at the term at which the same occurs, giving the names of the persons so elected; and thereupon the clerk of the superior court of the county shall issue to each of said persons so named a certificate of his election and appointment, which shall have the force and effect of a commission.

§640. (719 y.) *Term of office.* The commissioners selected shall ^{Acts 1878-9, p. 74.} hold their offices for the term of two years, and until their successors are elected in the manner first herein pointed out.

§641. (719 z.) *Duty of commissioners.* It shall be the duty of said ^{Acts 1878-9, p. 74. §625.} boards of commissioners to inspect the condition of any and all turnpike roads in their counties as often as every three months, and to see to it that such roads are kept in good condition to be traveled over, and are graded according to the terms of their charters, respectively; and that the tolls charged are not greater than allowed by such charters.

§642. *Maximum grade of turnpike.* The maximum grade of all turn- ^{Acts 1884-5, p. 125. §2368.} pike roads in this State shall not exceed one foot in fifteen, unless a steeper grade has been allowed in the charter.

§643. *Penalty.* The owner and manager of turnpike roads in this ^{Acts 1884-5, p. 125.} State shall have six months after October 3d, 1885, to grade and construct their roads in conformity to the provisions of the preceding section, and upon failure so to do, their charter shall be subject to be forfeited as now provided by law.

§644. *Judges to fix grade of turnpike.* The judges of the superior ^{Acts 1890-1, p. 224. §2368.} courts of this State, in granting charters to incorporate turnpike road companies upon application, may, in their discretion prescribe the grade of such turnpike roads, which shall be reasonable and fair, taking into consideration the elevation of the ground upon which such turnpike roads are to be constructed.

Turnpike companies.

Acts 1882-3,
p. 134.
§§2368, 625. §645. *Tolls on turnpikes not collectible unless kept in repair.* It shall be unlawful for any owner of any turnpike road, or keeper of any toll-gate upon any turnpike road in this State, to demand or collect toll from any person for traveling over such road, when it is not kept repaired so as to comply with the terms of its charter.

Acts 1876-7,
p. 74. §646. (719 aa.) *Proceedings against defaulting owners of turnpikes.* Whenever it shall be ascertained that any turnpike road is being used and kept as such by its owners, and is not graded as required by its charter, the commissioners aforesaid shall make out a statement, wherein shall be specified, as nearly as may be, the defects in such roads, a copy of which shall be served upon the keeper of the toll-gates on such road, which shall be deemed and held as service upon the owners of such turnpike; and should such owners fail or refuse to make such road in compliance with the terms of its charter, for thirty days after such notice, it shall be the duty of such commissioners to forthwith institute suit against such owner, owners, or company, to forfeit its charter, which suit shall be in the name of the commissioners.

Action against defaulting turnpike-owner was properly brought in name of commissioners of turnpikes: 73 Ga. 552.

Acts 1878-9,
p. 74.
1882-3, p. 83. §647. (719 bb.) *Duty of commissioners as to turnpikes out of repair.* In all cases where turnpike roads are neglected and suffered to get into a condition that they cannot be traveled over comfortably by travelers, and drayed over successfully, the commissioners aforesaid in the counties where such roads are, shall notify the keeper of the toll-gates on such road of the condition of the same, and unless such road is immediately repaired and put in good condition, such commissioners shall institute the proceeding provided for in section 646, and on the trial of said case, provided for in this section, if the fault or failure of such owner, company or corporation should be deemed insufficient to authorize the forfeiture of its charter, the measure of damages to the public may nevertheless be estimated in dollars and cents by the jury trying such case, judgment for which may be entered against such owner, company or corporation, and when collected shall be paid over to the county school commissioner and paid out as part of county school fund.

Acts 1878-9,
p. 74. §648. (719 cc.) *Compensation of commissioners.* Each commissioner shall receive, as compensation, one dollar per day for the time actually spent in inspecting roads, and all necessary expenses actually incurred by them in consequence of the prosecution of any suit as herein provided for, to be paid by the county of such commissioners.

Acts 1878-9,
p. 74.
§1900. §649. (719 dd.) *Extent of jurisdiction.* In cases where any turnpike road, the property of the same owners, or company, runs through or into more counties than one, it shall be competent for the com-

Rights of way for persons engaged in mining.

missioners, in either of the counties in which any part of said road may be, to perform all the duties herein imposed, and to institute and maintain the suits herein provided for, without the co-operation of the commissioners of the other county or counties through which such road passes, and any judgment of forfeiture so obtained shall apply to the whole road.

Superior court of county where portion of road ran had jurisdiction, an agent being found therein; immaterial that such agent resided in another county: 73 Ga. 552.

ARTICLE 6.

RIGHTS OF WAY FOR PERSONS ENGAGED IN MINING.

§650. *Mining rights of way.* Any person, or corporation, who may be actually engaged in the business of mining iron, copper, gold, coal, or any other metal or mineral; in quarrying marble, granite, or any other stone; or in making copperas, sulphur, saltpeter, alum, or other similar articles, and may need for the successful prosecution of such business a right of way for a railroad, turnpike, or a common road across the lands of others, such right of way may be obtained in the same manner that the right to convey water across the lands of others may be acquired by the owner of mines, as provided by the Code. Acts 1887, p. 35. §§1938, 4685

§651. *Arbitrator's duty.* The arbitrators selected as provided by the Code, shall decide both as to the necessity for the right of way sought to be condemned, and the compensation to be paid to the landowners therefor. Acts 1887, p. 35. §1938.

§652. (744.) *May direct watercourses.* In all cases where it may be deemed desirable and necessary to divert any watercourse from its usual channel, for any of the purposes specified in section 650, it shall be lawful to organize the board of arbitrators, whose duty in relation to the same shall be to decide both as to the necessity of diverting the watercourse, and who are damaged, and how much.

§653. (746.) *Mining, privileges incidental thereto.* The owner of any mine shall have the right to enter upon any land between the mine and the water-power upon which the same is dependent, and to cut thereon such ditch, canal or tunnel, or to construct such flume, or other aqueduct, and to build such dam as may be necessary to control said water-power: *Provided*, that the party desiring to cut such ditch, canal or tunnel, or to construct such flume or other aqueduct, or to erect such dam, shall first have the damages assessed arising to the owner of such intervening land, or owner of the land on which such dam is to be erected, by reason of the cutting of such Acts 1868, p. 139. §4685.

ditch, canal or tunnel, or the construction of such flume or other aqueduct, and the erection of such dam, and shall pay to the owner of the land so intervening, or on which such dam is to be erected, the damages which may be assessed in the manner hereafter provided.

Acts 1868,
pp. 139,
140.

§654. (747.) *Application for privileges.* The owner of the mine shall, after having given the owner of the land to be entered upon at least five days notice of his intention to make such application, present to the ordinary of the county his written application for the right and privilege of cutting such ditch, canal or tunnel, or constructing such flume or aqueduct, or erecting such dam.

Acts 1895,
p. 20.

§655. (752.) *Draining privileges, how obtained.* The owner of any mine shall have the right to enter upon any land, and to cut and open thereon such ditches, canals and tunnels, or to construct such flumes or other aqueducts, or such rope, wire, track, or other tramway, or such wagonway, as may be necessary to drain his mine, or to carry off and drain away the water and tailings of such mine or mining operations, or to carry off and transport any crude ore from such mine or mining operations to the mill or other place of reduction where such ore is to be treated: *Provided*, that the party desiring to cut and open such ditches, canals or tunnels, or to construct such flumes or other aqueducts, or such rope, wire, track, or other tramway, or such wagonway, shall first have the damages assessed arising, or which may arise, to the owner of such land by reason of the cutting and opening of such ditches, canals, or tunnels, or the construction of such flumes or other aqueducts, or such rope, wire, track, or other tramway, or such wagonway; and shall pay the owners of such land the damages which may be assessed.

Acts 1870,
p. 265.
§4685.

§656. (753.) *Application and proceedings thereon.* The owner of the mines who desires the right and privilege of cutting and opening such ditches, canals or tunnels, or of constructing such flumes or other aqueducts, shall make his application under and according to the provisions and requirements specified in this Code, and all proceeding in relation thereto shall be had, and the damages shall be assessed and paid, according to the method of condemning land in this Code provided, all of which are extended to the owners of mines desiring to drain their mines, and to carry off the water and tailings from their mines and mining operations, through or over the land of others.

It is a necessary incident of a mining corporation that it shall have power to contract and bind itself to those dealing with it in matters within the intent of the charter, even although the charter contains no express grant of power to contract or make debts: 45 Ga. 34.

Acts 1868,
pp. 140,
141.

§657. (750.) *Lessee of mine deemed the owner.* Any person or company of persons engaged in working a mine, under a lease for that purpose, shall be held and regarded as owner or owners, and as such

Tramroads. Private ways.

shall be entitled to avail himself or themselves of the benefits and privileges of this Article: *Provided*, that in no instance the water shall be drawn from any mill or factory now in operation.

GENERAL NOTE.—Ownership of water in artificial ditch; and its diversion restrained: 70 Ga. 86. Measure of damages for diverting water flowing in a ditch: 70 Ga. 88. Lessee of water estopped from denying lessor's title: 70 Ga. 88. Record in suit for damages assessed for cutting a ditch, admissible in later suit over title to the water, when: 70 Ga. 86.

Purchaser from grantee of deed reserving mining privileges, not enjoined from using water on land: 75 Ga. 447.

ARTICLE 7.

TRAMROADS.

§658. *Tramways.* Any person, or corporation, desiring to build or construct any tramways to connect with any waterway or railway in this State, for the purpose of transporting lumber, naval stores and timber by means of the same, may make application, in writing, to the ordinary or county commissioners of the county in which such tramway is to be located, setting out the length of such way, together with the place of starting and the terminus of the same and the line of its location as near as may be.

§659. *Proceedings to lay out road.* When the application aforesaid is filed in the office of the ordinary, as aforesaid, or county commissioners, as the case may be, all the proceedings thereafter shall be the same as are now allowed and directed by this Code for condemning property, except that the strip of land to be used for such purpose shall not exceed in width fifteen feet.

§660. *Cessation in use of.* If such tramway so laid out shall at any time cease to be used for such purposes, then the land so employed for such way shall in its use revert to the owner thereof.

ARTICLE 8.

PRIVATE WAYS.

§661. (720.) *Private ways, by whom granted.* The ordinaries have authority to grant private ways to individuals to go from and return to their farms or places of residence.

The county judge of Richmond county: 62 Ga. 319.

Cited: 72 Ga. 140. See 89 Ga. 111.

Ordinaries or county commissioners cannot grant private way to brick-yard: 71 Ga. 250.

Act 1834,
Cobb, 955.
Acts 1853-4,
p. 88.
§§633, 3065,
5729, 4685.

Acts 1887,
p. 103.
§§2350, 675,
89 Ga. 111.

§4685.
89 Ga. 111.

Private ways.

Ordinary has power to open private ways, but no power to declare one, already claimed, permanent: 86 Ga. 323.

§662. (721.) *Not more than fifteen feet wide.* They must not exceed fifteen feet in width, and must be kept open and in repair by the person on whose application they are established, and may be as much less as the applicant may choose.

Section cited and construed, as to the kind of road and the occupation necessary to obtain a prescriptive right: 61 Ga. 29, 30. A neighborhood road used by a settlement of people is not a public road: 61 Ga. 156.

Stated: 68 Ga. 528; 69/758, 766. Cited: 72 Ga. 140.

Not sufficient that average width not over fifteen feet: 69 Ga. 758, 766.

Running around one spot until repairs made, is not increase of width so as to break continuance of use: 75 Ga. 858.

See notes to section 678.

§663. (722.) *How obtained.* Any person desiring any such passway over the land of another, must petition the ordinary, 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.

One cannot claim road over another's land as necessary, when one over his own available. Acquisition of new road competent to show old one unnecessary: 82 Ga. 770.

Acts 1851-2,
p. 281.

§664. (723.) *Twenty days notice, appeal, etc.* After all persons over whose lands such passway is to be made shall have had twenty days notice, in writing, of such application, and such ordinary shall be satisfied that such applicant is entitled to the same, he 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 landowners, 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 such report, by giving the other five days notice in writing, he may take an appeal to the ordinary, who, after hearing all the evidence pro and con, may confirm said report or alter the same, which when done shall be final.

Party present at hearing and making no objection, estopped from setting up want of service: 80 Ga. 805.

Acts 1851-2,
p. 281.
§4635.

§665. (724.) *Damages, how assessed.* If the person then, over whose land the passway is, conceives 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.

Payment of damages is not a prerequisite to appointment of commissioners and laying out of road: 80 Ga. 805.

Private ways.

§666. (725.) *Applicant may decline to open the way.* 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 ordinary may issue an execution; and in all cases the damages must be paid before the way is opened.

§667. (726.) *May be established by agreement.* 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.

§668. (727.) *Recorded and protected.* 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.

Cited: 68 Ga. 449.

§669. (728.) *Landowners may join in opening a way.* Several landowners 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.

§670. (729.) *May apportion the work.* 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 commissioner, whose powers are the same touching such road and the hands thereof as the three road commissioners of the district.

§671. (730.) *On wild lands.* 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 landowners and are in the habitual use of such private way, and not after.

Railroad company's express consent necessary to license thoroughfare under stationary cars, so as to make company liable for injury to child crawling under cars: 87 Ga. 491.

Lane originally cattle-way became general way by seven years use; ordinary could remove obstruction under section 2222: 87 Ga. 320.

§672. (731.) *Prescriptive right to way.* 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 the owners have had six months knowledge without moving for damages, his right to use becomes complete, and such owners are barred of damages.

But must be one fixed route only, not more than fifteen feet wide: 61 Ga. 29, 30. Section cited, and the use of a private way for seven years must be without intermission, to create a right by prescription: 53 Ga. 232–235.

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See notes to section 678.

Cited: 72 Ga. 140.

Constitutional requirement to pay just compensation for private ways, not applicable to prescriptive way: 75 Ga. 858, 859.

Consent or acquiescence to use of way by owner, not prevent prescriptive right ripening: 75 Ga. 859.

What necessary to entitle one to prescriptive right of way over land of another: 68 Ga. 528; 69/758, 766.

Mere frequency of passage across lands, without repairs, etc., and not always in same track, insufficient: 68 Ga. 528.

Party claiming must bring himself strictly within requirements: 69 Ga. 766.

Must have been in uninterrupted use thereof, and way only fifteen feet wide: 76 Ga. 107; see also 81 Ga. 749.

Where party has used private way for seven years or more, injunction will lie to restrain interference with such use: 80 Ga. 77.

To establish prescriptive private way, must show seven years uninterrupted use: 86 Ga. 323.

§621. §673. (732.) *Cannot be closed after one year without notice.* 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.

Person seeking to close private way used longer than one year, must show due notice to users: 85 Ga. 273.

§633. §674. (733.) *Special ways.* 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.

Acts 1853-4, §658. §675. (734.) *If there is but one bluff.* 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.

§676. (735.) *The use of another landing.* 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.

§677. (736.) *Omission to assess damages.* 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.

Acts 1872, p. 60. §678. (737.) *Prescriptive right of way.* Whenever a private way has been in constant and uninterrupted use for seven years or more,

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and no legal steps have been taken to abolish the same, it shall not be lawful for any one to interfere with said private way.

Section cited, and where it was not shown in reference to a private way that there had been seven years of uninterrupted user: 62 Ga. 422. Must be uninterrupted user for seven years: 53 Ga. 232-235. And user on one fixed route only: 61 Ga. 29, 30.

See notes to section 672.

Conveyance of fee by tenants in common, with no reservation of way, conveyed whatever easement tenant had: 65 Ga. 468.

Not acquired by tenant in common so long as all tenants had undisputed use of premises: 65 Ga. 468.

Public road discontinued by proper authority, no right to use as private way survives to one who has long used it as one of public: 67 Ga. 761.

Whether private way closed by implied consent, question for jury: 80 Ga. 659.

Consent or acquiescence to use of way by owner, not prevent prescriptive right ripening: 75 Ga. 859.

What necessary to entitle one to prescriptive right of way over land of another: 68 Ga. 528; 69/758, 766.

Mere frequency of passage across lands, without repairs, etc., and not always in the same track, insufficient: 68 Ga. 528.

Party claiming must bring himself strictly within requirements: 69 Ga. 766.

Private way not within this section unless strictly fulfilling definition in section 662: 81 Ga. 749; see also 76 Ga. 107.

To establish prescriptive private way, must show seven years uninterrupted use: 86 Ga. 323.

Continual passing through two-foot private alley in city, not ripen into prescriptive right, when: 93 Ga. 298.

No establishment by prescription of private way which shifts from one place to another: 93 Ga. 300; see also 95 Ga. 151.

Obstruction of such way removed on petition to ordinary: 75 Ga. 858.

§679. (738.) *Obstructions, how removed.* In the event the owner or owners of land over which such private way may pass, or any other person, shall obstruct, close up, or otherwise render said private way unfit for use, the party or parties injured by such obstructions, or other interference, may petition the ordinary in the county where such private way has been in use to remove such obstructions, and upon the petition being filed, the ordinary shall issue a rule *nisi*, directed to the party or parties complained against (which rule shall be served by the sheriff or his deputy), calling upon the offending parties to show cause why said obstructions should not be removed, and the free use of said private way be re-established. Said rule shall be served at least three days before the day set for the hearing, and when the day arrives the ordinary shall proceed to hear evidence as to said obstructions or other interference, and if it should appear that said private way has been in continuous, uninterrupted use for seven years or more, and no steps taken to prevent the enjoyment of the same, then the ordinary shall grant an order directing the

Acts 1872,
p. 60.
§4685.

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party or parties so obstructing, or otherwise interfering with said right of way, to remove said obstructions or other interference within forty-eight hours, and in the event of failure so to remove said obstructions, the ordinary shall issue a warrant directed to the sheriff, commanding him forthwith to remove said obstructions.

Confined to obstruction of private ways arising by prescriptive right under this section: 63 Ga. 658. Obstructing a private way: 55 Ga. 310. As to procedure under this section: 64 Ga. 339; 60/101. A neighborhood road used by one settlement of people is not a public road: 61 Ga. 156.

Commissioners of roads and revenues of Monroe county have no jurisdiction to remove obstructions: 66 Ga. 537.

Obstruction of private way is private nuisance, and magistrate has concurrent jurisdiction with ordinary for removal: 80 Ga. 659.

Jurisdiction in ordinary, not court of ordinary: 67 Ga. 283.

Where city sold part of commons over which private way existed, vendee bought subject to it, and ordinary could remove obstruction. Distinction between city's jurisdiction over its public squares, streets, etc., and over such way: 78 Ga. 158.

What must appear by evidence: 67 Ga. 283.

This a complete remedy at law: 69 Ga. 757.

Evidence not showing that way only fifteen feet wide, nor open seven years, judgment ordering obstructions removed, reversed: 76 Ga. 107.

Right of way, founded upon use, etc., by owners of plantations, their agents, etc., is in owners, and must be enforced in their names and not agent's: 92 Ga. 156.

Street not treated as such for forty years, not opened on complaint to have obstruction removed: 87 Ga. 564; citing 44 Ga. 529.

Proceeding to remove obstruction of private way over land claimed by several, will lie against obstructor alone: 89 Ga. 257.

Acts 1872,
p. 61.
§§4634-4656.

§680. (739.) *No appeal; certiorari.* There shall be no appeal from the judgment of said ordinary; but either party being dissatisfied shall have the right to sue out a writ of *certiorari*, said *certiorari* to be had as in other cases now provided by law.

Superior court should not order final judgment, but should remand case: 94 Ga. 697; citing 60 Ga. 100.

Acts 1872,
p. 61.
§4269.

§681. (740.) *Fees of officers.* The fees of the ordinary in such case shall be three dollars, to be paid by the losing party. Sheriff's fees the same as serving declaration, or other process of court.

§682. (741.) *May be converted into public road.* When a private way is once established, it is in the power of the ordinary 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.

GENERAL NOTE.—The Act of 1834, authorizing the granting of private ways without just compensation, is unconstitutional: 9 Ga. 37. Injunction against a

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defendant for obstructing a road over his own land to which plaintiff did not have right of way, and which was not a public road, refused: 44 Ga. 30. Defendant who established a private road cannot be made to keep it in repair for others: 53 Ga. 232. When a neighborhood road was not a public road: 61 Ga. 156.

Private ways not presumed personal, but construed as appurtenant to land, nature of covenants running with land: 69 Ga. 456.

As to who holds title to private roads: 91 Ga. 659-668.

Measure of damages for unauthorized use of private way: 91 Ga. 659.

SEVENTH TITLE.

MUNICIPAL CORPORATIONS.

CHAPTER 1.

TOWNS AND VILLAGES.

ARTICLE 1.

HOW INCORPORATED.

SECTION 1.

PETITION TO SUPERIOR COURT AND PRELIMINARY ELECTION.

Acts 1882-3, §683. *Superior-court charters.* The superior court of either county
 p. 111. shall have power to grant charters to towns and villages when the
 §§2350, 1832, 2683, territory described in such charters is in more counties than one, in
 Acts 1890-1, the same manner as when the territory is in one county only.
 p. 190.
 1893, p. 65.

See notes on Municipal Corporations under sections 1833 and 778.

Acts 1872, §684. (774.) *Existing towns, by what law governed. New towns and*
 p. 16. *villages, how incorporated.* The towns and villages heretofore estab-
 1874, pp. 44, 46. lished in this State, shall remain subject to the laws now in force,
 applicable thereto respectively; and the provisions hereinafter set
 forth shall be deemed applicable only to towns and villages estab-
 lished after August 26th, 1872.

The provision in the Act of 1873, p. 16, allowing the councils of towns or villages theretofore established to exercise powers conferred by that Act, and to that extent, to amend charters of such existing corporations is unconstitutional: 60 Ga. 405; 60/227, 228; 74/658(2a).

The Acts of 1874, pp. 44, 46, amending the Act, and the title of the Act of 1872, and authorizing towns theretofore established to exercise powers conferred by the Act of 1872, p. 16, unconstitutional as containing two subject-matters, and matter not in the title: 60 Ga. 404-406. See 62 Ga. 425; 74/658(2a).

An Act providing for the incorporation of companies thereunder cannot constitutionally apply to those already incorporated (such an Act is unconstitutional as containing more than one subject-matter, and one not indicated by the title): 74 Ga. 658(2a).

Certificate of incorporation.

§685. (775.) *Application for incorporation, how made.* Whenever ^{Acts 1872,} the qualified voters of any town or village, not incorporated, consist- _{p. 16.} ing of not less than twenty-five qualified voters, wish to be incorporated, a petition shall be filed, by at least a majority of the male inhabitants of such town or village, in the superior court of the county in which the inhabitants reside, stating in such petition the proposed boundaries of such town, and the name to be given, if incorporated. The persons intending to make such application shall give notice that they will apply on some day therein specified, to said superior court, and shall also specify in such notice a day on which all the qualified voters residing in the proposed boundaries of such town will meet to vote on the question of incorporation; which said notice shall, if there be a newspaper printed within such territory, be printed therein once in each week for four successive weeks previous to the time specified for making such application and taking such vote, and if there be no such paper, the notice shall be posted in at least three of the most public places in such territory for four weeks at least before the time so specified therein.

Proceedings hereunder, incorporating town of Toombsboro, were valid. Act of 1872 attacked as unconstitutional as containing more than one subject-matter. No specific ruling: 81 Ga. 352.

§686. (776.) *Corporation determined by election.* On the day men- ^{Acts 1872,} tioned in such notice for the taking of the vote, the qualified voters _{p. 17.} residing within the proposed bounds shall meet at the place named therein and cast their votes for or against such incorporation. Each voter shall deposit a ballot in a ballot-box to be provided for that purpose, with the words written or printed thereon “For incorporation,” or “Against incorporation,” which vote shall be taken under the superintendence of any three voters, within the said boundary. appointed for that purpose by the voters present, and the result of such vote shall be certified and returned by them, under oath, to the superior court of the county, in case a majority of all the qualified voters residing within such boundary shall vote in favor of such corporation.

SECTION 2.

CERTIFICATE OF INCORPORATION.

§687. (777.) *Certificate of incorporation.* Upon the filing of such ^{Acts 1872,} certificate, the superior court shall, by an order, direct the clerk of _{pp 17, 18.} said court to issue a certificate of the incorporation of such town or village, in form or in substance as follows:

Election for organization.

“A certificate under oath of A. B., C. D., and E. F., that a majority of the qualified voters in the following boundaries, to wit: (here recite the boundaries), having been given in due form of law, in favor of the incorporation of the town (or village) of —, in the county of —, and it appearing to the satisfaction of the court that the provisions of the Code of Georgia have been complied with by the applicants for said corporation, the said town (or village) is duly authorized, within the corporate limits aforesaid, to exercise all the corporate powers conferred by the legislature of the State of Georgia, from and after the date of this certificate.

“—, CLERK.”

And from and after the date of such certificate the territory embraced within the boundary mentioned in said certificate, shall be an incorporated town or village, by the name specified in said notice and certificate.

Objection to admission of certificate, properly overruled here: 81 Ga. 355.

SECTION 3.

ELECTION FOR ORGANIZATION.

Acts 1872,
pp. 17, 18.

§688. (778.) *Election of officers, how held.*

1. At the term of ordering the certificate mentioned in the preceding section, the court shall appoint three legal voters residing within the said territory, who shall act as inspectors at the first election to be held in said town, or village, as hereinafter provided, and in case they shall fail or refuse to act, the said election may be held, certified and returned by any three voters of said town, or village, appointed for that purpose by the voters present.

2. The first charter election for officers of such incorporation shall be held within sixty days from the date of the certificate mentioned in the said section, of which election the appointed inspectors of election, or persons acting as such, shall cause at least two weeks notice to be given of the time and place of holding such election, and the officers to be voted for.

3. Such inspectors, or persons acting as such, after taking the oath prescribed for superintendents of elections in the Code, shall prescribe and act as inspectors of election, and all the laws applicable to the election of county officers shall apply to such election, if not inconsistent with the provisions of this Chapter; and such inspectors shall, within ten days after such election, grant a certificate to the person elected, which shall be recorded among the records of such town or village.

SECTION 4.

CORPORATE OFFICERS AND THEIR DUTIES.

§689. (779.) *Council; officers and their duties.*

1. The municipal authorities of such town or village shall be a mayor, a recorder, and five councilmen, who together shall form a common council; but no person shall be eligible to either of said offices unless at the time of his election he resides within the corporation. Acts 1872, p. 18.

2. The mayor, recorder, and councilmen of such town or village, as soon as they have been elected and qualified as herein provided, and their successors in office, shall be a body politic and corporate by the name of "the town (or village) of —," and shall have perpetual succession, and a common seal, and by that name may sue and be sued, plead and be impleaded, purchase and hold real estate necessary to enable them the better to discharge their duties and needful for the good order, government, and welfare of said town or village.

3. All the corporate powers of such corporation shall be exercised by said council, or under their authority, except when otherwise provided.

4. They shall also elect a treasurer and marshal if they deem necessary, each of whom, when elected, shall enter into a bond with sufficient sureties approved of by the mayor, in such penalty as the board shall prescribe, payable to the corporation, conditioned faithfully to collect and pay over, as required by the board, all taxes, fines, forfeitures, and all other incomes of said corporation, and said officers shall continue in office during the pleasure of council, and perform the duties respectively as herein prescribed, or as may be required by the council.

Town marshal was removable hereunder at pleasure of council, a privilege which could not be abdicated by contract with him: 81 Ga. 489. Citing: 76 Ga. 828.

§690. (780.) *Term of office.* The officers first elected in such town or village shall hold their offices until their successors are elected and qualified. The terms of all officers elected after the first election shall commence on the first Tuesday in February in each year, and shall be for one year, and until their successors are elected and qualified. Acts 1872, p. 18.

SECTION 5.

ELECTIONS, AND QUALIFICATION OF VOTERS.

Acts 1872,
p. 18.

§691. (781.) *Annual election and oath of officers.* After the first election of officers in such corporation, they shall be elected on every first Thursday in January, at such place in the town or village, and under such supervision, rules, and regulations (not inconsistent with the laws regulating county elections) as the council may prescribe; and every person elected or appointed to an office in such corporation, shall, within twenty days after his election or appointment, and before he shall enter upon the duties of his office, take and subscribe the oath of office, which may be done before any person authorized by law to administer oaths, or before the mayor or recorder of such town or village, which oath, with the certificate of the officer administering the same, shall be filed with the recorder of the town or village.

Acts 1872,
p. 19.

§692. (782.) *Effect of failure to hold election.* The franchises of such corporation shall not be forfeited or discontinued by a failure to hold the election at the proper time; but the officer or other person authorized by law, or, on their failure, any justice of the peace therein, may at any time, on giving the inhabitants at least five days notice thereof, by advertisement in some newspaper, or by written or printed notices at three or more public places in the corporation, hold such election; and the persons elected at such election shall have the same powers and authorities as if they had been elected at the regular period.

Candidates defeated in such election are estopped from questioning its legality: 72 Ga. 460.

Acts 1872,
p. 19.
§5737.

§693. (783.) *Qualified voters.* All persons who have been *bona fide* residents of such town or village for six months next preceding a charter election held therein, and who are qualified voters under the Constitution and laws of the State, and none others, shall be allowed at any charter election in said town. But no person shall be deemed a resident of any such town or village by reason of being a student of any school or college therein, or being stationed therein for any temporary purpose.

Construed: 62 Ga. 425.

Acts 1872,
p. 19.
§111.

§694. (784.) *Vacancies.* When a vacancy shall occur from any cause in the office of mayor, recorder, or in the council, the vacancy shall be filled by appointment by the council from among the citizens of the town or village, eligible under this Chapter.

Powers of council and its officers; council and its meetings. Powers of council.

ARTICLE 2.

POWERS OF COUNCIL AND ITS OFFICERS.

SECTION 1.

COUNCIL AND ITS MEETINGS.

§695. (785.) *Presiding officer, quorum, books, etc.* The council shall be presided over at its meetings by the mayor, or, in his absence, by one of the councilmen, elected by a majority of the council present, and a majority of the council shall be necessary to form a quorum for the transaction of business. The council shall cause to be kept in a well-bound book an accurate record of all its proceedings, by-laws, acts, orders, and resolutions, which shall be fully indexed and open to the inspection of any one who is required to pay taxes in such town or village. At such meeting of the council, the proceedings of the last meeting shall be read, and corrected if erroneous, and signed by the presiding officer for the time being. Upon the call of any member, the yeas and nays on any question shall be taken and recorded on the journal. The mayor, in case of a tie, shall have the casting vote.

Council has power to remove policeman for good cause, without trying him for the offense: 80 Ga. 503.

SECTION 2.

POWERS OF COUNCIL.

§696. (786.) *Powers and duties of the council.* The council of such town or village shall have power therein to lay off, vacate, close, open, alter, curb, pave, and keep in good order and repair roads, streets, alleys, sidewalks, crosswalks, drains, and gutters, for the use of the public, or any of the citizens thereof, and to improve and light the same, and have them kept free from obstructions on or over them; to regulate the width of sidewalks on the streets, and to order the sidewalks, footways, crosswalks, drains, and gutters to be curbed and paved and kept in good order, free and clean, by the owner and occupants thereof, or of the real property next adjacent thereto; to establish and regulate market; to prescribe the time of holding the same; to prevent injury or annoyance to the public or individuals from anything dangerous, offensive or unwholesome; to prevent hogs, cattle, horses, sheep, and other animals, and fowls of all kinds, from

Powers of council.

going at large in such town or village; to protect places of divine worship in and about the premises where held; to abate or cause to be abated anything which, in the opinion of the majority of the whole council, shall be a nuisance; to regulate the keeping of gun-powder and other combustibles; to provide, in or near the town or village, places for the burial of the dead, and to regulate interments therein; to provide for the regular building of houses or other structures, and for the making of division fences by the owners of adjacent premises, and the drainage of lots by proper drains and ditches; to make regulations for guarding against danger or damage by fire; to protect the property and person of the citizens of such town or village, and to preserve peace and good order therein, and for this purpose to appoint, when necessary, a police force to assist the marshal in the discharge of his duties; to prescribe the powers and define the duties of the officers appointed by the council, fix their term of service and compensation, require and take from them bonds when deemed necessary, payable to such town in its corporate name, with such sureties and in such penalty as the council may see fit, conditioned for the faithful discharge of their duties; to erect or authorize or prohibit the erection of gas-works or water-works in the town; to prevent injury to or pollution of the same, or to the water or healthfulness of the town; to regulate and provide for the weighing of hay, coal, and other articles sold or for sale in the town, and to provide a revenue for the town and appropriate the same to its expenses; to provide for the annual assessment of taxable property therein, and to adopt rules for the regulation and government of its own body. To carry into effect these enumerated powers and all others conferred upon such town or village, or its council, by this Chapter, or by any future act of the legislature of the State, the council shall have power to make and pass all needful orders, by-laws, ordinances, resolutions, rules, and regulations, not contrary to the Constitution and laws of this State, and to prescribe, impose, and enact reasonable fines, penalties, and imprisonments in the county jail, or the place of imprisonment in said incorporation, if there be one, for a term not exceeding thirty days for the violation thereof.

Summons to recorder's court need not conform to ordinance: 77 Ga. 663.

Bridges, streets, and sidewalks must be kept by city in reasonably safe condition: 76 Ga. 585.

City not liable for failure to carry out ordinance looking to opening new street: 77 Ga. 745.

Without express statutory authority, town has no right to permit permanent obstruction in street, for private use: 86 Ga. 756.

Acts 1880-1,
p. 179.

§697. (786 a.) *May organize chain-gangs.* The right and power to organize work-gangs or other means of confinement and to confine at labor therein, for a term not exceeding thirty days, persons convicted

Taxes, licenses, and streets.

of violating the ordinances of such towns and villages, are hereby conferred on the incorporated towns and villages of this State, or their respective authorities: *Provided*, that said penalty shall be inflicted only as an alternative of failure or refusal to pay fines imposed for such violations.

§698. (786 b.) *May provide for forfeiture of bonds.* Any municipal corporation in this State shall have full power and authority to provide, by ordinance, for the forfeiture of bonds given by offenders for their appearance before municipal courts, and to provide for the collection of the same from the principal and sureties to such bonds by judgment, execution, and sale. Acts 1880-1, p. 176.

§699. (786 c.) *May bind over or commit offenders.* Any mayor, recorder, or other proper officer presiding in any municipal court in this State, shall have authority to bind over, or commit to jail, offenders against any criminal law of this State, whenever in the course of an investigation before such officer a proper case therefor shall be made out by the evidence. Acts 1880-1, p. 176.

SECTION 3.

TAXES, LICENSES, AND STREETS.

§700. (787.) *Taxes, on what, and how levied.* The council shall cause to be annually made up, and entered upon its journal, an accurate estimate of all sums which are or may be lawfully chargeable on such town or village, and which ought to be paid within one year, and it shall order a levy of so much as may in its opinion be necessary to pay the same. The levy so ordered shall be upon all dogs in the said town or village, and upon all the real and personal estate therein, subject to State and county tax: *Provided*, that the tax so levied shall not exceed one dollar on every hundred dollars of the value thereof. Acts 1872, p. 21. §§753, 745.

§701. (788.) *Streets, by whom and how worked.* Every male resident of said town or village, not under sixteen nor over fifty years of age, shall, if required by the council thereof, work not exceeding fifteen days, by himself or an acceptable substitute, on the roads, streets, and alleys of said town or village, under the direction of the superintendent of roads, streets, and alleys, or may be released from such work upon the payment to the superintendent or council of such amounts as may be fixed by the council, the money so paid to be used in the improvement of said roads, streets, and alleys; and if said work and money so paid is not sufficient to put and keep the roads, streets, alleys, sidewalks, cross-walks, drains, and gutters of such town or village in good repair, the council thereof shall levy a Acts 1872, p. 21. §775.

Acts 1878-9,
p. 174. tax on all the subjects of taxation therein, sufficient for that purpose, and to pay all other expenses incident thereto. And the municipal authorities of any incorporated city in this State are hereby authorized to permit the inclosure of any lane or alley, or portion of a lane or alley in such city, when the owners of the lots abutting on such lane or alley, or portion of the lane or alley, sought to be secluded, and the owners of any other lots, to the enjoyment of which access through said lane or alley is necessary, consent: *Provided*, that said municipal authorities may have the right at any time to reopen said lane or alley.

Acts 1872,
p. 21. §702. (789.) *Licenses*. Whenever anything for which State license is required is to be done within such town or village, the council may require a town or village license therefor, and may impose a tax thereon for the use of the town or village, and may also require a bond, with sureties, conditioned as prescribed in section 689, payable to such town or village, in such penalty as it may think proper, and may revoke such license at any time, if the condition of said bond be broken. And they shall have power to license and regulate the management of barrrooms, saloons, hotels, and private boarding-houses, livery-stables, and private and public transportation through the town or village, and in addition to the *ad valorem* tax provided for by law, to levy a tax on all billiard-tables, tenpin or ninepin alleys, and tables and alleys of any other kind used for the purpose of playing on with pins or balls, or both, within such town or village, and on all contrivances, of whatever kind, used for the purpose of gaming or carrying on a game of chance, by selling cards, tickets, or numbers, or by turning a deal or wheel, or by using any other artifice or contrivance. They shall also have power to tax all shows taxed by the laws of this State, which may exhibit within such town or village, which tax may be collected, if not voluntarily paid, by execution and levy and sale, as provided for the collection of taxes under the general law prescribing the mode of incorporating towns and villages; and said council shall have full power to pass all ordinances necessary to carry into effect the provisions of this section.

A town whose charter embraces this section has power to issue license to retail spirits and to tax therefor: 62 Ga. 423-427.

License as fish-dealer, not give right to use street for business: 86 Ga. 756.

Acts 1872,
p. 21. §703. (790.) *Marshal's duty*. It shall be the duty of the marshal to collect the town or village taxes, fines, levies, and assessments, and in case the same are not paid within one month after they are placed in his hands for collection, the council shall issue execution therefor, and the marshal may levy and sell therefor in like manner,

 Mayor and other officers.

and under the same regulations, as the officers of the State are now authorized to levy and sell under other executions.

§704. (791.) *Lien for taxes, how enforced.* There shall be a lien on real estate within such town or village, for the town or village taxes assessed thereon, and for all other fines and penalties assessed or imposed upon the owners thereof by the authorities of such town or village, from the time the same are assessed or imposed, which shall have a priority over all other liens, except the lien due the State and county, and may be enforced in the same manner as now prescribed by law for the enforcement of the lien for county taxes, or in such other manner as the council may by ordinance prescribe. Acts 1872, p. 22. §778.

 SECTION 4.

MAYOR AND OTHER OFFICERS.

§705. (792.) *Powers and duties of mayor.* The mayor shall be the chief executive officer of the town or village; he shall take care that the orders, by-laws, ordinances, acts, and resolutions of the council are faithfully executed; he shall be *ex officio* justice of the peace within the town or village; shall, within the same, possess and exercise all the powers and duties, vested by law, as a justice of the peace, except that he shall have no jurisdiction as such in civil cases. He shall have control of the police of the town or village, and may appoint special police officers whenever he deems it necessary, and it shall be his duty especially to see that the peace and good order of the town or village are preserved, and that persons and property therein are protected, and to this end he may cause the arrest and detention of all riotous and disorderly persons in the town or village, before issuing his warrant therefor. He shall have power to issue executions for all fines, penalties, and costs imposed by him, or he may require the immediate payment thereof, and in default of such payment, he may commit the party in default to the jail of the county in which such town or village is situated, or other place of imprisonment in such corporation, if there be one, until the fine or penalty or costs shall be paid; but the term of imprisonment in such case shall not exceed thirty days. In the absence from the town or village, or sickness of the mayor, or during any vacancy in the office of mayor, any one of the councilmen, selected by the majority, shall perform his duties, and be vested with all his powers. Acts 1872, p. 22. 1890-1, p. 66.

§706. (793.) *Compensation of officers.* The mayor, recorder, and marshal of the town or village shall each receive such compensation for their services as may be fixed by council, which shall not be increased or diminished during their term of office. Acts 1872, p. 22.

Corporate courts and penalties; police courts.

Acts 1872,
p. 22.

§707. (794.) *Jail fees, how paid.* The expense of maintaining any person committed to the county jail, or other place of imprisonment, by the mayor, shall be paid by the town or village, and all costs incurred in the incorporation of any town or village shall be paid by the same.

Acts 1872,
p. 22.

§708. (795.) *Limits of towns, how extended.* The question of extending the limits of such corporations shall be submitted to the people of the district to be included, and if two-thirds of such people vote for extension, the same may be made.

In chartering town, or amending charter, legislature may give to incorporated territory such extent as it may choose; annexed territory taxable for prior municipal debts: 94 Ga. 557.

Acts 1872,
p. 22.
§751.

§709. (796.) *Officers shall not contract, when.* No person holding office under any municipal incorporation shall, during the time for which he was elected or appointed, be capable of contracting with such corporation for the performance of any work which is to be paid for out of the treasury, nor shall any such person be capable of holding or having any interest in such contract, either by himself or by another, directly or indirectly.

Construing this section in reference to the mayor of Macon: 60 Ga. 227.

If an illegal contract, as against public policy, be performed, no action, to recover money paid will lie: 85 Ga. 734.

Acts 1872,
p. 22.
§§719, 5891,
5893, 758,
377.

§710. (797.) *Municipal debts, how created.* No such town or village shall create any debt except the ordinary expenses of said town or village, unless by a vote of a majority of the citizens of said town or village, at an election to be held specially for that purpose.

Generally: See note on Municipal Corporations under section 1833.

CHAPTER 2.

CORPORATE COURTS AND PENALTIES.

ARTICLE 1.

POLICE COURTS.

§§4634, 11.

§711. (480.) *Corporate and police courts.* 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.

Punishment of offenders.

As to city court of Savannah, see Appendix: 22 Ga. 466. City court of Augusta, affidavit for bail process, *certiorari* from Richmond county superior court: 13 Ga. 357. City court of Augusta had no jurisdiction of less than \$100: 46 Ga. 486. City court of Atlanta, *habeas corpus* case, no *supersedeas* before bill of exceptions tendered: 47 Ga. 390. City court of Atlanta cannot grant new trials: 48 Ga. 37.

ARTICLE 2.

PUNISHMENT OF OFFENDERS.

§712. (480 a.) *Alternative sentences by police courts.* All police courts of this State, having authority to try offenses against the laws of the cities, towns and villages in which such courts are located, shall have power and authority to impose fines upon persons convicted of said offenses, with the alternative of other punishment allowed by law, in case said fines are not paid. Acts 1878-9, p. 153.

§713. *Selection or appointment of whipping-bosses.* The governing authorities of any county or municipal corporation in this State, employing or having labor performed by convicts, in any such county or municipal corporation, may appoint a whipping-boss for such convicts, and fix his compensation and prescribe his duties: *Provided, however,* that proper and necessary discipline may be administered by the superintendent or other officer or person having control of any convict or convicts, without the employment of a whipping-boss. Acts 1890-1, p. 211.

§714. *When to whip.* No whipping shall be administered to a convict by any whipping-boss or other officer or person, except in cases where the same is reasonably necessary to enforce discipline or compel work or labor by such convict.

§715. *Rules for government of convicts, etc.* Said governing authorities of counties and municipal corporations, respectively, employing or having labor performed by convicts, shall prepare and have published full and complete, reasonable and humane, rules and regulations for the government of the convicts under their control, which rules may be amended as occasion may require, but shall specifically prescribe the powers and duties, in all respects, of the superintendent, commissioner, guard, whipping-boss, or other person connected with the management of convicts, as to the care, keeping, control, work, and discipline of convicts.

§716. *Superintendent, etc., not personally liable for damage to convict.* §744. No superintendent, commissioner, guard, whipping-boss, or other person or employee of convicts, shall be personally liable for any injury or damage to any convict, resulting from the employment, care, keeping, control, work, and discipline of convicts who are

under the direction of said governing authorities, respectively, in accordance with reasonable and humane rules and regulations adopted as aforesaid.

CHAPTER 3.

MUNICIPAL TAXATION.

ARTICLE 1.

ASSESSORS.

Acts 1890-1,
p. 231.

§717. *Tax assessors for city.* The mayor and council of each town or city are authorized, at their option, to elect three freeholders, residing in the town or city, as assessors, who shall value and assess all the property within said town or city liable for taxation. All persons dissatisfied with the value placed on their property shall appear before said assessors and produce testimony as to the value of property, and the decision of said assessors, after hearing the evidence, shall be final: *Provided*, that this section shall not affect towns or cities now having the power to appoint assessors.

§718. *Reports.* Said assessors shall make their reports at such time and in such manner as the town or city authorities shall determine, and shall be governed by rules made by the authorities, unless contrary to the laws of this State. The authorities shall, in levying or assessing the rate of taxation, do so upon the value of the property reported by the assessors.

ARTICLE 2.

LIMITATION ON CITIES' RIGHT OF TAXATION.

Acts 1874,
p. 109.
§§1608, 710.

§719. (1672 a.) *Not to tax over one-half of one per cent.* No municipal corporation shall levy or collect for the ordinary current expenses of said corporation, except as hereinafter provided, any *ad valorem* tax upon the property within said corporation, exceeding one-half of one per cent. upon the value of said property, any charter of said corporation to the contrary notwithstanding.

City cannot tax railroad property used in its business: 71 Ga. 158.

Ad valorem assessment by authorities constituted in the charter for that purpose, is legal method of fixing taxes; execution for amount so fixed not enjoined: 79 Ga. 98.

Assessment for street and other improvements.

§720. (1672 b.) “*Ordinary expenses*” defined; *separate accounts*. Acts 1874,
p. 110.

1. The term “ordinary current expenses” shall be construed to include all current expenses, excepting only expenditures for education, for paving or macadamizing streets, and for payment of the principal and interest of the public debt, which shall be known as “extraordinary expenses.” §§199 (8),
463, 206 (7).

2. And in all cases where it shall be necessary to levy an additional tax above said one-half of one per cent., for any one or more of said extraordinary expenses, the levy and assessment of the same for each said extraordinary expense shall be separately made and collected.

3. Said municipal authorities shall cause separate accounts to be kept, on account of all amounts collected and disbursed on account of each of said extraordinary expenses; and all amounts so collected shall be applied exclusively to the extraordinary expenses for which said tax was levied and collected.

Expenses, “ordinary” and “extraordinary” considered. How far tax of one-half of one per cent. may be used for fitting up municipal offices; work begun before money in treasury: 67 Ga. 106.

§721. (1672 c.) *Officer diverting money to other purposes, guilty of malpractice*. Any officer of any municipal corporation who shall apply any portion of any fund collected by taxation for either of said extraordinary expenses, to any other ordinary or extraordinary expense, shall be guilty of malpractice in office. Acts 1874,
p. 110.
§§199 (8),
463, 206 (7).

§722. (1672 d.) *Additional fund, how raised*. If an additional fund is required by said corporation for internal improvements, not herein provided for, or if the amount realized by the levy of one-half of one per cent. shall be insufficient to defray the ordinary current expenses of said corporation, an additional tax may be levied for this purpose when the same shall be authorized by a vote of two-thirds of the legal voters of said corporation who shall vote at an election to be held for that purpose, and separate accounts of all amounts so collected and disbursed shall be kept as is provided in section 720. Acts 1874,
p. 110.

ARTICLE 3.

ASSESSMENT FOR STREET AND OTHER IMPROVEMENTS.

§723. *Municipalities may issue executions for paving, etc.* All municipal corporations have authority to enforce the collection of any amount due or to become due for paving streets or lanes, or for laying sewers and drains, or for cleaning or repairing privy vaults, by execution to be issued by the treasurer against the persons or corporations by whom such debts may be due, which may be levied by the Acts 1884-5,
p. 148.

marshal on the real estate of the owners, and after proceedings as in cases of sales for city taxes, the same may be sold at public outcry. All sales made by such city under execution shall be subject to purchase by said corporation, and the right of redemption by the owner after sale.

Cited: 79 Ga. 104.

Acts 1890-1,
p. 229. §724. *Renewal of pavements by assessment, etc.* The mayor and council or governing authority of any city having a population of over twenty thousand, have authority to renew, by the use of any material that may be decided on, or repair any pavement in said city, upon the same terms and conditions as to assessment of property and street-car companies, as were in force when the pavement was originally laid: *Provided*, in the judgment of the city council of said city the pavement is worn-out and no longer serviceable.

ARTICLE 4.

TAXATION OF RAILROADS BY CITIES.

Acts 1890-1,
p. 152.
§779. §725. *Property of railroads subject to municipal taxation.* All property, real and personal, belonging to railroad companies in this State, which is within the limits of any municipal corporation, shall be subject to taxation by the said municipality as fully and as completely as is the property of other corporations within the limits. And it is made the duty of the municipal authorities to cause property belonging to a railroad company to pay its proper and just *pro rata* of municipal taxes.

Acts 1890-1,
p. 152.
§784. §726. *Return, to show what.* In addition to the facts required to be shown by the Act to provide a system of taxation of railroad property in each of the counties of the State, every railroad company in this State shall, at the time of making the returns provided for in said Act, show the value of the company's property in each incorporated city or town through which it runs.

Acts 1890-1,
p. 152. §727. *Rolling-stock, how assessed.* The rolling-stock and other personal property of said railroad companies shall be distributed to said municipalities on the same basis that rolling-stock and other personal property are distributed to the counties under the provisions of said Act—that is, as the value of the whole property, real and personal, of the said company, is to the value of the property located in the particular municipality, such shall be the amount of rolling-stock and other personal property to be distributed for taxing purposes to each municipality.

Garnishment and interest on tax executions.

§728. *County tax law applicable.* All other provisions of said Act ^{Acts 1890-1,} are made applicable to the assessment and collection of taxes of ^{p. 152.} railroads by municipalities upon the property of such railroads located in such municipalities, and upon the rolling-stock and other personal property.

ARTICLE 5.

GARNISHMENT AND INTEREST ON TAX EXECUTIONS.

§729. *Garnishment for city taxes.* When any treasurer or other ^{Acts 1890-1,} person authorized to collect the taxes due any municipal corporation ^{p. 53.} can find no property of the defendant on which to levy any tax execution, he shall make an entry to that effect on said execution, and 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, without making affidavit or giving bond. Said summons of garnishment shall be served by the treasurer or other tax-collector, or by the sheriff, or any constable of the county in which the garnishee may reside, at least fifteen days before the sitting of the court, and returned to the superior or city court of the county in which such municipal corporation is situated. ^{§895.}

§730. *Entry on execution and return.* Said treasurer shall enter on ^{Acts 1890-1,} the execution the name of the person garnisheed, and return the exe- ^{p. 53.} cution to said court, and the subsequent proceedings shall be the same as on garnishments in cases when judgment has been obtained.

§731. *Tax executions to bear interest, when.* All executions issued for ^{Acts 1890-1,} taxes due the State, or any county thereof, or any municipal corpo- ^{p. 50.} ration, whether issued on assessments for permanent improvements of ^{1889, p. 31.} streets or sewers of said municipal corporations, or otherwise, shall bear interest at the rate of seven per cent. per annum, from the time fixed by law for issuing the same: *Provided*, that this section shall not apply to taxes or tax *fi. fas.* issued by any municipal corporation imposing penalties for failure to pay taxes to any municipal corporation on any *fi. fas.* due to it for taxes or assessments, having, November 11th, 1889, a population of sixty thousand or more, unless the mayor and general council, mayor and council, or other governing authority of any such municipal corporation shall, by order, resolution, or ordinance, provide for the charge and collection of such interest on such *fi. fas.*

Generally: See note on Municipal Corporations under section 1833.

ARTICLE 6.

SALES FOR MUNICIPAL TAXES AND REDEMPTION OF PROPERTY SOLD.

Acts 1877,
p. 125.

§732. (3656 a.) *Time, place, and manner.* The time, place, and manner of the sale of property, both real and personal, for taxes due to municipal corporations in this State, shall be the same as that provided by law for sheriff's sales for State and county taxes.

Sunday is *dies non juridicus*, and advertisement of sale in a Sunday paper is illegal, and sale void: 72 Ga. 290.

The language of this section does not embrace the newspaper in which sales are to be advertised: 86 Ga. 303.

Section does not change rules of evidence as to city tax sales and deeds: 89 Ga. 286.

Acts 1877,
p. 125.
1880-1, p. 48.

§733. (3656 b.) *Redemption.* Whenever any land is so sold, 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 the payment.

Acts 1877,
p. 125.
§§127-131.

§734. (3656 c.) *Corporation may purchase, when.* Whenever at any such sale by a municipal corporation for taxes due it, by its marshal or duly authorized officer, no one present shall bid for the property put up to be sold, as much as the tax for which it is proposed to sell the same, and the officer's cost, if any due thereon, after such property shall have been cried a reasonable time, then any duly appointed officer or agent of the corporation may bid off such property for the corporation, and the marshal or other officer making such sale, shall make to the corporation a deed to the property so sold, and deliver the same to the officer designated by the corporation to receive it, and the title acquired by the corporation at such sale and by such deed shall be perfect, valid and binding, after the period above provided for redemption by the owners shall have elapsed and there is no redemption by the owner, as if purchased by an individual or corporation other than such corporation so purchasing, and the marshal, or other duly authorized officer making the sale, shall put the corporation, through any officer or person it may designate, in the possession of the property so sold.

Acts 1877,
p. 125.
§131.

§735. (3656 d.) *Property sold by corporation, how.* Neither the governing body of any such municipal corporation, whether known as mayor and councilmen, mayor and aldermen, or by any other name, during whose term of service any such sale shall take place, nor any subsequently elected or appointed governing body, shall be capable of diverting or alienating the title of the corporation to any property so purchased, except by a public sale of the same to the highest bidder.

Power of municipality and its officers; councilmen incompetent to hold other office. Cities as trustees.

§736. (3656 e.) *Ordinances to carry this into effect.* Municipal corporations shall have full power and authority to pass appropriate ordinances and by-laws to carry these provisions into effect. Acts 1877, p. 125.

§737. (3656 f.) *Does not apply to counties.* Nothing in the preceding five sections shall be construed to apply to counties. Acts 1877, p. 125.

§738. *Recitals in tax deed.* Unless otherwise provided in the charter, the recitals in a deed under a sale for municipal taxes are not evidence of the facts recited. 89 Ga. 283. §5150.

Recitals in city tax deed do not prove sale regular, unless statute so provides: 89 Ga. 286.

Before municipal tax *fi. fa.* and deed admissible in evidence as title, what must be shown: 69 Ga. 194.

Ordinance requiring written notice of levy, etc., should have been complied with: 77 Ga. 772, 773.

Generally: See notes on Municipal Corporations under section 1833.

CHAPTER 4.

POWER OF MUNICIPALITY AND ITS OFFICERS.

ARTICLE 1.

COUNCILMEN INCOMPETENT TO HOLD OTHER OFFICE.

§739. *Councilmen incompetent to hold other municipal office.* Councilmen and aldermen of the towns and cities of this State shall be incompetent to hold, except in towns of less than two thousand inhabitants, any other municipal office in said towns and cities during the term of office for which they were chosen; but nothing in this section shall apply to any municipal office which is filled by appointment of the mayor. Any councilman or alderman appointed during his term to any other municipal office shall resign before being eligible to enter upon the office to which he has been appointed. Acts 1890-1, p. 226. 1895, p. 79. §224.

ARTICLE 2.

CITIES AS TRUSTEES.

§740. *Incorporated towns and cities may accept gifts.* All incorporated towns and cities in this State are authorized to receive any donations or gifts of real or personal property which may be made to them by deed of gift, will, or otherwise, and subject to such conditions as may be specified in the instrument giving or donating the Acts 1892, p. 104.

property, if the governing body of such town or city approves of such conditions.

§741. *May act as trustees.* The incorporated towns and cities in this State shall be authorized to act as trustees under any conveyance or will donating or giving property for charitable or eleemosynary purposes.

Acts 1889,
p. 178.

§742. *Towns trustees of cemeteries.* Any person may convey to the mayor and city council of any town or city in this State, any money or property to be held by such mayor and council in trust, the *corpus* or increase thereof to be expended as directed by such conveyance, in the improvement or preservation and care of any cemetery or of the burial lots of such owner therein, and such mayor and council shall receive and hold such property and execute such trusts, according to the terms thereof, as other trusts are executed under the laws of this State, and shall by its clerk make annual returns to the ordinary, and shall be entitled to such commissions as are paid to other trustees, but shall not be required to give bond.

ARTICLE 3.

LIMITATION ON POWERS OF CITY AND ITS OFFICERS.

68 Ga. 816.
§3.

§743. *Cannot restrict subsequent council.* One council cannot by an ordinance bind itself or its successors so as to prevent free legislation in matters of municipal government.

88 Ga. 455.
54 Ga. 468.
§716.

§744. *Not liable for acts of public officers.* A municipal corporation is not liable for the torts of policemen or other officers engaged in the discharge of the duties imposed on them by law.

See notes to section 1833, catchword "Policeman."

86 Ga. 756.
§753.

§745. *Obstructions in street.* Without express legislative authority, a municipality cannot grant to any person the right to erect or maintain a structure or obstruction in a public street.

See notes to section 1833, catchword "Streets."

75 Ga. 433.
§§1859, 1860.

§746. *Equity will not interfere with discretion of council.* The council or other governing body of a municipality has a discretion in the management and disposition of its property, and where it is exercised in good faith, a court of equity will not interfere therewith.

§747. *Municipal corporations not liable for discretionary acts.* Where municipal corporations are not liable by statute to perform an act, they cannot be held liable for exercising their discretion in failing to perform the same.

See notes to section 1833, catchword "Damages."

Streets neglected; duty of justice.

§748. *Municipal corporations liable for what.* Municipal corpora-^{69 Ga. 542.} tions are not liable for failure to perform, or for errors in performing, their legislative or judicial powers. For neglect to perform, or for improper or unskillful performance of their ministerial duties, they are liable.

See notes to section 1833, catchwords “Damages” and “Ministerial Acts.”

§749. *Municipal corporations liable for injuries, when.* If a municipi-^{82 Ga. 207.} pal corporation has not been negligent in constructing or repairing the same, it is not liable for injuries resulting from defects in its streets when it has no notice thereof, unless such defect has existed for a sufficient length of time for notice to be inferred.

See notes to section 1833, catchword “Notice.”

§750. *Municipal property not subject to levy.* Property of a municipi-^{64 Ga. 291.} pal corporation in use for the public, or held for future use for the public, is not subject to levy and sale under executions. All property held by a municipality is presumptively for public use.

See also 59 Ga. 771; 62/324.

§751. *Voting when personally interested.* It is improper and illegal^{80 Ga. 793. §§709, 3010.} for a member of a city council to vote upon any question, brought before the council, in which he is personally interested.

§752. *Officers, when personally liable.* Members of the council^{67 Ga. 190. §3807.} and other officers of a municipal corporation are personally liable to one who sustains special damages as the result of any official acts of such officer, if done oppressively, maliciously, corruptly, or without authority of law.

ARTICLE 4.

STREETS NEGLECTED; DUTY OF JUSTICE.

§753. (652.) *Streets neglected for three months, justices to act, etc.*^{Act 1833, Cobb, 954. §745.} When the main streets of an 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 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 5.

CITIZENS AS JURORS.

Acts 1874,
p. 45.
1875, p. 96.
§340.

§754. (1672 f.) *Who are competent jurors.* The fact of a person being a citizen or resident of a municipal corporation shall not render him incompetent to serve as a juror in cases in which such municipal corporation is a party or interested.

In case against city, where residents stricken from jury as disqualified, new trial granted, unless facts demand verdict: 69 Ga. 577.

ARTICLE 6.

LICENSES TO PAWNBROKERS.

Acts 1868,
p. 136.

§755. (2137.) *Pawnbrokers, how licensed and governed.* It shall be lawful for the municipal authorities of the several incorporated towns and cities in the State of Georgia to license pawnbrokers in their respective jurisdictions, to define by ordinance their powers and privileges, to impose taxes upon them, to revoke their licenses, and generally to exercise such superintendence over pawnbrokers as will insure fair dealing between the pawnbroker and his customers.

In absence of ordinance, recorder could not fine pawnbroker for doing business without license: 78 Ga. 773. Charge of running a pawnshop without registering it, on a day named, did not authorize verdict and punishment for more than one day's violation: 87 Ga. 65.

ARTICLE 7.

SALE OF DOMESTIC WINES IN CITIES.

Acts 1895,
p. 91.

§756. *Sale of domestic wines.* Except where the sale has been prohibited by special act or the local-option law, any city or town may regulate the sale of domestic wines within their limits, provide penalties for non-compliance therewith, and license or tax each place where the same are sold. The same shall not be sold in quantities less than one quart nor be drunk on the premises where sold, except in regularly licensed barrooms.

§757. *Producer may sell domestic wine, when.* Nothing in the preceding section shall be construed so as to prevent any person from selling in cities and towns wine made from grapes or berries grown on his own land, or lands leased or rented by him: *Provided*, he does not establish a place of business to sell the same or otherwise engage regularly in the business of selling the same within the territorial

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limits of said cities and towns, in which case he shall fall within the operation of the preceding section.

CHAPTER 5.

FUNDING BONDED DEBT OF MUNICIPALITIES.

§758. (508 m (2).) *Bonded debt of towns and cities may be compromised.* The municipal authorities of any incorporated town or city of this State are authorized to compromise their bonded debt, in accordance with the provisions of this Chapter: *Provided*, that this Chapter shall not be construed to prejudice the rights of such creditors as may refuse to assent to such compromise. §§5893, 377, 1866. Acts 1878-9, p. 85. §§710, 719.

§759. (508 m (3).) *New bonds may be issued for outstanding bonds.* Where there are outstanding bonds and coupons of any incorporated town or city of this State whether the said outstanding bonds or coupons are due or to become due, it shall be lawful for the municipal authorities to issue new bonds, with coupons attached, to be exchanged and to stand in the place of such outstanding bonds and coupons: *Provided, always*, that the new bonds so issued shall not exceed in amount the previously existing total bonded debt, with interest thereon, of such town or city. Acts 1878-9, p. 85.

§760. (508 m (4).) *Benefits of this law, how obtained.* When the authorities of such town or city shall desire to avail themselves of the benefit of the provisions of this Chapter, they are hereby authorized and empowered to pass any ordinance, or ordinances, to provide for the issuance and exchange of new bonds to stand in the place and stead of outstanding bonds and coupons, and to determine the mode and method of such issuance and exchange, and to fix the length of time such new bonds shall run and the rate of interest they shall bear. Such ordinance, or ordinances, shall have the force and effect of contracts between the said town or city and those who may receive or hold such new bonds so issued and exchanged. Acts 1878-9, p. 85.

§761. (508 m (5).) *Sinking fund, how provided.* If any town or city, availing itself of the provisions of this Chapter, shall desire to provide a sinking fund for the redemption of such new bonds, it shall be lawful for the authorities to pass all ordinances necessary for that purpose, and to create a commission for the management of said sinking fund, and for its proper use and application, which commission shall be composed of not less than three nor more than five freeholders of such town or city; and the ordinance, or ordinances, providing for said sinking fund and said commission, for its management and application, and the mode of appointing said commis- Acts 1878-9, p. 85.

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sion, and prescribing its duties, shall have the force and effect of law, and shall be held and considered as part of the contract between such town or city and the acceptors or holders of such new bonds.

GENERAL NOTE ON MUNICIPAL CORPORATIONS.—See notes to sections 1833 and 778.

 Public revenue; taxation; exemption.

EIGHTH TITLE.

PUBLIC REVENUE.

CHAPTER 1.

TAXATION.

ARTICLE 1.

EXEMPTION.

§762. (798.) *Property exempt from taxation.* The following de- Acts 1878-9,
scribed property shall be exempt from taxation, to wit: All public p. 33.
property, places of religious worship, and places of burial; all insti- §§5796, 5884,
tutions of purely public charity; all buildings erected for and used 5886.
as a college, incorporated academy, or other seminary of learning;
the real and personal estate of any public library, and that of
any other literary association, used by or connected with such li-
brary; all books, philosophical apparatus, paintings, and statuary of
any company or association, kept in a public hall, and not held as
merchandise or for purposes of sale or gain: *Provided*, the above-
described property so exempted be not used for purposes of private
or corporate profit or income; and all laws exempting property from
taxation, other than the property herein enumerated, shall be void.

Construed, imports and exports are exempt: 60 Ga. 66-69. Masonic lodge
is exempt: 53 Ga. 93. Referred to: 53 Ga. 93.

See 11 Ga. 79; 50/424.

Not in conflict with constitutional inhibition against taking money from
treasury in aid of any church, sect, etc.: 76 Ga. 182.

Property exempted from tax illegally, *mandamus* remedy: 84 Ga. 213.

Municipal contract with street-railroad company here did not exempt sta-
bles, shops, houses, etc., from taxation: 66 Ga. 104.

Exemption of realty within limits of city used for farming purposes, void:
89 Ga. 810.

Lands held in trust to appropriate income for benefit of poorhouse, not ex-
empt: 80 Ga. 159.

Though income from stores in Masonic building go exclusively to charitable
purposes, store part of building taxable: 81 Ga. 212.

Lands of public academy exempt though separate from academy grounds:
90 Ga. 634.

Persons and property subject to taxation.

Public property non-taxable whether income derived from it or not; terms "private or corporate" are employed in this section in contradistinction to public: 90 Ga. 648.

Act allowing city of Atlanta to assess property for street-improvements did not apply to places of religious worship: 76 Ga. 182.

Church property subject to assessment for street-paving: 86 Ga. 730.

Water-works in city of Athens not exempt here: 74 Ga. 413.

Formerly, State could by contract restrict its taxing power. Not so as to municipality: 83 Ga. 734.

As to exemptions and restrictions on power to tax certain railroads chartered prior to Constitution of 1877, see 54 Ga. 428, 423, 402; 62/485; 66/563; 62/468; 68/318; 70/11; 64/783; 62/453; 87/487; 89/574, 575.

Acts 1889,
p. 141.

§763. *What toll-bridges exempt from taxation.* When any person residing in or out of this State is the proprietor of any toll-bridge, or bridge on which toll may be lawfully charged in this State, such bridge shall be considered and treated as public property, and exempt from taxation whenever and so long as the proprietor shall allow it to be used absolutely and entirely as a free bridge, and shall keep the same in good repair and safe condition for the free use of the public.

Acts 1889,
p. 35.
§5884.

§764. *Unlawful exemptions.* No county authority shall exempt from taxation any manufactory, industry, enterprise, or any property of any kind not now exempt by law.

§765. *Tax-receiver.* The tax-receiver shall have all property, whether exempted by the county authorities or not, which is required by law to be returned for taxes in the several counties in this State, returned for taxation, and the tax-collector shall collect the taxes upon such property.

Acts 1882-3,
p. 120.
§775.

§766. *Maimed Confederate soldiers exempt from poll-tax.* All persons who have lost a limb or limbs, or the use of the same, while actually engaged in the military service of the late Confederate States, are relieved from the payment of all poll-tax in this State.

ARTICLE 2.

PERSONS AND PROPERTY SUBJECT TO TAXATION.

Acts 1851-2,
p. 288.
§5883, 769,
778.

§767. (799.) *Taxable property.* All real and personal estate, whether owned by individuals or corporations, resident or non-resident, is liable to taxation.

A foreign insurance company taxed by means of license required: 50 Ga. 537. City may exempt property from taxation: 60 Ga. 93; 54/330. Income is not property: 60 Ga. 93-100; 8/23. Promissory note taxable according to its market value: 47 Ga. 382, 384. No tax permitted on State bonds: 60 Ga. 505; 50/387. A municipal corporation can tax the property and business also: 62

Persons and property subject to taxation.

Ga. 645-650; 60/133. Also as to a tax on the gross value of sales: 62 Ga. 645-650.

Property of national bank and its shares, taxable by city here, but not its business: 62 Ga. 650; 59/648.

City of Augusta could tax insurance and banking company on "capital stock" and not the company as a corporate body: 37 Ga. 620-622.

Capital stock of corporation is, relatively to the corporation, a liability, not property; not taxable by city here: 94 Ga. 201.

Savannah could tax capital invested and stock of corporations: 75 Ga. 36.

Where legislature prohibited tax on cotton or sales thereof, a tax laid by municipality on such sales, illegal: 69 Ga. 581; see also 65 Ga. 231.

City of Macon could not tax its own bonds: 67 Ga. 489, 492.

Assessments against abutting property for street-improvements are not taxes: 70 Ga. 817; 75/9; 76/186; 79/105; 85/49; 86/737.

Specific tax on business is constitutional, and consistent with *ad valorem* tax on property used in such business: 94 Ga. 617.

Livery-stable business and sale-stable business may be separately taxable: 94 Ga. 617.

Under Act of December 11th, 1871, city of Macon could not tax capital stock of corporation: 94 Ga. 201.

Tax *fi. fa.* for tax on lot, good, though issued against agent of owner: 74 Ga. 592.

Under Act of December 22d, 1894, shares in building and loan associations upon which no loan has been made, liable to taxation at true market value: 80 Ga. 515.

Real estate held under city of Savannah on payment of annual ground-rent forever, etc., taxable by city: 87 Ga. 397.

Maker and holder of bond for titles liable indiscriminately to the public for taxes, but between themselves the one enjoying the use is liable: 80 Ga. 55.

Tax execution issued under general assessment against all of defendant's property, sale thereunder of lot in which defendant had no more than life-estate passed only defendant's interest. Had assessment been against the particular lot sold, title of purchaser would have been good against the world: 81 Ga. 86. Compare 86 Ga. 602.

Charter authorizing city to tax "real and personal estate" does not necessarily confer right to tax income; such right must clearly appear: 76 Ga. 189, 190.

Where illegal tax voluntarily paid to city and used, cannot be recovered: 69 Ga. 581; see also 48 Ga. 309; 61/228; 62/541; 66/31; 50/304; 68/119; 85/468; 89/154.

See note on Municipal Corporations under section 1833.

§768. *Interest in land less than fee.* All persons owning any mineral or timber interests, or any other interest or claim in or to land less than the fee shall return the same for taxation and pay taxes on the same as on other property. And any person failing to comply with the requirements of this section shall be proceeded against as a defaulting taxpayer. Acts 1889, p. 35. §§778, 816.

§769. (803.) *Non-resident owners of property liable.* Lands or other property belonging to citizens of the United States, not resident of this State, cannot be taxed higher than the property of residents, §§767, 816.

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.

Discrimination as between property of residents and non-residents: 25 Ga. 610. Non-residents are not required by our law to pay taxes on notes held by them on citizens of this State: 44 Ga. 651. Section cited and construed: 50 Ga. 392.

Acts 1851-2,
p. 291.
§139.

§770. (804.) *Tax to be assessed, by whom.* All property or other thing of value, subject to taxation, must be given in by the taxpayers 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.

According to its value, under the Constitution of 1868: 41 Ga. 22. The Constitution of 1868 authorizing a special tax on liquor for certain purposes, this tax was not objectionable to the *ad valorem* provisions: 42 Ga. 416. A tax on the occupation of a retail dealer of liquor, held valid: 42 Ga. 596-599. City tax on the shareholders of stocks in banks should be *ad valorem*: 47 Ga. 562, 563. Promissory notes or other debts: 47 Ga. 384.

That rate of taxation provided for by act may vary in different counties, not render act otherwise than uniform: 89 Ga. 574; 91/774.

City ordinance imposing *ad valorem* tax on realty, unconstitutional because personalty not taxed: 82 Ga. 138.

Taxation upon property must be at a uniform rate on all kinds: 84 Ga. 683.

Tax on business or occupation is not a tax on property which must be *ad valorem* and uniform: 89 Ga. 642.

Act authorizing city to assess abutting real estate to pave street, etc., not violative of constitutional provision as to *ad valorem* taxation: 70 Ga. 817; see also 75 Ga. 9; 76/186; 79/105; 85/49; 86/737.

Municipal taxes must be *ad valorem*; values, how determined: 79 Ga. 98.

See notes to section 5883.

Acts 1851-2,
p. 291.
§§395, 139.

§771. (805.) *Assessment, when to be made.* 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 also publish a copy thereof for the space of thirty days in some public gazette at the seat of government.

§139. §772. (806.) *Amount of taxes to be assessed.* 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.

Act 1804,
Cobb, 1051.
Acts 1851-2,
p. 291.
§§1952, 806.

§773. (807.) *In what funds taxes are to be paid.* 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.

Persons and property subject to taxation.

§774. (808.) *Default and insolvent list.* In netting the digest, the default list shall be deducted for the receivers, and the insolvent list for the collectors. Act 1847, Cobb, 1079. Acts 1851-2, p. 292.

§775. (809.) *Poll-tax.* Every male person between the ages of twenty-one and sixty years, shall pay an annual poll-tax of one dollar. No county, city, or corporate authority shall assess or collect any capitation tax whatever, except street tax, and that only after opportunity to work the streets. Acts 1869, p. 162. 1870, p. 432. Act 1842, Cobb, 1074. §§5885, 766, 701.

Commutation street tax not unconstitutional: 62 Ga. 646.

Act authorizing city of Savannah to collect poll-tax, constitutional: 66 Ga. 217.

To work roads, or pay a fair tax, is a public duty, and a failure so to do may be punished under police powers, without trial by jury: 91 Ga. 773.

§776. (801.) *Bonds, notes, etc., of non-residents; bonds of other States.* Bonds, notes, or other obligations for money, on persons in other States, or of other States, or bonds of corporations of other States, and shipping, are the subjects of return and taxation in this State. Act 1858, p. 105. §§819, 766.

Bonds owned by citizens of Augusta on corporations or individuals out of the city: 50 Ga. 387-392. Bonds, notes, etc., follow the *situs* of the creditor: 64 Ga. 799. The law as set forth in this decision is now different under this section: 33 Ga. 113.

State of Georgia cannot tax its own bonds: 60 Ga. 505. Nor can city of Augusta tax Georgia bonds: 50 Ga. 387. City of Macon not authorized to tax its own bonds: 67 Ga. 489.

Generally, choses in action taxable at creditor's domicile: 90 Ga. 648. Where trustees personally and as tenants in common own choses in action, city could only tax *pro rata* share of those trustees living in city: 90 Ga. 648.

§777. (802.) *Ungranted lands and stock corporations.* All lands held under warrants and certificates, but not granted, are liable to taxation, and all moneyed or stock corporations, are liable to taxation. Acts 1851-2, p. 289.

§778. *Taxes charged against whom.* Taxes are to be charged against the owner of property if known, and against the specific property itself if the owner is not known. Life-tenants, and those who own and enjoy the property, are chargeable with the tax thereon. Hence, while the public may treat property as belonging either to the maker or the holder of a bond for titles, when the latter is in possession, yet as between the parties the one receiving the rents or enjoying the use is liable for the tax. §§3090, 3992. 86 Ga. 602. 87 Ga. 399. 80 Ga. 55. §§767, 848.

Where tax *fi. fa.* against one as "agent" (for estate of deceased non-resident), purchaser thereunder got good title: 51 Ga. 453; see also 68 Ga. 585; 74/592.

State and county taxes are not only against the owner, but against the property; the only concern as to the owner is to know against whom to assess, but the tax and lien is against the property: 69 Ga. 194. But see 86 Ga. 602.

Land to be taxed only against owner, agent, or occupant, unless owner unknown: 86 Ga. 600; 90/287.

Real estate held under city of Savannah on payment of annual ground-rent, taxable by city against holder: 87 Ga. 397.

Persons and property subject to taxation.

GENERAL NOTE ON MUNICIPAL TAXATION.—Denial, by election, of power to issue school bonds, no denial of right to tax for schools under city charter ratified: 95 Ga. 555, 556.

Amendment to charter extending limits, new citizens taxable for old city debts: 94 Ga. 551.

Mayor and council cannot delegate to mayor the taxing power conferred on it: 62 Ga. 646.

Under Act of December 11th, 1871, city of Macon could not levy tax on capital stock of corporation: 94 Ga. 201.

Formerly State could by contract restrict its taxing power; not so as to municipality: 83 Ga. 734.

Whether or not tax necessary for purpose covered by charter, is for taxing power, not the courts: 63 Ga. 527.

Assessments, municipality must follow strictly power to tax by local assessment: 91 Ga. 500. Act of October 16th, 1889, as to assessment by Athens against abutting real estate, for sidewalk-paving, etc., not violative of *ad valorem* clause of Constitution; nor does it deprive owner of property without due process; nor is it exercise of eminent domain: 85 Ga. 49; see also 70 Ga. 817; 75/9; 76/186; 79/105; 86/737.

Church property subject to assessment for street-paving: 86 Ga. 730; but see 76 Ga. 188.

Business taxes, etc., *ad valorem* tax on property not hinder tax on business carried on with same: 94 Ga. 617. Act here authorized special tax on all business occupations within city; one class might be taxed without taxing others: 94 Ga. 617.

As to manner of collecting taxes where two separate occupations carried on by same person. Livery-stable and sale-stable not two occupations as matter of law: 94 Ga. 617, 618.

Municipality may classify all subjects of taxation exclusive of property, taxing or exempting any or all classes; the rate must be uniform on each class taxed: 84 Ga. 683.

City having authority to tax businesses, may lay tax on each department of general-merchandise store, as different business: 69 Ga. 583; see also 42 Ga. 596.

One taxable in Savannah as commission merchant and also as agent for steamship, etc., unless custom made them one business: 70 Ga. 760. As to whether running omnibuses to depot is, by custom, part of public stable business, so that city can require only one tax: 66 Ga. 31, 36.

Tax on business may be required of each member of firm: 70 Ga. 761; 59/187; see also 53 Ga. 616. After special tax imposed upon a class of dealers, but before time for returning and paying same, rate may be increased: 75 Ga. 36.

Right of city of Macon to tax businesses; distinction between tax on property and tax on business carried on with said property: 62 Ga. 645. Tax on business measured by gross sales must be uniform as to rate: 62 Ga. 645; see also 59 Ga. 648; 60/133.

Tax on private wagon for private use, is tax on property; such wagon not liable to specific tax: 62 Ga. 646. May tax business of drayage according to number and capacity of drays employed, and whether employed in general business, or only business of owners: 62 Ga. 645, 646; see also 53 Ga. 410.

Distinction between taxes and licenses, and taxes on property and on businesses, considered in connection with the *ad valorem* and uniformity rules: 50 Ga. 530. See also cases there cited: 49 Ga. 195.

State tax on railroads.

Tax on sales of itinerant trader is tax on property: 55 Ga. 678; so as to tax on mules sold in city, of \$1.00 per head, void for want of uniformity: 41 Ga. 21.

See notes to the several sections of this Chapter, and general note following section 1833.

ARTICLE 3.

STATE TAX ON RAILROADS.

§779. *Rolling-stock taxed.* Railroad companies operating railroads lying partly in this State and partly in other States shall be taxed as to the rolling-stock thereof and other personal property appurtenant thereto, and which is not permanently located in any of the States through which said railroads pass, on so much of the whole value of rolling-stock and personal property as is proportional to the length of the railroad in this State, without regard to the location of the head office of such railroad companies. Acts 1882-3, p. 42, §§725, 784.

Cited: 71 Ga. 31.

§780. (826 a.) *President to make returns.* The presidents of all the railroad companies, including street-railroads, dummy railroads, and electric railroads in this State shall be required to return on oath, annually, to the comptroller-general, the value of the property of their respective companies, without deducting their indebtedness; each class or species of property to be separately named and valued, so far as the same may be practicable, to be taxed as other property of the people of the State; and said returns shall be made under the same regulations provided by law for the returns of officers of other incorporated companies, which are required by law to be made to the comptroller-general: *Provided*, that the said railroads shall be taxable for city purposes as other property is taxed for city purposes, and any law making railroads taxable by counties will be applicable to street-railroads of every character. Acts 1874, p. 107, 1889, p. 36, §§725, 784, 804.

What property of Central Railroad Company was taxable by county of Bibb: 40 Ga. 647.

What is capital stock and liable to taxation: 8 Ga. 486. Property of the Rome Railroad in the city of Rome necessary to conduct its business is part of its capital stock, and exempt under its charter from city tax as property: 14 Ga. 275; 62/473. Capital stock exempt by charter, but other property taxed as ordinary property: 40 Ga. 646; 44/388. What taxes upon the Georgia Railroad and Banking Company are illegal according to the terms of their charter: 26 Ga. 651. Railroad tax cases: 54 Ga. 401, 408, 423, 430; 60/269.

As to taxes against various portions of Southwestern Railroad and force of its charter limitations: 68 Ga. 312; see also 70 Ga. 11; 64/783.

Valuation, how ascertained: 68 Ga. 318.

Western and Atlantic Railroad Company, how taxed; rate fixed by contract with State: 66 Ga. 563. As to Georgia Railroad and Central Railroad, see 62 Ga. 485; 66/566. Such contract irrevocable: 54 Ga. 428, 423.

State tax on railroads.

That some railroads not constitutionally taxable beyond percentage of income, not hinder taxation of other railroads *ad valorem*: 87 Ga. 487; see also 89 Ga. 575.

Act limiting taxation on per centum of "annual income," means gross income; lease not affect basis of taxation: 62 Ga. 468.

Consolidation of railroad with South Carolina Railroad under new name, new corporation, at least *de facto*, and taxable as other persons: 63 Ga. 483.

This act exhaustive as to State taxation; return should specify the several sorts of property; does not exempt property previously taxable: 71 Ga. 25.

No machinery under Act of 1874 for county taxation, and doubtful if county could tax; provided by Acts of 1882-3, p. 39: 71 Ga. 25.

City cannot tax railroad property used in its business: 71 Ga. 158; see also 71 Ga. 24.

Where effect of legislation was to exclude counties and municipalities from taxing railroads: 72 Ga. 211; see also 78 Ga. 119.

Under Act of 1883, pp. 39 and 41, depot in city not subject to city or county tax: 74 Ga. 16.

Acts 1874,
p. 107.

§781. (826 b.) *The presidents shall pay the taxes assessed.* Said presidents shall pay to the comptroller-general the taxes assessed upon the property of said railroad companies; and on failure to make the returns required by the preceding section, or on failure to pay the taxes so assessed, the comptroller-general shall proceed to enforce the collection of the same in the manner provided by law for the enforcement of taxes against the other incorporated companies before mentioned.

Acts 1874,
p. 107.
§903.

§782. (826 c.) *Tax, how resisted.* If any railroad company affected by the preceding sections desires to resist the collection of the tax therein provided for, said company through its proper officer may, after making the return required in section 780, and after paying the tax levied on such corporation by the tax Act and continuing to pay the same while the question of its liability herein is undetermined, resist the collection of the tax above provided for, by filing an affidavit of illegality to the execution or other process issued by the comptroller-general, stating fully and distinctly the grounds of resistance, which shall be returnable to the superior court of Fulton county, to be there determined as other illegalities; the same to have precedence of all cases in said court as to time of hearing, and with the same right of motions for new trial and writs of error as in other cases of illegality, in which case the comptroller-general shall be represented by the attorney-general of the State, or such other attorney as the Governor may select; if the grounds of such illegality be not sustained, the comptroller-general shall, after crediting the process aforesaid with amount paid, proceed to collect the residue due under the provisions aforesaid; and if, at any time during the pendency of any litigation herein provided for, the said corporation shall fail to pay the tax required to be paid as a condition of hearing, then said illegality must be dismissed, and no sec-

County taxation of railroads.

ond affidavit of illegality shall be allowed. Said illegality may be amended as other affidavits of illegality, and shall always be accompanied by good bond and security for the payment of the tax *fi. fa.* issued by the comptroller-general.

To be entitled to this remedy, railroad must have made returns before executions issued: 62 Ga. 463, 468, 485, 495, 510.

Case under this section: 70 Ga. 11.

Attorney-general cannot perform duties of comptroller: 70 Ga. 26.

Entries of settlement stricken, and *fi. fas.* ordered to proceed: 70 Ga. 12.

Jury may assess the property, on trial, under this section: 70 Ga. 12.

Mode of assessing sections and branches of railroad: 70 Ga. 13.

Taxpayer availing himself of illegality authorized by statute, must abide the statute as to such remedy: 89 Ga. 598.

§783. (826 c (3).) *Railroad companies, how dealt with for not paying tax.* In the event of refusal by any railroad company to pay the tax on account of exemption in the charter of such company, it shall be the duty of the attorney-general, when directed by the Governor, to institute proceedings to ascertain whether or not the charter of such company is liable to forfeiture by reason of any violation of its provisions, and the result of such proceedings shall be reported to the General Assembly. Acts 1877,
p. 125.
§§815, 1969,
2167 (11).

ARTICLE 4.

COUNTY TAXATION OF RAILROADS.

§784. *Railroads to report to comptroller annually.* On or before the first day of May, each railroad company in this State shall make an annual return to the comptroller-general, for the purposes of county taxation in each of the counties through which said road runs, in the following manner: Said return shall be under the oath of the president or other chief executive officer, and shall show the following facts as they existed on the first day of April preceding, to wit: first, the aggregate value of the whole property of said railroad company; second, the value of the real estate and track-bed of said company; third, the value of the rolling-stock and all other personal property of said company; fourth, the value of the company's property in each county through which it runs. Acts 1889,
p. 29.
§§726, 779,

Constitutional: 89 Ga. 574. See 71 Ga. 30.

§785. *Taxed by each county through which it passes.* Whenever the amount of the tax levy of any county through which the said railroad runs is assessed by the authority of such county, it shall be the duty of the ordinary thereof to certify the same and transmit such certificate to the comptroller-general; and the property of such rail- Acts 1889,
p. 29.
§§779, 726.

County taxation of railroads.

road companies shall be subject to taxation in each county through which the same passes, to the same extent and in the same manner that all other property is taxed, in the manner hereafter set out.

Acts 1889,
p. 29.

§786. *Property assessed.* Whenever such certificate is received by the comptroller-general, he shall proceed to assess the amount of each and every railroad company's property, in each and every of said counties, in the following manner: First, it shall be assessed upon the property located in each county, upon the basis of the value given by the returns. Second, the amount of tax to be assessed upon the rolling-stock and other personal property, is as follows: As the value of the property located in the particular county is to the value of the whole property, real and personal, of the said company, such shall be the amount of rolling-stock and other personal property to be distributed for taxing purposes to each county. The value of the property located in the county and the share of the rolling-stock and personal property thus ascertained, and apportioned to each of such counties, shall be the amount to be taxed to the extent of the assessment in each county.

Acts 1889,
p. 29.

§787. *Taxes due county paid tax-collector.* Whenever the comptroller-general shall ascertain and levy in the manner specified the amount of tax due by such company to each of such counties, it shall be his duty at once to notify the president and treasurer of such railroad company of the amount due in each of said counties for county taxes of said railroads, and each and every road is required, within sixty days from the receipt of such notice, to pay to the tax-collector of each county through which the railroad runs the amount mentioned by the comptroller-general as the tax due to such county.

Acts 1889,
p. 29.
§903.

§788. *Manner of issuing fi. fas.* If any railroad company shall refuse to pay the amount thus ascertained and due by it to the tax-collector of any county to which the same is due and payable, it shall be the duty of the comptroller-general to issue a *fi. fa.* in the name of the State of Georgia against such railroad company for the same, to be issued, levied, and returned in the same manner as tax *fi. fas.* are issued for State taxes due in the State by said companies.

Acts 1889,
p. 29.
§903.

§789. *Affidavit of illegality.* If any railroad company shall dispute the liability to such county tax, it may be done by an affidavit of illegality, to be made by the president of said railroad in the same manner as other affidavits of illegality are made, and shall be returned for trial to the superior court of the county of Fulton, where such cases shall be given precedence for trial over all other cases, except tax cases in which the State shall be a party.

GENERAL NOTE.—This act considered and construed in detail and held constitutional: 89 Ga. 574; see also 89 Ga. 597.

ARTICLE 5.

SPECIAL TAX FOR LIQUOR-DEALERS, ETC.

§790. (809 a.) *Special tax on liquor-dealers, and its collection.* The general tax Act provides for levying a specific tax upon all dealers of spirituous or malt liquors, and intoxicating bitters, whether dealing in either or all thereof, for each place of business in each county where the same are sold, and the collection of such tax is provided for in the sections following. Acts 1880-1, p. 42.

§791. (809 b.) *Liquor-dealers shall register.* Annually, each person or firm desiring to engage in the sale of spirituous or malt liquors or intoxicating bitters, or in either or all of them, in this State, shall, before they commence the sale of such spirituous or malt liquors or intoxicating bitters, go before the ordinary of the county in which he or they propose to sell said spirituous or malt liquors, or intoxicating bitters, and register his or their names as such dealer. Acts 1880-1, p. 42. 1882-3, p. 55.

Registration, etc., not authorize sales in Atlanta, without license from county commissioners: 77 Ga. 663.

§792. (809 c.) *Ordinary shall give notice of registration.* As soon as the dealer has registered, the ordinary shall notify the comptroller-general, and the tax-collector of his county, of the fact that such person, or the members of such firm, have registered as a dealer in spirituous or malt liquors, or intoxicating bitters. Acts 1880-1, p. 42.

§793. (809 d.) *Comptroller shall keep register.* The comptroller-general shall keep in his office a book, to be known and styled as a "Register of liquor-dealers," and it shall be his duty, when notified by the ordinary of a person or the members of such firm registering for the purpose of engaging in the sale of spirituous or malt liquors, or intoxicating bitters, to enter the name of such person or the members of such firm in said book, in places set aside in said book of registry, for each county in this State. Acts 1880-1, p. 42.

§794. (809 e.) *Tax-collector's duty.* The tax-collector, as soon as he is notified of the registering of a person or the members of a firm as a dealer in spirituous or malt liquors, or intoxicating bitters, shall enter the name of said person, or the members of such a firm, in a book to be known as a county register of liquor-dealers, said book to be furnished the tax-collector. Acts 1880-1, p. 42.

§795. (809 f.) *Dealer shall pay tax upon registration.* Whenever a person or members of a firm register, such person or members of such firm shall pay to the tax-collector of the county where such registry is made, the entire amount of the tax imposed for that year by the General Assembly in the general tax Act, before commencing to do the business for which he or they registered. Acts 1880-1, p. 42.

Special tax for liquor-dealers, etc.

Acts 1880-1,
p. 43.

§796. (809 g.) *Penalty for failure to register and pay tax.* Where a person or members of a firm register as a dealer in spirituous or malt liquors, or intoxicating bitters, and fail or refuse to pay the tax, or where a person or members of a firm commence to sell spirituous or malt liquors, or intoxicating bitters, without complying with the requirements of section 791, such person or members of such firm shall be guilty of a misdemeanor, and it shall be the duty of the tax-collector to give information against such person, or members of such firm so violating the provisions of the preceding sections, to the solicitor-general of the circuit in which his county is located, and it shall be the duty of the solicitor-general to draw up a bill of indictment against such person or members of such firm, and when there is a true bill found by the grand jury, he shall prosecute such person or members of such firm so indicted.

Acts 1880-1,
p. 43.

§797. (809 h.) *Liability of tax-collector who fails to inform.* Whenever a tax-collector fails or refuses to give the solicitor-general the information, it shall be the duty of the Governor, upon proper proof being made before him of such failure or refusal by the tax-collector to give information to the solicitor-general, to order the comptroller-general to issue *fi. fa.* against such tax-collector and his bondsmen for the amount of the tax which is due by the offender who has violated the provisions of the preceding sections as aforesaid, and against whom the tax-collector has failed or refused to inform.

Acts 1880-1,
p. 43.

§798. (809 i.) *Comptroller to furnish register, etc.* The comptroller-general shall furnish each ordinary and tax-collector with a book, upon which they shall enter the name of each person or members of a firm registering as a dealer in spirituous or malt liquors, or intoxicating bitters. In the case of the ordinary, it shall be his duty in registering the same to give the name, place of business, and when registered. In case of the tax-collector, it shall be his duty to enter the name of the person or members of a firm registered with the ordinary, date when notified by the ordinary, date of when tax was paid him, amount of tax paid, and date of remitting same to the treasurer of the State.

Acts 1880-1,
p. 43.

§799. (809 j.) *Collectors shall report tax and remit same.* The tax-collector shall make quarterly reports of the amounts collected from dealers in spirituous or malt liquors, or intoxicating bitters, to the comptroller-general, under oath to be administered by any duly qualified officer, and it shall be the duty of the tax-collectors to remit to the treasurer of the State the amounts of their collections, less commissions, at the time of forwarding their quarterly reports to the comptroller-general.

Acts 1880-1,
p. 43.

§800. (809 k.) *Fees of ordinary and collector.* The commission to be allowed to the tax-collectors for collecting these special taxes

Special tax for liquor-dealers, etc.

shall be the same percentage as is now allowed them for collecting the general tax in their respective counties, upon the amount collected; and the fee to be allowed the ordinary for registering the name of the dealer in spirituous or malt liquors, or intoxicating bitters, shall be the same as now allowed for recording an official bond: *Provided*, said fee is paid by the party registering.

§801. (809 m.) *Inspection of registry by grand jury.* It shall be the duty of the ordinary and tax-collector to lay before the grand juries of their respective counties, at the fall term of each meeting of their superior courts, the books of registry kept by each of them, and it shall be the duty of the grand jury to inspect said registers and compare one with the other, and having made such inspection, if any discrepancies are found in said books, or if they find there are any dealers in spirituous or malt liquors, or intoxicating bitters, doing business in their county, not reported or registered on such books, it shall be their duty to report such discrepancy to the comptroller-general, and it shall be his duty, if the discrepancy is found to be in favor of the State, to issue *fi. fa.* against said collector for the amount so reported by the grand jury as being due the State, and if a person, or the member or members of a firm engaged in this sale of spirituous or malt liquors, or intoxicating bitters, have failed to register, or having registered have failed to pay, it shall be their duty to indict such persons. Acts 1880-1, p. 43.

§802. (811.) *License, when necessary.* No assessment or payment of tax is to exonerate the person from taking out a license from the county, or city or incorporated town, where they are required by law so to do.

Where a physician is licensed by authority of the State, the city of Savannah cannot require him under penalty to take out license before he can practice his profession. But the practice of his profession in that city is the subject of taxation: 36 Ga. 460. See also note to section 1538. A license tax by a city on a foreign insurance company with an agency in the city: 50 Ga. 537.

Suit against city, alleging unlawful revocation of liquor license, should specify how act was unlawful: 89 Ga. 781.

§803. (810.) *Billiard-tables, etc.* Where persons are specifically taxed for keeping a billiard or pool table, bagatelle-table or tenpin-alley, they need not give in the value thereof.

Taxes, how returned and collected; returns to comptroller-general; payment made. Arbitration, etc.

CHAPTER 2.

TAXES, HOW RETURNED AND COLLECTED.

ARTICLE 1.

RETURNS TO COMPTROLLER-GENERAL.

SECTION 1.

RETURNS AND PAYMENT, HOW MADE.

§§874, 779-789.

§804. (832.) *Returns to comptroller, how made.* The returns of all 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 company is subject to taxation by the laws of this State.

§805. (826.) *Returns and taxes, etc.* The returns of all 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 paid to the State treasurer by the first day of October, and not later than December twentieth, of each year.

Cited: 87 Ga. 490.

Right to tax railroads reserved to State; city ordinance attempting to impose such tax, invalid: 78 Ga. 119.

See notes to section 780.

§773.

§806. (833.) *Payments, how made.* 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.

SECTION 2.

ARBITRATION OF DIFFERENCES.

Acts 1878-9, p. 166.

§807. (833 a.) *Differences arbitrated, how.* Whenever the comptroller-general shall be dissatisfied with a return for taxation required by law to be made to him by any corporation, company, person, or institution, and shall make an assessment which is not satisfactory to the officer or person making such return, and two arbitrators are chosen, one by the comptroller-general and the other by said officer

Returns of insurance companies.

or person, if said arbitrators fail to select an umpire within thirty days after receiving notice of their appointment, the Governor shall appoint two arbitrators, who with the arbitrator selected by said officer or person representing the corporation, company or institution, shall determine the question of amount or value, as the case may be, and their award shall be final.

Applies to taxes accruing after date of this Act: 70 Ga. 13.

§808. *Arbitration to assess tax against railroad, express, sleeping-car, and telegraph companies.* In all cases of disagreement between the comptroller-general and any railroad or express company, sleeping-car companies, and telegraph companies owning property in this State, as to the taxable value of their said property, where said differences are referred to arbitration, the comptroller-general shall appoint any one of the railroad commissioners to act as arbitrator for the State, in each case, and it shall be the duty of said railroad commissioner, when thus appointed, to perform the duty of arbitrator without any additional compensation.

Acts 1894,
p. 67.
§812.

SECTION 3.

RETURNS OF INSURANCE COMPANIES.

§809. (875 c.) *Insurance companies to give names of agents.* Insurance companies doing business in this State, in making their returns to the comptroller-general for purposes of taxation, shall give the name of each agent acting for such company, and post-office address of same; the aggregate amount of risks underwritten in this State during the tax year; the amount of premiums received, and the losses paid and unpaid by agencies.

Acts 1880-1,
p. 47.

§810. (875 d.) *President makes return.* The returns provided for in the preceding section shall be made by the president, or some other duly authorized officer of the company duly sworn to, and shall be forwarded to the comptroller-general on or before July first, of each year, and at the time of making such return, the amount of tax due by said company upon premium receipts, or otherwise, shall be forwarded to the treasurer.

Acts 1880-1,
p. 47.

§811. (875 e.) *Returns, shall embrace what.* Returns hereinbefore required to be made to the comptroller-general shall embrace a period of time commencing with May first, and ending with April thirtieth, next preceding the date of the return made, and companies making the same must notify the comptroller-general of the officer or attorney in this State against whom legal process shall issue in case it becomes necessary for the comptroller to issue *fi. fa.* against said companies

Acts 1880-1,
p. 47.

Returns to comptroller, assessments in case of difference. Proceedings in case no returns, collection, etc.

for any violation of the laws in this State governing insurance companies, or for the non-payment of taxes due by them.

SECTION 4.

RETURNS TO COMPTROLLER, ASSESSMENTS IN CASE OF DIFFERENCE.

Acts 1877,
p. 126.
§808.

§812. (826 d.) *Returns to comptroller must be itemized.* Whenever corporations, companies, persons, agencies, or institutions, are required by law to make returns of property, or gross receipts, or business, or income, gross, annual, net, or any other kind, or any other return, to the comptroller-general, for taxation, such return shall contain an itemized statement of property, each class or species to be separately named and valued, or an itemized account of gross receipts, or business, or income, as above defined, or other matters required to be returned, and in case of net income only, an itemized account of gross receipts and expenditures, to show how the income returned is ascertained, and such returns shall be carefully scrutinized by the comptroller-general, and if in his judgment the property embraced therein is returned below its value, he shall assess the value, within sixty days thereafter, from any information he can obtain, and if he shall find a return of gross receipts, or business, or income, as above defined, or other matters required to be returned as aforesaid, below the true amount, or false in any particular, or in anywise contrary to law, he shall correct the same and assess the true amount, from the best information at his command, within sixty days. In all cases of assessment, or of correction of returns, as herein provided, the officer or person making such returns shall receive notice and shall have the privilege, within twenty days after such notice, to refer the question of true value or amount, as the case may be, to arbitrators—one chosen by himself, and one chosen by the comptroller-general—with power to choose an umpire in case of disagreement, and their award shall be final.

Applies to taxes accruing after February 22d, 1877: 70 Ga. 13.

SECTION 5.

PROCEEDINGS IN CASE OF NO RETURNS; COLLECTION BY COMPTROLLER.

Acts 1877,
p. 127.
§808.

§813. (826 e.) *When no return, comptroller to assess.* In cases of failure to make return, the comptroller-general shall make an assessment from the best information he can procure, which assess-

Returns to receiver of tax returns; what to be returned.

ment shall be conclusive upon said corporations, companies, persons, agencies, or institutions.

Mode of assessing sections and branches of railroad: 70 Ga. 13.

§814. (826 f.) *Collection of tax, how enforced.* In all cases of default of payment of taxes upon returns or assessments, the comptroller-general shall enforce collections in the manner now provided by law. Acts 1877, p. 127. §§867, 874, 880.

§815. (826 g.) *Usual penalties still of force.* Nothing in the three preceding sections shall alter or affect the penalties now provided by law against defaulting or delinquent corporations, companies, persons, or institutions referred to therein, or to alter or affect the mode of enforcement of such penalties now provided by law. Acts 1877, p. 127. §§783, 1969, 2167 (11), 11.

Cited: 72 Ga. 211.

Taxes do not bear interest, but are enforced by penalties: 70 Ga. 13; see also section 887.

ARTICLE 2.

RETURNS TO RECEIVER OF TAX RETURNS.

SECTION 1.

WHAT TO BE RETURNED.

§816. (828.) *Returns of mining companies, etc.* Mining companies must make their returns in the county where the mine is worked, and those who have plantations in counties not their residence must make the returns for them together with the stock and other property employed thereon, in the counties where they are respectively situated. Acts 1855-6, p. 275. §768.

§817. (829.) *Mine or plantation on county line.* If there is a mine or plantation on the line between two counties, and in two or more counties, the returns shall be made in the county where the improvements or most of the improvements are. But any plantation whereon the owner resides which shall be divided by a county line or lines, and said county line or lines shall not be definitely ascertained and distinctly marked, shall be returned for taxation by the owner in any of the counties in which a part of said plantation may lie, which the owner may elect. Acts 1880-1, p. 49.

Meaning of "plantation" discussed and defined: 79 Ga. 721.

§818. (830.) *Non-residents included.* The provisions of the two preceding sections apply to non-residents who hold such property in this State. §§766, 776.

Wild lands and notice to non-residents.

Act 1840,
Cobb, 1073.
§§ 769, 776,
834.

§819. (831.) *Returns of non-residents, etc.* Lands and other property of non-residents must be returned and paid for in the county where the lands or other property are respectively situated.

Acts 1872,
p. 77.

§820. (873.) *Taxable lands, how and when returned.* All lands in this State subject to taxation, whether improved or unimproved, shall be returned by the person or persons owning the same, his, her or their agent or attorney, to the receiver of the county where the land lies. And it shall be the duty of the receiver to require all persons making returns of lands in his county, to return the same by district, number and section, if the lands have such designation, and when lands have no such designation, then by such description as will enable the receivers to identify them. Receivers are prohibited from receiving any returns of land which do not so designate them. And the comptroller-general is prohibited from allowing any receiver compensation or percentage for his services, who receives returns in any other manner.

Sale under tax *fi. fa.* where land improperly described: 80 Ga. 73.

Wild lands returned to tax-receiver and tax paid to collector, sale by comptroller-general void: 76 Ga. 739.

Where tract of land did not constitute a "plantation" within meaning of section 817, but should have been returned under general law, to wit, this section: 79 Ga. 721.

Under Act of 1874 (pamph. pp. 105, 107), comptroller-general could issue tax execution only against unimproved land. Sale under execution against cultivated land was void: 73 Ga. 95; see also 65 Ga. 219.

SECTION 2.

WILD LANDS AND NOTICE TO NON-RESIDENTS.

Acts 1880-1,
p. 46.
1882-3, p. 47.
§834.

§821. (874 b.) *Wild land returned, how, and subject to double tax, when.* Any wild lands not given in for taxes in the county in which they may be, shall be subject to double tax, as other property, and it shall be the duty of the receiver of tax returns, when taxes are not paid in the time provided by law, to issue executions against said wild land, and after due advertisement, as now prescribed by law, to sell said lands for payment of taxes; the tax-collector, upon receipt by him of any return of lands, shall transmit immediately his receipt for such return to the person making the same: *Provided*, that the owner of any wild lots or tracts of land through which county lines may run, shall be allowed to return said lots or tracts of land in either county containing any portion of said lots or tracts of land.

This, and section 910 refer to unreturned wild lands; returned wild lands governed by section 909, and are redeemable only within a year: 81 Ga. 653.

Returns, when and to whom made; duty of receiver of returns.

§822. *Owners to be notified of returns received.* The receiver of tax returns shall notify non-residents or their agents of the receipt of their returns immediately upon the receipt of the same by them, and the tax-collectors, as soon as the digests are turned over to them, and the rate of tax levied, shall notify non-residents or their agents of the amount of tax due by them. Acts 1881, p. 45. 1882-3, p. 45. §834.

§823. *Penalty.* If any person shall suffer injury by the failure of the tax-collectors to do their duty as prescribed in the preceding section, the officer so offending shall be liable on his bond to the party so damaged for the full damage sustained by the owner of said land, including all costs and expenses of redeeming or recovering his land or the value of the land not redeemed or recovered.

§824. *Notice by mail.* Notice forwarded by due course of mail shall be held and deemed a sufficient compliance with the requirements of this Article by the receiver and collector.

§825. *Expense refunded.* The receiver and collector shall be allowed and paid their respective accounts annually incurred for postage in carrying out the requirements of this Article, upon a sworn account properly audited by the officer or officers having charge of the county finances.

SECTION 3.

RETURNS, WHEN AND TO WHOM MADE; DUTY OF RECEIVER OF RETURNS.

§826. (827.) *Returns, to whom made.* 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 cases of mining companies and of persons who cultivate lands in counties not their residence.

§827. (834.) *Other returns, how made.* Returns of 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 and not later than the twentieth day of December in each year.

Formerly the first of January was the time: 8 Ga. 479. Section cited, and the first of April fixes the liability to tax for the current year: 51 Ga. 252-254. An export on the first of April, 1875, exempt from taxation: 60 Ga. 63-66.

Irregularities in returning municipal taxes are waived by defendant in *fi. fa.*, pointing out property to be levied on: 80 Ga. 55.

§828. (921.) *Negligence of receiver, etc.* 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.

Form of tax returns.

§829. (923.) *One whose return has been refused, etc.* The person whose return is refused may save a double tax by making his return to the ordinary, 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.

§830. (925.) *What is no refusal.* The claim of the receiver to assess a taxpayer's property is not a refusal to receive a return.

Acts 1876,
p. 15.

§831. (923 a.) *Names to be taken in full.* Receivers of tax returns in the various counties of this State shall enter on their digests the first name in full of all taxpayers.

Acts 1894,
p. 31.

§832. *Names of colored persons shall be entered alphabetically, etc.* The tax-receivers shall place the names of the colored taxpayers, in each militia district of the county, upon the tax digest in alphabetical order. Names of colored and white taxpayers shall be made out separately on the tax digest.

SECTION 4

FORM OF TAX RETURNS.

Acts 1884-5,
p. 8.
1886, p. 24.

§833. *Questions for taxpayers.* For the purpose of having a full and correct return of the real and personal property of this State, it shall be the duty of the receiver of tax returns to present a list to each taxpayer, which shall contain the following :

Are you subject to poll-tax?

Are you a daguerrean or other artist?

Are you a lawyer?

Are you a doctor?

Are you a dentist?

How many hands are employed by you between the ages of twelve and sixty-five years?

How many acres of land, except wild lands, do you own, or of how many are you the holder, either as parent, husband, trustee, executor, administrator, or agent? Where is the same located by number and section? What is the value thereof?

How many acres of wild land do you own or represent in this county, by number, district, and section? What is the value thereof?

What is the value of your improved city or town property, including the improvements thereon?

What is the value of your unimproved city or town property?

How many shares in the bank of which you are president, and what is the value thereof?

Form of tax returns.

How much capital have you in the bank of which you are president, as a sinking fund, or surplus fund, and not represented in the value of the shares?

How much property, real and personal, does the bank of which you are president own, not used in the banking business, and what is the value thereof?

How much money or capital has the building association or the building and loan association of which you are the president, in loans?

How much money on hand?

What is the gross value of your notes, accounts, or other obligations for money, and the market value thereof—whether the same are within or without this State? Acts 1884-5, p. 28. 1886, p. 24.

What is the value of your turpentine-stills and appurtenances?

What is the value of your leases or leased privileges or other assets of like character?

The value of your merchandise of all kinds on hand?

The amount of capital invested in shipping and tonnage?

The amount of capital invested in stocks of companies other than such companies as are required to be returned by the presidents or their agents to the comptroller-general?

How much capital invested in bonds; except bonds of the United States and such bonds of this State as are by law exempt from taxation?

How much capital has the manufacturing company of which you are president, or agent, invested in the manufacture of woolen or cotton fabrics, including lands, and what is the value of your stock on hand, and what is your surplus fund?

How much capital have you invested in iron-works, foundries, and machine-shops, including machinery and land?

How much capital have you invested in mining, including lands, and what is your surplus fund?

What is the value of your household furniture including your tableware?

What is the value of your kitchen furniture?

What is the value of your office furniture?

What is the value of your pianos, organs, and other musical instruments?

What is the value of your sewing-machines?

The value of your gold watches?

The value of your silver watches?

The value of your watches made from material other than gold or silver?

The value of gold and silver ware?

Oath of taxpayer.

- The value of diamonds and jewelry worn by owner or not?
 The value of horses?
 The value of mules and asses?
 The value of cattle?
 The value of sheep?
 The value of goats?
 The value of hogs?
 The value of carriages, wagons, and buggies?
 The value of agricultural tools, implements, and machinery?
 The value of your library, pictures, paintings, and statuary?
 The value of cotton, corn, and other farm products on hand and for sale?
 Value of guns, pistols, bowie-knives, and such articles?
 The value of portable sawmills, gins, engines, and other machinery, or of such or other machinery, stationary or otherwise, and not returned as part of the realty?
 The value of all other property not herein mentioned?

SECTION 5.

OATH OF TAXPAYER.

Acts 1884-5, §834. *Oath of taxpayers.* The oath to be attached to the lists provided for in this Chapter shall be as follows: "I do solemnly swear that I have carefully read (or have heard read) and have duly considered the questions propounded in the foregoing tax-list, and that the value placed by me on the property returned, as shown by said list, is at the true market value thereof; and I further swear that I returned, for the purposes of being taxed thereon, every species of property that I own in my own right, or have control of, either as agent, executor, administrator, or otherwise; and that in making said return, for the purpose of being taxed thereon, I have not attempted, either by transferring my property to another or by any other means, sought to evade the laws governing taxation in this State. I do further swear that in making said return I have done so by estimating the true worth and value of every species of property contained therein." Which oath shall be subscribed by the persons making the return, and the administration and taking of the oath shall be attested by the receiver of tax returns; but the oath of non-residents, females, and sick persons may be taken and subscribed before any person authorized to administer an oath, and forwarded to the receiver.

Blanks, lists, and digests. Assessment or arbitration in case of insufficient return.

SECTION 6.

BLANKS, LISTS, AND DIGESTS.

§835. *Lists furnished to tax-receivers.* It shall be the duty of the comptroller-general to have the lists provided for in this Article printed with the oath required by preceding sections attached thereto, and at the time of forwarding the digests to the receivers of tax returns, he shall forward to each receiver of tax returns a sufficient number of such lists to enable them to take the returns of the taxpayers of their respective counties; the lists furnished by the comptroller-general, as above provided, shall be so arranged as to make the items in the same correspond as nearly as practicable with the items on the digests as furnished to the receivers of tax returns. Acts 1884-5, p. 28. 1886, p. 24.

§836. (846.) *Comptroller to furnish receivers blank forms.* The receivers of tax returns in making the digests shall conform to the forms furnished and shall make out three digests, and each digest shall be of uniform size, and when returned shall be bound and labeled. Act 1845, Cobb, 1076.

§837. (848.) *Returns, how entered in digests.* Land and interest in land, 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. Acts 1851-2, p. 290.

§838. (849.) *Number of digests, to whom furnished.* The receiver must make out three of such digests in a fair and legible handwriting, and furnish, by the first day of August in each year, one to the comptroller-general, one to the ordinary, and one to the tax-collector. Acts 1851-2, p. 291.

Section cited and the digests are evidence on the trial of an issue as to the payment of taxes: 47 Ga. 90.

SECTION 7.

ASSESSMENT OR ARBITRATION IN CASE OF INSUFFICIENT RETURN.

§839. (839.) *In case of false return, tax-receiver to assess value.* 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. Acts 1858, p. 103. §§807, 812, 813.

Does this apply to returns made to the comptroller-general? 70 Ga. 13.

Tax-receiver dissatisfied with return should assess property within thirty days: 92 Ga. 715.

Overpayment and mistakes, how corrected.

Acts 1858,
p. 103.
§879.

§840. (840.) *Subsequent proceedings.* If such assessment is not made by the receiver *instanter*, he shall give the taxpayer notice of his assessment, and in either case it shall be the taxpayer'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.

It is here assumed that the Act of 1804 is still in force in reference to one neglecting or refusing to give in his taxable property, or convicted of fraud or making a false return, being liable to a penalty one-half to the informer: 20 Ga. 585. That a part of the eighth section of the Act of 1804 in reference to paying clerks of the inferior court a fine of \$10.00, is repealed: 28 Ga. 85.

Does this apply to returns made to the comptroller-general? 70 Ga. 13.

Assessors may fix valuation higher even than receiver himself did. Taxpayer having invoked this section cannot attack its constitutionality. Notice of time and place of meeting, and opportunity to be heard, not required, statute contemplating that assessors act, not on evidence, but on their personal knowledge and opinion: 90 Ga. 148.

§§874, 879.

§841. (841.) *Property returned below its value.* It is the privilege of any taxpayer of the county 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 complainant and the ground of complaint, and shall proceed to have a new assessment in the terms of the preceding section.

Acts 1859,
p. 70.

§842. (842.) *Oath of assessors.* 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.

SECTION 8.

OVERPAYMENT AND MISTAKES, HOW CORRECTED.

Act 1845,
Cobb, 1077.
§§7, 268,
3723.

§843. (850.) *Mistakes, how corrected.* 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 ordinary and the tax-collector of the county from which such digest comes, of such mistake and correction.

Act 1845,
Cobb, 1078.
§§908, 3723.

§844. (851.) *Tax overpaid to be refunded when in the treasury.* If by reason of such mistake, or from any other cause, a taxpayer'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

Double tax, when collected.

the Governor, who shall, if he approves, draw his warrant on the treasury in favor of such taxpayer for the proper amount, out of any moneys not otherwise appropriated.

Money paid for license voluntarily, though in good faith, and license illegally issued, not recovered back: 85 Ga. 468.

§845. (852.) *And before reaching the treasury.* 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. Acts 1855-6, p. 275. §3723.

§846. (853.) *Doubtful cases.* When any similar cases arise which are doubtful in the opinion of the Governor, he shall refer the matter to the General Assembly. Acts 1855-6, p. 275.

SECTION 9.

DOUBLE TAX, WHEN COLLECTED.

§847. (854.) *Defaulters to be doubly taxed.* 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; and for every year's default the defaulter shall be taxed double until a return is made. Act 1813, Cobb, 1059. Act 1845, Cobb, 1076. Act 1847, Cobb, 1078. Acts 1851-2, p. 290. 1863-4, p. 49. 1873, p. 20.

Taxes do not bear interest unless so provided: 70 Ga. 13.

Where machinery for making return is not provided, double tax is inequitable, and should be enjoined: 71 Ga. 25.

§848. (855.) *Property not returned to be doubly taxed.* If there is taxable property, real or personal, in a county, 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. §874.

Section cited: 51 Ga. 454, 455; see also 68 Ga. 585. Cited: 71 Ga. 814.

Relief from double tax.

SECTION 10.

RELIEF FROM DOUBLE TAX.

§849. (856.) *When defaulters not liable for double tax.* If persons who are required to give in land in the counties where situated 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.

Acts 1860,
p. 59.

§850. (843.) *Defaulting taxpayer, how relieved.* When a taxpayer has been returned as a defaulter and doubly taxed, either by the receiver or collector, the ordinary is authorized to relieve the defaulter of the penalty for default at the time said ordinary allows the collector his insolvent lists: *Provided*, that said taxpayer shows to such ordinary, by satisfactory evidence, that either from providential or other good cause he had not an opportunity to make his returns 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.

Act 1804,
Cobb, 1051.

§851. (844.) *Defaulters, how relieved from double tax.* 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 ordinary 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.

§852. (845.) *Defaulter's oath.* The ordinary, shall require the taxpayer to swear to the cause of his delay, and shall state the same in the copies furnished the comptroller or receiver.

Act 1815,
Cobb, 1062.

§853. (885.) *Persons wrongly judged as defaulters, how relieved.* 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 ordinary 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.

Sheriff collecting money from defaulter must at once pay it to comptroller-general: 83 Ga. 38. No law for judicial trial of claim thereto: 83 Ga. 38; citing 58 Ga. 106.

Liability of agents of non-residents. For former years. When estates not double-taxed. Third parties, etc.

SECTION 11.

LIABILITY OF AGENTS OF NON-RESIDENTS.

§854. (857.) *Agents of non-residents.* All persons who give in ^{Act 1804,} property for persons not resident in the State shall be personally ^{Cobb, 1047.} liable for the taxes, as well as the principal and his property. ^{§881.}

Section cited and construed: 51 Ga. 455; see also 68 Ga. 585. Cited: 71 Ga. 814; 86/601.

Notice of levy for municipal taxes should have been given agent of non-resident owner here: 77 Ga. 772.

SECTION 12.

TAXES OF FORMER YEARS.

§855. (870.) *Taxes for former years, how returned and collected.* Re- ^{Act 1813,} ceivers and collectors are required to receive the returns and to col- ^{Cobb, 1060.} lect the taxes thereon for former years, when any person is in ^{§§883, 2787.} 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.

As to taxes due under the relief law: 43 Ga. 538–547. Overruled by: 16 Wall. (U. S.) 315.

SECTION 13.

ESTATES NOT LIABLE FOR DOUBLE TAX, WHEN.

§856. (871.) *Estate not liable to default, when.* The estate of any ^{Act 1848,} person shall not be liable for default when said person may have ^{Cobb, 1057.} 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.

SECTION 14.

LIABILITY OF TAX OFFICERS TO THIRD PARTIES.

§857. (874d.) *Officer liable for failure of duty.* If any person has ^{Acts 1880-1,} given in his lands as herein prescribed, and shall suffer injury by ^{P. 45.} the failure of the receivers of tax returns to do their duty, the officer

Colored taxpayers' returns. List of insolvents and defaulters; insolvent lists.

so offending shall be liable on his bond to the party so damaged for the full value of the land sold.

SECTION 15.

COLORED TAXPAYERS' RETURNS.

Acts 1874,
p. 109.

§858. (875 a.) *Returns of taxes paid by colored people to be made.* The several receivers of tax returns and tax-collectors in this State, or other officers performing similar duties, shall make returns to the comptroller-general of the character and amount of all taxes returned or paid by colored taxpayers in this State. And it shall be the duty of the comptroller-general in his annual report to make a general exhibit of the character and amount of the taxes so returned.

ARTICLE 3.

LIST OF INSOLVENTS AND DEFAULTERS.

SECTION 1.

INSOLVENT LISTS.

Act 1804,
Cobb, 1049.
Acts 1855-6,
p. 136.
1857, p. 132.

§859. (858.) *When collectors to pay taxes into treasury and present insolvent list.* The several 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 proper authority.

Acts 1878-9,
p. 180.
§§774, 941.

§860. (859.) *Insolvent list, by whom allowed.* Insolvent lists of tax-collectors shall alone be allowed by the ordinary, county judge, commissioners of roads and revenue, or other tribunals authorized by law, except grand juries, upon a return of the tax execution with entry of proper legal officer of "no property."

Acts 1878-9,
p. 180.

§861. (860.) *Lists, how allowed.* Said official tribunals shall, if they have reason from any cause to suspect the return of the returning officer to be incorrect in any particular, to cause such *fi. fa.* to be sent out again for collection. But before any officer named in this section shall allow any insolvent list, the officer in whose hands the tax *fi. fas.* have been placed for collection shall make oath that he has made every effort in his power to collect the same, and that

Insolvent lists.

he verily believes the taxpayers on said list have no property out of which the tax can be collected.

§862. (861.) *On what tax allowed.* The proper tribunal in making out such list shall be required to state how much is allowed the collector on account of the State tax, and how much is allowed on the county tax. Acts 1861, p. 80.

§863. (862.) *Ordinary to retain copy of list, constable to collect fi. fas.* When the collector shall have his insolvent list credited, it shall be the duty of the tribunal allowing it to retain a copy of such list and direct the collector to issue executions for the same, and place them in the hands of some constable of the county for collection, who shall be entitled to the same fees as he is entitled to for other executions, and two and one-half per centum, and the balance shall be paid by the constable to the ordinary, whose duty it shall be to transmit the same to the treasury. Acts 1857, p. 132. 1861, p. 80.

§864. (863.) *Disposition of insolvent list.* When such lists are allowed, they must be entered on the minutes of the court, and the ordinary, or other tribunal, must furnish the collector certified copies thereof, stating in the certificates when and by what tribunal allowed.

§865. (864.) *Comptroller to wait for insolvent list, how long.* Whenever the comptroller-general shall be satisfied that a tax-collector has exercised due diligence in his efforts to have his insolvent list allowed within the time prescribed by law, the said comptroller-general shall be authorized, if in his judgment the public interest will not suffer thereby, to wait with the collectors fifteen and not exceeding thirty days for said insolvent list, before issuing *fi. fa.* for the same. Acts 1861, pp. 80, 81.

§866. (865.) *When not.* 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. Act 1812, Cobb, 1059.

§867. (866.) *When time shall be granted to receivers and collectors.* 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 all such cases such officer must respond to the requirements of the comptroller-general. Act 1843, Cobb, 1074. §§774, 941.

§868. (867.) *Newly elected receivers and collectors.* Such officers are not liable for the penalties fixed for those regularly elected, until 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.

§869. (868.) *Collector to make a schedule of defaulters.* It is the duty of the collector to examine the digest of the receiver, and if he Acts 1857, p. 131.

Record of tax defaulters. Duty of comptroller as to delinquent taxpayers.

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.

Act 1843,
Cobb, 1074.

§870. (869.) *Comptroller may allow further time.* 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.

SECTION 2.

RECORD OF TAX DEFAULTERS.

Acts 1884-5,
p. 28.

§871. *Record of tax defaulters.* The tax-collectors shall record in a book kept for the purpose, in alphabetical order and by militia districts, the names of all persons who have not paid their taxes, placing opposite the name of such person the amount he is due for such tax, said record to be made in a well-bound book, to be furnished at the expense of the county, and the record so required to be made shall be filed by the first day of July of each year with the court or board of commissioners having charge and control of the county affairs.

Acts 1884-5,
p. 28.

§872. *Tax collected after record, how applied.* When any tax shall be collected after said record is made, it shall be applied to oldest tax demand against said person paying the same.

Acts 1884-5,
p. 28.

§873. *Pay of collector and forfeiture of commission.* For the service in making said record, the tax-collector shall have the sum of five dollars for every hundred names so recorded on said book, to be paid out of the county treasury; and for his failure to discharge the duties herein required of him, such collector shall forfeit one-fourth of his commissions.

ARTICLE 4.

DUTY OF COMPTROLLER AS TO DELINQUENT TAXPAYERS.

§§804, 412,
841, 848.

§874. (876.) *Defaulting corporations.* 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

Duty of comptroller as to delinquent taxpayers.

liable to the State treasury, the comptroller-general shall issue against them an execution for the amount of taxes due, according to law, together with the costs and penalties.

Section cited; illegality dismissed, not entitled to the terms of the Act of 1874, a later provision repealing an exemption from tax in the charter of a railroad: 62 Ga. 463-467. Section cited; illegality dismissed: 62 Ga. 500-508. A tax execution against a dealer in sewing-machines, under this section, not restrained by injunction: 63 Ga. 738.

Company failing to make revised return, this section applies: 70 Ga. 12.

Taxes do not bear interest, but are enforced by penalties: 70 Ga. 13.

Long standing decision that comptroller may not transfer execution, not reversed, though unsound: 84 Ga. 772.

Comptroller-general cannot transfer wild-land tax execution: 87 Ga. 448.

§875. (877.) *Forfeiture of charter of delinquent corporations.* The §§1882, 1883. 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.

§876. (878.) *Penalty, where there is no special provision.* 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.

§877. (879.) *Foreign insurance companies, penalty.* The penalty or §875. default tax on foreign insurance companies shall be five hundred dollars; on foreign bank agencies, two thousand dollars; on express companies, ten thousand dollars.

§878. (880.) *On lottery dealers.* 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.

§879. (881.) *When there is no return.* When there is no return by §841. which to assess the tax, the comptroller-general shall, from the best information he can procure, assess in his discretion.

Mode of assessing sections and branches of railroad: 70 Ga. 13.

Jury may assess on trial under section 782: 70 Ga. 12.

Company failing to make revised return, this section applies: 70 Ga. 12.

Can the comptroller-general delegate this power? 70 Ga. 12.

§880. (882.) *Executions issued against corporations, how directed.* §§804, 888, 894, 895. The executions issued by the comptroller-general against any 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 company, with power to issue and serve garnishments upon the debtors of the corporation.

§881. (883.) *Executions against agents, etc.* The executions against §854. agents of foreign institutions 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.

§882. (884.) *Money collected on fi. fa.* 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.

Section cited, and creditor with an older *fi. fa.* cannot claim the money; no judicial interference with, tolerated: 58 Ga. 106, 107.

ARTICLE 5.

TAX FI. FAS. AND SALES.

SECTION 1.

LIEN OF TAX FI. FAS.

Act 1804,
Cobb, 1050.
§§ 2791, 2787,
855.

§883. (812.) *Taxes to be first paid.* 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 due the State were a lien on the property of the debtor, formerly, from the first of January: 8 Ga. 479. In this case was a lien from the first of April, and sale by the assignee in bankruptcy did not divest the State's lien for taxes: 46 Ga. 412. Nor does a sale of land under a decree of the circuit court of the United States divest the State's lien for taxes: 63 Ga. 486, 487. Nor is the city's lien for taxes divested by a sale for purchase-money in a matter transpiring in the city of Atlanta: 66 Ga. 617.

Cited: 70 Ga. 36.

Stated, as to State taxes: 69 Ga. 194.

Lien for State taxes follows property. The assessment is against owner, the tax and lien is against the property: 69 Ga. 194.

Return of no personalty not prerequisite to levy by constable on land for State and county taxes: 83 Ga. 198.

Return by husband and father as his own, *fi. fa.* properly against him. No hardship that burden on wife and children to show part not subject, since, if return invalid altogether, double tax (section 848) results: 79 Ga. 799.

63 Ga. 483.
§907.

§884. *Lien of tax not divested by judicial sale.* A sale of property under any other process does not divest the lien of the State for taxes.

See also 84 Ga. 34; 66/617.

Act 1804,
Cobb, 1050.
§§ 855, 2787.

§885. (813.) *Conveyances and judgments to avoid payment of taxes, void.* All deeds of gift, mortgages, sales and assignments of property of any kind, made to avoid payment of taxes, or judgments procured to be rendered for the same purpose, are null and void.

Cited. Codifiers revised the law and changed it, how: 69 Ga. 194.

Interest on tax *fi. fas.* Transfer of tax *fi. fas.*

§886. (814.) *Donee, etc., property liable.* 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. Act 1804,
Cobb, 1050.

Cited. Codifiers revised the law and changed it, how: 69 Ga. 194.

SECTION 2.

INTEREST ON TAX *FI. FAS.*

§887. *Tax fi. fas. bear interest.* All executions issued for taxes due the State or any county thereof, or any municipal corporation therein, whether issued on assessments for permanent improvements of streets or sewers of said municipal corporation, or otherwise, shall bear interest at the rate of seven per cent. per annum from the time fixed by law for issuing the same: *Provided*, that this section shall not apply to taxes or tax *fi. fas.* issued by any municipal corporation imposing penalties for failure to pay taxes. Acts 1889,
p. 31.
§§395, 889.

Formerly taxes did not bear interest: 70 Ga. 13.

SECTION 3.

TRANSFER OF TAX *FI. FAS.*

§888. (891 a.) *Transfer of tax fi. fas.* Whenever any person, other than the person against whom the same has issued, shall pay any execution issued for State, county, or municipal taxes, or any other execution issued without the judgment of a court, under any law, the officer whose duty it is to enforce said execution shall, upon the request of the party paying the same, transfer said execution to said party; and said transferee shall have the same rights as to enforcing said execution and priority of payment as might have been exercised or claimed before said transfer: *Provided*, said transferee shall have said execution entered on the general execution-docket of the superior court of the county in which the same was issued, and if the person against whom the same was issued resides in a different county, then also in the county of such person's residence, within thirty days from said transfer. And in default thereof such executions shall lose their lien upon any property which has been transferred *bona fide* and for a valuable consideration before the record and without notice of the existence of such execution. Acts 1804,
pp. 37, 38.
1872, p. 35.
1875, p. 119.
§5374.

Illegality to tax *fi. fa.* held by transferee, on ground of payment to him: 66 Ga. 88.

Dormancy of tax *fi. fas.*

Interest on docketed executions: 70 Ga. 35.

Sheriff's sale here not having divested tax lien, transferee of tax *fi. fa.* could not claim money arising from sheriff's sale: 66 Ga. 617.

The terms of this section must be strictly complied with as to third persons: 86 Ga. 125.

After such transfer, city has no title in tax *fi. fa.*, and marshal's function at end except to enforce *fi. fa.* for transferee: 67 Ga. 337.

Where mortgagee pays taxes to protect mortgage, such taxes are charges upon the property as against mortgagor and all persons claiming under him; but taxes on other property are not charges except as against defendant: 80 Ga. 55. Tax execution cannot avail transferee as lien, unless properly entered on execution-docket within thirty days: 80 Ga. 56.

If not recorded within thirty days, not enforced by transferee as lien on defendant's property: 66 Ga. 351.

Transfer here should have been recorded within thirty days; lien not saved by Act of 1879, extending time of record: 69 Ga. 644.

Tax execution not entered on superior-court docket, within thirty days after transfer, is satisfied as to third persons: 86 Ga. 777; lien not lost as against defendant: 85 Ga. 463.

Long standing decision that comptroller may not transfer execution, not reversed, though unsound: 84 Ga. 772. Comptroller-general cannot transfer wild-land tax execution: 87 Ga. 448.

Transfer by attorney, representing State and sheriff, of *fi. fa.* issued by comptroller against tax-collector, legal: 85 Ga. 463.

Sheriff has no right to transfer *fi. fa.* under this section, unless paid in full: 86 Ga. 777.

Acts 1887,
p. 21.
§887.

§889. *Interest on transferred tax fi. fas.* All tax *fi. fas.* transferred to third parties shall bear interest, at the lawful rate, from date of transfer: *Provided*, the same have been recorded as prescribed by law.

SECTION 4.

DORMANCY OF TAX *FI. FAS.*

Acts 1887,
p. 23.
§3761.

§890. *Tax fi. fa. dormant, when.* All State, county, city, or other tax *fi. fas.*, before or after legal transfer and record, shall be enforced within seven years from the date of their issue; or within seven years from the time of the last entry upon the tax *fi. fa.* by the officer authorized to execute and return the same, if said entry is properly entered by said officer upon the execution-docket and books in which said entries are now required to be made in cases of entries on executions issued on judgments.

§3761.

§891. *Laws as to judgments applicable to tax fi. fas.* All laws in reference to a period of limitation as to ordinary executions for any purpose, or to the length of time or circumstances under which they lose their lien in whole or in part, are made applicable to tax *fi. fas.*

Alias tax *fi. fas.* Tax executions, when and by whom issued.

SECTION 5.

ALIAS TAX *FI. FAS.*

§892. *Alias tax fi. fas.* When any tax execution which shall have ^{Acts 1882-3,} been regularly issued by the tax-collector of any county of this State _{p. 108.} shall be lost or destroyed, an *alias* execution, in lieu of such original execution, may issue upon the party having the right to control such original execution filing with the ordinary of the county in which it issued a statement under oath of the loss or destruction of such original. The ordinary shall indorse on the copy issued in lieu of said original, the word "*Alias.*"

§893. *Force and effect of alias.* Said *alias* execution shall have all ^{Act 1804,} the legal force and effect of the lost or destroyed original execution. _{Cobb, 1059.}

SECTION 6.

TAX EXECUTIONS, WHEN AND BY WHOM ISSUED.

§894. (886.) *Tax-collector's fi. fas., when and how issued.* Execu- ^{§§408, 414,} tions for non-payment of taxes against persons who are not required _{880, 900.} 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-collectors have the power to issue executions against defaulting taxpayers, which the sheriff and constables are bound to execute and return: 11 Ga. 79. Summary of statutes on this subject: 11 Ga. 81. Constitutional provisions as to trial by jury do not apply to the case of a taxpayer who fails or refuses to pay his tax: 23 Ga. 566. Rule against the sheriff to account for such *fi. fas.*: 29 Ga. 212. Prerequisites for must be strictly complied with, and an injunction sustained against a tax *fi. fa.* issued by a city: 31 Ga. 700. Tax *fi. fa.* levied by a constable on land and returned to the sheriff to sell: 60 Ga. 352, 353.

Sale not void because improved land described as wild, in *fi. fa.*: 80 Ga. 71.

Sale under tax execution issued by the collector after going out of office, a nullity: 92 Ga. 367.

Tax *fi. fa.*, how directed: 68 Ga. 173.

Tax-collector can issue execution for unpaid liquor tax: 74 Ga. 592.

Recitals in tax deed presumed correct, and officer issuing execution presumed to have done his duty: 85 Ga. 835.

Garnishment on tax *fi. fas.* Insolvent tax *fi. fas.* to be levied. Tax *fi. fas.*, on what levied.

SECTION 7.

GARNISHMENT ON TAX *FI. FAS.*

Acts 1855-6, §895. (3557.) *Tax-collector may issue garnishment.* 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 belonging to the defendant; which 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 fifteen days before the sitting 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.

Section referred to and construed: 60 Ga. 304.

Acts 1855-6, §896. (3558.) *Proceedings thereon.* 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 where judgment has been obtained or execution issued.

SECTION 8.

INSOLVENT TAX *FI. FAS.* TO BE LEVIED.

Acts 1880-1, §897. (886 a.) *Insolvent tax fi. fas. may be put out.* The county authorities of any county in this State shall place such tax executions as have been returned insolvent, in the hands of the sheriff or any constable of the county for collection, to be levied, and sales thereunder to be made in accordance with the regulations governing sales under executions issued from common-law judgments.

SECTION 9.

TAX *FI. FAS.*, ON WHAT LEVIED.

§5423. §898. (891.) *Defendants may point out property.* Defendants in *fi. fas.* issued by tax-collectors for taxes shall have the privilege of pointing out the property upon which to levy said *fi. fas.*, but it shall be within the discretion and power of the collector to have the

Claims, how interposed.

proper officer levy the same on any other property he may point out, whenever he deems it necessary to secure the prompt collection of the tax *fi. fas.*

Formerly a tax-collector could not transfer a tax *fi. fa.* so that the transferee could enforce it against the defendant's property: 59 Ga. 202. *Fi. fa. prima facie* satisfied and transferred, such transferee cannot interfere with the title acquired at a sheriff's sale before the transfer: 61 Ga. 61. There was no authority before the Act of 1872 to transfer a tax *fi. fa.*: 48 Ga. 177. Since the Act of 1875, if a tax *fi. fa.* is transferred, but not recorded in thirty days, cannot be enforced by transferee: 66 Ga. 351.

Act of pointing out property on which to levy tax *fi. fa.* is waiver of all irregularities in returns as against defendant and all parties interested: 80 Ga. 55.

Pointing out property for tax sale governed by this section, not by section 5423: 86 Ga. 379.

Realty held under bond for title, partly paid for, liable for obligee's taxes. Tax sale not vitiated by obligee thereafter paying off lien older than tax *fi. fa.*: 90 Ga. 287.

SECTION 10.

CLAIMS, HOW INTERPOSED.

§899. (896.) *Claim may be interposed when tax fi. fa. is levied.* Act 1810,
Cobb, 1056.
Act 1840,
Cobb, 1072.
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.

Claim *in forma pauperis* cannot be interposed to tax levy, either of city or State. This section governs tax levies; section 4618 inapplicable: 73 Ga. 28.

§900. (3732.) *Claim if fi. fa. against tax-collector.* §§408, 415,
880, 894. When any execution may be issued against any tax-collector or taxpayer 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 provided in the case of other claims, and give bond, 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.

Section referred to and construed: 60 Ga. 77.

Cited as illustrating legislative construction of word "taxes," embracing money due by defaulting tax-collector: 66 Ga. 121.

Court erroneously dismissing levy, may correct error by reinstating case at same term: 86 Ga. 777.

Costs and fees. No judicial interference.

SECTION 11.

COSTS AND FEES.

Acts 1880-1,
p. 83. §901. (888 a.) *Cost of collecting tax fi. fa.* Whenever the sheriff or other officer of any county shall collect any tax *fi. fa.* over one hundred dollars, he shall be entitled to one dollar for costs, and for collecting any tax *fi. fa.* of one hundred dollars or under, fifty cents for costs.

Acts 1861,
p. 80.
§906. §902. (887.) *Fee for issuing tax fi. fas.* Tax-collectors shall be allowed a fee of fifty cents for issuing tax *fi. fas.*; but no tax-collector, sheriff, or constable, shall receive costs on said *fi. fas.* unless the same be collected from the defendant.

SECTION 12.

NO JUDICIAL INTERFERENCE.

Act 1840,
Cobb, 1051.
§§396, 415. §903. (3668.) *No judicial interference with taxes.* No replevin shall lie, nor 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.

As to injunctions: 59 Ga. 805-811; 63/352.

Not entertained in a proceeding against defaulting tax-collector and sureties: 21 Ga. 50. Where a tax *fi. fa.* can be estopped by illegality: 25 Ga. 610. Where tax for an illegal purpose, can resort to illegality: 20 Ga. 102; 47/642, 643. Law of this section referred to: 33 Ga. 623. As to interference of equity in: 42 Ga. 229; 49/201; 27/354. When not permitted: 59 Ga. 811. When allowed: 64 Ga. 789. State bonds, tax on: 60 Ga. 506-508. As to injunction against municipal taxes: 56 Ga. 448. Where writ of prohibition did not lie against a tax-collector: 45 Ga. 85. This section intended to prevent only suits obstructing the State in collection of her revenue: 46 Ga. 460. Where no judicial interference allowed as against comptroller-general: 46 Ga. 325, 344. Section referred to and construed: 48 Ga. 139. When no illegality allowed against county and municipal taxes: 57 Ga. 166, 167. When affidavit against tax-collector allowed: 51 Ga. 252. When no injunction as against State tax on bank-stock: 59 Ga. 353.

Courts are slow to obstruct collection of municipal tax: 62 Ga. 646.

Illegality to tax *fi. fa.* held by transferee, on ground of payment to him: 66 Ga. 88. Illegality to tax *fi. fa.*: 76 Ga. 100, 101; 75/502.

Equity will interfere to prevent officer from enforcing execution for taxes not founded on any valid law: 68 Ga. 311.

Injunction granted against illegal imposition of tax by county against railroad: 71 Ga. 25. Unconstitutional tax against railroad enjoined in county where levy made: 64 Ga. 783. Remedy by injunction against illegal tax on railroad: 62 Ga. 485, 495, 510.

Levy and sale under tax *fi. fas.*

Interlocutory injunction against collection of school tax, properly denied, where complainants guilty of acquiescence and delay: 86 Ga. 605.

Erroneous administrative acts of school board not ground to enjoin collection of school tax: 86 Ga. 605. Municipal tax sale not enjoined where no irreparable loss, etc.: 77 Ga. 496. *Ad interim* injunctions sparingly granted: 82 Ga. 138.

Tax-collector enjoined from collecting taxes on land transferred to another county: 92 Ga. 549.

SECTION 13.

LEVY AND SALE UNDER TAX *FI. FAS.*

§904. *Purchase by one bound to pay.* One who is bound to pay the tax on property cannot strengthen his title by purchasing at a tax sale; such purchase will be treated as payment. ^{86 Ga. 604.}

§905. (888.) *By whom levied, and sales under.* Executions may be levied by either of the officers to whom directed, or other officer who by law may be authorized in their place; but a constable cannot levy a tax *fi. fa.* when the principal amount exceeds one hundred dollars, and if a tax *fi. fa.* for less than one hundred dollars be levied by a sheriff, his fee for said levy shall be that now allowed constables, and if the levy be made upon personalty, the same shall be advertised and sold as is now provided for justice-court *fi. fas.* If the constable levies on land, it must be returned to and sold by the sheriff of the county. ^{Acts 1876, p. 30.}

Under this section, sheriff could not levy where the amount did not exceed \$50.00: 60 Ga. 466. But by Act of 1876, page 16, he can levy whatever amount involved. Where the constable could levy the *fi. fa.* on land and return it to the sheriff: 60 Ga. 353. And by Act of 1876, page 30, could do this, where the amount involved is over \$50.00. A sheriff levying a tax *fi. fa.* of less than \$100, need not make an entry of no personalty before levying on realty: 65 Ga. 64.

Cited: 68 Ga. 196.

In 1873 constable could not levy tax *fi. fa.* for more than \$50.00: 68 Ga. 173.

Levy and sale not void here, where execution improperly directed, but properly executed: 75 Ga. 516.

Return of "no personalty" not prerequisite to levy by constable on land for State and county taxes: 83 Ga. 198.

Proceedings regular, not fraud in sheriff to sell under tax *fi. fa.* land already sold under general *fi. fa.* Nor in purchaser with notice of first sale: 84 Ga. 34.

§906. (889.) *Constable may levy in any part of the county.* 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. ^{§§911, 902.}

Levy and sale under tax *fi. fas.*

§§5451, 884. §907. (890.) *Sales under tax fi. fas.* Sales under tax *fi. fas.* shall be made under the same rules governing judicial sales.

Purchaser at, gets a good title, when: 8 Ga. 479. Tax-collectors' sales must show upon their face that all the prerequisites of the law have been strictly complied with: 11 Ga. 423-427. Sales should be made in the county where the property to be sold is: 20 Ga. 639. What sale is void and when it does not divest the lien of a mortgage: 25 Ga. 103. Mortgagee may purchase under a tax execution older than the mortgage so as to take the land freed from a judgment older than the mortgage: 55 Ga. 145. Purchaser at, is not entitled to rents, issues and profits accruing between the time of his purchase and the redemption of the property: 60 Ga. 260.

See notes to section 913.

Where sale of wild lands under comptroller-general's *fi. fa.*, invalid for failure to comply with law as to advertising: 76 Ga. 739.

Applies to tax *fi. fa.* of comptroller-general: 89 Ga. 793.

Sale, under tax *fi. fa.* for \$3.60, of land worth \$1,200, voidable at landowner's option; and deed showing such excessive levy, void on its face: 81 Ga. 40.

Municipal tax sale must meet all requirements of the law, and ordinances of city should be strictly followed; agent of non-resident owner should have been notified of levy here: 77 Ga. 772, 773.

Stranger to title, not in possession nor in privity with owners, cannot attack sale for excessive levy, illegal advertisement, etc.: 93 Ga. 715.

Officer bound to levy and sell only to extent necessary to pay *fi. fa.* As to levying on equity of redemption where property mortgaged: 69 Ga. 194.

Purchasers acquire title subject only to right of redemption; not affected by pre-existing liens, etc.: 69 Ga. 194.

Sale under general *fi. fa.*, lien for tax not divested: 84 Ga. 34.

See section 884.

Sale under two *fi. fas.* at once (common-law and tax *fi. fa.*) not void; but latter dominates character of sale, and land redeemable by refunding whole amount paid by purchaser: 81 Ga. 247.

Proceedings regular, not fraud in sheriff to sell, under tax *fi. fa.*, land already sold under general *fi. fa.* Nor in purchaser with notice of first sale: 84 Ga. 34.

Internal revenue officer's certificate of tax sale (see Revised Statutes United States, sections 3198 and 3199), neither passed title nor evidenced that title had ceased to be where it was before: 83 Ga. 79.

One holding property as agent, or trustee, cannot purchase it at tax sale for self or wife; amount property bought at sale not evidence of value in accounting with owner: 92 Ga. 149, 154.

Blanks in sheriff's deed as to date of levy and of sale, except that sale was first Tuesday, and of day and month deed executed, may be supplied by parol as in case of other judicial sales: 94 Ga. 542.

Land of one person sold under tax *fi. fa.* against another, sale void: 95 Ga. 60.

Recitals in tax deed that preliminaries of valid sale were observed, not evidence: 89 Ga. 286.

Tax execution in rem and sale thereunder. Redemption of property sold for taxes.

SECTION 14.

TAX EXECUTION IN REM AND SALE THEREUNDER.

§908. (897.) *Property not returned but assessed, how disposed of.* §848.
 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 §912. 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.

Section cited and referred to: 51 Ga. 454; see also 68 Ga. 585.

Purchaser at sheriff's sale cannot recover the overplus, not showing title from true owner: 72 Ga. 193.

Those in charge of disbursing educational fund might sue ordinary for mis-application: 72 Ga. 193.

Tax *fi. fa.* against land, owner unknown, should be issued how: 86 Ga. 591.

SECTION 15.

REDEMPTION OF PROPERTY SOLD FOR TAXES.

§909. (898.) *Land sold may be redeemed.* Whenever any land is sold by virtue of a tax execution issued under this Code, the owner thereof, or any administrator, executor, or guardian, or other trustee of the defendant in execution, 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. Acts 1878-9, p. 50. §§916, 733.

When the lien of a mortgage is not divested by a tax sale: 25 Ga. 103. Under a city tax *fi. fa.* the right of redemption exists: 50 Ga. 425. The purchaser on redemption only gets his money back and ten per cent.; this section cited: 60 Ga. 262.

Title perfect and absolute if not redeemed within one year: 69 Ga. 194.

Redemption must be within one year of date of sale, not of record of deed: 86 Ga. 379.

Wife of defendant in execution has privilege of redeeming where property sold was homestead property: 80 Ga. 25.

Sale under two *fi. fas.* at once (common-law and tax *fi. fa.*) not void; but latter dominates character of sale, and land redeemable by refunding whole amount paid by purchaser: 81 Ga. 247.

Tax *fi. fas.* levied in any county. Surplus at tax sale; tax deeds.

Tendering in redemption less than price paid at tax sale and ten per cent., no tender: 84 Ga. 561.

Though paid in ignorance of the law, rents paid to purchaser at tax sale not applied as in redemption: 84 Ga. 561.

Demand by purchaser for larger amount than paid and ten per cent., no excuse for failure to tender: 84 Ga. 561.

Conveyance hereunder, no proof that grantee is owner: 94 Ga. 689.

Acts 1880-1,
p. 45.
§§ 916, 733.

§910. (874 c.) *How redeemed.* Whenever any wild land is sold by virtue of a tax execution, the owner thereof, or the executor, administrator, guardian, or trustee of such owner shall have the privilege of redeeming said land thus sold, within two years from the date of such sale, by paying to the purchaser the amount paid by such purchaser, together with interest thereon at the rate of twenty per cent. per annum. Upon the redemption as aforesaid by any owner of any lot of wild land sold, said owner, or his agent, shall receive any surplus of money which may remain in the hands of the sheriff, after deducting the taxes and costs of such sale; and if said lot or lots are not redeemed in the time mentioned, all surplus funds arising from the sale of wild land shall be paid over by the sheriff having possession of such funds, to the State treasurer, with a list of the lands from which said sums were derived.

SECTION 16.

TAX *FI. FAS.* LEVIED IN ANY COUNTY.

Act 1804,
Cobb, 1050.
§906.

§911. (899.) *Tax fi. fas. run in any county.* If there is not sufficient property in the county where the taxpayer resides to satisfy the taxes, property situated in any other county is the subject of levy and sale.

Tax-collector's sale must take place in county where property is: 20 Ga. 639.

SECTION 17.

SURPLUS AT TAX SALE; TAX DEEDS.

§908. §912. (892.) *Excess, how paid.* If there is any excess after paying taxes and all expenses, it shall be immediately paid to the person authorized to receive it.

§738. §913. (893.) *Deed made at sale under tax fi. fa. valid.* 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.

 Purchaser's right to possession. Purchase by counties at tax sales.

The terms of this section do not apply to sales by the marshal of a town or city: 50 Ga. 424. Mortgagee buying in land at a tax sale holds it good against a judgment older than the mortgage: 55 Ga. 145. This deed is not evidence without the *fi. fa.* under which the sheriff acted: 55 Ga. 572.

See notes to section 907.

Section applies to tax *fi. fa.* of comptroller-general: 89 Ga. 793; does not apply to deed by city officer under city tax sale: 89 Ga. 286; citing 50 Ga. 418; distinguishing 69 Ga. 194; 65/366.

Purchaser at tax sale gets no title where levy excessive and description incomplete: 75 Ga. 169.

Description in tax deed held to be fatally defective: 91 Ga. 577.

Improved land listed as wild land, and sold for taxes as such, sale void: 85 Ga. 603.

Sale of land, under tax *fi. fa.* issued *in personam* and specifying no particular property, not valid, where person had neither possession nor title: 86 Ga. 591.

Land of one person sold under tax *fi. fa.* against another, sale void: 95 Ga. 60.

Tax deeds admissible to show title, though levy apparently excessive, validity having been recognized: 86 Ga. 166.

Recitals in tax deed presumed correct, and officer issuing execution presumed to have done his duty: 85 Ga. 835.

Affidavit here insufficient under statute prescribing that mayor shall make affidavit on tax deeds, as dispensing with other proof: 91 Ga. 577.

Return of no personalty not prerequisite to levy by constable on land for State and county taxes: 83 Ga. 198.

Person chargeable with payment of tax cannot strengthen his title by purchase under tax *fi. fa.* improperly issued against former occupant: 86 Ga. 591. See section 904.

 SECTION 18.

PURCHASER'S RIGHT TO POSSESSION.

§914. (894.) *Officer to put purchaser in possession of land.* The officer^{§5468.} selling has the authority to put purchasers in possession of land sold, as in other cases.

The superior court will not order the marshal of Atlanta to place in possession the purchaser of land sold under a tax *fi. fa.* for taxes due the city, which sale was by a former marshal: 40 Ga. 49. But the purchaser is not entitled to the rents and profits accruing between the time of his purchase and the redemption: 60 Ga. 261.

One not evicted, where land sold under tax *fi. fa.* against another, unless privy in estate, etc.: 95 Ga. 60.

 SECTION 19.

PURCHASE BY COUNTIES AT TAX SALES.

§915. *Counties may buy property sold under tax fi. fas.* The board of commissioners of roads and revenues in counties where such boards

Acts 1892,
p. 252.

Delinquent tax receivers and collectors; penalty for incomplete, improper, or useless digest.

have been created, or the ordinaries or the judges of the county court in such counties as have such officers in control of their roads and revenues, are authorized to purchase and hold in their official capacity any real property offered for sale by virtue of tax *fi. fas.*: *Provided*, that said commissioners, ordinaries or judges shall only be authorized to bid on such real property when other bids do not cover the amount of said tax *fi. fa.* and cost: *And provided further*, that said commissioners, ordinaries or judges shall not bid more for such property than the amount of taxes and cost. Said county authorities, upon bidding in any property as herein provided, shall draw their warrant on the county treasurer to pay to the officers the costs due on said tax *fi. fas.*, and accruing costs in effecting said sales.

§§ 909, 127,
733.

§916. *Right of redemption.* Owners of real property sold under and by virtue of tax *fi. fas.*, and bid in by the board of commissioners of roads and revenues, ordinaries or judges, as provided in the preceding section shall have the privilege of redeeming said real property as in other cases.

§§ 347, 348,
129.

§917. *If not redeemed may be sold.* Said board of commissioners of roads and revenues, ordinaries or judges of the county court are authorized to dispose of said real property purchased under said tax *fi. fas.*, and remaining unredeemed, as provided for in the Code.

CHAPTER 3.

DELINQUENT TAX RECEIVERS AND COLLECTORS.

ARTICLE 1.

PENALTY FOR INCOMPLETE, IMPROPER, OR USELESS DIGEST.

§918. (902.) *Receivers failing to complete digest.* 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 of his commissions; and if beyond the time when the Governor and comptroller fix the rate per cent., he forfeits all his commissions.

§919. (903.) *Failing to make a proper digest.* 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.

Execution against defaulting receiver or collector and sureties.

§920. (904.) *Making a useless digest.* 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 ordinary, on the request of the comptroller-general.

ARTICLE 2.

EXECUTION AGAINST DEFAULTING RECEIVER OR COLLECTOR AND SURETIES.

§921. (905.) *Becoming indebted to the State, process to issue.* 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.

§922. (906.) *Making false return.* 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.

§923. (907.) *Liable for deceiving taxpayer.* If by any device, intentionally, he causes the taxpayer to pay more than his lawful tax, the provisions of the preceding section apply.

§924. *Comptroller to issue executions vs. collector and sureties on default.* If any collector shall fail to settle his accounts with the comptroller-general in terms of the law, he shall issue execution against him and his sureties for the principal amount, with interest at the rate of twenty per cent. per annum on said amount: *Provided*, that if upon a final settlement it should appear that said collector was entitled to credits at the time he is required by law to settle, the comptroller-general may allow the same, and charge such interest only on the amount for which the collector is in default, together with all the costs and attorney's fees incurred by reason of the issuance of said execution.

When removed upon a *quo warranto*, and ordered to pay taxes collected to the clerk of the superior court, such execution cannot issue against him as tax-collector: 3 Ga. 233. Tax execution against a collector and his sureties must be issued by the comptroller-general: 27 Ga. 69. Presumption as to the custody of such execution: 27 Ga. 69. Is a homestead subject to such *fi. fas.*? 47 Ga. 417. Suit by one surety against the other: 59 Ga. 646. No notice necessary before issuing execution: 60 Ga. 296-298. Tax-collector cannot protect himself from paying over money collected from the taxpayers, and the ordinary's order protects him from claims of the taxpayers: 53 Ga. 191-194.

§§418, 416.

Act 1804.
Cobb, 1052.
§418.Acts 1823,
Cobb, 1025.
Acts 1889,
p. 52.
§§206 (6),
416, 189,
927, 405-
419.

Bond and oath to be filed before qualification.

Cited, as to interest: 70 Ga. 35.

Comptroller-general may issue execution against defaulting tax-collector and his sureties: 83 Ga. 38.

Construing special county with general law, county officers charged with "examining and auditing" and with "bringing said officers to a speedy settlement" had implied authority to issue execution against defaulting tax-collector. Immaterial whether commissioners or clerk signed execution: 83 Ga. 270.

County execution against tax-collector *prima facie* case for county. Met by illegality, issue made should be tried; dismissal for absence of county attorney without excuse, error: 83 Ga. 275.

§§405-419.

§925. (911.) *Fi. fas. against collectors.* 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.

Rule against the sheriff to account for tax *fi. fas.* placed in his hands: 29 Ga. 212. When a levy by a sheriff on the property of his cosurety and co-defendant was not permitted: 60 Ga. 490.

Act 1804,
Cobb, 1052.
§§139, 903.

§926. (912.) *Not to be suspended, etc.* Executions so issued shall not be suspended or delayed by any judicial interference with them, but the Governor may suspend collection not longer than the next meeting of the General Assembly.

By the Act of 1804, courts cannot entertain an affidavit of illegality to an execution proceeding against a defaulting tax-collector and his sureties: 21 Ga. 50. If defaulting tax-collector is entitled to any judicial interference, it is as complete at law as in equity: 40 Ga. 133. Section cited, and the sheriff was not made to pay over money here collected to plaintiff in an older judgment: 58 Ga. 106, 107. When the courts will not entertain an injunction: 46 Ga. 326-344.

See notes to section 903.

Sheriff collecting money from defaulter must at once pay it to comptroller-general; no law for judicial trial of claim thereto: 83 Ga. 38.

§§189, 414,
924, 933,
976.

§927. (913.) *Lien on property of principals and sureties, bound.* The property of collectors, receivers, and of their sureties, is bound, from the execution of their bonds, for the payment of taxes collected and the discharge of their duties.

§§905-907.

§928. (914.) *Proceedings in selling, etc.* The proceedings in selling property under such executions must be the same as under *fi. fas.* issued from the superior court.

ARTICLE 3.

BOND AND OATH TO BE FILED BEFORE QUALIFICATION.

§§241, 252.

§929. (915.) *Collector not to collect till bond filed.* If any collector shall collect, or attempt to collect, any taxes before the receiver has completed and transmitted his digest to the comptroller-general,

Tax-receivers; election and liability.

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.

§930. (916.) *Governor may vacate the commissions, when.* The Governor may vacate the commissions of defaulting tax-collectors, or of tax-receivers failing or refusing to do their duty, give bond, and take the oath required by law; and in such event the vacancy shall be filled in the manner prescribed for other vacancies. Act 1826, Cobb, 1260. §§132, 229.

Cannot urge the invalidity of the orders of the ordinary for levying the taxes, against a foreclosure of a mortgage made to secure the county: 56 Ga. 290. Section cited, as to vacating tax-collector's commissions: 48 Ga. 137.

ARTICLE 4.

TAX-RECEIVERS.

SECTION 1.

ELECTION AND LIABILITY.

§931. (917.) *Tax-receivers, how elected.* The tax-receivers shall be elected on the first Wednesday in January, biennially, for the term of two years, and are commissioned and qualified as clerks of the superior court are. Vacancies are filled as vacancies for such clerks. Acts 1872, p. 82. §§4550-4555.

§932. (918.) *Receivers' oath and bond.* 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: "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 a sum equal to one-half of the amount of the State tax supposed to be due from the county for the year in which he shall give bond; the amount of said bond to be filled by the comptroller-general before being sent out to the several counties from the Executive office. Acts 1863-4, p. 124.

§933. (919.) *Liability of receivers, etc.* 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. §§972, 927, 924, 976.

SECTION 2.

DUTIES OF TAX-RECEIVER.

- Act 1804,
Cobb, 1046. §934. (920.) *Duties of receiver enumerated.* It is his duty—
Act 1807,
Cobb, 1054. 1. To receive all returns of taxes within the time and in the man-
Act 1812,
Cobb, 1057. ner prescribed by law.
Act 1813,
Cobb, 1059. 2. To make out and perfect the three digests in writing and fig-
Acts 1851-2,
p. 290. ures 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 taxpayer applies to give in.
7. To embrace in his digest to the comptroller-general, the ordinary, 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 assess upon the digests deposited with the ordinary the county taxes according to law, and the rate per cent. levied by said ordinary.
10. To conform to such rules as he may be furnished with, and to obey such orders as may be given by the comptroller-general.
11. To perform all other duties that the law requires, and which necessarily under the law appertain to his office.

Tax-receiver bound to know law regulating his official duty: 92 Ga. 719.

SECTION 3.

EXAMINATION AND CORRECTION OF RETURNS BY GRAND JURY.

- Acts 1874,
p. 108. §935. (923 b.) *Grand jury shall inspect receiver's books.* The tax-receiver in each county of this State, in each and every year, at the fall term of the superior court in his county, shall lay before the grand jury his returns for that year, of the taxable property in his said county, and the grand jury shall overlook the same, and whenever they find an undervaluation, to correctly assess the same, ac-

Tax-receiver's compensation.

according to the market valuation of the property, and return to the receiver his returns with the corrections which they have made.

Railroad returns not subject hereto, but stand as made: 89 Ga. 594.

§936. (923 c.) *Corrected returns the guide for next year.* When the receiver shall receive his returns for the next succeeding year, and the corrected returns made by the grand jury, it shall be his guide for that year, and if the taxpayer shall return his property below the valuation made by the grand jury, the receiver and taxpayer each shall select an arbitrator, and these two shall select an umpire to whom the question of valuation shall be referred, and their award shall be returned to the receiver, and shall be entered by him as the valuation of said taxpayer's property.

§937. (923 d.) *These provisions to be given in special charge.* The judges of the superior courts, at each fall term, shall give these provisions in special charge to the grand juries, that they may be informed of the duties therein imposed upon them.

§938. (923 e.) *Liquor-dealers to be returned by name.* The receivers of tax returns in this State shall return by name all persons or firms dealing in spirituous, vinous or malt liquors, intoxicating bitters, or other articles of like character.

§939. (924.) *Return forwarded to comptroller.* The ordinary shall forward a copy of a defaulting taxpayer's corrected return, and affidavit to the comptroller-general *instanter*, and retain the originals, for which he shall be entitled to one dollar from the taxpayer.

SECTION 4.

TAX-RECEIVER'S COMPENSATION.

§940. (926.) *Receiver's pay, etc.* The county shall pay the receiver one-half of what the collector gets for collecting the county tax.

Tax-receivers were not entitled to any commissions on the county tax: 19 Ga. 611.

§941. (808.) *Default and insolvent list.* In netting the digest, the default list shall be deducted for the receivers, and the insolvent list for the collectors.

ARTICLE 5.

TAX-COLLECTORS.

SECTION 1.

ELECTION AND OATH.

§981. §942. (927.) *Election, commission of tax-collectors, etc.* Tax-collectors are elected at the same time and in the same manner, for the same term of office, and are commissioned and qualified as tax-receivers.

Tax-collector's term having expired, he is in office so long as he acts, and until successor qualifies: 92 Ga. 367.

§981. §943. (928.) *Vacancies, how filled.* Vacancies are filled as they are in the office of receiver.

§284. §944. (929.) *Collector's oath.* Before entering on the duties of his office, besides the oath required of all civil officers, he shall take and subscribe the following 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, 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 August, and that I will pay over all taxes collected by me, as required by law. So help me God."

SECTION 2.

TAX-COLLECTORS' BONDS.

Acts 1863-4, p. 124. §945. (930.) *Amount of bonds and their conditions.* He shall also give bond and security for thirty-three and one-third per cent. more than the State tax supposed to be due from the county for the year for which said officer is required to give bond, the amount of the bond to be filled up by the comptroller-general before being sent out to the county from the Executive office; and shall give another bond with sufficient security, payable to the ordinary, conditioned for the faithful performance of his duties as collector of the county tax, in a sum to be fixed by such ordinary.

It is not compulsory, but is discretionary as to a bond under the Act of 1821: 11 Ga. 207. Where the bond is void under the Act of 1821: 18 Ga. 47. Securities on a bond for the collection of the State tax are not liable to the ordinary

Tax-collectors' duties.

for failure of the collector to collect and pay over the county tax: 47 Ga. 639-642; section cited. As to a bondsman sharing fees with the collector, his principal being made to respond to another cosurety on the bond: 59 Ga. 644-647.

§946. (931.) *Approved by whom.* Such bond for county taxes when given must be approved by the ordinary, filed in his office, recorded in the book with other official bonds, and in all respects is an official bond.

Sureties not released by ordinary's failure to approve and file the bond: 94 Ga. 37.

§947. (932.) *Bond to be given, etc.* 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 ordinary, he may appoint some competent person to collect the county tax. Act 1823, Cobb, 1065.

§948. (933.) *Duty of person so appointed.* 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.

SECTION 3.

TAX-COLLECTORS' DUTIES.

§949. (934.) *Collector's duties enumerated.* It is the duty of the tax-collector— Act 1804, Cobb, 1046. Act 1812, Cobb, 1058. Acts 1857, p. 31. 1858, p. 104.

1. To diligently collect and promptly pay over in the funds allowed by law the State and county taxes to the comptroller-general and the county treasurer, respectively.

Cannot urge the invalidity of the order of the ordinary in reference to the tax, as an excuse for not paying over the money collected: 56 Ga. 290.

2. To search out and ascertain as far as possible all polls and professions, 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 single commissions, and to deposit said book with the comptroller-general, and a copy with the ordinary, before the day of final settlement. Acts 1862-3, p. 57.

4. To have his insolvent lists allowed in the manner required by law before final settlement with the comptroller-general.

Tax-collectors' duties.

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, and there to attend during the time for collection 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.

Acts 1878-9,
p. 78. 10. In collecting the special tax that may be levied year after year on dealers in intoxicating bitters, or other articles of like character, and upon dealers of spirituous, vinous and malt liquors, or any other person liable to special tax, to report the name of the person or firm paying said tax, the amount paid, and the date of said payment, to the comptroller-general at the time of paying said special tax into the State treasury.

Acts 1875,
p. 120. 11. To issue executions against all tax defaulters who are residents of the counties in which said tax-collectors are holding their offices, for any and every year preceding and including the years for which they are elected, and to collect the tax due from said defaulters, and pay over the same to the proper authorities.

12. To perform all other duties that the law requires, and which necessarily under the law appertain to his office.

It is the duty of the collector, and not of the receiver, to make the assessment both for State and county purposes upon the taxable property of the county: 21 Ga. 206.

§7. §950. (935.) *Collector's negligence no excuse to defaulting taxpayer.* 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.

Report to grand jury and comptroller. Bonds of collectors in certain counties. Weekly reports, etc.

SECTION 4.

REPORT TO GRAND JURY AND COMPTROLLER.

§951. (935 a.) *Statement of special taxes to grand jury.* It shall be the duty of the tax-collector of each county in this State to lay before the grand jury, on the first day of the term of each court, a full statement of all special taxes received by him for the six months immediately preceding said report, and to state fully the date of said payments, from whom received, and also the amounts received. And the judges of the superior courts of this State shall give this law in charge to the grand jury at each term of their respective courts. Acts 1878-9, p. 78. §§935, 936, 418, 965.

§952. (935 b.) *Quarterly returns of special taxes to comptroller.* It shall be the duty of the tax-collectors of this State to make quarterly returns to the comptroller-general, under oath, to be administered by any duly qualified officer, of all special taxes collected by them, except those given in and entered upon the receiver's digest, setting forth in said returns the names of all persons or companies paying such tax, when paid, for what purpose, and the amount thereof. Acts 1878-9, p. 80.

SECTION 5.

BONDS OF COLLECTORS IN CERTAIN COUNTIES.

§953. *Separate bonds.* Each of the tax-collectors of such counties in this State as have a population of thirty thousand or more, shall enter into two bonds, one to the State for fifty thousand dollars, with good and approved security as now required by law, and one to the county in the sum of twenty-five thousand dollars, with like approved security, as now required by law, for the faithful performance of the duties of such tax-collector. Acts 1890-1, p. 105.

SECTION 6.

WEEKLY REPORTS IN SUCH COUNTIES.

§954. *Weekly settlement of amount due State.* Whenever the tax-collector, in any such county having a population of thirty thousand or more, collects State taxes to the amount of five thousand dollars, he shall at once pay the same over to the treasurer as now required by law; and shall also pay over all the taxes he may have collected during the week, on Saturday of each week, whether the same Acts 1890-1, p. 105.

Collector, when ex officio sheriff.

amounts to five thousand dollars or not; so that no tax-collectors in said counties shall have or keep any of the money of the State in his hands for a longer period than one week.

Acts 1890-1,
p. 105.

§955. *Amount due county.* Said tax-collectors shall each pay over, from time to time, the county taxes to the proper county officers, as now required by law, so soon as there is collected three thousand dollars; and if he fail to collect said sum during any week, he shall then pay over on Saturday all he has collected during said week.

§956. *Weekly duplicate reports.* The tax-collector in each of such counties shall make duplicate weekly reports to the comptroller-general and the county authorities of the aggregate amount of taxes collected during said week, naming separately the amount of taxes collected for the State and the county, and shall swear that the same is a correct report of the taxes collected as aforesaid.

Acts 1892,
p. 89.

§957. *Reports of failure to discharge duty.* If any of such tax-collectors fail or refuse to make said payment, or if he make a false return, or if he fail or refuse to file such list as required, it shall be the duty of the comptroller-general, or the ordinary, or county officer having charge of the county affairs, as the case may be, to report said facts to the Governor, and it shall be the duty of the Governor to cause a notice to be served on said tax-collector, calling on him to show cause why he should not be removed from office, and if he fail to make a proper excuse within ten days, it shall be the duty of the Governor to remove him.

SECTION 7.

COLLECTOR, WHEN EX OFFICIO SHERIFF.

Acts 1890-1,
p. 101.

§958. *Collector ex officio sheriff in some counties.* The tax-collectors of counties which contain a population of seventy-five thousand or more, shall be *ex officio* sheriffs in so far as to enable them to collect the taxes due the State and county, by levy and sale under tax executions; and said tax-collectors shall not turn over any tax executions to the sheriffs, or to any other levying officials of the said State, except when it may become necessary, for the purpose of enforcing the same, to send said executions to any other county or counties than that in which issued; but said tax-collectors, by virtue of their office, shall have full power and authority to levy all tax executions heretofore or hereafter to be issued by them in their respective counties; and the compensation of said tax-collectors shall not exceed fifty cents for issuing each *fi. fa.*, and for levying and

Execution-docket, receipt, and stub-book.

selling the same fees as are now allowed by law to the sheriffs of said State; and said tax-collectors shall have full power to bring property to sale, and sales made by them shall be valid, and shall convey the title to property thus sold as fully and completely as if made by the sheriffs of said counties.

§959. *Levy under general law.* All levies and sales made by the tax-collectors as *ex officio* sheriffs, under the provisions of this Article, shall, as to the time, place and manner, and in all other respects, conform to, and be controlled by, the general laws of the State regulating sales under tax *fi. fas.* Acts 1890-1, p. 101.

§960. *Deputies.* Tax-collectors in counties under the provisions of this Article shall have power to appoint one or more deputies, who shall be vested with the same powers as to levy and collections as are vested in the tax-collectors; the said tax-collectors shall be responsible for the acts of said deputies, and their compensation shall be paid by said tax-collectors. Acts 1890-1, p. 101.

SECTION 8.

EXECUTION-DOCKET, RECEIPT, AND STUB-BOOK.

§961. *Keep stub-book of tax receipts.* The several tax-collectors of this State shall keep a stub-book of tax receipts, and enter on the receipt and the stub attached thereto the name of each taxpayer in their respective counties, the amount of taxes assessed against him, and itemize the same, stating the amount due the State, county, poll-tax, or any other professional or special tax. Acts 1884-5, p. 66.

Provisions directory and executive, valid: 86 Ga. 779.

§962. *Execution December twentieth of each year.* They shall keep an execution-docket, and on the twentieth day of December in each year issue executions against each delinquent or defaulting taxpayer in their respective counties, unless further time is allowed as now provided by law, and enter the names of such delinquent or defaulting taxpayers on said docket, together with an itemized statement of the taxes covered by such execution. Acts 1884-5, p. 66.

§963. *Receipt to be attached.* When such executions have been issued, it shall be the duty of the officer issuing the same to clip from the stub the unsigned receipt of such taxpayer, and attach the same to the execution issued, and place said execution in the hands of some officer authorized by law to collect the same, and make an entry on his execution-docket of the name of said officer and the date of delivery. Acts 1884-5, p. 66.

Provision requiring tax-collectors to attach unsigned receipt to tax execution, directory: 86 Ga. 777.

Acts 1884-5,
p. 66.

§964. *Duty of collecting officer.* It shall be the duty of the officer into whose hand said execution is placed, to proceed at once to collect the same, and when said execution is paid by the defendant, voluntarily or by levy and sale, it shall be the duty of said officer to detach from the execution the tax receipt and enter thereon the amount collected, including all costs and commissions, and also to make a similar entry on said execution, the receipt to be delivered by the officer to the defendant, and the execution to be returned to the tax-collector with the amount of tax collected, who shall at once copy the entry of the officer on his execution-docket and file said execution in his office.

Acts 1884-5,
p. 66.
§§951, 935,
418.

§965. *Docket to be submitted to grand jury.* It shall be the duty of the several tax-collectors of this State to submit their respective execution-dockets and cash-books to the grand jury of the spring term of the superior court of their respective counties, whose duty it shall be to thoroughly inspect the same and report thereon by general or special presentment.

Acts 1884-5,
p. 66.

§966. *Penalties.* For a violation of any of the provisions of the five preceding sections, said tax-collector so violating shall forfeit all or such part of his commissions as the grand jury of the county shall recommend, and if he fails to pay over such penalty imposed, it shall be enforced against such tax-collector and his securities by the comptroller-general, as now provided by law against defaulting tax-collectors, with twenty per cent. penalty of the amount added thereto.

GENERAL NOTE.—Where by mistake the tax-collector pays over money to the county treasurer, he can recover it back: 3 Ga. 90. The comptroller-general cannot issue an execution against a person assuming to act as tax-collector and his sureties: 3 Ga. 233. A tax-collector in default cannot take a homestead as against the process of the State directed against him: 60 Ga. 76. Tax-collectors cannot urge as a defense the invalidity of the ordinary's orders levying the extra tax: 53 Ga. 191-194.

Comptroller-general's execution against defaulting tax-collector and sureties leviable on homestead: 66 Ga. 119.

Tax executions collectible for benefit of tax-collector are subject to all equities between him and defendant in *fi. fa.*: 83 Ga. 581.

Tax executions not collectible for benefit of public by tax-collector's administrator, but by his successor, or the sheriff: 83 Ga. 582.

Tax-collector personally liable, and to what extent, where he coerces, by execution, payment of business tax by one not liable: 93 Ga. 12.

Verdict and judgment against one "as tax-collector" sued individually, not void—such words descriptive only: 93 Ga. 13.

Compensation of collectors and receivers.

ARTICLE 6.

COMPENSATION OF COLLECTORS AND RECEIVERS.

§967. (936.) *Pay of tax officers.* The commissions to be allowed to each receiver and collector of State and county tax shall be as follows, viz.:

- On all digests for the first one thousand dollars 6 per cent.
- On all digests for excess over one thousand dollars to two thousand dollars 4 per cent.
- On all digests for excess over two thousand dollars to three thousand dollars 3 per cent.
- On all digests for excess over three thousand dollars to four thousand dollars 2¾ per cent.
- On all digests for excess over four thousand dollars to six thousand dollars 2½ per cent.
- On all digests for excess over six thousand dollars to eight thousand dollars 2¼ per cent.
- On all digests for excess over eight thousand dollars to twelve thousand dollars 2 per cent.
- On all digests for excess over twelve thousand dollars to eighteen thousand dollars 1¾ per cent.
- On all digests for excess over eighteen thousand dollars to thirty-six thousand dollars 1½ per cent.
- On all digests for excess over thirty-six thousand dollars 1¼ per cent.

Where school tax levied, tax-collector may retain his usual commissions; the tax must pay expense of its gathering: 87 Ga. 22.

§968. (936 a.) *Local laws changing commissions, repealed.*

1. All laws heretofore enacted by the General Assembly, fixing the commission of receivers of tax returns and collectors of taxes in certain counties, different from the rates hereinbefore set forth, are repealed.

2. And no tax-collector shall in any event receive any greater or different rate of commission or rate of payment for the collection of county taxes than he receives by this Article for collecting State taxes.

3. The commission of tax-receiver, to be paid from county taxes, shall be one-half the amount allowed by this Article to tax-collectors for collecting county taxes.

Miscellaneous provisions; comptroller to make rules. Suit on bonds. Different persons, etc.

ARTICLE 7.

MISCELLANEOUS PROVISIONS.

SECTION 1.

COMPTROLLER TO MAKE RULES.

§969. (937.) *Comptroller-general to make rules for collectors and receivers.* 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.

§970. (938.) *Furnish collectors and receivers with the same.* These rules, when made, shall be entered in a book in his office kept for that purpose, and be binding upon 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.

§971. (939.) *May be published.* 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.

SECTION 2.

SUIT ON BONDS.

§§933, 924,
927, 976,
414.

§972. (940.) *Bonds may be sued on.* 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.

SECTION 3.

TAX-RECEIVER AND TAX-COLLECTOR TO BE DIFFERENT PERSONS.

Acts 1878-9,
p. 76.
§§224, 968.

§973. (940 a.) *Tax offices separated.* All local or special laws consolidating the offices of tax-receiver and tax-collector in any of the counties in this State, are repealed, and the compensation of said officers shall be governed by the general laws of force in this State.

SECTION 4.

RECORD AND LIEN OF TAX OFFICERS' BONDS.

§974. *Tax officers' bonds, where recorded.* In all cases where one or more sureties on the bond or bonds of county treasurers, tax-collectors, or tax-receivers, shall own real estate in any county or counties other than the county in which such officers shall hold office, such bond, within thirty days after the execution thereof, shall be recorded in the county or counties wherein such real estate is situated, by the ordinary of such counties, or if the fiscal affairs of such counties are or shall be by law committed to a board of commissioners, such bond or bonds shall be recorded within thirty days after its execution by such board, in the book of record of bonds of county officers. Acts 1890-1, p. 104.

§975. *Bonds forwarded for record.* After the bond of any such officer shall have been accepted and recorded in the county in which such an officer holds such office, the ordinary or board of commissioners of such county shall forward the same to the ordinary or board of commissioners in each county in this State in which any one or more sureties on such bond shall own any real estate, and such ordinary or board of commissioners to whom such bond shall be sent shall record the same in accordance with the preceding section. Acts 1890-1, p. 104.

§976. *Third parties not affected unless bond recorded.* As against the interests of third parties acting in good faith and without notice, who may have acquired a transfer or lien binding the real estate of any surety on the bond of any county treasurer, tax-collector, or tax-receiver in this State, situated in any county other than that in which such officer or officers shall hold such office, no such real estate of such surety or sureties shall be bound from the date of such bonds, unless such bonds shall have been recorded in such county. When such bond or bonds shall be recorded after the thirty days, the real estate of the surety or sureties thereon situated in any county or counties other than that in which such officer or officers shall hold such office or offices, shall be bound only from the date when such bond or bonds shall be so recorded. Acts 1890-1, p. 104. §§924, 927, 933, 414, 972.

§977. *Lien between parties unaffected.* Nothing in preceding three sections shall be construed to affect the validity or force of the lien of any such bond from the date thereof as between the parties thereto. Acts 1890-1, p. 104.

§978. *Directions by Governor, and costs of record.* It shall be the duty of the Governor to give written or printed directions to the ordinaries and boards of commissioners of the various counties, upon the requirements of the four preceding sections, as other instructions and directions are now given in reference to the bonds of said offi- Acts 1890-1, p. 104.

Record and lien of tax officers' bonds.

cers; and the costs of transmitting and recording said bonds shall be paid by the officer whose bond it is.

GENERAL NOTE ON TAXATION.—On the subject of taxes generally: 8 Ga. 23. In laws imposing taxes if there be a doubt as to whether the intention of the act was to levy a tax, that doubt should absolve the taxpayer: 8 Ga. 23. State tax on imports held not invalid in this case: 14 Ga. 439. But see, there can be no State tax on exports: 60 Ga. 61. In the District Court of the United States an injunction was granted to prevent the collection by a revenue officer of an illegal assessment of taxes: 35 Ga. 315. Income of the Western and Atlantic Railroad is not subject to taxation: 35 Ga. 315. The right of taxation is in the sovereign, the State: 41 Ga. 331. Power of a *de facto* government to assess taxes only avails while it maintains its supremacy: 41 Ga. 331. Tax levied for educational purposes on liquor is not unconstitutional: 42 Ga. 416. See section 1519 *et seq.*, for taxes upon retailers of spirituous liquors. On the Act of 1870 directing ordinaries to assess a tax to pay the salaries of the district judges and attorneys, where it was sufficiently definite: 44 Ga. 77. Non-residents not required by our law to pay taxes on notes held by them on citizens of this State: 44 Ga. 651. Whether a citizen of Georgia is liable to pay taxes on an open account due him by a non-resident: 45 Ga. 327, 328. A sale by an assignee in bankruptcy does not divest the State's lien for taxes: 46 Ga. 412. The declaration must set forth the facts in a suit to recover back taxes said to have been illegally collected: 46 Ga. 272. When an injunction was granted because the tax *fi. fa.* had the first lien: 46 Ga. 458. Not a uniform tax, and an injunction was granted as against it: 47 Ga. 562. A municipal corporation so far as the right of taxation exists in it is a grant and is called a franchise, and a *de facto* government assessing a tax, afterward overthrown, cannot collect the tax: 41 Ga. 331. Injunction at the instance of taxpayers will not be granted, unless the acts of its officers are *ultra vires*, fraudulent and corrupt: 43 Ga. 67. See notes to sections 802 and 1538. City of Columbus could not assess tax to pay bonds except by legislative enactment: 25 Ga. 610. A legislative act rendering binding a subscription of the city of Columbus to the stock of certain railroads: 30 Ga. 845. Augusta's canal tax held valid: 5 Ga. 561. Illegal tax enjoined as against the Georgia Railroad and Banking Company: 26 Ga. 651. A proceeding of the city council of Augusta should have been enjoined, in issuing a tax execution not having complied with the prerequisites: 31 Ga. 700. Injunction refused against a tax on gross sales, etc., by the city of Augusta: 37 Ga. 597. Where the city of Augusta could not assess a specific tax on the insurance and banking company itself, and not on its capital: 37 Ga. 620. No tax on notes held by and belonging to the residents of the town of Griffin on non-residents: 33 Ga. 113. The marshal of Griffin need not make entry of "no personal property" before he levies a tax *fi. fa.* on real property: 40 Ga. 39. The right of trial by jury does not apply to a taxpayer who refuses to pay his tax: 23 Ga. 566. The superior court will not order the marshal of Atlanta to put a purchaser in possession of lands in the city sold by a former marshal for taxes: 40 Ga. 49. The town of Albany can only impose an *ad valorem* tax on horses or mules sold by drovers: 41 Ga. 21. That land in a city is used for agricultural purposes, is no ground for an injunction of the tax on it: 53 Ga. 589. A physician of Savannah licensed by the State cannot be required under a penalty to take out license by the city: 36 Ga. 460. Retailers of liquor in Savannah must pay license and also the special tax: 42 Ga. 596. There can be no set-off of illegal taxes paid in former years as against a tax execution for tax of later years: 56 Ga. 448. Ordinary cannot

Revenue from other sources.

buy in at tax sales, nor can he pay city taxes on property purchased, out of the county funds: 51 Ga. 9. Taxes illegally assessed by the town of Jonesboro: 63 Ga. 527. When cannot recover back taxes illegally yet voluntarily paid: 61 Ga. 228-230.

Protest accompanying voluntary payment of taxes to city will not authorize recovery; what must appear: 68 Ga. 119.

See notes to section 767.

Paragraph 18, section 2, general tax Act of 1889 and 1890, applies to any one buying and selling futures, though sales not completed by him: 86 Ga. 246.

Local agent of non-resident dealers in futures, liable to punishment prescribed by general tax Act for 1889 and 1890: 86 Ga. 246.

General tax Act of 1890, nor fourth section, unconstitutional as referring to more than one subject-matter, uniform, etc.; "futures" dealer case: 92 Ga. 21.

Board of equalizers; Act of 1891 a general law and constitutional; prior special acts void: 91 Ga. 117.

Taxpayer cannot protect himself against legal demand for his taxes, by showing that another taxpayer has been assessed so as to make his taxes less than they should be: 89 Ga. 598.

Meaning of term "doing cold storage business" in twenty-second clause, second section, general tax Act of 1890: 93 Ga. 12.

Taxation is not a contract, nor does payment of a tax exempt a party from a future assessment: 75 Ga. 36.

Legislature cannot impose pecuniary penalty for non-payment upon one class of taxpayers exclusively, nor subject one class to execution for taxes earlier than others: 87 Ga. 487.

As to license tax imposed on railroads hauling sleeping-cars, etc., violating interstate-commerce clause of United States Constitution: 85 Ga. 650.

See notes to section 5974.

Tax *fi. fa.* must issue against owner of the property: 86 Ga. 602.

Previous cases apparently *contra* reconciled and distinguished: 86 Ga. 600, 602.

Tax *fi. fa.* must issue against owner; excepted cases are those in which law authorizes them to issue against agent or occupant. Owner unknown, *fi. fa.* issues *in rem* against specific property taxed: 86 Ga. 600-602.

Execution *in personam* can only sell that which defendant in *fi. fa.* owns: 86 Ga. 600.

General tax *fi. fa.* no warrant for selling property of a person who is not the owner, nor occupant, nor agent of either, and who has not returned it for taxation: 71 Ga. 810; 86/601; distinguishing 46 Ga. 412; 51/453; 79/799; 80/55; 74/592.

Failure to return property for taxation, effect on title: *Simms vs. Tidwell*, October term, 1896.

CHAPTER 4.

REVENUE FROM OTHER SOURCES.

§979. (941.) *State's revenue from other sources.* 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.

Revenue from other sources.

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.
6. Receipts from military or other claims against the United 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 librarian may receive for official duties.

§§5829, 180.

§980. (942.) *Miscellaneous revenue.* 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 moneys collected from any source or on any account, to which the State is entitled, not otherwise directed, must be paid into the State treasury.

§134.

§981. (943.) *Fees to be paid to treasurer.* The fees which officers are allowed to charge, and which, when collected, must be paid to the treasurer, are as follows:

1. Those by the secretaries of the Governor:	
A grant for one hundred acres or under	\$ 1 00
A grant for over one hundred acres or under three hundred acres	2 00
A grant for over three hundred acres or under five hundred acres	3 00
A grant for over five hundred or under one thousand acres .	4 00
A grant for one thousand acres and over, 1 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	2 00
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 three hundred words	1 00
If more than three hundred words, per one hundred words	10

2. Those by the 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.

Revenue from other sources.

For registering each grant	\$	50	
For registering bond or other similar writing		1 00	
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 of land		1 00	§180.
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	
For granting charters to railroad companies	100 00		Acts 1894, p. 38.
For granting charters to insurance companies	100 00		
For granting charters to banking companies	50 00		
For granting charters to express companies	100 00		
For granting charters to canal companies	100 00		
For granting charters to telegraph companies	100 00		
For granting charters to navigation companies	100 00		
Renewing charters to railroad companies	100 00		
For granting charters to purchasers of railroads	50 00		
Renewing charters to insurance companies	100 00		
For renewing charters to banking companies	100 00		
For renewing charters to express companies	100 00		
For renewing charters to canal companies	100 00		
For renewing charters to telegraph companies	100 00		
For renewing charters to navigation companies	100 00		
For amending charters of banking companies	25 00		
For amending charters of insurance companies	25 00		Acts 1894, p. 39.
For amending charters of railroad companies	25 00		
For amending charters of canal companies	25 00		
For amending charters of navigation companies	25 00		
For amending charters of express companies	25 00		
For amending charters of telegraph companies	25 00		
For recording trade-mark	1 00		
For granting charters to street or suburban railroad companies	50 00		
For renewing charters of street or suburban railroad companies	25 00		
For appointing commissioners of deeds	5 00		
3. Those by the treasurer:			
For every extract or copy from any book, minutes, or file of office, not more than three hundred words	\$	1 00	§§188, 197.
For every additional one hundred words		10	
For every search by request		25	
4. Those by the comptroller-general:			
Every extract or copy from any book, minutes, or file of office, not more than three hundred words	\$	1 00	

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	For every additional one hundred words\$	10
	For every search by request		10
	5. Those by secretary of State or surveyor-general:		
	For examining a plat . . . . .	.\$	50
	For recording a plat		1 25
	For recording a plat of a town, township, or village		10 00
§181.	Transmitting a <i>caveat</i> to Governor, and attending thereon .		1 00
	Certified copy of any original record not more than three hundred words		1 00
	For every additional one hundred words		10
	Certified copy of an original warrant		50
	Issuing a certificate of record		50
	For every search per request		25
§150.	6. Those by the librarian:		
	Certifying to the existence or contents of any manuscript, map, or other document intrusted to his keeping . . . . .	.\$	1 00
	Furnishing copies of his catalogue of books		50

CHAPTER 5.

STATE DEPOSITORIES.

Acts 1893, p. 24-29.
1888, p. 34.
1889, p. 54.
1892, pp. 54, 55.
1890-1, p. 67.
1895, p. 21.
§198 (4).

§982. *State depositories provided for in various cities.* The Governor shall name and appoint a solvent chartered bank of good standing and credit in each of the following cities, to wit: In the cities of Atlanta, Athens, Augusta, Columbus, Macon, Savannah, Rome, Americus, Albany, Hawkinsville, Gainesville, Griffin, LaGrange, Thomasville, Newnan, Cartersville, Dalton, Valdosta, Milledgeville, Darien, Dawson, Cordele, Marietta, Richland, Millen, Warrenton, Carrollton, Elberton, Monticello, Fort Gaines, Cedartown, Jackson, Harmony Grove, Thomaston, Covington, Blackshear, Waycross, Brunswick, Forsyth, Jefferson, Washington, Quitman, and Greenville, which shall be known and designated as State depositories.

State depositories are not public officers: 72 Ga. 501, 511.

Acts 1878-9, p. 88.
1895, p. 22.

§983. (943 b.) *Selection of State depositories, etc.* Said State depositories shall be appointed for the term of four years from the date of their appointment, and shall be liable to be removed by the Governor in his discretion for any neglect of their official duty, and they shall receive no salary or fees from the State of Georgia.

These banks are not public officers: 72 Ga. 501.

Acts 1878-9, p. 88.
1895, p. 22.
§§5827, 5896.

§984. (943 b.) *Contracts as to interest to be paid.* The Governor shall make with depositories the most advantageous contracts for interest to be paid by them to the State for the use of the State's

State depositories.

money which may be deposited therein, as hereinafter provided by this Chapter. And in the event any depository so named shall refuse to make satisfactory contract with the Governor as to interest to be paid, he shall have authority to remove such depository and appoint another. In the event only one bank is situated in any city designated as a legal depository, the Governor can place deposits in the depository nearest situated with whom a satisfactory contract has been made: *Provided*, that no officer of this State shall be allowed to receive any commission, interest, or reward to himself from any source for the depositing of such money in such depositories, or for continuing such deposits. But the receiving of any such benefit by any officer shall be felony.

§985. (943 d.) *Depositories to give bond.* Each of said depositories shall, before entering upon the discharge of their duties by their proper officers, execute a bond with good and sufficient securities, to be approved by the Governor, in a sum of fifty thousand dollars. Said bond shall be conditioned for the faithful performance of all such duties as shall be required of them 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 their hands during their continuance in office. Said bond shall be filed and recorded in the Executive office, 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. And said bonds, when given, shall have the same binding force and effect as the bond now required by law to be given by State treasurers, and, in case of default, shall be enforced in like manner.

Acts 1878-9,
p. 88.
§189.

Bond here complied with the law: 72 Ga. 501.

Lien of bond extends to choses in action, and dates from execution of bond. *Fi. fa.* issued by Governor *instanter* as on treasurer's bond: 66 Ga. 609.

This bond a lien on property of the bank and the securities, as by section 189: 72 Ga. 511.

Bond enforced by Governor issuing execution as in section 190: 72 Ga. 511.

Such bond is a lien on property of principal and sureties from time of its execution, and everybody is bound to take notice: 79 Ga. 159.

Surety not relieved because Governor selected bank as solvent, and surety signed relying on this fact, whereas bank was insolvent; State takes bond for its security, and does not guarantee bank's solvency to sureties: 72 Ga. 517. Nor is surety relieved by Governor's false representation of bank's solvency, which induced him to sign, nor because bank did not make proper returns to Governor, and was not removed as depository: 72 Ga. 517, 518.

Sureties not required to justify, and such affidavits exhibited to one surety but unknown to Governor, not relieve him: 72 Ga. 518.

Surety's name forged, State has no lien on his property: 72 Ga. 515.

Surety liable though name of another surety, whose signature he required was forged: 72 Ga. 518.

State depositories.

President signing as surety, not relieved from liability because other surety's name was forged. Nor could purchaser from him urge such forgery: 72 Ga. 501.

Bond to be obligatory need not be actually recorded in Executive office: 72 Ga. 518.

Not necessary to enter filing and recording on bond, but recited by Governor under State seal sufficient, unless overcome: 72 Ga. 502.

Surety must see that bank accounts for all public money or effects received by it, whether taxes or not: 72 Ga. 518.

Purchaser of property from president of bank, charged with notice that he was surety on bond: 72 Ga. 501.

Change of stockholders not affect corporate existence: 72 Ga. 518.

Acts 1882-3,
p. 138.

§986. *When Governor may appoint new depositories.* Whenever from any cause the State depositories in any locality shall cease to operate, it shall be the duty of the Governor to make another appointment, either to fill out the unexpired term or to enter upon a new term of four years, as the case may be. Said newly appointed depository shall have all the powers, perform all the duties, and be subject to all the liabilities prescribed for State depositories, and shall furnish a like bond in which each of the sureties shall bind themselves for the entire amount of the bond. In selecting any depository, the Governor shall not be confined to banks chartered by the State, but may, if he deem it best, select any bank chartered under the national bank Act of the United States, doing business in this State.

Acts 1882-3,
p. 138.

§987. *Treasurer to advise Governor of financial condition of State depositories.* It shall be the duty of the treasurer to keep advised, and to keep the Governor advised from time to time, of the financial condition of the various State depositories, as well as of the financial condition and standing of the securities on the bonds of such depositories, and if at any time they should become satisfied of the insolvency of any of the depositories, or that the affairs of any of said depositories are in an embarrassed condition, it shall be the duty of the Governor to direct the treasurer to withdraw the money of the State from such depository, and the Governor may declare the position vacant and may proceed to appoint another bank in the same locality to act as such depository for the unexpired term under the rules and regulations prescribed by law. In case the Governor should be advised of the insolvency of the securities on the bond of any of said depositories, it shall be his duty to notify such depository to strengthen said bond, and if at the end of ten days said bond is not strengthened, the Governor shall declare said office vacant, and proceed to fill the same by new appointment.

Acts 1882-3,
p. 138.

§988. *Sureties, how relieved.* Any surety on the bond of a State depository desiring to be relieved from said bond may give notice in writing to the Governor of such desire, with the reasons therefor,

State depositories.

and the Governor shall have authority, in his discretion, to relieve such surety: *Provided*, the consent of the cosureties be first obtained in writing: *And provided further*, that the principal will furnish a new surety to take the place of the surety relieved, who will assume all his liabilities for past and future transactions.

§989. *Amount of State's deposit limited to amount of bond of depository.* The treasurer of this State shall not deposit at any one time, or have on deposit at any one time in any one of the depositories of this State for a longer time than ten days, a sum of money belonging to this State that exceeds the bond given by said depository to the State. The treasurer shall check from any depository the amount of the State's money that said depository holds in excess of its bond, and pay the sum into the treasury: *Provided*, that a State depository may be allowed to hold a sum greater than fifty thousand dollars, but not in excess of one hundred thousand dollars, upon such depository giving a new bond to cover the maximum amount to be deposited with it, and when such new bond has been executed and delivered to the Governor the old bond shall be discharged and surrendered, and whenever a national bank is selected as a State depository the amount of the bond shall be double the amount of money to be deposited with it. The bond to be made by the State depositories may be a personal bond or may be made by a deposit with the State treasurer of United States bonds or Georgia State bonds, or either one or both of said methods.

Acts 1893,
p. 135.

§990. *Monthly statements of depositories.* Depositories shall render to both the Governor and the treasurer such monthly statements as they are now required by law to make to the treasurer.

§991. *Governor authorized to sell bonds of defaulting bank.* When ever any bank which has been made a State depository, and has deposited bonds, shall fail to faithfully perform such duties as shall be required of them by the General Assembly or the laws of this State; or shall fail to faithfully account for all the public moneys or effects that may have come into its hands during its continuance in office, the Governor shall sell a sufficiency of said bonds to reimburse the State the amounts due by the State depository on account of such default.

Acts 1889,
p. 177.

§992. (943 e.) *Funds subject to check, etc.* Said depositories shall hold all funds received by them for and on account of the State, subject to the check or order of the State treasurer, and shall render to the State treasurer, on the first day of every month, a statement of the money on hand belonging to the State, showing the time when, and from whom, received, together with a statement and balance-sheet showing the exact condition of its account with the State treasurer on that day; and whenever any tax-collector

Acts 1878-9,
p. 88.

State depositories.

shall make a deposit in said depositories, they shall give to said tax-collector a receipt, which shall be a good and sufficient voucher to said collector, and they shall mail to the State treasurer a duplicate of the receipt so given to said tax-collector, and so soon as the treasurer shall receive said duplicate receipt, he shall issue his certificate in favor of the depositing tax-collector, and transmit the same to the comptroller-general, who shall pass the amount therein mentioned to the credit of said tax-collector, and at once mail to him a receipt for said amount.

Acts 1878-9,
p. 88. §993. (943 c.) *Tax-collectors may pay funds at depositories.* The Governor shall, at the time of appointing the State depositories, make a list of the counties whose tax-collectors shall be instructed to pay State funds into each depository, and said tax-collectors shall pay into no other depository than the one named by the Governor; and the Governor shall also make known the apportionment of counties by a proclamation duly published in the city where such depository is located, giving the name of the depository, and the names of the counties whose tax-collectors shall be instructed to pay into said depository all moneys collected by them for and on account of State taxes.

Acts 1878-9,
p. 88. §994. (943 f.) *Tax officers may also pay at treasury.* Nothing contained in this Chapter shall be construed to prevent tax-collectors from paying State funds directly into the State treasury. And it shall not be lawful for the State treasurer to deposit such funds in any bank or other depository except those established under this Chapter, and he shall, by check or other proper means, draw from said depositories such amounts only, and at such times only, as the necessities of his department may require.

Treasurer may make other deposits than taxes: 72 Ga. 518.

Acts 1878-9,
p. 90. §995. (943 g.) *Treasurer's bond not affected.* Nothing contained in this Chapter shall be held, taken or construed as affecting, altering, or changing the provisions of existing laws as to the bond of the State treasurer.

GENERAL NOTE.—Act of 1878 not violative of Constitution as containing more than one subject-matter, or matter different from caption: 66 Ga. 609.

NINTH TITLE.

PUBLIC DEBT.

CHAPTER 1.

PUBLIC DEBT.

§996. (944.) *Bonds and certificates, how authenticated.* All bonds or certificates of the State for the State debt 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.”

§997. (945.) *Amounts of, and how payable.* 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.

§998. (946.) *Coupons, how signed and paid.* 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.

§999. (947.) *When unsigned not to be paid.* 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.

§1000. (948.) *Public debt, when paid.* The principal and interest shall be made payable at such place in this State or other of the United States as the Governor may in his discretion direct, and he may direct the principal payable at one place and the interest at another.

§1001. (949.) *Bonds payable out of the State may be exchanged.* 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.

§1002. (950.) *Bonds taken up not to be reissued.* When such exchange occurs, the original bonds so taken up shall not be reissued

on any account whatever, unless specially provided for by the General Assembly.

Acts 1878-9,
p. 57.

§1003. (951.) *Lost bonds or coupons.* When any bond and coupon, or coupon, shall be lost, mutilated, or destroyed, the Governor may issue to the holder a new bond, with proper coupons attached; or if coupon alone be lost, mutilated, or destroyed, he may direct the treasurer to issue new coupons in lieu of such coupons as may be lost, mutilated, or destroyed.

Acts 1878-9,
p. 58.

§1004. (952.) *New bonds, how obtained.* When mutilated, the mutilated bond, or coupon, 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.

§1005. (953.) *Bond and surety to be given.* Having made such affidavit, he shall then, before receiving the new bond, or coupon, give bond and surety to the Governor in a sum double the amount of the bond and coupon, or coupons alone so issued, as the case may be, conditioned to save the State harmless on account of issuing such new bond and coupon, or coupons only, as the case may be.

Acts 1866,
p. 18.

§1006. (954.) *New bonds in lieu of those stolen.* The Governor is authorized to issue a new bond or bonds in lieu of a bond or bonds of the State which may have been stolen, upon the holders making affidavit as provided for: *Provided*, said holders may have given or shall give twelve months notice of the loss or theft of said bonds, fully describing the same, at the treasury of the State, at least twelve months prior to the time when said new bonds may be or shall be issued: *Provided*, that no new bond shall be issued for or in lieu of any lost or stolen bond until the owner of such bond shall first give to the State a bond with security, to be approved by the Governor for the time being, fully indemnifying the State against the payment of the bond so lost or stolen.

§1007. (955.) *Bonds, etc., when paid, how disposed of.* 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.

§1008. (956.) *Appropriations for bonded debt.* 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. Any surplus in the treasury after allowing for all the annual charges against it, including such claim, is likewise appropriated to the same object.

§1009. (958.) *Governor may apply surplus.* 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.

§1010. (959.) *Bonds redeemed before due.* 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.

§1011. (959 a.) *Registration of State bonds.* Any holder of the bonds of this State, whether in his own right or in a fiduciary capacity, may have the same registered at the office of the State treasurer upon application and presentation of said bonds to the treasurer as hereinafter provided.

§1012. (959 b.) *Book of registration.* It shall be the duty of the ^{§200.} treasurer to procure and provide, at the expense of the State, a suitable book or books in which, upon application and presentation of a bond or bonds as aforesaid, he shall enter, in a manner to be of easy and ready reference, a description of said bond or bonds, giving number, series, date of issue, denomination, by whom signed, and such other data as may be necessary for the ready identification thereof, together with the name of the person registering the same, the character or capacity in which such person holds said bond or bonds, and for whose benefit the same is or are registered. And the said treasurer shall enter upon each and every bond so registered as aforesaid, the date of said registration, by whom registered, and in what character or capacity, and shall sign said entry officially; and shall cut, with a stamp prepared therefor under the direction of the treasurer, the letter "R" in the face of said bonds so registered, and such person or persons having such bond or bonds so registered shall be required to pay to the treasurer the sum of fifty cents for each bond so registered, which said registry fee shall be paid into the treasury by the said treasurer.

§1013. (959 c.) *Registered bonds, how transferred.* None of said bonds shall, after such registration, be negotiable by delivery, but said bonds may nevertheless be negotiated or transferred by the person in whose name they are registered, by reregistration in the name of the person to whom the same are to be transferred or negotiated.

GENERAL NOTE.—Act of March 2d, 1875, requiring past matured bonds to be registered within five months, etc., held constitutional: 68 Ga. 711, 716.

TENTH TITLE.

PUBLIC PROPERTY.

CHAPTER 1.

PUBLIC BUILDINGS.

Acts 1870,
pp. 494,
495.
Acts 1870,
pp. 503,
455.
§5931.

§1014. (960.) *Buildings owned by the State.* The buildings and those appurtenant thereto belonging to the State, are—

The State capitol, at Atlanta.

The Governor's mansion, in the city of Atlanta.

The State arsenals at Milledgeville and Savannah, donated by Act of 1870; the Deaf and Dumb Asylum at Cave Spring; the Lunatic Asylum near Milledgeville; the penitentiary at Milledgeville; the buildings of the Western and Atlantic Railroad.

The old capitol and Executive mansion at Milledgeville, with the ground attached to each.

§1015. (961.) *Partly owned by the State.* The State has an interest in—

The University of Georgia, at Athens.

The Asylum for the Blind, at Macon.

The buildings of the Technological School and of the other branch colleges.

§1016. (1016.) *Library, arsenals, and other property.* 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.

Acts 1892,
p. 95.
1882-3, p. 18.
1884-5, p. 27.
1888, p. 14.

§1017. *Use of capitol.* The use of the capitol building and grounds shall be limited to the legitimate departments of this State, and to State and national political organizations, and the keeper of public buildings and grounds shall not grant the use of either the capitol or grounds for any other uses.

CHAPTER 2.

LAND OWNED BY THE STATE.

Acts 1889,
p. 171.
§5900.

§1018. (962.) *Lands owned by the State.* The lands heretofore specially reserved to the State are—

Stock owned by the State. The Western and Atlantic Railroad and its government.

The lands known as the "McIntosh Reserve," on which is situated ^{§§3223-3242.} 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 mark, where it forms the boundary between Georgia and Alabama; 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.

City of Atlanta cannot take lands owned by State for a street: 53 Ga. 120-123.

State's agent not compelled to go beyond Indian Spring Reserve and keep up roads between boundaries and highway to facilitate public access: 78 Ga. 547.

CHAPTER 3.

STOCK OWNED BY THE STATE.

§1019. (1013.) *Stock owned by the State.* The State owns the following stock:

In the Georgia Railroad and Banking Company, one hundred and eighty-six shares.

In the Southern and Atlantic Telegraph Company, indorsed by Western Union Telegraph Company, four hundred and forty shares.

CHAPTER 4.

THE WESTERN AND ATLANTIC RAILROAD AND ITS GOVERNMENT.

§1020. (963.) *Western and Atlantic Railroad property of the State.* ^{Acts 1889, p. 362.} The railroad communication from Atlanta, in Fulton county, to ^{1892, p. 101.} Chattanooga, on the Tennessee river, is the property of this State ^{1895, p. 99.} exclusively, and shall be known as the Western and Atlantic Railroad. ^{§§3, 268.}

What is the relation of the State, so far as her interest is concerned, to the Western and Atlantic Railroad? 54 Ga. 635.

The Western and Atlantic Railroad and its government.

§§5900, 3,
268.

§1021. (964.) *Relation of the State to the Western and Atlantic Railroad.* 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.

When the State engaged in the carrying business on the Western and Atlantic Railroad, it assumed obligations and liabilities incident to that business as when carried on by individuals, and the remedy against it is by suit against the superintendent of the road when the claim is not otherwise adjudicated: 28 Ga. 180. The plaintiff in such suit is not restricted to the amount claimed when he presented his account to the superintendent for settlement; he recovers according to his proof under the law: 28 Ga. 180.

§3.

§1022. (965.) *Road laws and penal laws apply to Western and Atlantic Railroad, proviso.* 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.

The Act of 1856 (Cobb, 154) does not apply to the Western and Atlantic Railroad: 23 Ga. 436. The Western and Atlantic Railroad is subject to the same liabilities for damages as other railroads: 34 Ga. 424. Section cited and construed: 53 Ga. 124.

Acts 1862-3,
p. 182.
§§3, 1020.

§1023. (966.) *Laws applicable to Western and Atlantic Railroad.* All laws of force regulating the liability of railroad companies in this State for damages done by the running of locomotives, cars, and other machinery, are hereby declared to apply equally to the Western and Atlantic Railroad; and in the bringing of all suits against the Western and Atlantic Railroad, the same shall be regulated by the laws in existence on that subject at the time of the adoption of this Code.

Where the damage for which the suit was brought was received before the adoption of the Code: 40 Ga. 416. What action maintainable under this section by the widow of an engineer killed by the colliding of two trains: 34 Ga. 422.

Acts 1857,
p. 62.

§1024. (967.) *Preceding laws of force.* 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.

Section cited; the remedy against the superintendent and officers of the Western and Atlantic Railroad is the same as against tax collectors and receivers: 46 Ga. 350-360.

Acts 1851-2,
p. 110.
1865, p. 249.

§1025. (968.) *Superintendent appointed by Governor.* 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. The salary of the superintendent shall be five thousand dollars per annum.

He is not subject to garnishment: 37 Ga. 240.

§1026. (969.) *To give bond and security.* 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.

§1027. (970.) *To take oath.* He shall also, at the same time, be-^{§234.} sides 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."

§1028. (971.) *Powers of superintendent.* The superintendent has ^{Acts 1851-2,} authority—
p. 111.

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 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.

Section cited and construed: 62 Ga. 198-200.

5. To make contracts with the government of the United 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 show 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 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 city of Atlanta.

Acts 1851-2,
p. 111.

§1029. (972.) *Rules to be recorded, printed, and furnished to officers.* 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.

Parol evidence of: 28 Ga. 111.

§1030. (973.) *Force of said rules.* 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.

This section referred to: 35 Ga. 107.

Acts 1851-2,
p. 111.

§1031. (974.) *Suits against Western and Atlantic Railroad.* 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 roads 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.

Under the Act of 1851–2, a rejection of a claim by the late chief engineer did not entitle the party to sue the superintendent: 19 Ga. 543. Suit against the Western and Atlantic Railroad for loss of tobacco shipped on said road should be brought against the superintendent in Fulton county, where the office was located: 34 Ga. 543.

§1032. (975.) *Demand necessary before suit brought.* 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.

Demand on the superintendent is a condition precedent: 19 Ga. 544, 545. Plaintiff in a suit is not restricted to the amount demanded, but may recover according to the proof: 28 Ga. 180.

§1033. (976.) *Books of road prima facie evidence.* 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. Acts 1858, p. 64.

The books of the State road, though made *prima facie* evidence by statute, may be discredited by internal evidences of inaccuracy: 83 Ga. 627.

§1034. (977.) *Its debtors public debtors.* 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. Acts 1858, p. 64.

A debt due the Western and Atlantic Railroad is to be paid next after funeral expenses, as provided in section 3424, paragraph 3: 46 Ga. 359; 38/171.

§1035. (978.) *Treasurer, by whom appointed.* 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. Acts 1851-2, p. 112.

§1036. (979.) *His oath.* 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.” Acts 1851-2, p. 112.

§1037. (980.) *Bond and security.* 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 superintendent’s.

§1038. (981.) *Treasurer’s duties.* It is the duty of the treasurer— Acts 1851-2, p. 112.
1. To take custody of all funds appertaining to the road, to receive all moneys 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 the 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.

Acts 1851-2,
p. 112.

§1039. (982.) *Auditor appointed by Governor.* The Governor shall appoint an officer for said road who shall be styled the auditor.

§1040. (983.) *His oath.* 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."

§1041. (984.) *Give bond and surety.* He shall, at the same time, give bond and surety, to be approved by the Governor, in the sum of twenty thousand dollars.

§1042. (985.) *Bond and oath filed and recorded.* Such bond and oath of office shall be filed and recorded as the superintendent's.

§1043. (986.) *Auditor's duties enumerated.* It is the duty of the auditor—

Acts 1851-2,
p. 113.

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.

Acts 1858,
p. 62.

§1044. (987.) *Remedy of the State against officers of Western and Atlantic Railroad.* 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.

Section cited: 46 Ga. 342.

§1045. (988.) *Additional bond may be required.* The Governor may ^{Acts 1858,} require each of such officers to give additional bond and surety on _{p. 63.} the same terms and conditions that he may require it of the comptroller-general or the State treasurer.

§1046. (989.) *Monthly reports of agents.* Each agent of such road ^{Acts 1858,} having the funds thereof in his hands shall make out monthly, _{p. 63.} 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.

§1047. (990.) *Defaulting officer or agent dismissed.* 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.

§1048. (991.) *Proceedings on a dismissal.* When such dismissal ^{Acts 1858,} shall take place, an account shall at once be had of all the freight _{p. 63.} on hand, giving the person dismissed a credit or receipt therefor, so as to show the amount of his indebtedness.

§1049. (992.) *Amount due by defaulter, how treated.* As soon as an ^{Acts 1858,} agent, or any other person having funds of the road unaccounted _{p. 63.} for, is in default, and fails to pay over said funds on demand made by the superintendent or by his authority, 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.

Duty of the comptroller-general: 46 Ga. 342.

§1050. (993.) *Oaths of agents.* 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 moneys 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."

§1051. (994.) *Bonds of agents.* 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.

§1052. (995.) *Disposition of affidavit and bond.* The oath 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.

§1053. (996.) *Bonds renewed annually.* 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.

§1054. (997.) *Settlements with agents.* 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.

§1055. (998.) *Governor to examine bond, etc.* 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.

Acts 1855-6,
p. 157.

§1056. (999.) *Conductor's oath.* 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 my hands belonging to the State road, as required by law, or the order of the superintendent. So help me God."

Acts 1851-2,
p. 113.

§1057. (1000.) *No credit for freight.* No agent at any station of said road is permitted to give credit for any freight on any produce, goods, or other commodity conveyed, but shall collect the freights before the articles are taken away, except in cases where the freights, by arrangement, are chargeable to some other railroad company.

Acts 1851-2,
p. 111.

§1058. (1001.) *Conductor's settlements.* 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.

§1059. (1002.) *Cases where superintendent and auditor differ.* 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.

The Western and Atlantic Railroad and its government.

§1060. (1003.) *Proceeds to be paid monthly into treasury.* 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.

§1061. (1004.) *Useless iron, etc., shall be sold on thirty days notice.* Acts 1855-6, p. 157. 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 days notice of the time and place of said sale, with a description of the property, in a public gazette at Atlanta.

Section cited: 60 Ga. 279.

§1062. (1005.) *Terms of sale.* 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, 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.

All this law in regard to sale referred to: 60 Ga. 278, 279.

§1063. (1006.) *Officer not to be purchaser.* Neither the superintendent nor 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.

§1064. (1007.) *Record of sales to be kept.* The superintendent shall keep a record of all such property sold, to whom sold, at what price, and on what terms, and shall embrace the same in his report to the Governor.

Section cited: 60 Ga. 279.

§1065. (1008.) *Restriction on sale of road property.* 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.

The Western and Atlantic Railroad and its government.

Acts 1853-4,
p. 97.

§1066. (1009.) *Who may travel without charge.* 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.

§1067. (1010.) *Superintendent to enforce the laws.* The superintendent of said road is specially charged with the due execution and faithful fulfillment of all the laws for the government and regulation of the same.

Acts 1859,
p. 9.

§1068. (1011.) *Lime, transportation of.* 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 interests 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.

Acts 1865-6,
pp. 261,
262.

§1069. (1012.) *Landowners may build stock-gaps.* All persons in this State owning land through which the Western and Atlantic Railroad passes shall have permission to build stock-gaps on said road when the line of their fences may cross the same, and shall have the privilege of joining their fences to such stock-gaps: *Provided*, said landowners shall not improperly interfere with the bed of said road, or render it less safe, or interfere with the running of the trains thereon.

GENERAL NOTE.—The chief engineer rejecting a claim does not authorize suit against the superintendent, under the Act of 1851-2 (Cobb, 110): 19 Ga. 543. Can be sued only by a special act of the General Assembly: 23 Ga. 436. Not subject to garnishment: 37 Ga. 240. Not liable to pay for cross-ties taken from a citizen and used in the repair of the road under an agent of General Wilson: 39 Ga. 609. Suit under the third section of the Act of 1870 to authorize a lease and before said lease was consummated: 42 Ga. 462. The same remedy against the superintendent of the Western and Atlantic Railroad as against tax-collectors: 46 Ga. 358.

Public printing.

CHAPTER 5.

PUBLIC PRINTING.

§1070. (1040 a.) *Public printing, how let out.* The public printing shall be let to the lowest responsible bidder or bidders, who shall give adequate and satisfactory security in a sum not less than twenty thousand dollars for the faithful performance of the contract; and no member of the General Assembly, or other public officer, shall be interested, either directly or indirectly, in any such contract. Acts 1878-9, p. 37. §1080.

§1071. (1040 b.) *Commissioners of public printing.* The secretary of State, the comptroller-general, and the treasurer of the State are commissioners of public printing, with full powers to contract for and superintend the same under this Chapter, and any two of them shall be sufficient to act. Acts 1878-9, p. 37. §5905.

§1072. (1040 c.) *Advertisement for bids.* Said commissioners, on or by the first week in June, 1880, and every two years thereafter, shall give notice by advertisement in one of the newspapers published in each of the Congressional districts of this State, that sealed proposals to do the public printing for the State will be received by them at the office of the secretary of State, in Atlanta, for thirty days; that on the first Tuesday of August following, the public printing will be awarded to the lowest bidder whose bid is filed in compliance with law. Said commissioners shall have the power to reject any and all bids, and relet the same whenever they shall deem it to the public interest to do so, and when itemized accounts are rendered by the public printer, said commissioners may examine experts as to the value of all material furnished, and cost of work charged for under this Article, and said commissioners shall have full power to reject any item of account which may appear to them, from such expert testimony or otherwise, to be in excess of said public printer's contract or contrary thereto. Acts 1878-9, p. 37. 1887, p. 98.

§1073. (1040 d.) *Stipulations and specifications.* When bids are made to do the public printing, such bids must be based on the following stipulations, specifications, and requirements, to wit: That the laws shall be completed and delivered in the office of the librarian of the State, at the capitol, within thirty days from the adjournment of each session of the legislature. The journals shall be printed and delivered in the office of the librarian within thirty days from the adjournment of each session of the legislature. The paper on which the laws and journals are printed shall be No. 1, sized and supercalendered white book. That for the laws, size 26x40 inches and weighing fifty pounds to the ream. The paper for the journals, size 24x38, weighing fifty pounds to the ream. The paper used in Acts 1878-9, p. 37. §1079.

printing the messages of the Governor, the reports of heads of departments of State government, the reports of committees of the legislature, and all other documents of similar character, must be the same as that used on the journals.

All blank books made for the use of the State shall be manufactured of the best ledger writing-paper of Byron Weston's, or other equally good make, and the binding full, with extra russia ends and bands. The tax and wild-land digests shall be ruled, printed, and bound in the same style as the digests of 1878. The paper for the tax digests shall be on thirty-six pound double flat-cap of Whiting's, or other equally good make. The wild-land digests of the same paper, twenty-eight pound demy. The bills printed for the two houses of the General Assembly while in session shall be on Whiting's, or other equally good make, thirty-six pound double flat-cap, in the same type (small pica) and the same size sheet as bills of 1878. All blanks for the use of the State shall be on the same paper as that used for the bills of the legislature, unless otherwise directed by those competent to do so under the law. The type used in printing the laws shall be new small pica, and for the head and side notes new nonpareil, to be set in the same style and measure as the laws of 1877. The type for the journals shall be new small pica, set in the same style and measure as the journals of the legislature of 1877.

Acts 1878-9,
p. 37.

The type used on the reports of heads of departments, reports of committees of the legislature, the messages of the Governor, and other similar documents, shall be in new small pica type, and table-work in new nonpareil, or other suitable type.

The bids for public printing shall be submitted in writing, under seal, and directed to the commissioners of public printing, with the following specifications, to wit:

On the laws.—For composition, — cents per one thousand ems. For paper of No. 1 white, sized and supercalendered, book size, 24x40 inches, and weighing sixty pounds to the ream, — cents per pound. For proof-reading, make-up, and putting to press, for each form of sixteen pages, — cents. For presswork on book-press, with No. 1 book ink, costing not less than seventy-five cents per pound, — cents per token of two hundred and fifty impressions for forms of sixteen pages.

On the journals.—For composition, small pica type, per one thousand ems, — cents. For paper No. 1, sized and supercalendered, book size, 24x36, and weighing fifty pounds to the ream, per pound, — cents. For proof-reading, make-up, and putting to press each form of sixteen pages, — cents. For presswork, per token of two hundred and fifty impressions on book, seventy-five cents book ink, sixteen-page forms, — cents.

Public printing.

For folding sixteen-page forms.—Per thousand sheets, —.

For stitching pamphlets.—One section, two holes, per one hundred, —. Two sections, three holes, per one hundred, —. Four to six sections, three holes, per one hundred, —. Seven to ten sections, three holes, per one hundred, —.

For stitching journals.—From thirty to sixty sections, per one hundred, —.

For gathering pamphlets.—For two sections, per one hundred, —. For four sections, per one hundred, —. For seven to eight sections, per one hundred, —.

For gathering journals and laws.—For thirty to sixty sections, per one hundred, —.

For pressing the laws and journals.—From thirty to sixty sections of sixteen pages, per one hundred, —.

For stabbing journals, reports, and pamphlets.—From four to eight sections, per one hundred, —. For stabbing, from twenty to fifty sections, five holes, per one hundred, —.

For trimming pamphlets.—From one to four sections, per hundred, —. From seven to ten sections, per hundred, —.

For trimming journals.—From thirty to fifty sections, per hundred copies, —.

For covering pamphlets.—From one to five sections, per hundred, —. From seven to nine sections, per hundred, —.

For sewing laws.—From twenty to thirty sections, per book, —.

For making cases for laws.—No. 30 Dary's tar-board, sheep back and corners; sides best tea cover, thirty-five pound 20x25 flat paper, per case, —.

For rounding and casing the laws.—Per copy, —.

Tax digests.—For ruling, per ream, —. For composition, per thousand ems, —. For make-up and putting to press, each form, —. For presswork, per token of two hundred and fifty impressions, —. For binding and labeling digest, per hundred copies, —.

Wild-land digests.—For ruling, per ream, —. For composition, per thousand ems, —. For make-up and putting to press, each form, —. For presswork, per token of two hundred and fifty impressions, —. For binding and labeling wild-land digests, per hundred copies, —.

For blank books (extra russia ends and bands).—Cap books, twenty sheets to the quire, per quire, —. For demy books, twenty sheets to the quire, per quire, —. Medium books, twenty sheets to the quire, per quire, —. For double-cap books, twenty sheets to the quire, per quire, —. For imperial books, twenty sheets to the quire, per quire, —. For superroyal books, twenty sheets to the

Publication of Georgia reports.

quire, per quire, ——. For printed headings on all books, from one line to six lines, ——.

Acts 1878-9,
p. 37.

§1074. (1040 e.) *Contract forfeited, when.* In case the contractors fail to do the work according to contract, or fail to furnish materials according to contract, then the contractors and their securities shall be liable on their bond, and the commissioners may, for any such failure, declare the bond forfeited, and may award the contract to the next lowest bidder, or relet the work at once, in the same manner as hereinbefore set forth, as to them may seem best.

§1075. (1040 f.) *Contractor and sureties, how bound.* Each of the securities on the bond of a person, or persons, to whom said contract may be awarded, shall, at the time of signing the same, verify and state distinctly for what amount he becomes liable by reason of signing said bond.

Acts 1877,
p. 15.

§1076. (1040 g.) *Duties and pay of printer.* It shall be the duty of the contractor or person doing the public printing to employ such assistance as may be necessary to prepare and compile the several Acts and Resolutions of the General Assembly in the shortest possible time.

In compiling the laws, it shall be his duty to observe the following regulations, to wit:

1. To distinguish in their classifications the public laws from those that are local or private, and to arrange the former under their appropriate heads.

2. To prepare for publication side and head notes, for reference.

3. To add notes referring to such previous legislation as may be modified or repealed, and notes giving the decisions of the Supreme Court since the last publication of acts upon the subject-matter of each act of a public nature.

4. Prepare and append a copious and correct index.

For the additional service of compiling and classifying the laws, as directed in the foregoing, the contractor or person doing the public printing shall be entitled to compensation amounting to three hundred dollars in addition to that provided by law for the printing of the same.

CHAPTER 6.

PUBLICATION OF GEORGIA REPORTS.

Acts 1878-9,
p. 158.

§1077. (228 a.) *Reports, how published.* The Supreme Court reports of this State shall be published by, and at the expense of, the State, in the manner hereinafter pointed out.

Publication of Georgia Reports.

§1078. (228 b.) *Estimate of reporter.* It shall be the duty of the Supreme Court reporter to estimate the number of Supreme Court reports that will probably be demanded by the public, in addition to the number required by the State, and file a report of said estimate in the Executive office immediately upon the preparation of any given volume of reports for the press; and in said report to the Governor, he shall state the quantity of matter which the forthcoming volume of the reports contains. Acts 1878-9, p. 158.

§1079. (228 c.) *Style of printing.* The printing and binding of said Supreme Court reports shall be done upon the terms and in the manner that other State printing is done, and the printing, paper, and binding shall be similar in style to that now used in the publication of said reports. Acts 1878-9, p. 158. §1073.

§1080. *Reporter to contract for printing.* The reporter of the Supreme Court, with the consent and approval of the Governor, shall have power to award the contract for the publication of the Supreme Court reports in the same general manner as the contract for other public printing is now awarded, but in making such award the said Governor and the reporter shall not be limited to the lowest bidder, but may take into consideration the responsibility of such bidder, and his capacity and ability to perform such contract, in all cases making such award as will promote the best interests of the State and secure the cheapest and most prompt and efficient performance of said contract. Acts 1882-3, p. 76. §1070.

§1081. *Contractor to give bond.* Should the contract for the printing and binding of the Supreme Court reports be at any time awarded to a person other than that to whom the general public printing is awarded, he shall give a bond, with good and adequate security, payable to the Governor of this State, and approved by him, in the sum of not less than ten thousand dollars, for the prompt and faithful performance of said contract; should said contract be awarded to the same person to whom is awarded the contract for public printing, he shall give a bond of ten thousand dollars, conditioned as aforesaid, in addition to the bond given on account of the general public printing. The sureties on said bond shall justify, and for a failure, neglect, or refusal to comply with said contract in any particular, the principal and sureties on said bond shall be liable. §§1070, 1076, 5515.

§1082. *Reports, how printed.* It shall be the duty of the person to whom is awarded the printing and binding of the Supreme Court reports, to print and bind the same promptly in the manner provided by this Code. §5515.

§1083. *Penalty for delay.* Should there be any unnecessary delay in such printing or binding; it shall be the duty of the reporter to notify the Governor of the same, and the Governor shall deduct

from the cost of the volume then being published one hundred dollars for each week that such delay is continued, and the amount shall be forfeited by the person having such contract. If such delay shall arise from providential cause or other reason standing upon the same basis, the Governor shall have authority, in his discretion, to remit all or any part of said forfeiture arising during the delay, which was actually caused by such reason.

Acts 1882-3,
p. 76. §1084. *Reporter to examine accounts.* Before the bills of the contractor for printing and binding the Supreme Court reports shall be paid by the Governor, the same shall be submitted to the reporter, whose duty it shall be to make such report or suggestion to the Governor as will aid him in determining the correctness and propriety of the bill presented.

Acts 1882-3,
p. 76. §1085. *Defective work re-executed.* Should the work of printing or binding the reports, or any part of them, be improperly done, the Governor shall have power to require the same to be re-executed, or make such deductions from the bills presented as may seem to him reasonable and proper: *Provided*, that none of the remedies prescribed in this and the two preceding sections shall affect the liability of the contractor or his sureties on his bond, nor shall the discretionary action of the Governor thereunder work any release of said bondsmen.

§1086. *Contractor to swear to account.* The accounts presented by the contractor for printing and binding the Georgia reports shall be verified by his oath, and he shall further make oath that no more copies have been printed than those delivered to the State.

§1087. *Forfeiture of contract and reaward.* Should the contractor fail to promptly and satisfactorily perform his duty in printing and binding the reports, the reporter, with the consent and approval of the Governor, may declare the contract forfeited and reaward the same, but this shall not affect the liability of the original contractor and his sureties upon their bond.

§1088. *Reports uniform.* It shall be the duty of the reporter to make the volumes of the reports as nearly uniform as may be practicable and consistent with the speedy and advantageous publication thereof.

Acts 1878-9,
p. 158. §1089. (228 f.) *Copyright.* The copyright of said reports shall belong to the State.

Acts 1880-1,
p. 141. §1090. (228 g.) *Reports to be electrotyped.* The Governor shall require all the Georgia reports hereafter published, commencing with the sixty-sixth volume, to be electrotyped, and it shall be his duty to see to it that the additional expense thus incurred shall not exceed that paid for similar work by other States of the Union.

§1091. *Advances to contractors.* It shall be lawful for the treasurer to advance to the contractor such sums, not exceeding two-thirds of the value of such portion of a volume as may be printed, whenever the reporter shall certify that such portion has been printed, taking a receipt for the sum or sums thus advanced, which shall be his voucher and an offset to the executive warrant for the payment of the completed volume, which payment shall be made out of any money in the treasury not otherwise appropriated: *Provided*, said contractor shall, at his own expense, effect such an amount of insurance for the benefit of the State upon the volume on which such advance is to be made, as will protect the State from loss in case of its injury or destruction by fire. Acts 1882, p. 78.

§1092. (230.) *Reports not to contain arguments of counsel.* The volumes of reports must not contain any argument or brief of counsel, beyond a statement of the points and authorities. Act 1856, Cobb, 455. §5515.

§1093. (231.) *Reports, failure to publish.* If the reporter fails to publish the volumes of reports within six months of the time of the delivery to him of the decisions, 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; but if he continue to fail to publish and furnish them as required, and without excuse, he forfeits one-fourth more of his salary, and must be removed by the Supreme Court.

ELEVENTH TITLE.

PUBLIC DEFENSE.

CHAPTER 1.

VOLUNTEER FORCES.

ARTICLE 1.

STAFF AND ORGANIZATION.

SECTION 1.

STAFF-OFFICERS.

Acts 1893,
p. 93.

§1094. *Volunteer force.* The volunteer forces of this State shall be the active militia of this State, of which the white forces shall be known and designated as the "Georgia Volunteers," and the colored forces as the "Georgia Volunteers, Colored."

§§5814, 5921.

§1095. *Commander-in-chief.* The Governor is the commander-in-chief.

Acts 1893,
p. 102.
§§1118, 1122,
1127.

§1096. *Governor's staff.* The military staff of the Governor shall consist of the following officers, to be appointed by him, who shall be commissioned as officers of the Georgia Volunteers, holding office at the pleasure of the Governor, or until their successors are appointed and qualified, to wit:

1. An adjutant-general, who shall be keeper of the public property, one judge-advocate general, one quartermaster-general, each with the rank of colonel, not less than four aides-de-camp with the rank of lieutenant-colonel, and in his discretion as many more as he may deem proper, and in his discretion whenever the exigencies of the service require, one inspector-general and commissary-general and one inspector-general of rifle practice, each with the rank of colonel.

2. The Governor may also appoint his private secretary as his military secretary, and commission him with the rank of major.

3. In addition hereto, the adjutant-general, the quartermaster-general, the commissary-general may each have an assistant, and

Organization.

the inspector-general may have two assistants, and the said assistants shall have the rank of lieutenant-colonel.

4. These assistants shall be appointed by the Governor upon the recommendation of the above-mentioned respective heads of departments, and shall be attached to the military staff of the Governor.

§1097. *Adjutant-general, judge-advocate, etc.*

Acts 1893,
p. 102.

1. The adjutant-general shall be *ex officio* chief of the staff of the Governor, and all communications between the Governor and officers of the volunteer forces of the State shall be made through and to him; he shall keep and preserve the arms, accoutrements and other military stores of the State; keep on file in his office all reports made to him; make an annual report to the Governor of the condition of the volunteer forces, and the Governor is required to lay the same before the legislature; he shall give his whole time and attention to said office. Unless such offices are filled, the adjutant-general shall perform the duties of the inspector-general and the duties of the inspector-general of rifle practice, and shall perform such other duties as may be required of him by the Governor.

2. The judge-advocate general shall supervise and care for the management of all things relating to the administration of justice among the aforesaid volunteer forces; diligently scrutinize and examine the proceedings of all courts martial, and report thereon in writing for the information of the Governor. Under the orders of the Governor the judge-advocate general shall act as judge-advocate of any court martial where the public interests may require his attendance, and perform such other duties as may be required of him by the Governor.

3. The quartermaster-general, the inspector-general of rifle practice, the aides-de-camp and the military secretary shall perform such duties pertaining to their respective offices as may be directed by the Governor. Unless such office is filled, the quartermaster-general shall perform the duties of the commissary-general.

4. The duties of the inspector-general, the commissary-general and the assistants hereinbefore provided shall be correlative with those discharged by like officers in the United States army, and they shall perform such other duties pertaining to their respective offices as may be required of them by the Governor.

SECTION 2.

ORGANIZATION.

§1098. *Volunteer forces, of what composed.* In time of peace the volunteer forces shall consist of not exceeding seventy-two compa-
Acts 1893,
p. 93.
1895, p. 96.

Regiments, battalions, companies, etc.; volunteer forces, how divided.

nies of infantry white, and twenty companies of infantry colored; twenty-four troops of cavalry white, and one troop of cavalry colored; two batteries of artillery white, and one battery of artillery colored; not exceeding six machine-gun batteries white; a medical department white; a hospital and ambulance-corps white; and to each regiment of infantry and cavalry white, which may be organized, a signal-corps and a band of music; said volunteer forces fully armed and equipped, to be allotted and apportioned in such localities of the State as the interests of the service, in the discretion of the Governor, may require: *Provided*, that the Governor shall have power, in case of war, invasion, insurrection, riot or imminent danger thereof, to increase the said forces and organize the same as the exigencies of the occasion may demand.

Acts 1890-1,
p. 68.
§1111.

§1099. *Retain organizations and privileges.* Until otherwise provided by law, there shall be no brigade, division, or other larger organization of the volunteers of this State; and commanders of regiments, battalions, and unattached companies shall receive orders only from the Governor, except when otherwise specially ordered, and all regimental organizations heretofore effected under and by virtue of Acts of the General Assembly of Georgia, are hereby declared legal and valid, and they shall retain their organizations and chartered privileges granted by said acts.

ARTICLE 2.

REGIMENTS, BATTALIONS, COMPANIES, ETC.

SECTION 1.

VOLUNTEER FORCES, HOW DIVIDED.

Acts 1893,
p. 93.

§1100. *Regiments, battalions, etc.* The volunteer forces shall be organized and arranged by the Governor into such regiments, unassigned battalions, unassigned companies, separate departments and corps, with power to make such alterations in the organization and arrangement thereof, from time to time, as he may deem necessary. Unassigned battalions of infantry and cavalry white, now existing or hereafter organized, shall be assigned to regiments, whenever it is practicable in the judgment of the Governor so to do. In time of peace the number of regiments of infantry white shall not exceed six, and the number of regiments of cavalry white shall not exceed two. In such organization and arrangement the companies comprising any regiment shall be selected from the same general geograph-

Regiments. Battalions.

ical section of the State, to the end that the territory in which a regiment is located shall be distinct and separate. For the purposes of this Article, the Governor shall be authorized to transfer, if necessary, companies to and from regiments and battalions as they are now organized. The infantry colored shall be organized into battalions and unassigned companies.

SECTION 2.

REGIMENTS.

§1101. *Regiments consist of three battalions.* Regiments of infantry and cavalry shall consist of three battalions. To each regiment of infantry there may be attached, in the discretion of the Governor, a machine-gun platoon. To each regiment of infantry and cavalry there shall be one colonel, one lieutenant-colonel, not exceeding three majors, in the discretion of the Governor, one adjutant, one quartermaster, one commissary, one inspector of rifle practice, who shall be signal-officer; one chaplain, each with the rank of captain, and one sergeant-major, one quartermaster-sergeant, one commissary-sergeant, one color-sergeant. Acts 1893, p. 93.

SECTION 3.

BATTALIONS.

§1102. *Number of companies in battalion.* Battalions of infantry and cavalry shall consist of not less than three nor more than four companies. To each battalion there shall be one major, one adjutant with the rank of first lieutenant, and one sergeant-major. Until assigned to a regiment, any unassigned battalion now organized may have a commissioned and non-commissioned staff consisting of one chaplain with the rank of captain, and one adjutant, one quartermaster, one commissary, one inspector of rifle practice, each with the rank of first lieutenant, and one sergeant-major, one quartermaster-sergeant, one commissary-sergeant, one color-sergeant; and when such battalion is so assigned, the commissioned and non-commissioned staff shall be reduced to conform to the requirements of this Article. Battalions of infantry colored may consist of not less than three nor more than six companies each, and to each battalion colored there shall be one major, one chaplain with the rank of captain, and one adjutant, one quartermaster, one commissary, one surgeon, one inspector of rifle practice, each with the rank of Acts 1893, p. 93.

first lieutenant, and one sergeant-major, one quartermaster-sergeant, one commissary-sergeant, one hospital steward, one color-sergeant.

SECTION 4.

COMPANIES.

Acts 1892,
p. 75.
1893, p. 93.

§1103. *Company and officers.* To every company of infantry and cavalry, there shall be one captain, one first lieutenant, one second lieutenant, five sergeants, four corporals, and not less than twenty nor more than eighty privates. To every battery of artillery there shall be one captain, two first lieutenants, one second lieutenant, five sergeants, one quartermaster-sergeant, four corporals, and not less than twenty nor more than eighty privates. To every machine-gun battery there shall be one captain, one first lieutenant, and one second lieutenant, five sergeants, four corporals, and not less than ten nor more than eighty privates. Each machine-gun battery, when organized, shall be attached to a regiment of infantry and shall bear the numerical designation of such regiment. To each regimental signal-corps there shall be, under command of the signal-officer, one first lieutenant, two sergeants, one corporal, and not less than eight nor more than forty privates. To each regiment band of music there shall be one chief musician, two sergeants, two corporals, and not less than twelve nor more than fifty privates. To every company there shall be one clerk who shall be detailed for that duty from the company.

SECTION 5.

VOLUNTEERS.

Acts 1878-9,
p. 103.

§1104. (1103 b.) *Who may be enrolled as a volunteer.* Any person capable of doing military duty (not under sixteen years of age) may be enrolled as a volunteer; but every company and battalion must be composed of men of the same race and color.

Acts 1889,
p. 129.
§1128.

§1105. *Term of enlistment.* Each member of the volunteer force of this State shall enlist for the term of twelve months, or, in default thereof, the name of such person be dropped from the roll.

Acts 1889,
p. 129.
§1128.

§1106. *Form of enlistment.* The form of such enlistment shall be prescribed in a general order, to be issued by the adjutant-general and forwarded to regimental, battalion, and independent company commanders.

 Definition of terms, vacancies. Chartered companies.

§1107. *Transfer to another company.* The advisory board prescribes ^{Acts 1889,} the mode and manner of transferring a member from one company ^{p. 129.} to another.

§1108. *Discharged cannot re-enlist.* Soldiers discharged for the good ^{Acts 1889,} of the service, or dishonorably discharged or expelled from the volun- ^{p. 129.} ^{§1128.} teers of this State or from the national guard, or volunteers of any other State, or from the army or navy of the United States, shall not be enlisted, unless such discharge or expulsion shall have been revoked by proper authority.

 SECTION 6.

DEFINITION OF TERMS, VACANCIES.

§1109. *Meaning of terms.* For the purposes of this Chapter the ^{Acts 1893,} words “company” or “companies” shall apply to and include in- ^{p. 93.} fantry, cavalry, artillery, machine-gun and signal-corps forces, except where herein specified; and the term “unassigned battalion” shall apply to a battalion not attached to a regiment, and the term “unassigned company” to a company not attached to a regiment or battalion.

§1110. *Vacancies.* When a vacancy shall occur in any commis- ^{Acts 1893,} sioned or non-commissioned office now existing in the artillery, in- ^{p. 93.} fantry, or cavalry of the aforesaid volunteer forces, but which is not provided for by this Chapter, such office shall thereupon cease and expire.

 ARTICLE 3.

CHARTERED COMPANIES.

§1111. *Charters retained.* Nothing in this Chapter shall defeat or ^{Acts 1893,} impair the existing charters and privileges of any regiment, bat- ^{p. 93.} ^{§1099.} talion, or company now organized, except when inconsistent with the provisions of this Chapter.

For act incorporating first regiment: Acts of 1889, p. 126.

For act incorporating second regiment: Acts of 1890–1, p. 194.

For acts incorporating third regiment: Acts of 1890–1, pp. 195, 198; 1892, p. 77.

For acts incorporating fourth regiment: Acts of 1890–1, p. 196; 1892, p. 76.

For act incorporating fifth regiment: Acts of 1892, p. 77.

§1112. *Names retained.* Regiments, battalions, and companies ^{Acts 1893,} already organized may retain any special name or designation they ^{p. 93.} ^{§1099.} may have adopted, or may have by charter if incorporated, and any regiment, battalion, or company hereafter organized may adopt any

special name or designation it may select, but regiments and unassigned battalions must be numbered in their respective arms, according to the date of their organization, and every company attached to a regiment or unassigned battalion must be designated in such regiment or unassigned battalion by a letter of the alphabet, in the manner now in use in the United States army.

ARTICLE 4.

GRADUATE OFFICERS.

Acts 1893,
p. 104.

§1113. *Graduate officers.* The Governor is hereby authorized to appoint and commission annually, from among the graduates of every college or educational institution of this State in which military instruction is regularly given to at least one hundred students the graduates thereof having the highest standing (the same to be determined and certified by the faculty thereof), who shall have received military instruction and training during a full course of three years thereat, and who shall be, at the time, citizens of the State of Georgia, as second lieutenants of infantry of the Georgia Volunteers: *Provided*, that application for such appointment and commission be made within six months after graduation from such college or institution.

Acts 1893,
p. 104.

§1114. *Assignment for duty, etc.* The officers appointed and commissioned in pursuance of the preceding section shall be in addition to those now authorized, or who may hereafter be authorized in the said Georgia Volunteers, and such officers may be assigned by the Governor to such duty as, in his judgment, the interest of the service may require.

ARTICLE 5.

COMPANY ELECTIONS.

Acts 1893,
p. 93.

§1115. *Elections.* Company officers shall be elected by the members of the company. In the case of a company belonging to a regiment or unassigned battalion, the election shall be ordered by the regimental or battalion commander respectively. In the case of an unassigned company, an election for a subaltern officer shall be ordered by the commanding officer thereof, and the election for captain shall be ordered by the Governor. In any case if an officer already commissioned be promoted, the vacancy thereby created may be filled at the same election without further orders. **Such**

Regimental and battalion elections.

elections may be superintended by any two or more officers of the volunteer forces not connected with the company in which the election is to take place, or by two or more justices of the peace or freeholders, or one justice and one freeholder of the county wherein the election is to take place. The polls should be kept open not less than two hours nor more than one day. The order for the election shall be promulgated to the members of the company at least five days before the election, in the manner as other orders to the company are promulgated, and shall specify what hours the polls are to be open.

ARTICLE 6.

REGIMENTAL AND BATTALION ELECTIONS.

§1116. *Election of field-officers.* Field-officers of a regiment or unassigned battalion shall be elected by the commissioned officers of the companies of which such regiment or unassigned battalion is composed. If the election be for the commander of a regiment or unassigned battalion, it shall be ordered by the Governor; if for a junior field-officer, it shall be ordered by the regimental commander. If a field-officer already in commission in a regiment be promoted, the vacancy thereby created may be filled at the same election without further orders. Such election may be superintended by any two or more officers of the volunteer forces not themselves candidates, or any two or more justices of the peace, with one or more freeholders. The polls shall be kept open not less than two hours nor more than one day. The order for the election shall be promulgated in the same manner as other orders, at least ten days before the election is held, and shall specify the time and places of the election, and between what hours the polls are to be open. In the case of a regiment or unassigned battalion composed of companies in different counties, there shall be a poll in each county where there may be one company or more, and the election shall be conducted at each on the same day and in the manner above described.

Acts 1893,
p. 93.

§1117. *Election returns.* Returns of an election for officers of companies belonging to regiments or unassigned battalions and for junior field-officers of regiments, shall be transmitted to the Governor through respective commanding officers, and those of elections for officers of unassigned companies through the captains of the companies. Returns of elections for captains of unassigned companies and for commanders of regiments and unassigned battalions shall be sent direct to the Governor by the superintendents.

Acts 1893,
p. 93.

ARTICLE 7.

RESIGNATION AND DISCHARGE OF OFFICERS.

Acts 1893,
p. 93.
§1096.

§1118. *Discharge of commissioned officers.* The Governor may discharge any commissioned officer of the aforesaid volunteer forces for the following reasons, to wit: Upon tender of resignation; when it appears to the Governor that he is unable or unfit to discharge the duties of his office, or to exercise proper authority over his inferior officers or soldiers, or that he has been convicted of an infamous crime; when he has removed his residence out of the bounds of his command to so great a distance that it is inconvenient to perform the duties of his office; when he has been absent from his command for a longer period than three months, without leave from the Governor; upon the disbandment of the organization to which he belongs; upon sentence of court martial after trial according to law.

Acts 1893,
p. 93.

§1119. *Absence of officers.* No officer shall be absent from his command for a period of more than thirty days, without leave of absence, which shall be granted only by the Governor.

Acts 1893,
p. 93.
§1096.

§1120. *Resignation.* A resignation tendered by an officer shall be in writing, and shall be forwarded to the adjutant-general, for the decision of the Governor, through all intermediate commanders, and until duly accepted the officer shall not be considered as out of the service: *Provided*, that no resignation of an officer shall be accepted against whom charges have been preferred, prior to his trial upon, or the withdrawal of, the same, nor until he shall have satisfied and shall have been discharged from any bond given by him for the care of any ordnance or other military stores intrusted to his keeping by the State.

Acts 1890-1,
p. 199.
§1096.

§1121. *Honorable retirement.* All commissioned officers of the "Georgia Volunteers" who shall have been at the date of retirement in commission for a period of ten years, or who shall have served in the ranks and in commission for a period of fifteen years, may, upon their application and the approval of the Governor of the State, be honorably retired from service and their names inscribed upon a roll to be established and maintained in the office of the adjutant and inspector general, and known as the "Roll of retired officers;" and said retired officers shall have all the rights, privileges, immunities and exemptions now or hereafter enjoyed by the "Georgia Volunteers," and be entitled to wear, upon any occasion, the uniform of the highest rank that they may have held: *Provided*, that the time of service of any officer in the Confederate service shall be counted, if necessary, to make the ten or fifteen years service required; and

the privilege of retirement shall be extended to commissioned officers who have heretofore resigned. The service required need not be continuous.

ARTICLE 8.

APPOINTMENTS.

§1122. *Appointment.* Commissioned staff-officers of regiments and unassigned battalions shall be appointed and commissioned by the Governor, upon the recommendation of respective commanders. Commissioned staff-officers of battalions of a regiment shall be appointed and commissioned by the Governor upon the recommendation of respective battalion commanders, approved by the regimental commander. And all such officers shall be subject to such examinations as to their fitness for commissions as are now or may hereafter be provided for by law. ^{Acts 1893,} ^{p. 93.} ^{§1096.}

ARTICLE 9.

EXAMINATION OF OFFICERS.

§1123. *Examination of officers.* Every person elected to or nominated for any commissioned office in the volunteer forces of this State, shall appear before an examining board, consisting of two or more competent officers, who shall examine said person as to his military and other qualifications. The Governor may waive the examination of any person appointed by him as a member of his military staff or of any person nominated for the office of chaplain. ^{Acts 1892,} ^{p. 81.} ^{§1096.}

§1124. *Examining boards.* The Governor is authorized to establish one or more boards for the examination of all persons applying for commissions. Examinations shall, in all cases, be written, and conducted in accordance with such rules and regulations as may be prescribed by the Governor. The examination of persons nominated for the office of surgeon shall be conducted by boards composed entirely of surgeons or officers of the medical department of the volunteer forces of this State. ^{Acts 1892,} ^{p. 81.}

§1125. *Reports of boards.* Each board of examination shall within ten days after each examination make a detailed report, in writing, of the result thereof to the Governor, who shall approve or disapprove of the persons elected or nominated. If any person elected to or nominated for any commissioned office, shall fail to appear before a board of examination within thirty days after being notified, unless he shall give satisfactory excuse for such non-appearance, or ^{Acts 1892,} ^{p. 81.}

shall fail to pass a satisfactory examination, the fact shall be certified by the board to the Governor, who shall declare the election or nomination null and void. Any person elected or nominated as aforesaid, who shall fail to pass a satisfactory examination, and be reported by the examining board as unqualified for a commission, shall not be eligible for another election or nomination for the term of twelve months.

Acts 1892,
p. 81.

§1126. *Compensation of boards.* The boards of examination shall serve without compensation from the State, except actual expenses incurred.

ARTICLE 10.

OATH OF OFFICERS.

Acts 1892,
p. 81.
§234.

§1127. *Oath of commissioned officers.* Every person commissioned as an officer in the volunteer forces of this State, before he shall assume such rank or enter upon the duties of the office to which he may be commissioned, shall accept such commission and shall take and subscribe, before some person authorized, such oath and declarations as may be prescribed by the Governor.

ARTICLE 11.

DISCHARGE OF ENLISTED MEN.

Acts 1893,
p. 93.
§§1105, 1108.

§1128. *Discharge of enlisted men.* No enlisted man of the volunteer forces of this State shall be discharged before the expiration of his term of enlistment, except by order of the Governor and for the following reasons, to wit: Accept promotion by commission; upon removal of residence from the State, or out of the bounds of command to which he belongs to so great a distance that, in the opinion of his commanding officers, he cannot properly perform his military duty; upon disability, established by a certificate of a medical officer; upon conviction of felony in a civil court; upon his own application, approved by the commanding officer of his company, and by superior commanders; to carry out the sentence of a court martial; whenever, in the opinion of the Governor, the interests of the service demand such discharge.

Acceptance of other office. Medical department.

ARTICLE 12.

ACCEPTANCE OF OTHER OFFICE.

§1129. *Acceptance of another office.* When an officer of the afore-^{Acts 1893,}said volunteer forces holding a commission is elected or appointed ^{p. 93.} to another office in the volunteer forces and accepts the same, such acceptance shall vacate the office previously held.

ARTICLE 13.

MEDICAL DEPARTMENT.

§1130. *Medical department.* The medical department heretofore^{Acts 1893,} provided shall be known and designated as the medical department ^{p. 93.} of the Georgia Volunteers, and shall consist of one surgeon-general with the rank of colonel, one assistant surgeon-general with the rank of lieutenant-colonel, one medical inspector with the rank of major, not exceeding one surgeon with the rank of captain, and one assistant surgeon with the rank of first lieutenant, to each regiment; not exceeding one assistant surgeon with the rank of first lieutenant, to each unassigned battalion and each unassigned battery which may be organized under the provisions of this Article. All medical officers of the Georgia Volunteers commissioned as medical officers of the Georgia Volunteers, shall constitute a medical staff which shall be under the direction and control of the medical department.

§1131. *Appointment of officers of medical department.* The officers^{Acts 1893,} of the medical department shall be appointed as follows: The surgeon-general by the Governor; the assistant surgeon-general and ^{p. 93.} the medical inspector by the Governor, upon the recommendation of the surgeon-general; the surgeons and assistant surgeons by the Governor, upon the recommendation of the respective commanders of organizations entitled to such medical officers. No person shall be eligible for appointment as surgeon-general, assistant surgeon-general, or of medical inspector, who is not at the time an officer of the medical department of the Georgia Volunteers.

§1132. *Examination.* All persons nominated as medical officers^{Acts 1893,} of the volunteer forces of this State shall, before being commis- ^{p. 93.}sioned, undergo such examination as to fitness as is now or may be provided for by law.

§1133. *Hold office during good behavior.* All medical officers shall^{Acts 1893,} hold commissions during good behavior, and shall be subject to the ^{p. 93.}

Hospital and ambulance corps.

same regulations for the government of the volunteer forces as all other commissioned officers.

Acts 1893,
p. 93.

§1134. *Surgeon-general.* The surgeon-general of the Georgia Volunteers shall be attached to the military staff of the Governor, and, under his direction, shall have general supervision and control of all matters pertaining to the medical department of the volunteer forces of the State, and shall be charged with the administrative duties of the medical department; have supervision and direction of the selection and distribution of all medical and hospital supplies; approve or disapprove of all requisitions for supplies from all medical officers; make, subject to the approval of the Governor, such regulations for the government of the medical department as he may deem necessary. He is chief of his department, and shall submit annually to the Governor a report, in writing, of the medical department, and shall perform such other duties as may be required of him by the Governor.

Acts 1893,
p. 93.

§1135. *Surgeon-general to assign.* The surgeon-general shall assign to permanent duty with the various commands of the Georgia Volunteers, the medical officers connected with such commands. Officers so assigned shall continue to act as part of the staff of the commanding officer of the organization to which they are assigned.

Acts 1893,
p. 93.

§1136. *Vacancies.* An officer commissioned to fill a vacancy shall in like manner be assigned, and shall serve as part of the staff of the commanding officer of the command to which he is assigned. Officers of the medical department may be detached and detailed for temporary duty by the surgeon-general should the interest of the medical department so demand, but the detachment shall not continue beyond a reasonable period, nor to the detriment of the commands to which such officers are permanently assigned.

ARTICLE 14.

HOSPITAL AND AMBULANCE CORPS.

Acts 1893,
p. 93.

§1137. *Hospital corps.* The hospital and ambulance corps shall be known and designated as the hospital and ambulance corps of the Georgia Volunteers, and shall consist of hospital stewards, acting hospital stewards and privates, and all necessary service in garrison, camp, or field, including ambulance service, shall be performed by the members thereof, who shall be regularly enlisted for a period of two years, under such regulations as may be prescribed by the Governor. Said hospital and ambulance corps shall be permanently attached to and be under the direction and control of the medical department of the Georgia Volunteers.

Sundry regulations; contested elections.

§1138. *Hospital stewards.* The surgeon-general of the Georgia Volunteers shall have authority to appoint as many hospital stewards as, in his judgment, the service may require, but not exceeding two hospital stewards to each regiment, and not exceeding one hospital steward to each unassigned battalion or battery. Acts 1893, p. 93.

§1139. *Qualifications.* No person shall be appointed a hospital steward who is not a practical druggist, duly licensed from the State board of pharmacy. Acts 1893, p. 93.

§1140. *Privates of hospital-corps.* The surgeon-general is empowered to enlist, or cause to be enlisted, as many privates of the hospital and ambulance corps, each to be over eighteen years of age as the service may require, and to limit and fix the number, and make such regulations for their government as may be necessary. Any enlisted man of the Georgia Volunteers shall be eligible for transfer to the hospital and ambulance corps as a private. Privates of the hospital and ambulance corps shall perform duty as ward-masters, cooks, nurses, and attendants in hospitals, and as litter-bearers, and ambulance attendants in the field, and such other duties as may, by proper authority, be required of them, and these men shall have all the rights and privileges of enlisted men of the volunteer forces. Acts 1893, p. 93.

§1141. *Detail.* Privates of the hospital and ambulance corps may be detailed as acting hospital stewards by the surgeon-general whenever the necessities of the service require the same. Acting hospital stewards, when educated in the duties of the position, may be eligible for appointment as hospital stewards. Acts 1893, p. 93.

CHAPTER 2.

SUNDRY REGULATIONS.

ARTICLE 1.

CONTESTED ELECTIONS.

§1142. (1103 p.) *Elections, how decided.* In every election for an officer of volunteers, the majority of the votes cast shall decide. In the event of a mere plurality or a tie, a new election shall be ordered. When the returns show a majority of votes cast for one person, the Governor shall forthwith issue to the officer elect the proper commission, bearing date the day the election was held. If an election be contested, notice thereof shall be given to the Governor within five days after the election, and the commission shall be Acts 1878-9, p. 107.

withheld until the contest shall be decided. In such a case either party contestant may, upon five days notice to the other, take testimony, upon oath, before any justice of the peace of the county in which the election was held, within thirty days after such election, which testimony shall be forwarded by such justice to the Governor for his decision thereon. The Governor's decision shall be final, and thereupon the commission shall be issued accordingly.

ARTICLE 2.

DURATION OF COMMISSION.

Acts 1878-9,
p. 107.

§1143. (1103q.) *Duration of commission.* Every commission issued to an officer of volunteers shall continue until death, resignation, promotion or dismissal of the officer. And all companies and battalions are hereby forbidden to adopt or retain rules providing for the periodical election of any commissioned officer. And commissions issued to staff-officers of battalions shall in like manner continue, notwithstanding the death, resignation, or dismissal of the battalion commander, upon whose recommendation they were appointed. Nevertheless, upon the disbanding of any company, or dissolution of any battalion, the commissions of all officers of such company or battalion shall thereupon cease.

ARTICLE 3.

UNIFORMS.

Acts 1878-9,
p. 107.

§1144. (1103s.) *Uniforms.* The uniform already adopted by any company or battalion already uniformed at the time of the passage of this Article, is hereby authorized, and may be retained by such company or battalion as long as it pleases, but it cannot be changed except for the uniform hereinafter provided for, and no company or battalion shall hereafter be received or recognized, or supplied with arms or accoutrements, or its officers commissioned, unless it be uniformed in the manner hereinafter provided for. But every battalion or unattached company shall be at liberty to adopt such distinctive marks, ornaments, or insignia, in addition to the uniform hereinafter provided for, as it may prefer, subject to the approval of the Governor: *Provided*, it makes no substantial change in the uniform.

 The flag of the State.

§1145. *Service uniform.* There shall be adopted a service uniform ^{Acts 1884-5,} for the volunteer forces of this State, to be prescribed by the Governor in general regulations hereinafter provided for. _{p. 74.}

§1146. *Fatigue uniform.* The military advisory board of this State ^{Acts 1889,} shall prescribe a complete fatigue uniform for the Georgia Volunteers, which uniform shall not be changed in any particular except by act of the legislature. _{p. 128.}

§1147. *Advisory board to contract for same.* The advisory board ^{Acts 1889,} shall make a contract, or contracts, for the making and furnishing of the uniform prescribed, with one or more firms or persons, on such terms as said board may decide, and shall, on application, furnish a copy of said contract to each company in the State. If uniforms are received from the United States government, said uniforms furnished shall be considered a compliance with the law. _{p. 128.}

§1148. *Uniform exempt.* No part of the uniform or equipment or trooper's horse of any volunteer officer or soldier shall be subject to levy and sale for debt, except for fines or other dues to his company or battalion, according to its rules, and such as may be imposed on him by sentence of a court martial. The members of said volunteer forces shall in all cases, except treason, felony or breach of the peace, be privileged from arrest during their attendance at drills, parades, meetings, encampments, and the election of officers, and during the performance of any public duty as such members, and in going to and returning from the same. ^{Acts 1878-9,} _{p. 113.} ^{1884-5,} _{p. 74.}

 ARTICLE 4.

THE FLAG OF THE STATE.

§1149. (1103 ss.) *Description of flag.* The flag of the State of ^{Acts 1878-9,} Georgia shall be a vertical band of blue next the staff, and occupying one-third of the entire flag; the remainder of the space shall be divided into three horizontal parallel bands, the upper and lower of which said bands shall be scarlet in color, and the middle band white. _{p. 114.}

CHAPTER 3.

THE PUBLIC ARMS AND ARSENALS.

ARTICLE 1.

ARSENALS.

§1150. (1180.) *Public arms, where kept.* The public arms of the State are to be deposited in the arsenals, and at such place as the commander-in-chief may order, or the General Assembly prescribe.

§1151. (1187.) *Deposits of gunpowder.* Gunpowder shall not be deposited in any arsenal contrary to any ordinance or by-law of the city where it is situated.

ARTICLE 2.

MILITARY STOREKEEPERS.

§1152. (1188.) *Military storekeepers.* The Governor has power to appoint military storekeepers for such arsenals or other places where the public arms may be kept, who hold their offices for one year.

§1153. (1189.) *Shall give bond and surety.* Before entering on the discharge of their duties, all military storekeepers 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.

§1154. (1190.) *The duties of military storekeepers.* 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.

2. To make annually, or oftener if required by the Governor or secretary of State, 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 secretary of State 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.

§1155. (1191.) *Penalty for violation of duty.* 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.

ARTICLE 3.

ARMORY.

§1156. *Armories public property.* Each armory owned and occupied by any command of said volunteer forces shall be, to all intents and purposes, public property—that is to say, the State shall have the right to use the same for public purposes of a military character, to quarter troops therein in times of emergency, to be judged of by the commander-in-chief, and to otherwise use the same for military purposes, such use, however, to be consistent with the occupation of the same by said command holding the legal title thereto, and so as not to oust the said command therefrom, and as such public property, each said armory, and the land upon which it is situated while it is used and occupied as such, shall be exempt from any taxation, State, county, or municipal. The adjutant and inspector general shall see that all such armories are kept in serviceable condition, and shall report on the same to the commander-in-chief in his annual report. All rents or income of any portions of such armories shall be the property of the command owning the same. The State shall not appropriate any money for the repair of such buildings, but all repairs and other expenses incident to preserving and repairing such buildings shall be paid by the command owning the same.

Acts 1884-5,
p. 74.

ARTICLE 4.

ARMS AND MUNITIONS.

§1157. *Arms and ammunition.* The arms and accoutrements of the volunteer troops of this State shall be such, in each arm, as are furnished by the Governor out of those supplied to him by the government of the United States; and it shall be the duty of the Governor hereafter to distribute the arms obtained from the government of the United States to the volunteer forces as in his judgment may be to their best advantage, and all the companies of each battalion must be armed and accoutred alike; but any company of either arm, to which the Governor may be unable to furnish arms and accoutre-

Acts 1878-9,
p. 108.
1884-5, p. 74.

Arms and munitions.

ments, may find its own, subject to the rules that all the companies of the same battalion shall be armed and accoutred alike, and that all such arms be such as are used in the army of the United States; and no company shall be received, recognized or commissioned unless the Governor be prepared to furnish it with arms and accoutrements, or it be already furnished at its own expense. All arms and accoutrements furnished by the Governor shall be accounted for in the returns hereinafter provided for. But nothing herein contained shall be construed to prevent any company or battalion from having and using accoutrements, in time of peace, different from those supplied by the Governor, at its own expense: *Provided*, that all companies in the same battalion be accoutred alike.

Acts 1878-9,
p. 108.
1884-5, p. 74.

§1158. *Supplies of ammunition.* The Governor shall furnish annually the commander of each battalion and unattached company the following supplies of fixed ammunition to the volunteers armed according to the provisions of the foregoing section, out of the supplies of ammunition received from the government of the United States, viz.: To each company of infantry not less than ten round of ball and six round of blank cartridges, of which not less than five round of ball cartridge shall be always on hand for the service of the State; to each company of cavalry, armed with pistols or carbines, not less than twenty round of ball cartridge, of which not less than ten round of ball cartridge shall be always on hand for the service of the State; to each battery of artillery not less than ten round of shot or shell per gun, and six round of blank cartridge, of which not less than five round of shot or shell per gun shall be always on hand for the service of the State, and there shall be added for the artillery the proper proportion of friction primers. All ammunition issued shall be accounted for in the returns hereinafter required. The Governor may furnish from the source aforesaid further supplies of ammunition to said volunteer forces, if in his judgment he deem it best.

Acts 1878-9,
p. 109.
1880-1.
p. 104.

§1159. (1103 v.) *Bond to be given for arms and accoutrements.* All arms and accoutrements shall be issued by the Governor to the commander of the company, and shall be receipted for by him; but no such issue shall be made until after there shall have been executed and delivered to the Governor a bond of the officer, with at least two sureties, who shall be jointly and severally bound, and each of whom shall be sworn that he is worth the amount of the bond over and above his indebtedness, and the amount of the homestead exemption allowed by law, in double the value of such arms and accoutrements, payable to the Governor and his successors in office, for the safe-keeping, proper use, and surrender, when required, of the same. In the event of the death, resignation, or dismissal of such officer, his

Arms and munitions.

successor shall not be commissioned or entitled to enter upon his command until he shall have reported to the Governor the arms and accoutrements remaining of those originally issued to the command, and have delivered to the Governor his own bond for the same, with sureties as above prescribed. The person giving bond for arms and accoutrements, his executors, administrators and sureties, shall be liable to suit in the proper court for damages resulting from a breach thereof. And any non-commissioned officer or soldier, to whom his commanding officer may find it necessary or convenient to intrust arms or accoutrements issued by the State shall be liable to such officer for any loss of or injury to the same, in any court having jurisdiction of the person of the defendant and the amount of the demand. And if any officer or soldier shall sell or otherwise dispose of any arms or accoutrements belonging to the State in his possession, custody or control, the purchaser shall acquire no title, and such officer or soldier shall, upon conviction thereof by a court martial, be dismissed from the volunteer force. And it shall be the duty of the Governor to require the adjutant-general to inspect, at least once in every year, the arms and accoutrements issued to each company and each military school or college in the State, and to make a written report of such inspection, showing the condition of such arms and accoutrements, and the nature and extent of the repairs needed, if any; and such repairs may be ordered by the Governor by the supply of missing parts from the quota received from the United States, or by the employment of skilled artisans under the direction of the company commander or president, who shall be paid by the Governor out of the contingent fund upon itemized accounts certified by the company commander or president. The adjutant-general shall receive no compensation for these inspections, but the necessary expenses of them, not exceeding the amount of two hundred and fifty dollars in any one year, shall be paid out of the contingent fund upon itemized accounts.

§1160. (1103 w.) *Arms, etc., surrendered, when.* Whenever any company shall be disbanded, or shall refuse to obey the lawful order of its company or battalion commander, or of the Governor, the Governor may require the immediate surrender of all arms, accoutrements, and ammunition issued for its use; and upon neglect or refusal to surrender the same within thirty days after such demand, the captain and his sureties shall become liable to suit on his bond, and the arms, accoutrements, and ammunition may be taken possession of wherever found by any officer of the State, civil or military, by such summary process as the law provides, and immediately delivered to the Governor, or his order.

Acts 1878-9,
p. 109.

Parades; parades, when and by whom ordered.

Acts 1884-5,
p. 74.

§1161. *Keeping arms, etc.* Regulations shall be prescribed by the commander-in-chief from time to time, in general orders, concerning the keeping of arms, equipments and military property in charge of any command of said volunteer forces; concerning the armories of the several commands of said volunteer forces; requiring that the property of the State in possession of each of said commands shall be insured against loss or damage by fire; requiring target practice by each of the said commands once a year, and the record thereof (furnishing all details thereof) to be promptly forwarded thereafter to the adjutant and inspector general; transmitting to the several commands all matters of general interest of a military nature, and otherwise forwarding and maintaining proper drill and discipline throughout the said volunteer forces.

Acts 1884-5,
p. 74.

§1162. *Collection of arms, etc.* It shall be the duty of the Governor to take immediate steps to gather in and collect together all of the arms, equipments, and military property of the State which may have been issued heretofore to commands now disbanded and no longer in actual existence, and to this end to bring such suits as may be necessary upon the bonds given to secure the State for the issuance of such arms, equipments, or military property.

CHAPTER 4.

PARADES.

ARTICLE 1.

PARADES, WHEN AND BY WHOM ORDERED.

Acts 1878-9,
p. 110.

1884-5, p. 74.

§1163. *Parades and inspection.* Every company of volunteers shall parade at least four times in every year, and every battalion at least once every year, the times to be appointed by the rules adopted by such company or battalion, or in the absence of such rules, by its commanding officer. The Governor may order such other parades, not exceeding one in any year, of any company or battalion, as he may think proper, for inspection or review by the adjutant and inspector general, or such officer of volunteers as he may designate for that duty.

Order at parades. Sutlers, etc.

ARTICLE 2.

ORDER AT PARADES.

§1164. (1103 y.) *Disturbers of parades subject to arrest.* The officer Acts 1878-9,
p. 110. commanding any detachment, company, or battalion at any parade, or during the performance of any other duty ordered by proper authority, shall have authority to arrest and place under confinement during the continuance of such duty, any person who shall in any way willfully disturb or interrupt the peaceable and orderly proceedings of such detachment, company, or battalion, and such person shall, moreover, be liable to prosecution in the superior court.

§1165. (1143.) *Insubordination by bystanders or volunteers.* If a bystander, or person not connected with the military, shall molest, interrupt, or insult any officer or soldier while on duty at any parade or muster, such person shall be subject to prosecution, as provided in section 346 of the Penal Code, and the commanding officer where such offense shall happen shall have power to confine such person under guard until the close of such parade or muster. And if any person connected with the military service of the State shall be guilty of any of said offenses or shall otherwise violate military order or decorum, he shall be arrested and punished at the discretion of a court martial.

ARTICLE 3.

SUTLERS, ETC.

§1166. (1145.) *Sutlers under the control of commanding officer.* 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.

§1167. (1146.) *Treatment of intoxicated visitors.* 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.

Duty in case of invasion, riots, and mob violence; war or invasion. Riots, mobs, etc.

CHAPTER 5.

DUTY IN CASE OF INVASION, RIOTS, AND MOB VIOLENCE.

ARTICLE 1.

WAR OR INVASION.

Acts 1878-9, §1168. *Proceeding in case of invasion, etc.* In case of any invasion, rebellion, insurrection or probable prospect thereof, the Governor shall have authority to order into the service of the State such portion of the volunteer forces as in his judgment the occasion shall require, and to detail or appoint to command them the ranking officer so ordered, or any other officer of superior rank, and such other officers for their payment and supply as he may find necessary.

ARTICLE 2.

RIOTS, MOBS, ETC.

Acts 1878-9, §1169. *Governor's duty.* Whenever any judge of the superior court, city-court judge, sheriff, or mayor of any incorporated city, town or village in this State shall have reasonable cause to apprehend the outbreak of any riot, rout, tumult, insurrection, mob, or combination to oppose the enforcement of the laws by force or violence, within the jurisdiction in which such officer is by law a conservator of the peace, which cannot be speedily suppressed or effectually prevented by the ordinary *posse comitatus* and peace-officers, it shall forthwith become the duty of such judge, sheriff, or mayor to report the facts and circumstances, in writing, to the Governor, and request him to order out such portion of the volunteer forces of this State as may be necessary to enforce the laws and preserve the peace; and it thereupon shall be the duty of the Governor, if he deem such apprehension well founded, to order out, or direct to be held in readiness, such portion of the volunteer forces of the State as he may deem advisable for the proper enforcement of the law, and he may direct the officer in command of the troops to report to the officer making such application, or any one or more of them, and to obey the orders of such civil officer, or if the Governor deem it advisable, may specially instruct the officer in command of such troops as to the duties required of them, and direct their execution under the immediate control of the Governor.

Power of mayor in cases of emergency. Order to disperse before firing.

ARTICLE 3.

POWER OF MAYOR IN CASES OF EMERGENCY.

§1170. *Call in case of emergency.* Whenever any riot, outbreak, tumult, mob or rout shall occur or be imminent under such circumstances that timely application cannot be made to the Governor, and action had thereon by him, the mayor of any city, town, or village in which any of said volunteer forces are located, if he ascertains or has good reason to believe that the ordinary *posse comitatus* or civil power of the county, city, town, or village where such violation of the laws and peace of this State occurs or appears imminent, are or would be unable to promptly suppress or prevent the same, may, without first making application to the Governor, direct the commander of each company, or part of a company of said volunteer forces, in the county or said city, town, or village where such lawlessness exists or is threatened, to call out and report with his command to such civil officer, to enforce the laws and preserve the peace, and it shall be the duty of such commander and all persons composing such command to obey such order.

Acts 1878-9,
p. 110.
1884-5, p. 74.

ARTICLE 4.

ORDER TO DISPERSE BEFORE FIRING.

§1171. *Mob to be ordered to disperse, when and how.* Before using any military force in the dispersion of any riot, rout, tumult, mob, or other lawless or unlawful assembly or combination mentioned, it shall be the duty of the civil officer calling out such military force, or some other conservator of the peace, or if none be present, then of the officer in command of the troops, or some person by him deputed, to command the persons composing such riotous, tumultuous, or unlawful assemblage or mob to disperse and retire peaceably to their respective abodes and businesses: *Provided*, that in no case shall it be necessary to use any set or particular form of words in ordering the dispersion of any riotous, tumultuous, or unlawful assembly, nor shall any such command be necessary where the officer or person in order to give it would necessarily be put in imminent danger of loss of life, or great bodily harm, or where such unlawful assemblage or mob is engaged in the commission or perpetration of any forcible or atrocious felony, or in assaulting or attacking any civil officer or person lawfully called to aid him in the preservation of the peace, or is otherwise engaged in actual violence to persons or property.

Penalty for riot and failing to disperse. Assaulting troops and resisting attack.

ARTICLE 5.

PENALTY FOR RIOT AND FAILING TO DISPERSE.

§1172. *Pénalties for riot.* Any person or persons composing or taking part in any riot, rout, tumult, mob, or lawless combination or assembly mentioned in this Chapter, who, after being duly commanded to disperse, as hereinbefore provided, willfully and intentionally fails to do so as soon as practicable, shall be guilty of a felony, and on conviction thereof shall be imprisoned in the penitentiary not less than one nor more than two years.

Acts 1884-5,
p. 74.

§1173. *Killing rioters or injuring property.* Any person or persons composing or taking part, or about to take part, in any riot, mob, rout, tumult, or unlawful combination or assembly mentioned in this Chapter, having been duly commanded to disperse, or where the circumstances are such that no such command is requisite, under the provisions of this Chapter, the civil officer to whom such military force is ordered to report, or, if there be no civil officer present, then such military officer (or if such command is acting under the direct order of the Governor, then such officer within the limits provided in his instructions), shall take such steps and make such disposition for the arrest, dispersing or quelling of the persons composing or taking part in any such mob, riot, tumult, outbreak, or unlawful combination or assembly mentioned in this Chapter, as may be deemed requisite to that end, and if in doing so any person is killed, wounded, or otherwise injured, or any property injured or destroyed by the civil officer, or officer or member of the said volunteer forces, or other person lawfully aiding them, such civil officer, military officer, or member of the said volunteer forces, or person lawfully aiding them, shall be held guiltless in all cases, unless it be made to appear that such killing, wounding, or injury to persons, or injury or destruction to property, was wanton or malicious, without seeming necessity or excuse therefor.

ARTICLE 6.

ASSAULTING TROOPS AND RESISTING ATTACK.

§1174. *Assaulting troops.* Any person, or persons, who unlawfully assaults, or fires, or throws any missile at, against, or upon any member or body of the said volunteer forces, or civil officer, or other person lawfully aiding them, when assembling or assembled for the purpose of performing any duty under the provisions of this Chapter, shall be guilty of a misdemeanor.

Right of way for troops.

§1175. *Resisting attack.* If any portion of the volunteer forces, or other persons lawfully aiding them in the performance of any duty under the provisions of this Chapter, are assaulted, attacked, or in imminent danger thereof, the commanding officer of such troops need not await any orders from any civil magistrate, but may at once proceed to quell such attack, and take all other needful steps for the safety of his command.

§1176. *Duty of citizens when shot is fired, etc.* Whenever any shot is fired, or missile thrown at or against or upon any body of said volunteer forces, or upon any officer or member thereof assembling or assembled for the performance of any duty under the provisions of this Chapter, it shall forthwith be the duty of every person in the assemblage from which the shot is fired, or missile thrown, to immediately disperse and retire therefrom without awaiting any order to do so; and any person knowing or having reason to believe that a shot has been fired or missile thrown, as aforesaid, from any assemblage of which such person forms a part, or with which he is present, and failing immediately, without lawful excuse, to retire from such assemblage, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be imprisoned in the county jail for not less than one month nor more than one year; and any person so remaining in such assemblage after being duly commanded to disperse shall be deemed guilty of a felony, and on conviction thereof shall be imprisoned in the penitentiary for not less than one nor more than two years.

ARTICLE 7.

RIGHT OF WAY FOR TROOPS.

§1177. *Right of way for troops.* The United States forces or troops, or any portion of said volunteer forces, parading or performing any duty according to law, shall have the right of way in any street or highway through which they may pass: *Provided*, the carriage of the United States mails, the legitimate functions of the police, and the progress and operation of fire-engines and fire departments shall not be interfered with thereby.

§1178. *Control of streets.* Whenever any rout, riot, or mob has occurred, or is progressing, or so imminent that any portion of the said volunteer forces is or has been called out for the performance of any duty under the provisions of this Article, it shall be lawful for the civil officer under whose orders the volunteer forces are acting, or the commanding officer of such volunteer forces, if it be deemed advisable in subduing or preventing such mob or riot, or the

outbreak thereof, to prohibit all persons from occupying or passing on any street, road, or place, in the vicinity of the rout, mob, or riot, or the place where the same is threatened, or where the said volunteer forces may be for the time being, and otherwise to regulate passage and occupancy of such streets and places. Any person, after being duly informed of such prohibition or regulations, who willfully and intentionally, without any lawful excuse, attempts to go or remain on such street, road, or place, and fails to depart after being warned to do so, is guilty of a misdemeanor, and on conviction thereof shall be fined not less than one nor more than one thousand dollars, and may also be imprisoned in the county jail for not less than thirty nor more than one hundred days; and in such case it shall be the duty of the officer commanding troops forthwith to arrest persons thus offending and turn them over to some civil magistrate.

CHAPTER 6.

PROTECTION OF PRISONERS; TRIAL OF VOLUNTEERS AND CHANGE OF VENUE.

Acts 1884-5,
p. 74.

§1179. *Protection of prisoners.* The commanding officer of any body of said volunteer forces guarding any jail, public building or other place, or escorting any prisoner, may, if he deem it advisable, prescribe a reasonable distance in the vicinity of such jail, public building or other place, or escort of such prisoner, within which persons shall not come; and any person knowingly and willfully, without lawful excuse, coming within said limits, without the permission of such officer, and refusing to depart after being ordered to do so, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be imprisoned in the county jail not less than thirty nor more than three hundred days; and any person so coming and remaining in said limits in the night-time shall be guilty of a felony and punished by imprisonment in the penitentiary for not less than one nor more than two years; and in either case it shall be the duty of the officer commanding such troops forthwith to arrest persons thus offending and turn them over to some civil magistrate.

Acts 1884-5,
p. 74.

§1180. *Command in case of war.* In case of war, riot, or insurrection, or imminent danger thereof, or in any other event when it may be necessary to call into active service both the Georgia Volunteers and the Georgia Volunteers, Colored, the companies or battalions thereof shall be under the command of the senior officer of said Georgia Volunteers then present.

Courts martial; organization and jurisdiction of general courts martial.

§1181. *Report to Governor.* Whenever any troops are ordered out by a civil magistrate under the provisions of this Article, without first obtaining an order from the Governor, it shall be the duty of the civil magistrate and also of the commander of such troops to report the facts as soon as practicable to the Governor, and in all cases the Governor may direct such troops to perform their duties under his immediate orders. Acts 1878-9, p. 110. 1884-5, p. 74.

§1182. *Change of venue.* Any civil officer, military officer or member of the said volunteer forces, or any person lawfully aiding them in the performance of any duty required under the provisions of this Article, if indicted or sued for any injury to person or property in endeavoring to perform such duties, shall have the right, and it is hereby made the duty of the court in which such indictment or suit is pending, upon the application of any person thus indicted or sued, to transfer the trial of the indictment or suit to some county free from exception, other than that in which the indictment was found or injury done. Any officer whose command is called out under the provisions of this Article, and reporting to any civil magistrate, may require such magistrate to make such order in writing, and prescribe therein the outline of the duties required of him and his command, and may decline to obey such orders until put in writing, and while such commanding officer must obey all lawful commands of such magistrate, such military officer may use his discretion as to the manner of carrying out such orders so long as he complies with their spirit. Acts 1878-9, p. 110. 1884-5, p. 74.

CHAPTER 7.

COURTS MARTIAL.

ARTICLE 1.

ORGANIZATION AND JURISDICTION OF GENERAL COURTS MARTIAL.

§1183. (1131.) *Courts martial to adjudge fines, etc.* Military forfeitures, fines, and penalties shall be adjudged by courts martial, in accordance with military law and the usage of the army of the United States. Notices to officers charged with offense, 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.

§1184. (1132.) *Constitution and rules of courts martial.* The constitution of all courts martial shall be in accordance with regula-

tions of the army of the United 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.

§1185. (1133.) *General court, how convened.* General courts martial shall be convened on the order of the commander-in-chief; they shall have cognizance of all military offenses, 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 offenses 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.

§1186. (1134.) *Officers, besides military punishment, subject to fine.* Besides the penalties usually adjudged against military offenses, officers 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 muster, shall exceed ten dollars, exclusive of the cost of collecting the same, except as herein provided.

§1187. (1135.) *Officers refusing to attend court martial.* If any officer charged with a military offense 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.

§1188. (1136.) *Compensation of courts martial.* 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.

§1189. (1137.) *Court may punish for contempt.* Courts martial shall have power to punish contempts in the same manner as civil courts.

Special courts martial.

§1190. (1138.) *Fines collected by execution.* Pecuniary penalties assessed by any courts 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.

§1191. (1139.) *Degraded.* Non-commissioned officers shall be degraded to ranks only by sentence of a company court martial.

§1192. (1140.) *Execution to be returned in sixty days.* 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.

§1193. (1141.) *Officers receiving moneys collected.* 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.

ARTICLE 2.

SPECIAL COURTS MARTIAL.

§1194. *Courts martial.* The rules of any company or battalion may provide for the organization of courts martial within such company or battalion for the trial and punishment of its own members for offenses against its own rules, subject to the restrictions hereinbefore set forth, and the sentence of such courts within the scope of their power shall be respected. There shall be a regimental board of officers to each regiment, and a battalion board of officers to each battalion, to consist of all the commissioned officers of the regiment or battalion, which shall have power to pass laws for their own government and that of the battalion, to establish fines and penalties for violation of such laws, and to establish penalties for non-attendance of the various non-commissioned officers and privates at any drill of the regiment or battalion.

§1195. (1103gg.) *Officers, how tried.* For the trial of any officer of a company attached to a battalion, for a military offense, not provided for by the rules of the company or battalion to which he belongs, the battalion commander shall have authority to order a

Acts 1878-9,
p. 111.
1884-5, p. 74.

Acts 1878-9,
p. 112.

court martial, composed of officers of the same battalion, not less than five nor more than seven in number, and not including any officer of the same company junior in rank to the accused. If the accused officer belong to an unattached company, the court shall be ordered by the Governor, subject to the foregoing regulations as to the number and qualifications of the officers composing it. If the accused be a field-officer of a battalion, the court shall, in like manner, be ordered by the Governor, and shall consist of not less than five nor more than seven officers, none of whom shall be of the same battalion and junior in rank to the accused. It shall not be necessary, in any case, that the members of the court shall be of equal or superior rank to the accused.

ARTICLE 3.

SERVICE OF NOTICE; VENUE.

Acts 1878-9,
p. 112.

§1196. (1103 hh.) *Officers, where tried.* Except when the accused officer is in actual service of the State, every such court martial shall be held in the county where the offense was committed; and the accused officer shall have at least thirty days notice of the time the court is to convene (with a copy of the charges against him, and of the order under which the court is to convene). If the accused officer refuse or fail to attend without sufficient excuse, to be judged of by the court, the court may, upon proof of service of notice upon him, as above provided, proceed to hear and decide in his absence. In all particulars not herein provided for, the organization and proceedings of the court shall be according to the law and practice of courts martial in the army of the United States.

ARTICLE 4.

PUNISHMENT.

Acts 1878-9,
p. 112.

§1197. (1103 ii.) *Punishment of officers.* No heavier punishment shall be imposed by any such court than cashiering, or a fine of one hundred dollars; and no sentence shall be enforced unless approved by the Governor, upon a full report of all the proceedings in the case. If the Governor approve a sentence to be cashiered, he shall announce the same in orders, and thereupon the commission of the delinquent shall cease, and an election to fill the vacancy shall be ordered. If the Governor approve a sentence to pay a fine, he shall announce the same in orders, and the president of the court shall

Pay of courts; contempt.

thereupon issue an execution therefor, signed by himself and countersigned by the judge-advocate, which shall have a lien upon all the property of the delinquent in this State, taking rank as a debt due to the public, and next after taxes, and may be levied by any sheriff or deputy-sheriff of this State. And all moneys collected under such execution shall be first applied to the payment of expenses of the court; and the residue, if any, shall be paid into the treasury of the State, to become a part of the military fund.

ARTICLE 5.

PAY OF COURTS; CONTEMPT.

§1198. (1103 jj.) *Pay of court martial, etc.* Every member of a court martial ordered by the Governor, and the judge-advocate thereof, shall be entitled to receive the sum of five dollars for each day of actual service upon such court, to be paid out of the military fund, upon the Governor's warrant; and any officer failing or refusing to serve, without sufficient excuse, to be judged of by the court, shall be fined in a like sum of five dollars for each day's absence, to be collected by execution issued in the same manner as provided in the foregoing section, to be first applied to the payment of the expenses of the court, and the residue, if any, to be paid into the treasury of the State, to become a part of the military fund. And any non-commissioned officers, or soldiers, not exceeding three, appointed by the president of the court to preserve order, or execute the orders of the court, shall be entitled to receive one dollar for each day of actual attendance, to be paid in like manner as the members of the court. Acts 1878-9, p. 112.

§1199. (1103 kk.) *Power of court martial to punish contempts.* Every court martial ordered by the Governor, or by battalion commander, shall have power to punish for contempt in the same manner and to the same extent as the justice of the peace. And all fines paid for contempt, if the court be ordered by the governor, shall be first applied to the expenses of the court, and the residue, if any, shall be paid into the treasury to constitute part of the military fund; if the court be ordered by a battalion commander, such fines shall be paid to him for the use of the battalion. Acts 1878-9, p. 113.

CHAPTER 8.

EXEMPTION FROM JURY AND ROAD DUTY.

Acts 1878-9, §1200. *Personal exemption from jury and road duty.* Every officer, p. 113.
1884-5, p. 74. non-commissioned officer, musician, or private of said volunteer forces on active list shall be exempt from road duty and street tax during the time of his service as such in the said volunteer forces, and every such person who shall have served ten years continuously in any one company or battalion of said forces in any capacity, as an active member thereof, uniformed and equipped, shall be thenceforth exempt from said road duty and street tax so long as he shall remain upon the rolls of said company or battalion upon the exempt or other lists. Each company of said volunteer forces shall have the privilege of bearing upon its rolls of pay members a class of special pay members, not exceeding fifteen in number, to be called "special pay members," who, upon paying a sum of money, as prescribed by said company, not less than twenty-five dollars per annum each to said company, shall be exempt from jury and road duty, and street tax, so long as such membership is continued. Certificates of membership shall be prepared and shall be signed by the company commanders, attested by the first sergeant of said company, and delivered to all of the members of said company, whether active or pay members; and certificates shall also be prepared and furnished by the battalion or regimental commanders, attested by the adjutant of said regiment or battalion, and delivered to the members of the staffs of such commands, and to commanding officers of the companies, and to the musicians, and such certificates, when produced in any court of this State, shall be evidence of the right of the holder thereof to exemptions herein granted. Company commanders shall furnish, upon the first day of May of each and every year, a certified roll of such members of their respective commands as are exempt under this section, to the clerk of the superior court of the county, and to the clerk of the city and town councils where such companies' headquarters may be, and regimental or battalion commanders shall furnish similar certificates to the clerks of the superior courts of the counties wherein the staff, commanding officers of the companies, and musicians may reside respectively, and such certified list or returns of said company commanders and said regimental or battalion commanders shall by said clerk of the superior court be turned over to the proper jury commissioners for information. When from any cause any member of said volunteer forces, or any special pay member exempted as aforesaid, shall have ceased to be entitled to such exemption, his said certificate of membership shall be at once recalled and destroyed, and immediate no-

Regulations, by Governor. Military fund.

tice shall at once be given by the proper commanding officer of the regiment, battalion or company, as the case may be, to the clerk of the superior court of the county of the residence of such member who may have ceased to be entitled to exemption, and thereafter such certificate of membership shall, in any court of this State, cease to be good as evidence of the fact contained therein. It shall be the imperative duty of said commanding officers to withdraw or cancel said certificates of membership whenever the holder thereof, on the active list, is absent from three successive drills or parades without good and sufficient excuse.

CHAPTER 9.

REGULATIONS, BY GOVERNOR.

§1201. *Order of drill, etc.* The system of discipline, drill, instruction, and field exercises ordered to be observed by and in the army of the United States shall be observed by said volunteer forces. Acts 1878-9,
p. 113.
1884-5, p. 74.

§1202. (1103 oo.) *Battalion colors.* Every battalion of volunteers shall carry the flag of the State, as its battalion colors. But this requirement shall not be construed to prevent it from carrying, in addition thereto, any other flag or colors of its own adoption. Acts 1878-9,
p. 113.

§1203. (1103 pp.) *Governor may order regulations.* For the purpose of carrying into effect any provisions of this Article, and of providing for the organization, discipline, and government of the volunteers, in all particulars not herein fully described, the Governor is authorized to make and order such general regulations as he may find necessary, not inconsistent with law; and to furnish to the commander of every battalion and company of volunteers, now or hereafter to be organized, at least four copies of this Article, and of any amendments thereof, which may from time to time be passed, and of such general regulations as he may prescribe, printed in pamphlet form, at the expense of the State. And until the Governor shall prescribe the regulations authorized by this section, and in all matters not fixed by this Article or by such regulations, the general regulations of the army of the United States shall govern, so far as they are applicable, and not inconsistent with anything contained in this Article. Acts 1878-9,
p. 113.

CHAPTER 10.

MILITARY FUND.

§1204. *Military fund.* All moneys collected for fines and forfeitures imposed under the provisions of this Article by courts martial ordered by the Governor, or by the superior court of any county, or Acts 1878-9,
p. 114,
1884-5, p. 74.

Other organizations not to be formed or drilled. Volunteer forces not to leave State.

for damages for the breach of any bond given for arms and accoutrements shall be paid into the treasury of the State, and there constitute and be kept as a separate fund, called the "military fund," and shall not be paid out for or applied to any other purpose whatever than those specified in this Article, and then only upon the Governor's warrant. All moneys appropriated from time to time by the General Assembly for the support, maintenance, or equipment of the said volunteer forces shall pass into and become a part of the said separate special fund in the treasury of the State, called the military fund, to be paid out on the Governor's warrant according to law.

CHAPTER 11.

OTHER ORGANIZATIONS NOT TO BE FORMED OR DRILLED.

Acts 1878-9, §1205. *Permission to drill for other troops.* It shall not be lawful
 p. 113.
 1884-5, p. 85. for any body of men whatever, other than the volunteer forces of this State, and the troops of the United States and bodies of police, to associate themselves together as a military company or organization, or to drill or parade with arms in any city or town in this State, without the license of the Governor, which license may at any time be revoked: *Provided*, that the students in educational institutions where military science is part of the course of instructions may, with the consent of the Governor, drill and parade with arms in public under the superintendence of their instructors: *And provided further*, that nothing herein contained shall be construed so as to prevent benevolent, secret, or social organizations from wearing swords and parading with side-arms; whoever offends against the provisions of this section, or belongs to or parades with any such unauthorized body of men with arms, shall be punished by a fine not exceeding ten dollars, or by imprisonment in the common jail for a term not exceeding six months, or both, in the discretion of the court.

CHAPTER 12.

VOLUNTEER FORCES NOT TO LEAVE STATE.

Acts 1878-9, §1206. *May leave State with Governor's consent.* No military com-
 p. 113.
 1884-5, p. 74. pany of said volunteer forces shall leave the State with arms and equipments without the consent of the commander-in-chief, and any company so offending in this particular shall be disbanded by the commander-in-chief.

CHAPTER 13.

ADVISORY BOARD, AND PROCEEDINGS FOR DISBANDMENT OF COMPANIES.

§1207. *Advisory board.* Every two years it shall be the duty of the Governor to designate four field-officers and four captains of companies, without regard to rank, as members of the advisory board, who, together with the quartermaster-general, one of the Governor's aides, to be designated by him, and the adjutant and inspector general, shall constitute said advisory board, of which the adjutant and inspector general shall be the president, and a secretary shall be selected by said board from its own members. The apportionment of the organizations hereafter to be raised and organized, if any, throughout the different counties, cities and towns of this State, shall be determined by such advisory board, which apportionment shall be so made, considering the wants and necessities of the different portions of the State, that the commands of said volunteer forces shall be at convenient points of the State for service, or for distribution when needed. A majority of said board shall constitute a quorum. Said advisory board shall meet at the capital whenever directed by the Governor, and in the event of a failure to obtain a quorum at any such meeting, a majority of the members of such advisory board may consent in writing to any apportionment proposed by the adjutant and inspector general, and such apportionment, when thus made and filed in the office of the adjutant and inspector general, shall be as valid and binding in all respects as if ordered at a regular meeting of said board. No meeting of said board shall be held until five days notice shall be first given by publication in some newspaper published at the capital. Vacancies in said board shall be filled as provided for original appointments.

§1208. *Disbandment of commands.* Commands of said volunteer forces may be disbanded—

1. By a vote of a majority of the whole number of persons on the roll of said organization, approved by the commanding officer of such organization and sanctioned by the Governor.

2. Whenever the said advisory board shall report in writing to the Governor that it would be to the interest of the public service to disband such organization, and the Governor shall approve such report.

§1209. *Notice to company.* No such report shall, however, be made to the Governor by said board until after ten days notice of the time and place of the meeting of the board (called by the Governor at time and place named by him) shall first have been given to the commanding officer of such organization, and that evidence then will be heard as to the propriety of disbanding such organization. After

Acts 1878-9,
p. 113.
1884-5, p. 74.

Acts 1884-5,
p. 74.

giving such notice the board shall hear such evidence as may be adduced, and shall as speedily as practicable determine whether it will be to the interest of the service to disband such organization, and if a majority of the members of said advisory board vote that it would be to the interest of the service to disband such organization, it shall be so certified to the Governor under the hands and seals of the president and secretary of said board, and the Governor, if he approves such finding, shall issue the appropriate orders for the disbanding of such organization and the safe-keeping of the public property which has been intrusted to it. The Governor shall convene said advisory board to inquire into the propriety of disbanding any organization belonging to said volunteer forces whenever he may deem it advisable, or the adjutant and inspector general shall report that such organization shall be disbanded, or charges are preferred by any commissioned officer against any such organization of inefficiency, lack of discipline, or other cause which if true would, in the opinion of the Governor, justify the disbanding of such organization. Whenever inquiry is made as to the propriety of disbanding any company with which any member of the board is connected, or which he may command, such officer shall be disqualified as to that particular matter, and his place shall be filled for the time being by an officer selected by the remaining members of the board present at the meeting.

Acts 1884-5,
p. 74. §1210. *Evidence before.* The members of said board shall have power to administer oaths to witnesses examined before it, and the board may summon and compel the attendance of witnesses when such board may deem it advisable; the president thereof shall file interrogatories to any person whose testimony is required, and appoint a suitable person as commissioner to take the same, who shall have power to administer oaths and take and certify the depositions of such persons.

Acts 1893,
p. 93. §1211. *Governor may advise with board.* The Governor may advise and consult, from time to time, in his discretion, with said advisory board upon all matters connected with the welfare of said volunteer forces, and for such purposes may convene the board as often as he may deem it necessary.

Acts 1893,
p. 93. §1212. *Expense of board.* All expenses of said board, approved by the Governor, for traveling, stationery, witness fees and expenses, or other necessary expenses, shall be borne by the State and shall be paid by Governor's warrant out of the military fund; and such other duties as the Governor may deem necessary that such advisory board shall perform shall be prescribed by him, in general orders, from time to time, whereupon said advisory board shall immediately obey such orders.

Encampment.

§1213. *Reports of the board.* Said advisory board shall report ^{Acts 1893,} through its president to the Governor, before the next session of the _{p. 93.} General Assembly, what changes should be made in the laws relating to said volunteer forces, fully and minutely, so that a complete military code may be adopted.

§1214. *Expenses of adjutant and inspector general's department.* There ^{Acts 1889,} shall be allowed for all the expenses of the adjutant and inspector _{p. 24.} general's department, inclusive of travel, stationery, reports, expenses of the advisory board, and everything else necessary to maintain said department, to be expended under the direction of the Governor, the sum of seven hundred dollars; which said sum is hereby appropriated for the expenses of said department annually.

CHAPTER 14.

ENCAMPMENT.

§1215. *Annual encampment.* In order to properly train the mili- ^{Acts 1889,} tary force of the State, and to make it a practical and efficient body, _{p. 24.} there shall be annual encampments, so that each command shall be ordered for one week annually, by the Governor, into camp, there to be drilled, disciplined, and taught the practical duties of camp life.

§1216. *Transportation.* The State shall provide tents and every- ^{Acts 1889,} thing else necessary, and shall furnish to the troops, when called _{p. 24.} out in this active service in said annual camps of instruction, one daily ration for each officer and man, and for each horse. Transportation shall be furnished by the State for the officers, men, and horses, from their homes to said camps, and for their return. In order to carry out the objects of this Article, the annual sum of seventy-two hundred dollars, or as much thereof as may be necessary, is appropriated, to be expended under the direction of the Governor, in accordance with the provisions of this Article, of which the sum of seven hundred dollars for the fixed expenses of the adjutant and inspector general's departments shall have priority.

§1217. *Permanent camp-site.* The permanent camp-site to be used ^{Acts 1890-1,} for the annual encampment of the Georgia Volunteers is located _{p. 198.} near Griffin, but said board may order any command or commands of the State forces into camp in any other locality than at such permanent site, under such regulations as may be placed upon them: *Provided*, no expenses shall be incurred by the State in establishing the encampment in addition to the appropriation heretofore made.

CHAPTER 15.

MILITARY PROVISIONS AND RULES.

Acts 1878-9,
p. 110. §1218. (1103 aa.) *Pay and rations while in service.* Whenever any part of the volunteer force of the State is called into the service of the State, all officers and soldiers responding to such call shall be entitled to such pay, rations, and other allowances, or to commutation therefor, as are prescribed for officers and soldiers of the army of the United States—every fraction of a day of such service to be counted as an entire day.

Acts 1878-9,
p. 110.
1880-1,
p. 105. §1219. (1103 bb.) *Reports of officers, etc.* The commanding officer of every battalion or unattached company shall annually make a report to the Governor, in such form as the Governor shall prescribe, of the strength of his command, and of all arms, accoutrements, and ammunition supplied to it. And the commander of every company attached to a battalion shall make a similar report to his battalion commander. These reports shall show the state of the command on the first day of May in each year, and shall be made within thirty days thereafter. And any officer who shall knowingly make a false report shall, upon conviction thereof by a court martial, be cashiered, or fined not more than one hundred dollars, or both, in the discretion of the court. And if any officer shall neglect to make any report required of him by this section, it shall be the duty of the Governor to require him to show cause why his command should not be disbanded.

Acts 1878-9,
p. 111. §1220. (1103 cc.) *Rules, how prescribed.* Every company and battalion of the volunteers may adopt such rules for the government of its members as it may think best: *Provided*, such rules contain nothing contrary to the law of this State, or of the United States: *And provided also*, that the rules of any company be not inconsistent with those of the battalion to which it belongs.

Acts 1878-9,
p. 111. §1221. (1103 dd.) *Non-commissioned officers and men, how governed.* When not in the actual service of the State for a time of seven days or more, delinquencies of non-commissioned officers and soldiers shall be punished in such manner as shall be prescribed by the rules of the company or battalion to which they belong: *Provided*, that such rules shall impose no other penalties than fines, expulsion, or the reduction of non-commissioned officers to the ranks, and shall not, in other respects, be contrary to the laws of this State, or the United States. But every officer, or non-commissioned officer, commanding a detachment, company or battalion, on parade or other duty, shall have authority to arrest, and keep under arrest during such parade or other duty, any officer or soldier under his

Military provisions and rules.

command, for such disobedience of orders, or disorderly or insubordinate conduct, as shall obstruct or interrupt the parade or other duty. All fines imposed in pursuance of the rules of any company or battalion shall be the property of the organization, and shall rank, in the distribution of the estates of deceased and insolvent persons, next after debts due to the public. When in the actual service of the State for a time of seven days or more, the rules of the company or battalion may be suspended, in the discretion of the Governor, and in such case, all officers, non-commissioned officers, and soldiers shall be governed by the military law of the State, or by such regulations as shall be promulgated by the Governor in accordance with law.

§1222. (1103 ee.) *Commissioned officers, how governed.* Officers shall, in like manner, be governed by the rules of the company or battalion to which they belong, subject to the provisions hereinbefore set forth; but no vote, sentence, or other decision under such rules, shall have effect to deprive an officer of his commission, unless approved by the Governor upon a full report of all the proceedings in the case. Acts 1878-9, p. 111.

§1223. (1178.) *General provisions adopting military law.* 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 United States.

§1224. (1163.) *Discipline when called into actual service.* Whenever any portion of the military force of this State shall be called into actual service, either of the State or of the United States, they shall be governed by the regulations of the army of the United 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.

§1225. (1166.) *Detachment of militia called for by United States.* Whenever any detachment of the militia may be required of this State, by the proper authority, on the part of the United 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.

Miscellaneous provisions.

§1226. (1167.) *Militia when called into service of United States.* When a division, or brigade, or companies sufficient to constitute either, shall be called for on the part of the United 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 United States.

§1227. (1168.) *Regiment or battalion of militia called out of the State.* 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 United 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 United 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.

§1228. (1177.) *May provide a substitute when called into service of the United States.* Any person detached to serve with any portion of the militia called into the service of the United 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, forfeitures, 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.

CHAPTER 16.

MISCELLANEOUS PROVISIONS.

§1229. (1162.) *In case of insurrection, invasion, etc., duty of Governor.* 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.

Miscellaneous provisions.

§1230. (1164.) *Pay and rations.* When any portion of the military force of this 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 United States.

§1231. (1165.) *Duty of resident commanders in case of sudden invasion.* 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.

§1232. (1169.) *Officers and militia to pass free over toll-bridges, when.* 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

§1233. (1170.) *On muster days under arms, how long.* 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. But no volunteer or militia military company, shall have any parade, drill, or muster, in this State on any election day, except such company shall be called out by the civil authorities of some county or city in this State.

Acts 1874
p. 112.

§1234. (1171.) *Arms, accoutrements, etc., exempt from sale.* 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 militiaman while going to, continuing at, or returning from parade, drill, or muster, or while in actual service of the State or the United States.

§1235. (1172.) *Plurality of votes to elect.* At all elections for officers of the militia, the person having the highest number of votes shall be declared elected.

§1236. (1173.) *Elections, where held.* All elections for militia officers shall be held at the usual place of holding elections, and the superintendents shall return the results 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.

Naval militia.

§1237. (1174.) *Commissions sealed with great seal.* 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 removed by the officer in whose staff they serve, and their commissions shall expire with his commission.

§1238. (1175.) *Election of a military officer; commission.* The result of the election of any military officer shall be transmitted to the Executive Department, and the Governor shall cause commissions to issue in accordance therewith.

§1239. (1176.) *Officers to report themselves.* 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.

CHAPTER 17.

NAVAL MILITIA.

Acts 1898,
p. 100.

§1240. *Separate enrollment of naval militia.* When in conformity with the military code an enrollment of persons subject to military duty shall be made, there shall be separately enrolled and designated as naval militia in such districts as the commander-in-chief may designate, all seafaring men of whatever calling or occupation, and all men engaged in navigation of the rivers and other waters, all persons engaged in the construction and management of ships and crafts, or any parts thereof, upon such waters, together with ship-owners, yacht-owners, members of yacht clubs, and all other associations for aquatic pursuits, all ex-officers and former enlisted men of the navy, subject to the existing qualifications and exemptions from enrollment for military service in the militia.

Acts 1898,
p. 100.

§1241. *Companies of naval militia.* In addition to the companies of the Georgia Volunteers which are now or which may be hereafter allowed, there may be allowed, in time of peace, the following companies of naval militia, organized by voluntary enlistment for the defense of the coast and harbors, which shall constitute a battalion to be known as the "Naval Battalion of Georgia Volunteers," to wit: Three companies of naval reserve artillery and one naval reserve torpedo company: *Provided*, that the commander-in-chief shall have power, in case of war, insurrection, invasion, or imminent danger thereof, to increase said force beyond such limit of four com-

Naval militia.

panies, and to organize the same as the exigencies of the service may require: *Provided further*, that the commander-in-chief may alter, annex, divide, consolidate, or disband the said naval battalion, or any part thereof, whenever in his judgment the efficiency of the State service will be increased thereby.

§1242. *Term of enlistment.* The term of enlistment in the aforesaid naval battalion shall be two years. No enlisted man shall be discharged before the expiration of his term of enlistment, except by the order of the commander-in-chief. Acts 1893, p. 100.

§1243. *Battalion officers.* To the aforesaid naval battalion there shall be one lieutenant-commander, who shall command the same, one lieutenant to act as executive officer, and one lieutenant to act as navigator, which officers shall be chosen and commissioned as soon as the said naval battalion is fully organized. The commanding officer of the said battalion shall have power to appoint a staff, to be commissioned by the commander-in-chief, to consist of one aide, one ordnance officer, one paymaster who shall be mustering officer, one surgeon, each with the rank of lieutenant, junior grade. There shall also be attached to the staff of the commanding officer the following warrant and petty officers: One master-at-arms, two yeomen, one hospital steward, one boatswain's mate. Acts 1893, p. 100.

§1244. *Company officers.* Each company of naval reserve artillery and the naval reserve torpedo company shall be commanded by a lieutenant, and shall contain one lieutenant, junior grade, two ensigns, and not less than thirty-two nor more than sixty warrant and petty officers and seamen as enlistmen. The naval reserve torpedo company shall consist of three crews, each of which shall contain at least sixteen warrant and petty officers and seamen. The first crew shall be commanded by the lieutenant, junior grade, the second and third crews by the two ensigns. Each torpedo crew shall contain at least two men with practical knowledge of electricity, and two others with a practical knowledge of steam-engineering. Acts 1893, p. 100.

§1245. *Qualification of officers.* The commissioned warrant petty officers of the naval battalion shall be chosen and shall qualify under such regulations as may be prescribed by the commander-in-chief. The rank given in this Article is naval rank as the same now exists in the navy of the United States. Acts 1893, p. 100.

§1246. *Duties of officers and men.* The officers and enlisted men of the aforesaid naval battalion, or any part thereof, shall perform such duty or service as may be ordered by the commander-in-chief, and shall be paid the same compensation as is allowed officers and enlisted men having the same relative rank or position in the Georgia Volunteers for performing similar duty or service, but they shall not receive any compensation from the State for duty performed by Acts 1893, p. 100.

Naval militia.

way of instruction or drill or otherwise for which they shall receive compensation from the United States. The uniform of the naval battalion and the insignia and designation of grade and rank shall be prescribed by the commander-in-chief, who may change and modify the same from time to time.

Acts 1893,
p. 100.

§1247. *Discipline.* The system of discipline, routine of duty and exercise of the naval battalion and parts thereof shall conform generally with the existing laws governing the volunteer forces of the State of Georgia, so far as the same may apply to the said naval battalion, and where the same does not apply, the discipline, duty, and exercises shall conform generally to the laws, customs, and usages governing the navy of the United States. The commander-in-chief is hereby authorized to make such rules and regulations from time to time as he may deem expedient for the government, assignment, and instruction of the naval battalion, but such regulations shall conform to this Article, and as nearly as practicable to those governing the United States navy, and when promulgated they shall have the same force and effect as the provisions of this Article. The naval battalion shall be subject to the articles and regulations for the government of the United States navy to the same extent as members of the Georgia Volunteers are subject to the articles of war and regulations for the government of the United States army.

Acts 1893,
p. 100.

§1248. *Naval boards and courts.* The appointment, composition, and powers of naval boards, courts of inquiry, and courts martial shall be as is now provided by the military code of Georgia for similar bodies in the Georgia Volunteers.

Acts 1893,
p. 100.

§1249. *Companies and battalions to correspond to same in Georgia Volunteers.* The naval battalion shall be considered to correspond to a battalion in the Georgia Volunteers, and shall be entitled to all the privileges and allowances of such battalions. Each company of said naval battalion shall be considered as the equivalent of a company of the Georgia Volunteers, and shall be entitled to the same privileges and allowances. The members of the naval battalion, and each company thereof, may form themselves into an organization, and adopt by-laws in the same manner, with the same powers, and subject to the same limitations as are now prescribed for members of companies in the Georgia Volunteers.

Pensions; pensions for maimed and infirm Confederate soldiers.

CHAPTER 18.

PENSIONS.

ARTICLE 1.

PENSIONS FOR MAIMED AND INFIRM CONFEDERATE SOLDIERS.

§1250. *Pensions to maimed soldiers.* Any person who enlisted in the military service of the Confederate States, or of this State, during the civil war between the States of the United States, who was *bona fide* a citizen of this State on October 26th, 1888, and who continues to be a *bona fide* citizen of this State, and any Georgian who enlisted from Georgia, or served in a Georgia command, who was living within the State in 1888, and any person who enlisted in the military service of the Confederate States, who was a *bona fide* citizen of this State in the year 1888, and who removed from the State after said date and has since returned to the State of Georgia, but who for twelve months prior to making his application has been a *bona fide* citizen of this State and who was drawing pension under the pension laws of this State at the time of his removal from the State, and who lost a limb or limbs while engaged in said military service, occasioned by reason of such military service, or who may have then received wounds or injuries which afterwards caused the loss of a limb or limbs, or who may have been permanently injured while in said service, and who may be a *bona fide* citizen of this State at the time of making application for the benefits herein provided for, shall be entitled to receive once a year the following allowances or pay, for the purposes expressed in Article 7, section 1, paragraph 1 (and the amendment thereto) of the Constitution of 1877, to wit:

For total loss of sight, one hundred and fifty dollars.

For total loss of sight of one eye, thirty dollars.

For total loss of hearing, thirty dollars.

For loss of all of a foot or loss of leg, one hundred dollars.

For loss of all of a hand or loss of arm, one hundred dollars.

For loss of both hands or both arms, one hundred and fifty dollars.

For loss of both feet or both legs, one hundred and fifty dollars.

For the loss of one hand or foot and one arm or leg by same person, one hundred and fifty dollars.

For permanent injuries from wounds whereby a leg is rendered substantially and essentially useless, fifty dollars.

For permanent injuries from wounds whereby an arm is rendered substantially and essentially useless, fifty dollars.

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For the loss of one finger or one toe, five dollars.

For the loss of two fingers or two toes, ten dollars.

For the loss of three fingers or three toes, fifteen dollars.

For the loss of four fingers or four toes, twenty dollars.

For the loss of four fingers and a thumb or five toes, twenty-five dollars.

For other permanent injury from wounds or disease contracted during the service, and while in line of duty as a soldier, whereby the person injured or diseased has been rendered practically incompetent to perform the ordinary manual vocations of life, fifty dollars.

For permanent injuries from wounds whereby a hand or foot is rendered substantially and essentially useless, twenty-five dollars.

For wounds or disease which renders applicant totally disabled for labor, or helpless, one hundred dollars.

Acts 1888,
p. 16.

§1251. *Method of obtaining pensions.* Before any person shall be entitled to any of such benefits, he shall make oath before some officer authorized to administer oaths, stating in what company, regiment, and brigade he was serving when the loss was sustained or injury received, and where and when it was lost or received, or when and where he contracted the disease which caused the amputation or loss of his limb or limbs, or produced the permanent disability claimed to exist. The applicant shall fully and clearly set forth all the facts showing the injury, its character, and especially the extent of the disability resulting therefrom, his citizenship and rights to the benefits of this Article. He shall also furnish an affidavit of one of the commissioned officers of his company or regiment, showing that he rendered service as a soldier and received the injury at the time and place claimed by applicant, and that the disability claimed to exist does exist. If the affidavit of such commissioned officer cannot be had, applicant may prove his service and injury by any three respectable citizens who served with him in the army or who knew of his service and injury, the sufficiency of such proof to be subject to the rules and regulations to be adopted by the Governor and set forth in the blank sent out from his office for use of applicants. The applicant shall also procure the sworn statements of two reputable physicians of his own county, showing precisely how he has been wounded and the extent of the disability resulting from the wound or injury or disease described. All of said affidavits shall be certified to be genuine by the ordinary of the county where made, and he shall in his certificate state that all the witnesses who testify to applicant's proofs are persons of respectability and good reputation, and that their statements are worthy of belief, and also that

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the attesting officer or officers are duly authorized to attest said proofs and that their signatures thereto are genuine.

§1252. *Warrant, how drawn.* When the proofs required have been filed in the Executive Department and deemed satisfactory by the Governor, he shall draw his warrant on the treasurer of the State in favor of the applicant for the sum to which he may be entitled; and annually thereafter a similar warrant shall be drawn in favor of applicant whenever it shall be made to appear by oath of applicant properly attested, and by the certificate of the ordinary of the county of his residence, that applicant is known to him and that he is a *bona fide* citizen of said county, and is the individual to whom previous payment or payments have been made.

§1253. *Additional proof may be required.* The Governor may require such other and further proof before drawing his warrant, as in his judgment may appear necessary to protect the State from fraudulent claims. He shall cause blank forms for making proofs to be printed and furnished to the ordinaries of this State in such quantities as may be necessary.

ARTICLE 2.

PENSIONS TO AGED AND INFIRM CONFEDERATE SOLDIERS.

§1254. *Payments.* There shall be paid annually a pension of sixty dollars to each Confederate soldier now residing in the State of Georgia, and who was on the first day of January, 1894, a *bona fide* citizen of this State, who by proper proofs shows that he volunteered either in the regular Confederate service or in the organized militia of the State of Georgia during the civil war and performed regular military duty for a period of not less than six months, and who, at the date of filing his application, submits proof to show that by reason of his “age and poverty, infirmity and poverty, or blindness and poverty,” he is unable to support himself by his own exertions or labor.

§1255. *Blank applications shall be furnished.* The payment of such pensions shall begin annually on the fifteenth of May. The Governor shall cause to be prepared and furnished to the ordinaries of the State necessary blank applications for the use of applicants. Each applicant shall make oath before the ordinary of his own county, setting forth his name, age, occupation, and physical condition, the company and regiment in which he enlisted as a soldier, the full term of his service in the Confederate army or Georgia militia, what property, effects, or income he possesses, and shall

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furnish the testimony of one witness who personally knows that he enlisted in the service and performed the duties of a soldier as claimed by him, and that he is unable to support himself by labor of any sort. He shall also furnish proof by two physicians of his county, showing his precise physical condition and inability to labor at any work or calling sufficient to earn a support for himself. These proofs shall be made before the ordinary of the county of the residence of the witnesses.

Acts 1894,
p. 33.

§1256. *Ordinary's certificate.* The ordinary shall certify to the trustworthy character of the witnesses and to the citizenship of applicant, and that the full text of the affidavits have been read to all of the affiants. He shall in every case administer an oath to each applicant and witness, before they sign the affidavits.

§1257. *Additional proofs may be demanded.* The Governor may demand other and additional proofs in any case where he may have reason to suspect that the claim is not meritorious.

§1258. *Ordinary's fee.* The ordinary shall be allowed a fee of one dollar in each case prepared by him in full, and a fee of fifty cents for witnessing proofs for an application from any county other than his own, to be paid by applicant.

Acts 1894,
p. 34.

§1259. *Unlawful to demand, etc., fees from beneficiaries.* It shall be unlawful for any claim agent or other person to demand, collect, or receive any fee or commission from any beneficiary under this Article, for any service rendered in preparing and presenting an application.

§1260. *Pensioners already enrolled.* No person already enrolled as a pensioner under the pension laws of 1887, as amended by Acts of 1888 and 1889, shall be entitled to an additional pension under this Article.

§1261. *Subsequent payments, how procured.* After an applicant has been enrolled as a pensioner under this Article, subsequent annual payments shall be made upon sworn application of the beneficiary, accompanied by the certificate of the ordinary of his county, showing continued residence in this State and that his disability still exists.

ARTICLE 3.

PENSIONS FOR WIDOWS OF GEORGIA CONFEDERATE SOLDIERS.

Acts 1892,
p. 98.
1890-1,
p. 202.
§5882.

§1262. *Pension to widows.* To the widow of every Georgia Confederate soldier, and to the widow of every Confederate soldier who enlisted in a Georgia regiment, and to the widow of every Confederate soldier who is herself a native Georgian now residing in the

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State of Georgia, and so long as she may continue to so reside there, shall be paid annually, on the fifteenth day of February, a pension of sixty dollars: *Provided*, that this section shall only apply to such widows as were married at the time of the service of such husband in the Confederate army and have remained unmarried since the death of such soldier husband: *Provided further*, that the said soldier husband shall have died in the service of the Confederate States, or since from wounds received therein or disease contracted in the service.

§1263. *Evidence to be furnished, etc.* Each applicant for such benefits shall furnish evidence of the enlistment and service of her husband in the Confederate army, or the State forces, during the war, and that his death, whether it resulted during or since the war, was directly the result of the service; but if any soldier husband so enlisted did not return after the close of the war, and nothing having been heard of him since, evidence of these facts shall be conclusive as to his death. The evidence shall be made by witnesses, not less than three, and in conformity with the rules and forms to be prescribed by the Governor. Each applicant must also furnish the certificate of the ordinary of the county wherein she resides, showing her residence, and that she resided in Georgia, December 23d, 1890.

Acts 1890-1,
p. 202.
1892, p. 98.

§1264. *Fees.* The entire fees and charges of the ordinary shall not exceed one dollar for all service rendered.

§1265. *Pension to widow of deceased pensioner.* The widow of every Confederate soldier who was on the invalid pension roll of the State of Georgia, on account of wounds received or disease contracted while in the Confederate service, and who has died from the effects of the injuries for which he was pensioned, shall be allowed a pension of sixty dollars per annum from the date of this Act, so long as she remains the widow of such deceased pensioner: *Provided*, said widow was married to or was the wife of said Confederate soldier during the date of service in the Confederate army.

Acts 1895,
p. 102.

§1266. *Annual payments.* The Governor is authorized to draw his warrant on the treasury of this State in favor of each and every widow who shall furnish satisfactory proof, that her deceased husband was on the Georgia invalid pension roll at the time of his death, that he is dead, that he died from the effects of the injuries for which he was pensioned, and that she is still his widow. Said warrants shall be for sixty dollars each, and be payable yearly so long as the applicant remains the widow of the deceased pensioner.

ARTICLE 4.

MISCELLANEOUS PROVISIONS.

Acts 1890-1,
p. 203.

§1267. *Widow entitled to pension at death.* It shall be lawful for the Governor to cause to be paid to the widow or to the dependent children of any deceased Confederate soldier any pension which may be shown to be due to said soldier at the time of his death, or to which his right had accrued before his death, and which had not been drawn by him. Said payments to be made upon sworn proof submitted to the Governor, showing date of the death of the soldier, and the fact that the applicant is his widow, or that the children are dependent children of said deceased soldier. This section to be construed to apply to one pension due at the date of the death of the soldier.

Acts 1890-1,
p. 203.

§1268. *Pension exempt from garnishment or other process.* The pensions of Confederate soldiers, and widows of Confederate soldiers, shall be exempt from garnishment and all other legal process, no matter in whose hands the pension or pensions may be; and no court or ministerial officer in this State shall ever have jurisdiction or authority to issue or enforce any garnishment or other process against the same.

Acts 1890-1,
p. 204.

§1269. *List transmitted to superior-court clerks.* It shall be the duty of the Governor, acting through the clerk in charge of the pensions, to transmit to the clerk of the superior court of each county in this State, on or before January first of each year, a complete list of all the soldiers and widows of soldiers residing in said county, as their names appear upon the pension-rolls of the State, and it shall be the duty of said clerk of the superior court to deliver said list of pensioners to the first grand jury that shall meet after the same has been received by said clerk.

§1270. *Examination of lists and report.* It shall be the duty of the grand jury to inspect and examine said list of pensioners, and to report the same in their general presentment, stating whether in their opinion all persons whose names appear upon said lists are entitled to receive pensions, and giving the names of such persons whose claims to pensions are, in the opinion of said grand jury, of a doubtful character. In making said examination the grand jury shall have power to subpoena witnesses and examine them touching the validity of said claims for pensions, and the clerk of the court shall promptly transmit to the Governor an exact copy of that portion of the presentments of the grand jury which refers to pensions, and the Governor shall cause additional proofs or evidence to be given in

Miscellaneous provisions.

all claims which are reported as doubtful or illegal by said grand jury, and unless the claim is supported by satisfactory proof, the same shall be disallowed and the name stricken from the pension-roll; and the judges of the superior courts are hereby required to give this law specially in charge to the grand juries before whom said pension-lists are placed for examination.

TWELFTH TITLE.

EDUCATION.

CHAPTER 1.

THE UNIVERSITY OF GEORGIA AND ITS ORGANIZATION.

ARTICLE 1.

THE UNIVERSITY OF GEORGIA.

§1271. (1192.) *University of Georgia and its government.* The government of the University of Georgia, at Athens, is vested in a board of trustees, who are subject to the General Assembly.

§5911. §1272. (1193.) *Name and style; may sue and be sued.* 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.

Acts 1871-2, §1273. *Board of trustees.* The board of trustees of the University of Georgia shall be composed of one member from each Congressional district, four from the State at large, two from the city of Athens, and the chairman *ex officio* of the local board of trustees of the Technological School, all of whom, except the latter, shall be appointed by the Governor and confirmed by the Senate, under the rules governing the appointment and confirmation of other officers of this State required by law to be confirmed by the Senate.

Acts 1871-2, §1274. *Term of office.* The term of office of said trustees shall be eight years, and until their successors are appointed, confirmed, and qualified. The first appointments shall be made by the Governor before the first day of September, 1889, and confirmed by the Senate; four of them shall be appointed for two years, four for four years, and four for six years, and four for eight years, and as the terms of these appointees expire their successors shall be appointed

and confirmed biennially thereafter for a full term of eight years. There shall be two trustees from the city of Athens, exclusive of one from the Congressional district in which said city may be located.

§1275. *Who eligible as trustees.* Persons to be eligible to the office of trustee shall be citizens residents of the districts from which they are appointed; shall be at least twenty-five years of age, not trustees of any other male college or university, excluding branch colleges of the University, and high schools or academies; and shall be chosen with special reference to their fitness and capacity to exercise the duties of trustee. The Governor shall be *ex officio* a member of the board of trustees, and shall attend its meetings when possible, and is entitled to all the privileges of a member of the board.

§1276. *Governor to fill vacancies.* In case of the death or resignation of any member of the board, the Governor shall fill such unexpired term in the manner above provided, such appointment to be confirmed by the Senate at the session after the same is made.

§1277. *Chairman of the board.* The board of trustees shall elect one of their number as their presiding officer, who shall be called the chairman of the board of trustees. The board may meet subject to their own order, but they must assemble in annual session in the city of Athens on the Thursday preceding the Sunday of the commencements of the University. They may establish such rules and regulations for their own direction as they deem proper; may fix the terms of the office of their chairman and secretary; and are vested with all the powers, privileges, and rights vested in the former board of trustees, and are charged with all the duties, obligations, and responsibilities incumbent on the same.

§1278. *Continuance.* It shall be the duty of the members of the board of trustees of said institution to attend the meetings of the board, so as to take part in its deliberations; and whenever any trustee shall be engaged, at the time prescribed for the annual meeting of the trustees, as counsel or party in any case pending in the courts of this State, and such case shall be called for trial during the regular sessions of said board, his absence to attend such session shall be good ground for postponement or continuance of the case till the session of the board shall have come to an end.

§1279. *Office vacant for failure to attend.* The office of any member of the board of trustees shall be vacated if he neglects to furnish good and satisfactory excuse, in writing, to the board for absence from two consecutive meetings thereof; and if any member, for any cause, fails to attend three successive meetings of the board, his office shall be declared vacant by the board; and the secretary shall in either event notify the Governor of a vacancy in the board, and the Governor shall fill the same as above provided for.

Acts 1871-2,
p. 74.
1878-9, p. 95.
1889, p. 56.

The University of Georgia.

Acts 1871-2,
p. 74.
1878-9, p. 95.
1889, pp. 55,
58.

§1280. *Compensation for board of trustees.* The members of the board shall each receive (for the payment of expenses actually incurred by them) the sum of four dollars for each day of actual attendance at the meetings thereof, and mileage in actual fare to and from the place of meeting by the nearest practicable route from their respective homes, said expenses and mileage to be paid by the State treasurer out of the funds of the State, by executive warrant, on presentation of vouchers of the members, approved by the chairman and signed by the secretary of the board. The members of said board shall receive no emolument or compensation for their services as such members.

§1281. *Biennial reports made to Governor.* The board of trustees shall submit to the General Assembly, through the Governor, biennial reports of their transactions, together with such information as is necessary to show the condition of the University, with such suggestions as it may think conducive to the good of the University and the cause of education in the State.

Acts 1894,
p. 64.

§1282. *Course of Bachelor of Arts to be encouraged.* In prescribing the course of study to be followed in said University, it shall be the duty of the trustees, in so far as the same can be done without detriment to other departments, to encourage and promote, by the disposition of the time and attention of the students, the regular course of Bachelor of Arts, in order that said course shall not be subordinated to any other course in the institution.

§1283. *Efficiency of the two literary societies to be promoted, etc.* The board of trustees shall, in their discretion, ordain and establish such rules and measures as will, in their judgment, tend to secure the efficiency and promote the success of the two literary debating societies in said institution, and to the encouragement of oratory and composition among the students attending the exercises in these societies.

Cobb, 1082,
1095.
Acts 1853-4,
p. 114.
1858, p. 107.
1859, p. 26.

§1284. (1196.) *Powers specified.* The trustees have power—

1. To elect their own officers, such as chairman, vice-chairman, secretary, treasurer, or such of them as they may require, and also all other officers they may deem necessary for their organization.

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.

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 fix their salaries.

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.

5. To establish all such schools of learning or art as may be useful to the State, and to organize the same in the way most likely to attain the ends desired.

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.

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.

§1285. (1197.) *Meeting of board, how called.* The chairman of the board and two of its members may appoint a meeting at any time by giving to the others at least ten days notice, by letter or otherwise. When the chairman 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.

§1286. (1199.) *Shall not dispose of stock subscribed for.* 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.

§1287. *Board of visitors.* The Governor shall annually appoint ^{Acts 1887,} five experienced educators, citizens of the State, as a special board _{p. 67.} of visitors to attend the examinations at the University of Georgia, preceding the annual commencement, to examine personally into the condition and management of said institution. Said visitors, or a majority of them, shall submit their report in writing, as soon thereafter as possible, to the Governor, in which they shall report upon the character of the examinations aforesaid, the condition and management of said institution, together with such suggestions and recommendations thereon as they may deem proper. Said reports shall be laid before the General Assembly by the Governor.

§1288. *Quorum and pay.* A majority of said board shall constitute a quorum. Such visitors shall receive, as compensation for their services, four dollars per diem, estimating from the date of leaving their homes, and mileage each way by the nearest practica-

ble route to Athens, at the rate of three cents per mile. The whole service of said board shall not exceed ten days.

Acts 1894,
pp. 63, 64.

§1289. *When report of board of visitors to be laid before trustees.* The board of visitors for the University of Georgia shall complete the report required of them, and lay the same before the trustees of said institution, on or before the Saturday preceding the annual commencement day of said institution. The said board of visitors shall also, at the same time, present to the trustees, in writing, any matter of importance coming to their knowledge during their examination of the institution, which, in their opinion, is material to the welfare, good management, and success of the same, making such suggestions touching the matter as may seem to the said board of visitors meet and proper: *Provided, however,* that the making of the report herein provided for shall not take the place of the report now required to be made to the Governor under existing laws.

§1290. *Consideration to be given report.* The board of trustees of the University of Georgia shall give to said report and the matter accompanying the same due and careful consideration, and, in their discretion, take final action on such matters as may be therein embraced looking to the welfare, government, discipline, and success of said institution.

§1291. (1202.) *Reports of boards of trustees and visitors.* 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.

Acts 1877,
p. 17.

§1292. (1203.) *No exclusion for religious views.* 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.

§1293. (1204.) *Oaths required in the charter.* The chancellor of the University, its professors and tutors, shall not be required to take certain oaths prescribed in its charter.

§1294. (1205.) *Chancellor may appear before the legislature.* 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.

§1295. (1206.) *Conferring degrees.* 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.

§1296. (1208.) *Preparatory school in connection with college.* By the authority of the board of trustees there shall be established, in connection with the University, an institute 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.

§1297. (1209.) *Campus grounds not subject to alienation.* 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 Governor John Milledge.

§1298. (1210.) *The permanent income not less than eight thousand dollars.* 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.

§1299. (1211.) *Acts relative to University not repealed.* 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.

Was the Georgia Military Institute suable at all? 31 Ga. 273.

ARTICLE 2.

BRANCHES OF THE UNIVERSITY.

Acts 1884-5, p. 69.
 1894, p. 63.
 1889, p. 10.
 1890-1, pp. 114, 118, 123, 126.
 1893, p. 63.
 1888, p. 49.
 1877, p. 117.
 1893, p. 506.
 Act of Dec. 20, 1826.
 Act of Dec. 19, 1829.
 Act of Dec. 20, 1833.
 Acts 1895, pp. 94, 95.

§1300. *Branches of the University.* The Georgia Normal and Industrial College, at Milledgeville; State Normal School, at Rock College, Athens; State College of Agriculture and Mechanic Arts, at Athens, with the Agricultural Experiment Station connected therewith, at Griffin; North Georgia Agricultural College, at Dahlonega; Medical College of the University of Georgia, at Augusta; the Technological School, at Atlanta; Georgia State Industrial College for Colored Youth, at Savannah, are branches of the University of Georgia, and are governed in the manner prescribed in the respective acts incorporating the same.

Acts 1889, p. 123.

§1301. *Females admitted to branch colleges.* All the branch colleges of the State University of Georgia, now or hereafter established, except the last two mentioned in the preceding section, shall be open to all white female students of proper age and qualifications, with equal rights and privileges as those exercised and enjoyed by the male students of such institutions, under such rules and regulations as may be prescribed by the several boards of trustees of said institutions.

ARTICLE 3.

FARMERS' INSTITUTES.

Acts 1889, p. 166.

§1302. *Board of directors of Experiment Station.* The board of directors of the Georgia Experiment Station shall have conducted throughout the State each year, during the season most convenient to the agriculturists, a series of farmers' institutes for the instruction of the citizens of this State in the better methods of agriculture in its various branches. These institutes shall be held at such time and places as said board may direct. The board shall make such rules and regulations as it may deem proper for organizing and conducting such institutes. In selecting lecturers for said institutes, preference shall be given to practical successful farmers possessing aptitude for the work. The exercises of such institutes shall be so arranged as to present the results of the most recent investigations in practical agriculture.

§1303. *Support of institute.* It shall be the duty of said board to apply exclusively to the support of said institutes any moneys which may come into its possession under any act which the Federal Con-

Academy for the Blind.

gress may hereafter pass in aid of farmers' institutes, and any moneys which may be derived from any other source as a gift or donation in aid of farmers' institutes. Said board shall account to the Governor for all such moneys, quarterly, showing in detail amounts received, sources whence derived, and how expended. Reports as to moneys which may be received under any act of the Federal Congress, as above indicated, shall conform to congressional requirements. Biennially said board shall, through the commissioner of agriculture, report to the Governor, in detail, its acts and doings as to said institute. The biennial reports shall embrace all the facts contained in the quarterly reports herein required.

CHAPTER 2.

ACADEMY FOR THE BLIND.

§1304. (1212.) *Location, etc., of Academy for Blind.* An institution for the education of the blind is located at Macon under the control of seven trustees already appointed.

§1305. (1213.) *Trustees a body corporate.* 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.

§1306. (1214.) *Powers of trustees.* The trustees have the power—

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.

§1307. (1215.) *Education of indigent blind.* All indigent blind persons, between the ages of seven and twenty-five years, who shall have given satisfactory evidence of having been a resident of this State for at least two years prior to his or her application, 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.

Acts 1882-3,
p. 61.

§1308. (1216.) *Applicants, how apportioned.* When there are more applicants than can be accommodated, they shall be apportioned among the several counties, according to representative population.

§1309. (1217.) *Number of pupils, how regulated.* Unless the funds will otherwise permit, there shall hereafter be but one indigent pu-

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pil from the counties applying, 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.

§1310. (1218.) *Pay pupils; how received.* All others than the indigent are to be received upon such terms as the trustees may impose.

§1311. (1219.) *Treasurer must give bond.* The treasurer of the board shall give bond and security in the sum of three thousand dollars.

§1312. (1220.) *Trustees must report to Governor.* The trustees must make annual reports to the Governor of all the affairs of the institution, sending therewith the annual report of the principal or superintendent, and shall propose such alterations or improvements as they may desire, which the Governor shall lay before the General Assembly with his annual message.

§1313. (1221.) *Board of visitors.* 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.

§1314. (1222.) *Powers and duty of visitors.* Said board of visitors shall report to the Governor such matters as they may deem advisable, which report shall be by the Governor laid before the General Assembly in connection with his annual message.

§1315. (1223.) *Vacancy in board of trustees, how supplied.* The trustees fill vacancies in their own body. When a vacancy occurs and is filled, it must be reported to the Governor. Their ineligibility is likewise the same as those last mentioned.

§1316. (1224.) *Statistics of the blind, how obtained.* The 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.

§1317. (1225.) *List of indigent blind.* 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.

§1318. (1226.) Section 1299 (as to laws kept in force) applies to the asylum for the blind.

CHAPTER 3.

ACADEMY FOR THE DEAF AND DUMB.

§1319. (1227.) *Academy for Deaf, how governed.* The Georgia school for the deaf shall be governed by a board of seven trustees; the Governor to have power to remove for cause at any time, and to fill all vacancies that may occur in said board. And said board of trustees shall meet in Cave Spring, take charge of the affairs of said institution for the deaf and dumb, and adopt such by-laws for its government, in conformity to this Chapter, as they may deem necessary. Acts 1877, p. 32. 1892, p. 83.

Trustees of deaf and dumb asylum, not subject to process of garnishment: 85 Ga. 481.

§1320. (1229.) *Principal, how elected and to whom responsible.* The principal of said institution is elected by said board of trustees, and shall reside in the institution. He is responsible to them, and his acts subject to their veto.

§1321. (1230.) *Subordinate officers, regulations, etc.* 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 to be paid by the treasurer.

§1322. (1231.) *Exclusive powers and duties of principal.* He shall be the sole official 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 moral instruction.

§1323. (1232.) *Board of visitors.* 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 for the Blind.

§1324. (1233.) *Contracts, how made valid.* 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.

§1325. (1234.) *Vacancy in board of trustees, how filled.* 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.

§1326. (1235.) *Deaf mutes, how educated and clothed.* All deaf and dumb children shall be educated free of charge; but it shall be the duty of the parents or guardians of such deaf and dumb children to Acts 1876, p. 30. 1868, pp. 12, 13.

furnish them with the necessary clothing during the time said child may remain in the institution, unless the parents or guardians of such child or children are wholly unable to furnish clothing; then, the ordinary of the county from which the child or children are sent, will certify that fact to the board under his hand and seal of office, naming the child or children in said certificate, as well as the name of the parents, guardians, or other persons having charge of them; certifying that the parents or guardians are wholly unable to furnish their clothing; then, and in that case, the institution will furnish the necessary clothing, and will also furnish shoes, for all without distinction.

Acts 1877,
p. 32.

§1327. (1235 a.) *Treasurer, how elected and his duty.* The board of trustees shall elect a treasurer, who shall give good and sufficient bond payable to the president, for the faithful performance of his duties, and shall keep a full and accurate account of all moneys received and paid out, and make an annual report to the board; he shall be required to keep his books in such condition that the financial standing of the institution may be seen at any time.

§1328. (1235 b.) *Election and duty of secretary.* The board of trustees shall elect a secretary, whose duty it shall be to keep a neat and true record of the meetings of the board, and of other matters that may be deemed necessary, and the offices of secretary and treasurer may be conferred upon one person, if thought advisable.

§1329. (1235 c.) *Annual report of trustees.* The board of trustees shall make an annual report to the Governor, of all their acts and doings, and a full statement of the condition of said institution, which report shall be submitted to the legislature.

Acts 1876,
p. 117.
1877, p. 31.

§1330. (1235 d.) *Who may be educated, and how long.* All deaf and dumb persons in the State of Georgia, between the ages of ten and twenty-seven years, who are in a condition, mentally and physically, to receive instruction, shall be entitled to all the benefits of said institution for a period of seven years, and the board of trustees shall have authority, upon recommendation of the principal, to allow an additional term of three years to such pupils as have exhibited a commendable energy and a mental capacity to be benefited, and the conferring of this privilege to be conditional upon good behavior and diligent application.

§1331. (1235 e.) *Day-scholars may be admitted.* The parent or guardian of any deaf and dumb mute, or semi-mute, shall be permitted, if they so desire, to send such child to the State institute for the deaf and dumb, at Cave Spring, as day-scholars, and boarding such child at their own expense outside of said institute at such convenient and accessible place as they may select.

County academies.

§1332. (1236.) *Teachers may be educated.* The board of trustees may, ^{Acts 1876,} in their discretion, select some educated young men of this State, ^{p. 31.} who may desire to learn the mute or sign language, upon the condition that they will obligate themselves to teach in the institution as many years as may be agreed upon by the board at the time they enter the institution. ^{1868, p. 13.}

§1333. (1237.) *Provisions of previous Chapter applicable.* All the ^{Acts 1876,} 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 visitors, its officers, and other officers of the State or county upon whom any duty is enjoined, the words “deaf and dumb” being substituted whenever the words “the blind” occur. The board of trustees of the Academy for the Deaf and Dumb, or any one or more of them, may in the discretion of the Governor be removed by him, upon recommendation of the board of visitors to said institution, and he is authorized to appoint their successors. ^{p. 31.}

CHAPTER 4.

COUNTY ACADEMIES.

§1334. (1238.) *Trustees of county academies, how appointed.* When it is not otherwise provided for, the ordinaries 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.

Incorporated academy is private corporation: 3 Ga. 283. The State may change the mode of electing trustees of an incorporated academy and supersede those in office: 22 Ga. 507.

§1335. (1239.) *Vacancies, how filled.* When vacancies occur, and provision is not made as to the manner in which said vacancies are to be filled, such ordinaries have the power to fill the same in their respective counties.

§1336. (1240.) *Authority of trustees.* 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.

§1337. (1241.) *Liability of holders of academy funds.* Any person ^{Act 1824,} holding academy funds and failing to pay over when bound, is liable ^{Cobb, 2.} to twenty per cent. interest from time of demand, and to be proceeded against by the ordinaries as against holders of county funds.

CHAPTER 5.

PUBLIC-SCHOOL SYSTEM.

ARTICLE 1.

COMMON SCHOOLS.

SECTION 1.

STATE SCHOOL BOARD.

Acts 1887,
p. 68.
§5907.

§1338. (1242-1275.) *State board of education.* The Governor, attorney-general, secretary of State, comptroller-general, and State school commissioner shall constitute the Georgia State Board of Education. The Governor shall be *ex officio* president, and the State school commissioner the chief executive officer. The clerk of the State school commissioner shall be the clerk of the State board of education. He shall be the custodian of its records, papers, and effects, and keep minutes of its proceedings; and said records and minutes shall be kept in the office of the commissioner, open to inspection.

§1339. *Meetings of.* The board shall meet, upon the call of its president, or a majority of its members, at the office of the State school commissioner, or at such other place as may be designated in the call. A majority of the board shall constitute a quorum for transacting business.

§1340. *Powers and duties as to bequests.* Said board may hold, to it and its successors, in trust for the State, any grant or devise of lands, or any donation or bequest of money or other personal property made to it for educational purposes, and shall forthwith place in the hands of the treasurer of the State, for safe-keeping, all moneys and personal property so received, and titles to land, taking therefor a receipt from said officer. When it is evidently the intention of the donor or devisor that the *corpus* of money thus received is not to be used, the General Assembly may, from time to time, invest said moneys in the name of the State. All moneys obtained, together with the profits accruing from their investment, shall be used only for educational purposes. The treasurer of the State shall pay to the order of the board the income or principal thereof, as said board may from time to time require in pursuance of law, but no disposition of any devise, donation, or bequest shall be made inconsistent with the conditions of the donation. For the faithful keep-

 State school commissioner, his powers and duties.

ing of all property so received, the treasurer shall be responsible, upon his bond to the State, as for other funds received by him in his official capacity.

§1341. *Seal.* The board shall procure a suitable seal, which shall be used for the authentication of the acts of the board and the important acts of the State school commissioner. Acts 1887, p. 68.

§1342. *An advisory and appellate body.* The board shall constitute an advisory body, with whom the State school commissioner shall have the right to consult when he is in doubt as to his official duty, and also a body in the nature of a court, to which appeals shall be had from the decision of the State school commissioner upon any question touching the construction or administration of the school laws; and the decision of the State board shall be final and conclusive. Appeals to the board must be made through the county commissioner, in writing, and must distinctly set forth the question of law, as well as the facts, in the case upon which the appeal is taken. Upon any question involving the construction or administration of the school laws, the concurrence of a majority of the whole board shall be necessary in order to give validity to the decision. §1364.

Section cited and construed: 61 Ga. 413.

 SECTION 2.

STATE SCHOOL COMMISSIONER, HIS POWERS AND DUTIES.

§1343. *School commissioner.* The State school commissioner shall be appointed by the Governor and confirmed by the Senate. A suitable office shall be furnished him at the seat of government. He shall be charged with the administration of the school laws, and general superintendence of the business relating to the common schools of the State. He shall prescribe suitable forms for the reports required of subordinate school officers and blanks for their guidance in transacting their official business, and shall from time to time prepare and transmit to them such instructions as he may deem necessary for the faithful and efficient execution of the school laws; and by what is thus communicated to them they shall be bound to govern themselves in the discharge of their official duty: *Provided*, there shall always be an appeal from the State school commissioner to the State board of education.

§1344. *To visit the several counties.* It shall be the duty of the State school commissioner to visit, as often as possible, the several counties of the State for the purpose of examining into the administration of the school law, counseling with school officers, delivering popular addresses, inspecting school operations, and of doing such other acts as he may deem to the interest of popular education.

State school commissioner, his powers and duties.

Acts 1887,
p. 68.

§1345. *Disbursement of school funds.* It shall be the duty of the State school commissioner to disburse the common-school fund in the following manner: He shall, annually, apportion equitably the State school revenue to the different counties of the State, upon the basis of the aggregate of children between six and eighteen years of age in each county. After the annual apportionment of the State school fund has been made and when the county school commissioner of any county shall give official notice to the State school commissioner that the common schools of his county are within three weeks of closing, the latter-named officer shall execute an order on the tax-collector of the county in favor of the county school commissioner for the quota of the common-school fund apportioned to the county, signing the order officially and affixing thereto his seal of office, and transmit the same to the county school commissioner.

§1346. *Notice of apportionment.* The State school commissioner shall send the notice of apportionment to the tax-collector of each county as soon as the apportionment is made, and it shall be the duty of the tax-collector to retain in his hands, of the taxes first collected, a sufficient amount to pay the sum mentioned as the county's quota in the notice of apportionment, and to pay the same to the county school commissioner as soon as the order of the State school commissioner is presented.

§1347. *Order of commissioner as cash.* The treasurer of the State shall receive the order of the State school commissioner as cash in settling with the tax-collector.

Acts 1892,
p. 85.
1890-1,
p. 120.
1893, p. 61.

§1348. *Duty to prosecute for misapplication of funds and make reports.* The State school commissioner shall see that the proper actions provided by law are brought against all officers and agents of the system who are liable to the same for misapplication of the school fund, or other cause. The State school commissioner shall make an annual report to the General Assembly, in which he shall present a statement of the condition and amount of all funds and property appropriated to the purpose of public education; a statement of the number of common and public schools of the various grades in this State; the number of scholars attending such schools, their sex, color, and the branches taught; a statement of the average cost per scholar of instruction under the common-school system in each county; a statement of plans for the management, extension, and improvement of the common schools; a statement of the number of children of school age in the State, with as much accuracy as can be ascertained; also a statement of the number of private schools and of colleges of different kinds in the State; the number of pupils in such schools or colleges, their sex, branches taught, and average cost per scholar of tuition in said schools and colleges.

State school commissioner, his powers and duties.

§1349. *County institutes.* He shall organize and establish in each county in Georgia a teachers' county institute, for the instruction of teachers in such other months as the State school commissioner may deem best and expedient: *Provided, however,* that the State school commissioner may, in his discretion, combine the annual session of said institutes, or any number of them, so that the same may be held in any county named by him; to prepare a programme of exercises, with a syllabus of each subject in said programme, for each day's session of said institute; to require county school commissioners to operate, at their regular *per diem*, said institute sessions under such general rules and regulations as he may deem best; to require all persons teaching in Georgia, or having license entitling them to teach in the State, to attend all sessions of said institutes held in the county of their residence, and perform all duties required of them as members of said institutes, unless providentially prevented; to secure prompt attendance upon said institutes by causing the county commissioners and county boards to collect such fines from absentees as may be deemed just and reasonable by said commissioners and boards: *Provided,* that no teacher shall be fined till he has stated the cause of his absence, in writing, to said commissioners and boards, and they have duly considered the same, and all money thus collected shall be used in purchasing teachers' libraries for the counties in which said fines may be collected; to provide separate institutes for the whites and colored; to pay from the educational fund of each county an amount not to exceed twenty-five dollars per annum to secure the services of an expert in conducting the week's session of the institute, which expert shall be chosen by the county commissioner and county board; which expert shall assist in conducting the exercises of each annual week's session of said institute in the county where he is thus employed; to cause all sessions of said institutes to be held at county-sites, or such other places as may be selected by the county school commissioners, and allow all persons so desiring to attend the sessions of said institutes: *Provided,* that all visitors shall be subject to the rules and regulations of said institutes while attending the exercises of the same; and to prescribe from time to time such other rules and regulations as he and the county school commissioners may deem best for successfully operating said institutes.

§1350. *Reports from county commissioners.* He shall have a right to require of the county school commissioners to make such reports as he may prescribe upon the subject herein mentioned; and in default of complying, as far as may be practicable, with this requirement, the county school commissioners shall not be entitled to compensation for their official services. He shall also have the right to make

Acts 1887,
p. 68.

County organization; county boards.

the requirement mentioned in section 1348 of the president of the board of education, or the chief executive officer of any public-school organization in this State, operating under any special law, and until the requirement is complied with, said organization shall not receive the *pro rata* of the State school fund to which it would be otherwise entitled.

§1351. *Salary and clerk.* The State school commissioner shall be entitled to receive for his services the sum of two thousand dollars annually, in quarterly installments. All his necessary traveling expenses incurred in the performance of his official duties, and all postage and other expenses absolutely necessary, arising in his office, shall be paid by the State. He shall also be entitled to employ one clerk to aid him in his official duties. His clerk shall receive an annual salary of not exceeding twelve hundred dollars, to be paid quarterly. The salaries and other expenses named in this section shall be paid out of the State school fund on executive warrant. It shall also be the duty of said commissioner to keep an itemized account of all expenses connected with his department, which account shall be audited by the State board of education.

§234. §1352. *Oath.* Before entering upon the discharge of his official duties, the said commissioner shall subscribe the oath required of other officers of this State.

ARTICLE 2.

COUNTY ORGANIZATION.

SECTION 1.

COUNTY BOARDS.

§1353. *School districts.* Each and every county in the State shall compose one school district, and shall be confided to the control and management of a county board of education.

Acts 1893,
p. 62.

§1354. *Membership in county boards.* The grand jury of each county (except those counties which are under a local system) shall from time to time select from the citizens of their respective counties five freeholders, who shall constitute the county board of education. Said members shall be elected for the term of four years and hold their office until their successors shall be elected and qualified. No publisher of school-books, nor any agent for such publisher, nor any person who shall be pecuniarily interested in the sale of school-books, shall be eligible for election as member of any board of education or as county school commissioner.

County boards.

Cited, as to mode of selection: 71 Ga. 284.

This board is a county authority. Where some not freeholders, board still competent to act *de facto*: 72 Ga. 546.

§1355. *Compensation of members.* The members of the board of education in each county shall each be paid a *per diem* not to exceed two dollars for each day's actual service, out of the school fund apportioned to the county; and their accounts for service shall be submitted for approval to the ordinary or county school commissioner, and they shall not receive any other compensation, such as exemption from road and jury duty. Acts 1895,
p. 87.

§1356. *Certificate of election and removal.* Whenever members of a county board are elected or appointed, it shall be the duty of the clerk of the superior court to forward to the State school commissioner a certified statement of the facts, under the seal of the court, as evidence upon which to issue commissions. The evidence of the election of a county commissioner shall be the certified statement of the secretary of the meeting of the board at which the election was held. Any member of a county board of education shall be removable by the judge of the superior court of the county, on the address of two-thirds of the grand jury, for inefficiency, incapacity, general neglect of duty, or malfeasance or corruption in office; the judges of the superior courts in this State shall have the power to fill vacancies, by appointment, in the county boards of education for the counties composing their respective judicial circuits, until the next session of the grand juries in and for said counties, when said vacancies shall be filled by said grand juries. Acts 1887,
p. 68.

§1357. *Officers of county boards.* The board of education shall elect one of their number president, who shall serve as such during the term for which he was chosen a member of the board. The county school commissioner shall be *ex officio* secretary of the board. A majority of the board shall constitute a quorum for the transaction of business. It shall be the duty of said secretary to be present at the meetings of the board, and to record in a book, to be provided for the purpose, all their official proceedings, which shall be a public record open to the inspection of any person interested therein; and all such proceedings, when so recorded, shall be signed by the president and countersigned by the secretary.

§1358. *Sessions.* It shall be the duty of the county board of education to hold regular sessions on the first Tuesday of the month succeeding the election, and each three months thereafter, at the court-house of the county, for the transaction of business pertaining to the public schools, with power to adjourn from time to time, and in case of the absence of the president or secretary, they may appoint one of their own number to serve temporarily.

SECTION 2.

SUBDISTRICTS AND TRUSTEES THEREOF.

Acts 1887,
p. 68.
1889, p. 124. §1359. *Subdistricts.* The county board shall lay off their counties into sub-school-districts, in each of which they shall establish one common school each for the white and colored races, where the population of the two races is sufficient, which school shall be as near the center of the sub-school-district as can be conveniently arranged, reference being had to any schoolhouse already erected and to the population of said sub-school-districts, and to the location of white and colored schools with regard to contiguity; in such sub-school-districts, where more than one school is demanded, they may establish one or more additional schools.

§1360. *New districts and powers of board to employ teachers.* Whenever it becomes proper to lay off new sub-school-districts or alter the boundaries of those already laid off, the board shall have full power to make such changes as the public necessities may require. The county boards are also empowered to employ teachers to serve in the schools under their jurisdiction, and the contracts for said service shall be in writing, signed in duplicate by the teacher on his own behalf, and by the county school commissioners on behalf of the board.

Acts 1889,
p. 122. §1361. *School trustees of subdistricts.* The county boards of education, whenever in their opinion the good of the schools demand it, may at their discretion appoint three intelligent, upright citizens of each subdistrict of their respective counties to act as school trustees for their subdistricts, naming one of the appointees to serve for one year, and one for two, and one for three years; and as vacancies occur by the expiration of the terms of incumbents, the boards shall fill those vacancies with appointees whose term of service shall be three years; and should vacancies occur by death, resignation, or otherwise, the boards of education shall fill these vacancies for the unexpired term; and whenever school trustees are chosen, the fact shall be recorded in the minutes of the county boards, and the appointees shall receive certificates of their appointment from the county school commissioner.

Acts 1889,
p. 122. §1362. *Duties of school trustees.* School trustees shall supervise the school operations of their subdistricts, visit the schools, and make such recommendations to the county boards, in relation to the school interests of their subdistricts, as may seem to them best, and especially in the matter of choosing teachers for their subdistricts. It shall be their right to recommend applicants, and it shall be the duty of the county boards to choose as teachers the persons so rec-

Control of school property.

ommended: *Provided*, they shall be persons duly qualified and eligible according to the provisions of existing law. It shall be the duty of the school trustees, in recommending persons as teachers, to recommend those persons who, in their opinion, are the choice of the communities to be served. The school trustees shall make a written report, once a year, to the county boards in relation to the matters committed to their supervision, or oftener if required by the county boards of education.

SECTION 3.

CONTROL OF SCHOOL PROPERTY.

§1363. *School property.* The county boards of education shall have ^{Acts 1887,} power to purchase, lease, or rent school-sites, build, repair, or rent _{p. 68.} schoolhouses, purchase maps, globes, and school furniture, and make all arrangements necessary to the efficient operation of the schools. The said boards are invested with the title, care, and custody of all schoolhouses or other property belonging to the subdistricts now or hereafter defined, with power to control the same in such manner as they think will best subserve the interests of common schools; and when, in the opinion of the board, any schoolhouse-site has become unnecessary or inconvenient, they may sell the same in the name of the county board of education, such conveyance to be executed by the president or secretary of said board, according to the order of the board. They shall have power to receive any gift, grant, donation, or devise made for the use of common schools within their respective counties, and all conveyances of real estate which may be made to said board shall vest the property in said board of education and their successors in office. It shall also be the duty of said board of education to make arrangements for the instruction of the children of the white and colored races in separate schools. They shall, as far as practicable, provide the same facilities for both races in respect to attainments and abilities of teachers and length of term-time; but the children of the white and colored races shall not be taught together in any common or public school of this State. In respect to the building of the schoolhouses, the said board of education may provide for the same, either by labor on the part of citizens of the subdistricts, or by a tax on their property.

Where injunction was denied county board of education against trustees of an institute not part of public-school system: 88 Ga. 214.

SECTION 4.

SCHOOL COURTS.

§1342.

§1364. *Powers of county boards as school court.* The county board of education shall constitute a tribunal for hearing and determining any matters of local controversy in reference to the construction or administration of the school law, with power to summon witnesses and take testimony, if necessary; and when they have made a decision, said decision shall be binding upon the parties. Either of the parties shall have the right to appeal to the State school commissioner; said appeal shall be made through the county commissioner in writing, and shall distinctly set forth the question in dispute, the decision of the county board, and the testimony, as agreed upon by the parties to the controversy, or if they fail to agree, upon the testimony as reported by the commissioner.

Section cited and construed: 61 Ga. 413.

Is court of limited jurisdiction; can try application for order to pay teacher upon claim audited by county commissioners: 67 Ga. 477.

SECTION 5.

TEXT-BOOKS.

§1365. *Text-books.* The county board of education shall prescribe, from time to time, what text-books and books of reference shall be used in the common schools of the county: *Provided*, that the Bible shall not be excluded from the common or public schools of the State: *And provided further*, that when such text-books are prescribed, they shall not be changed for five years thereafter, except by a three-fourths vote of all the board. The county boards shall not be permitted to introduce into the schools any text or miscellaneous book of a sectarian or sectional character. No teacher shall receive pay for any pupil who is allowed to use any other than the prescribed text-books.

County school commissioner; election, removal, etc.

ARTICLE 3.

COUNTY SCHOOL COMMISSIONER.

SECTION 1.

ELECTION, REMOVAL, ETC.

§1366. *County commissioner elected.* The county boards of education shall, from the citizens of their counties, select a county commissioner of education, who shall be *ex officio* county superintendent of common schools, and who shall hold his office for the term of four years. Before election, the applicants for position of county school commissioner shall be examined by the president of the county board, or by some one appointed by him or the board for that purpose, upon written or printed questions, which shall be furnished to the board by the State school commissioner; said examination to be upon the subjects taught in the common schools, upon the science and theory of common-school teaching and government, and upon such other subjects as the State school commissioner may deem proper. The said county board shall then elect such applicant county school commissioner who has stood satisfactory examination, taking into consideration the moral character, business qualifications, and general availability of each applicant. The county school commissioner, so elected, shall be required to give bond with good security, payable to the county board of education, conditioned for the faithful performance of his duty under the law, the amount and sufficiency of the security to be judged of by the county board. Acts 1887,
p. 68.

§1367. *Oath.* Before entering upon the discharge of his official duties, the said commissioner shall subscribe the oath required of other officers of this State. §234.

§1368. *Removal.* The county school commissioner may be removed from office before the expiration of his term, by a majority vote of the board of education, for inefficiency, incapacity, neglect of duty, or malfeasance or corruption in office. Any commissioner so removed shall have the right of appeal from the county board to the State school commissioner, and from the State school commissioner to the State board of education. §1364.

§1369. *Vacancies.* Should there be a vacancy in the office of county school commissioner, by resignation or otherwise, an examination and election for the remainder of the vacant term shall be held in the same manner as for a full term.

SECTION 2.

EXAMINATION, GRADING, AND LICENSE OF TEACHERS.

Acts 1890-1,
p. 118. §1370. *Examination and license of teachers.* The county commissioners shall examine all applicants for license to teach in their respective counties, giving previous public notice of the day upon which the examinations are to take place, and said commissioners shall be allowed to invite such persons as they may think proper to assist in these examinations. Applicants for license to teach in the common schools shall be examined upon orthography, reading, writing, English grammar, geography, arithmetic, and the science and practice of teaching in common schools; said examinations shall be held throughout the State on days to be fixed by the State school commissioner, and by questions prepared and sent out by him to the county school commissioners. The State commissioner shall supply the county commissioners with printed instructions as to grading applicants by a uniform grade, and fix the lowest standard for each class of licenses; no applicant for license shall be examined on any other day than the one above prescribed, except in cases where the county board of education shall order a special examination; no special examination shall be ordered by said board except for good and sufficient reasons and to meet some special emergency; in such cases the questions shall be prepared by the county school commissioner, or by some competent person under his authority, and their contents shall not be made known to the applicant or applicants until the examination actually commences; said examinations shall be conducted under the same rules and regulations as are provided by law for other examinations, but the licenses granted shall be valid only until the next examination ordered by the State school commissioner, and it shall not be lawful for the county school commissioner of any county other than that in which said special examination is held to indorse a license granted thereunder. The county board of education shall have power, if they deem best, to employ teachers at a salary.

Acts 1887,
p. 68. §1371. *Grading of applicants.* It shall be the duty of the county school commissioner to grade the applicants according to the instructions furnished him by the State school commissioner, submitting his report and recommendations thereon in writing to the county board of education, who shall grant to the applicants licenses of the first, second, or third grade, to be determined by the qualifications exhibited and the standard attained: *Provided*, they shall obtain at least the lowest grade-mark fixed by the State school commissioner for each grade: *And provided further*, that each applicant

submits with his or her examination paper satisfactory evidence in writing of good moral character. A license for the first grade shall continue in force for three years; a license of the second grade for two years; and a license of the third grade for one year, which said licenses shall entitle teachers holding them to be employed for and during the period of their licenses in any of the common schools of the county where issued. Licenses, to be good in another county than the one in which they are issued, must be indorsed by the county school commissioner of the county in which the applicant desires to teach.

§1372. *Unusual merit in examination.* After passing upon the examination papers, if, in the opinion of the county school commissioner, any one or more of them exhibit unusual merit, he shall forward such papers to the State school commissioner, together with his certificate of the good moral and professional character of the applicant, and if, in the opinion of the State school commissioner, said papers exhibit a sufficient degree of merit, he shall issue a permanent teacher's license to the applicant, which license shall be good in any county of this State, and which shall only be revocable by the State school commissioner for good and sufficient cause.

§1373. *Revocation of licenses.* The county commissioner shall have power, and it shall be his duty, to revoke license, granted by him or his predecessors, for incompetency, immorality, cruelty to pupils, or neglect of his duties, and the revocation of the license of any teacher shall terminate the connection of said teacher with any school in which he may have been employed; but any teacher so §1364. dismissed shall have the right to appeal to the county board of education, whose decision shall be final.

Teaching carried on notwithstanding the dismissal of the teacher, entitles him to no compensation out of the public-school fund: 61 Ga. 413.

SECTION 3.

OTHER DUTIES OF COUNTY SCHOOL COMMISSIONER, COMPENSATION, ETC.

§1374. *Duties of county commissioners.* The county commissioner shall constitute the medium of communication between the State school commissioner and the subordinate school officers; he shall visit each school in his county at least once during the school term, or twice if practicable, and oftener if ordered by the board, without notice to the teachers, for the purpose of inspecting its management and the modes of instruction, and of giving such advice and making such suggestions as shall tend to elevate it in character and effi- Acts 1887, p. 68.

ciency. He shall be the agent of the county board in procuring such school furniture, apparatus, and educational requisites as they may order; shall see that none but the prescribed text-books are used by pupils; shall audit all accounts before application is made to the county board for an order for payment. He shall procure a book in which he shall keep a record of his official acts, which, together with all the books, papers, and property, appertaining to his office, he shall turn over to his successor.

Is custodian of the school fund, and the county treasurer has no power to disburse it and is entitled to no commissions for so doing: 60 Ga. 558, 559.

Before board of education can try application for order to pay teacher, claim must be audited by county commissioners: 67 Ga. 477.

Mandamus will lie to compel county commissioners to audit claims: 67 Ga. 477.

Acts 1893,
p. 63.
1887, p. 68.

§1375. *Office of commissioner in court-house.* The county authorities of the different counties of this State shall furnish the county school commissioners thereof an office in the court-house: *Provided*, there is sufficient room in said court-house after furnishing the county officers with offices as now provided for by law.

Acts 1887,
p. 68.

§1376. *Compensation.* The county commissioner shall receive such compensation as the county board may allow him, not to exceed three dollars for each day actually employed in the discharge of his official duties, to be paid out of the educational fund furnished the county. His claim for services shall be presented in the form of an account against the county board of education; shall be verified by affidavit that the account is just and true, that the service therein named was honestly and faithfully rendered, and that the sum therein claimed is rightfully due and remains unpaid. When said account shall have been duly audited and approved by the county board, said commissioner shall retain his pay out of the revenue aforesaid. The county board of education shall determine the number of days in each year in which said county commissioner may labor in the performance of the duties required of him.

SECTION 4.

REPORTS OF TEACHERS; TUITION; MANUAL AND NIGHT SCHOOLS.

§1377. *Reports by teachers.* It shall be the duty of the teachers to file with the county commissioner, at the expiration of each term of school, a full and complete report of the whole number of scholars admitted to the school during said term, distinguishing between males and females, and colored and white, with the names thereof;

the entire and the average attendance; the branches taught; the number of pupils engaged in the study of each of the branches; and such other statistics as he may be required to report by the county commissioner, or by the State school commissioner. Until such report shall have been prepared, sworn to, and filed by said teacher, it shall not be lawful for the county commissioner to audit the account of said teacher for services.

§1378. *Free tuition, etc.* Admission to all common schools shall be gratuitous to all children between the ages of six and eighteen years, residing in the subdistricts in which the schools are located. Colored and white children shall not attend the same school, and no teacher receiving or teaching white and colored pupils in the same school shall be allowed any compensation out of the common-school fund. In special cases, to meet the demands of convenience, children residing in one subdistrict may, by express permission of the county board, attend the common schools of another subdistrict; and when a common school is located near a county line, children from an adjoining county may, by the consent of the county boards of the respective counties, be permitted to attend the school. In such cases the teacher shall make out two accounts, one against each county board, in amount proportioned to the number of children in the school from the respective counties.

Charge of an incidental admission fee against pupils in municipal public schools, unconstitutional: 86 Ga. 605.

Non-resident pupils in public schools, not admitted on terms disadvantageous to resident pupils: 86 Ga. 605.

§1379. *Manual-labor schools.* The county board of education shall have power to organize in each county one or more manual-labor schools on such a plan as shall be self-sustaining: *Provided*, that the plan be first approved by the State board of education.

§1380. *Evening-schools.* The board of education of any county shall have power to establish, at such places as they may deem proper, a suitable number of evening-schools for the instruction of such youth, over twelve years of age, prevented by their daily avocations from attending day-schools, subject to such regulations, and the instructions issued by the State school commissioner, as said board from time to time may adopt for the government thereof.

SECTION 5.

SCHOOL FUNDS AND SCHOOL PROPERTY.

§1381. *County entitled to part of fund.* As soon as the county board shall communicate satisfactory evidence to the State school commissioner that arrangements have been made, by taxation or

Acts 1887,
p. 68.
1893, p. 60.

otherwise, for continuing the common schools, free to all, for at least three months in the year, throughout the entire county, said county shall be deemed and held entitled to draw her proportionate part of the State funds.

§1382. *Failure to arrange for schools.* Whenever a county board of education, or board of education of any city, shall fail in any year to make arrangements to put schools in operation, said county or city shall forfeit all right to participation in the school fund for that year, unless the failure to arrange for schools was from providential cause, or other good and sufficient reasons, to be judged of by the State board of education.

Acts 1893,
p. 60.

§1383. *Time of apportionment.* When the funds drawn under apportionment, and any fund raised by local taxation, are placed in the hands of any county commissioner, he shall be holden for all amounts so received on his official bond as treasurer, and shall disburse the same only upon the order of the county board of education, and the said county commissioner shall not be entitled to compensation for receiving any school funds except as herein provided.

Acts 1887,
p. 68.

§1384. *School fund.* For the support and maintenance of the common schools of this State, the poll-tax, special tax on shows and exhibitions, all taxes on the sale of spirituous and malt liquors, dividends upon the stock of the State in the Bank of the State of Georgia, Georgia Railroad and Banking Company, and such other means or moneys as now belong to the common-school fund, and one-half of the proceeds of the rental of the Western and Atlantic Railroad or one-half the annual net earnings of said railroad, under any change of policy which the State may adopt hereafter; all endowments, devises, gifts, and bequests made, or to be made, to the State or State board of education; the proceeds of any commutation tax for military services; all taxes that may be assessed on such domestic animals as from their nature and habits are destructive to other property; all money received by the agricultural department of this State for the inspection of oil and fertilizers, in excess of what may be necessary to defray the expenses of said agricultural department; the net amount arising from the hire of convicts of this State, after all expenses now or hereafter a charge upon said fund shall have been deducted from the gross amount thereof; any educational funds belonging to the State (except the endowment of and debt due to the University of Georgia); and such other sums of money as the legislature shall raise by taxation or otherwise for educational purposes, are hereby declared to be a common-school fund.

§1385. *School fund to be kept separate.* When said common-school fund shall be received and receipted for, it shall be the duty of the officer authorized by law to receive such fund to keep the same sep-

Administration of oaths; report to grand jury.

arate and distinct from other funds, and said funds shall be used for educational purposes, and none other, and shall not be invested in bonds of this State, or in other stock, except when investment is necessary to carry out the conditions of an endowment, devise, gift, or bequest; and when taxes are paid into the treasury of the State, the comptroller-general shall in no case receipt a tax-collector for the same until that part of the tax so paid in, which was raised for school purposes, is separated in amount from the gross amount paid in.

§1386. *Property exempt from taxation.* Each and every lot or parcel of land which has been, or may be hereafter, obtained by any county board of education for the use of common schools, together with any school building erected thereon, and all school furniture, shall be exempt from all taxes, and from levy and sale under any execution or other writ or order in the nature of an execution: *Provided*, the lot of land so exempted shall not exceed four acres, and if there be any excess over that number of acres, then that portion not to exceed four acres, most convenient for school purposes, shall be exempt as aforesaid, the exempted portion to be set off by order of the county board. ^{Acts 1887, p. 68, §762.}

SECTION 6.

ADMINISTRATION OF OATHS; REPORT TO GRAND JURY.

§1387. *Who may administer oaths.* County school commissioners and members of the county boards of education are authorized to administer oaths necessary in transacting school business, or in conducting investigations before the county boards, when sitting as judicial tribunals for determining controversies arising under school laws. ^{Acts 1887, p. 68.}

§1388. *Report of county commissioners.* It shall be the duty of the county school commissioner to make a report of the school operations of the preceding year to the grand jury, at the spring term of the court, and to place his books before them for examination; and in making up the general presentments, it shall be the duty of the jury to take proper notice of the matters thus brought to their attention.

City authorities and citizens cannot interfere by injunction: 72 Ga. 353.

Enumeration of school children.

ARTICLE 4.

ENUMERATION OF SCHOOL CHILDREN.

§1389. *Enumeration of school children.* It shall be the duty of the county and city boards of education to cause an enumeration of the children between six and eighteen years of age to be made, under instructions from the State school commissioner, in the year 1888, and every ten years thereafter, as hereinafter prescribed. In the year 1893, and every ten years thereafter, it shall be the duty of the State board of education, in the early part of the year, to have an estimate made from the last census of the United States, of the number of children of school age in each county and in each town or city under a local school law; and if, from the evidence thus obtained or from other evidence, the board shall become satisfied that a new enumeration of the school population ought to be taken for any county, or town or city, or for the entire State, it shall be their duty to order the enumeration to be taken accordingly.

Acts 1887,
p. 68.

§1390. *How enumeration to be taken.* The different county or city boards shall employ one or more competent, reliable persons to take the enumeration in their respective jurisdictions, and the persons so employed shall go from house to house, making a thorough canvass of the territory assigned them, taking the number of children between the ages of six and eighteen years, and distinguishing between the sexes and races. The persons thus employed shall be known as enumerators of the school census, and shall take and report any additional statistics required by the State school commissioner. They shall receive as compensation a *per diem* not to exceed two dollars, to be paid out of the school fund of the jurisdiction in which the work is done. They shall make oath that the work has been carefully and faithfully done according to the true intent and meaning of this Article, the form of the oath to be prescribed by the State school commissioner. Nothing herein shall be construed to prevent the county boards from employing the county school commissioners to do the work contemplated in this section.

§1391. *New enumerations.* The State board is empowered to order a new enumeration when they are in doubt as to the accuracy of the returns made from any county or city; but the enumerators first making their returns shall receive no compensation in case it is found their enumeration was not correct. In case their enumeration is verified by the second enumeration, both shall be paid, but the amount paid shall be deducted from the school fund appropriated to this special territory.

 Private schools. Schools in cities.

ARTICLE 5.

PRIVATE SCHOOLS.

§1392. *Public teacher may contract for private teaching.* Whenever a county board shall have entered into a contract with a teacher to teach in any subdistrict, said teacher may enter into a supplemental contract with the patrons of said school to teach a private elementary school for the period allowed by law for the public term: *Provided*, that the contracting with teachers under the provisions of this Article shall be left to the discretion of the several county boards of education.

§1393. *Conduct of private schools.* Upon said private supplemental contract being approved by the board of education of the county, it shall be the duty of said teacher to enter as pupils in said private school all scholars of common-school age, who may enter said school at any time within the scholastic year of said private school. It shall be the duty of said teacher to keep an accurate account of the number of such pupils and the number of days actually attended by each pupil, and when said private school shall have closed, said teacher may make out an account against the county board of education for the full number of days each of said pupils may have attended said schools, not to exceed the whole number of days prescribed by law. Nothing in this Article shall be so construed as to prevent any common-school scholar from entering said school as pupil, if the parent or guardian of said pupil shall elect to enter him for the period of the public term and upon the merits of the common-school fund only. No teacher shall be contracted with under the provisions of this Article until he has been duly licensed as a common-school teacher. Every teacher contracted with under the provisions of this Article shall be required to make the same reports and returns to the county school commissioners as are required of teachers of common-schools; and until such private schools shall have been taught according to contract, and said reports and returns made, it shall not be lawful for the board of education to pay him or her for such services as such teacher.

Acts 1887,
p. 68.

ARTICLE 6.

SCHOOLS IN CITIES.

§1394. *School system in cities and towns.* Nothing in this Chapter shall be so construed as to prevent any city with a population greater than two thousand inhabitants, or any county or town under au-

thority of the General Assembly of this State, from organizing a public-school system independent of this system, or to prevent the said organization from drawing its *pro rata* share of all educational funds raised by the State: *Provided*, the chief executive officer of such independent organization shall make the same regular reports to the State school commissioner as are required from the county commissioners by this Article. Nothing contained in this Article shall be construed to annul or repeal any local law now of force in any city or county in this State providing for the organization and maintenance of the common or public schools in such city or county.

Special system of Glynn county considered: 72 Ga. 353.

ARTICLE 7.

ARBOR DAY; VACCINATION.

§1395. *Setting apart Arbor Day.* The first Friday in December in each year shall be set apart as a day for tree-planting, and shall be known throughout the State as "Arbor Day."

Acts 1890-1,
p. 219.

§1396. *Observance.* It shall be the duty of the State school commissioner through the county school commissioners to cause the public schools of the State to observe Arbor Day as the superintendents and teachers may think best, in order to show the value and beauty of forestry by practical tree-planting on school, church, and other public lots, lawns, and on the public highway.

Acts 1880-1,
p. 97.

§1397. (1275 b.) *Vaccination of pupils of public schools.* The county boards of education in the counties of this State, and the boards of public education for the city of Savannah and the other cities of this State, are authorized and empowered to make such regulations as in their judgment shall seem requisite to insure the vaccination of the pupils in their respective schools, and may require all scholars or pupils to be vaccinated as a prerequisite to admission to their respective schools.

GENERAL NOTE.—How accounts of teachers are to be paid: 17 Ga. 179. All the accounts of poor teachers are to be paid *pro rata* by the Act of 1857: 28 Ga. 293. Several acts about the school fund construed according to the general intent of the legislature: 33 Ga. 344. As to the clerk and treasurer of the educational fund, his bond: 13 Ga. 502. The treasurer of the county, and not the ordinary, is treasurer of the board of education: 45 Ga. 498.

Industrial education in public schools. Taxation by counties for common schools.

ARTICLE 8.

INDUSTRIAL EDUCATION IN PUBLIC SCHOOLS.

§1398. *Department of industrial education.* The board of education, ^{Acts 1884-5,} or other constituted authorities having charge of the public schools ^{p. 72.} in those counties or municipal corporations having a system of public schools supported by local taxation, not restricted to the education of children in the elementary branches of English education only, may open and annex to said public schools, in their discretion, a department of industrial education, in which all the students may be taught the use of tools for working in wood and metal, under such rules and regulations as may be prescribed by said board or other constituted authority. It shall be lawful to procure the necessary equipment and pay teachers with the funds arising from taxation in the county or municipal corporation aforesaid, and the said board, or other constituted authority, shall determine the number of such schools, the place where located, and the terms or sessions of the same, together with the ages at which children may attend the same.

ARTICLE 9.

TAXATION BY COUNTIES FOR COMMON SCHOOLS.

§1399. *Local tax may be levied, how.* A local tax to supplement the ^{Acts 1890-1,} State tax in support of the common schools, may be levied and col- ^{p. 121.} ^{§5909.} lected in any county in this State in which a county school system is not already in existence, in the following manner:

1. Whenever two successive grand juries of the county shall recommend in their general presentments that a local tax shall be levied to supplement the State tax in support of the common schools of the county, the ordinary shall order an election to be held, after giving public notice thereof, once a week for four weeks, in the paper in which the sheriff's advertisements are published, and by posting the notice at the court-house door for at least four weeks previous to the time fixed for said election.

2. Said election shall be held under the same rules and regulations as those governing the election of county officers, and all qualified voters of the county, and none others, shall be allowed to vote.

3. In said election the ballots shall have printed or written upon them the words "For local taxation for public schools" or "Against local taxation for public schools."

4. The managers of the election shall consolidate the votes as provided in elections for county officers, and shall then file the returns with the ordinary, who shall declare the result. If two-thirds of the persons qualified to vote at said election have voted for local taxation for public schools, the ordinary shall certify the same in writing to the county board of education.

5. The county board of education shall at a regular meeting, or at a special meeting of which due notice has been given to each member, proceed by order or resolution to levy a tax not exceeding one-fourth of one per cent. *ad valorem* upon all the taxable property of the county as shall appear by the county digest. The county school commissioners shall make out a certified copy of the order, fixing the rate of said tax, and deliver the same to the tax-collector of the county on or before the first day of September in each year, and the tax-collector shall collect said school tax in the same manner as other county taxes are collected, and promptly pay over the funds so arising to the county school commissioner, who shall receive and hold the same for the support of the common schools of the county in addition to the funds received from the State, and said tax may be levied and collected from year to year, as above provided, without holding any other election for that purpose: *Provided*, that any county in which a county school system is already in existence, but where the funds, as now provided by law, are insufficient in the opinion of the county board of education, for the support of the schools, may obtain the benefits of this Article by complying with all the provisions of the same.

§1394.

§1400. *Existing local school system not affected.* If there shall be in the county an incorporated town, or town having a local school system of its own, sustained by local taxation, in addition to its quota of funds received from the State, the residents of said incorporated town or towns shall not vote in the election held as aforesaid, nor shall the taxable property embraced within the corporate limits of said town be subject to the county school tax levied.

§1401. *How must determine.* In determining whether two-thirds of the qualified voters have voted for local taxation for common schools at the election, the registration lists last completed before the election shall be considered the correct enumeration of the qualified votes in the county.

ARTICLE 10.

FINANCES OF THE COMMON SCHOOLS.

§1402. *Common-school fund to be paid direct into treasury.* Beginning with taxes for the year 1895, all moneys belonging to the common-school fund of the State, including poll-tax and specific taxes, shall be paid direct into the State treasury in like manner as other State taxes are paid, and said common-school fund shall be used for no other than common-school purposes.

Acts 1894,
p. 60.
§5908.
Acts 1888,
p. 45.

§1403. *Proportion of each county paid to its credit quarterly.* On the thirty-first day of March, the thirtieth day of June, the thirtieth day of September, and the thirty-first day of December in each year, or as soon thereafter as practicable, the treasurer of the State shall place to the credit of each county in the State, on his books, its proportionate part of the common-school fund in the treasury on each of said dates, such proportionate part to be determined by the State school commissioner, the comptroller-general, and the treasurer, and to be based upon the proportion which the school population in each county bears to the school population in the State as shown by the last school census: *Provided, however,* that the salaries of the State school commissioner and his clerk or clerks, and the expenses of his office, and any other items properly chargeable under the law to the general school fund, shall be deducted out of the said fund before making the aforesaid apportionment to the counties.

§1404. *Statements by county commissioners of sums due.* On or before the thirtieth day of April, the thirty-first day of July, the thirty-first day of October, and the thirty-first day of January of each year, the county school commissioners of each county shall, under the approval of the county board of education, transmit to the State school commissioner an itemized statement of the various sums due and unpaid by the county board of education on said several dates mentioned in the preceding section, whether the same be for teachers' salaries, for pay of the county school commissioner, or for any other item of expense properly chargeable under the law to the county board of education; and when said itemized statements have been approved by the State school commissioner and presented to the Governor, the Governor shall issue his warrants upon the treasurer for all the funds standing to the credit of each of the several counties upon the books of the treasurer, or for such part thereof as may be needed to liquidate the indebtedness of the county board of education of such county, as shown by each itemized statement aforesaid. And the State treasurer shall, upon the presentation of the warrants aforesaid, draw his checks for the amounts of said

Acts 1894,
pp. 61, 59.

warrants in favor of the county school commissioners of the several counties, and the State school commissioner shall immediately transmit said checks to the several county school commissioners, who shall promptly disburse the money so received in payment of the sums set out in the itemized statement aforesaid; and if the money is not sufficient to pay said sums in full, then it shall be prorated among the various items: *Provided*, that the expenses of administration for each quarter shall first be paid in full, and the county boards of education are hereby authorized to make their contracts in such manner that the amounts payable to teachers for services rendered up to the end of the calendar quarter shall become due on the days specified in this section.

§1405. *School year coincident with calendar year.* Beginning with January 1st, 1895, and continuing thereafter, the school year shall be coincident with the calendar year, to wit, from January first to December thirty-first thereafter; and the State school commissioner, State treasurer, and comptroller-general shall, on or before the first Tuesday in December of each year, beginning in 1894, or as soon thereafter as practicable, make an estimate of the entire common-school fund of the State for the next succeeding school year, and shall at once communicate in writing to the county school commissioner of each county the amount of money that will be payable to his county; and on the first Tuesday in January in each year, or as soon thereafter as practicable, each county board of education shall meet and make the necessary arrangements for placing the schools in operation for the next school year, and shall have full authority in their discretion either to fix salaries for the payment of teachers, or to pay them according to enrollment or attendance: *Provided*, that nothing in this Article shall be construed to affect the right of the respective counties of the State to select the time of operating their schools, which shall be left entirely to the county boards of education, nor shall it affect or change the time of operating their schools under any special or local laws in any county of this State: *Provided further*, it shall not affect the quarterly payment of teachers as by this Article directed.

Acts 1894,
p. 62.

§1406. *Where there are local school laws.* In those counties having local school laws, where schools are sustained by local taxation for a period of five months or more, the State school commissioner shall, on the first day of January, April, July, and October of each year, or as soon thereafter as practicable, notify the Governor of the amount of funds standing to the credit of each of such counties on the books of the treasurer on said dates, arising from the quarterly apportionments aforesaid, and thereupon the Governor shall issue his warrants for said sums and the treasurer shall draw his checks for said sums without requiring the itemized statements as provided; and

the State school commissioner shall immediately transmit said checks to the officer under the local school system authorized to receive its funds, and the State school commissioner shall, in like manner, pay over to the proper officer under the school board of any town or city having a school system sustained by local taxation for a period of five months or more, and to which he is now authorized by law to make direct apportionments, such proportion of the entire county fund as shown on the books of the treasurer as the school population of the town or city bears to the population of the county, as shown by the last school census: *Provided*, that all children of school age resident in said county, and attending the public schools of such town or city, shall be counted in the school population of such town or city and be entitled to have their share of such county fund paid over to the proper officer of the school board of such town or city.

§1407. *Estimate of school fund.* The school fund for each calendar year shall be a fixed and specified sum, and in order to carry out this provision the State school commissioner, the comptroller-general, and the treasurer shall, on the first Tuesday of December of each year, beginning with 1894, or as soon thereafter as practicable, make an estimate of what the school fund for the ensuing year shall be from the specific taxes, direct appropriations, and from any other sources of supply which now belong to the school fund or may hereafter belong to the school fund, and said fund, when so estimated, shall be divided into four equal parts, and each of said parts shall be available and payable at the time specified in this Article: *Provided*, that in the event that the said specific taxes shall fall short of said estimate, then the balance necessary to meet the provisions of said estimate is hereby authorized to be paid from any fund in the treasury not otherwise appropriated.

§1408. *Basis of estimate of fund for ensuing year.* When the State school commissioner, the comptroller-general, and the treasurer shall meet on the first Tuesday in December, or as soon thereafter as practicable, to make the estimate of the school fund, they shall base said estimate upon the amount of school fund coming into the treasury for the year preceding the year for which said estimate is made. <sup>Acts 1894,
p. 63.</sup>

THIRTEENTH TITLE.

POLICE AND SANITARY REGULATIONS.

CHAPTER 1.

LUNATIC ASYLUM.

ARTICLE 1.

THE TRUSTEES.

Acts 1873, §1409. (1341.) *Managed by ten trustees.* The State Lunatic Asylum
p. 59. at Midway, near Milledgeville, is solely the property of the State,
1878-9, p. 70. and shall be under the management of ten trustees, one of whom
1889, p. 58. shall be a competent physician, and no two of whom shall reside in
the same county.

§1410. (1342.) *Trustees, how appointed.* 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 is experienced in the affairs of the Asylum.

§1411. (1344.) *Authority of trustees.* They have authority—

1. To prescribe all rules and regulations for the management of the institution, not conflicting with the law.

2. To appoint annually all the officers, point out their duties, and fix their salaries. The salary of said trustees shall not exceed one hundred and fifty dollars each per annum, and actual railroad fare going to and returning from Milledgeville.

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 toward such any other or greater violence than the occasion may require.

5. To hold in trust for said Asylum any grant or devise of 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 bring suit in their names for any claims the institution might have, whether arising upon contract or tort.

§1412. (1344 b.) *Patients, how admitted and discharged from Lunatic Asylum.* Lunatics, epileptics, idiots, and demented inebriates shall be admitted to, and discharged from, the Lunatic Asylum, under such rules and regulations as the trustees of said Asylum shall prescribe. Acts 1877, p. 113.

§1413. (1344 c.) *Trustees of Lunatic Asylum may make and change regulations.* The trustees shall prescribe rules and regulations for the purposes aforesaid, and from time to time, as experience may demonstrate to be necessary, alter and change the same, which rules and regulations, when thus established, shall be executed and carried into effect by the superintendent and other officers of said Asylum. Acts 1877, p. 113.

§1414. (1344 d.) *Lunatic Asylum free, to whom.* Said Lunatic Asylum shall be free to all the resident citizens of this State who may be lunatics, idiots, epileptics, or demented inebriates, and who, when admitted, shall receive free the same food, raiment, and medical and other attention as shall be provided for the inmates generally: *Provided, however,* that if the family or friends of any inmate shall desire to furnish extra or additional food, or other comforts, they may be allowed so to do at their own expense, under such rules and regulations as said trustees may prescribe. Acts 1877, p. 113.

§1415. (1344 e.) *Regulations furnished to ordinaries.* As soon as regulations have been made by the trustees for the reception of patients, it shall be the duty of said trustees to cause to be furnished, to the different ordinaries of this State, copies of said rules and regulations. Acts 1877, p. 113.

§1416. (1344 a.) *Harmless lunatics discharged.* The board of trustees of the Lunatic Asylum shall have power, upon the certifying thereunto of the medical officer of the institution, to discharge or remand to the county authorities whose duty it is made by law to provide for the paupers of the county from which he or she was sent, a patient in said Asylum, whose condition is such that no probability exists of his or her restoration to full reason and sanity by medical ministrations thereto, and who at the same time is regarded harmless and inoffensive in spirit, and whose remission to social life would reasonably involve no danger to the life of those with whom he or she would be associated. Acts 1874, p. 91. 1884-5, p. 61.

§1417. (1345.) *Officers designated.* The officers of the Asylum, appointed by the trustees, are a superintendent, an assistant physi-

The trustees.

cian, a treasurer, a steward, assistant steward, and matron, whose salaries are paid quarterly out of the annual appropriations.

Acts 1873,
p. 60. §1418. (1346.) *Offices to be separate.* The offices of treasurer and steward shall be separate and distinct, and no two offices pertaining to said institution, or its government, shall be held by one and the same person.

Acts 1878-9,
p. 87.
1882-3, p. 68. §1419. (1347.) *Treasurer's bond.* The treasurer must give bond and security in the sum of twenty thousand dollars.

Acts 1873,
p. 58. §1420. (1348.) *Itemized accounts.* The steward and treasurer, or either of them, shall present to the Governor, with each quarterly application for funds from the treasury, an exact itemized account of his expenditures for the preceding quarter, accompanied with a duplicate voucher for the sums disbursed by him for the said preceding quarter.

Acts 1893,
p. 58. §1421. (1349.) *Annual report of trustees.* At the close of each fiscal year, which terminates on the first day of September, 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, embracing the amount of each kind of provisions, drugs, clothing, and bedding purchased; of whom purchased, price paid, and aggregate cost; number of persons received, died, and discharged; dates of reception, discharge, and death; male and female, pauper and pay patients, and partial pay, if any; and also whether payment was made in clothing, provisions, or currency.

Acts 1873,
p. 59. §1422. (1350.) *Trustees shall present estimates.* The trustees shall present to the Governor, at least ten days before the annual meeting of the General Assembly, an exact estimate of the amount of money required for the support of the said Asylum for the succeeding year; and they shall set forth, under separate and distinct heads, a division, to wit, subsistence, clothing, fuel, and transportation, salaries, wages, medical supplies, ordinary repairs, and special improvements—the several amounts required for each of said departments of expenditure, and the Governor shall submit the same to the legislature as data upon which their appropriations may be made for the annual support of said institution; and said appropriations, or so much thereof as may be necessary, shall only be used for the division of expense for which it is estimated and no portion estimated for each department of expenditure be diverted to or used for any other department of expenditure.

ARTICLE 2.

PHYSICIANS.

§1423. *Physicians for Asylum.* No person shall be elected a physician of the Lunatic Asylum until after he shall have been rigidly and thoroughly examined by the board of trustees of the Asylum, and found to be well qualified to discharge the duties of the office. The board of trustees shall select three competent physicians, one of whom shall be a member and chairman of the board of trustees, and require all applicants for election to the position of superintendent and assistant physicians to appear before said commission and stand their examination, and the examination-papers to be returned to the board, with such recommendations as said board of physicians may make, and then said board shall commission said applicants, if the examination is satisfactory, who shall hold their respective offices two years, subject to removal by the board of trustees; all questions, with the answers made by each applicant in the presence of the board of physicians, to be filed in the archives of the Asylum for future reference; said examining board of physicians to be paid such sum as said trustees may allow, out of the contingent fund of the Asylum.

Acts 1890-1,
p. 232.

§1424. *No subsequent examination.* A second examination shall not be required of those who have already been examined and elected; such election shall be held biennially. Those officers who have served continuously for a period of ten years shall not be required to stand the examinations provided for.

Acts 1890-1,
p. 232.

ARTICLE 3.

MARSHAL.

§1425. *Trustees to appoint marshal.* The trustees shall have power to appoint a marshal, whose duty shall be to arrest any person or persons found upon the premises of said institution, guilty of disorderly conduct; or who shall use any obscene, profane, or vulgar language; or who shall play at any game of cards or any game of chance for money or other thing of value; or who shall sell any malt beer, wine, or other alcoholic liquors; or who shall be found within or upon the premises of said Lunatic Asylum in a state of intoxication; or who shall trespass upon the premises or lands of said Asylum after due notice has been given.

Acts 1889,
p. 162.

§1426. *Must turn over offenders to whom.* The said marshal is authorized to turn over to the municipal authorities of the city of Mil-

The superintendent. The admission, management, and discharge of patients.

ledgeville any person or persons arrested who may commit offenses that come within the jurisdiction of said municipal authorities (and authority is hereby conferred upon the municipal authorities of the city of Milledgeville to try and to punish such offenders), and to the authorities of Baldwin county any person or persons arrested who commit offenses that come within the jurisdiction exercised by said county authorities, to be dealt with as the law directs in each case. All witnesses shall be summoned by said marshal, on process issued by the mayor of Milledgeville, or by the proper legal authorities of Baldwin county: *Provided*, the provisions of this and the preceding section shall not be so construed as to increase the expenses of said Asylum to the State.

ARTICLE 4.

THE SUPERINTENDENT.

§1427. (1351.) *Superintendent of Asylum.* The principal officer of said Asylum is the superintendent, who shall be a skillful physician.

§1428. (1352.) *Superintendent's duties.* 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 in any way connected with the restoration to health or sanity of the inmates.

Acts 1865-6,
p. 24.

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, and to account for all his expenditures on vouchers in the same form as those which are made in accounting for disbursements in the commissary department of the United States.

ARTICLE 5.

THE ADMISSION, MANAGEMENT, AND DISCHARGE OF PATIENTS.

§1429. (1353.) *Who may be inmates.* Persons who may become inmates of said Asylum are either lunatics, idiots, epileptics, or demented inebriates.

§1430. (1354.) *Classification of inmates.* 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.

§1431. (1354 (4).) *Harmless idiots rejected at Lunatic Asylum, when.* Acts 1878-9,
p. 424. The superintendent may refuse to receive into the institution all harmless idiots, and such other harmless subjects as do not actually require treatment in the Asylum, so long as there are any recent and dangerous cases unprovided for; this discretionary power is granted to him until ample accommodations are made to receive within the institution all persons who, under the law, are entitled to admittance therein.

§1432. (1355.) *Asylum to be divided into apartments.* 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.

§1433. (1356.) *Georgia inmates preferred.* 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.

§1434. (1356 a.) *Applicants must be citizens of Georgia.* Every one sent to the Asylum from any county in Georgia must be shown, in the exemplification of proceedings, to be at the time strictly a citizen of this State, in terms of the law relating to citizenship. Acts 1874,
p. 91.

§1435. (1357.) *Resident pay patients, how admitted.* 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 from one of such physicians and two respectable citizens, stating the cause of the application. Acts 1857,
p. 123.

§1436. (1357 a.) *Exemplification must be certified.* The exemplification of proceedings sent with the party committed, shall, in all cases, be certified to be a true copy from the book of record kept for that purpose. Acts 1874,
p. 92.

§1437. (1358.) *Non-resident pay patients, how admitted.* 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 is secured.

§1438. (1359.) *Pay patients may be classified.* Pay patients may be divided into different classes, according to the accommodation desired and their means of paying.

§1439. (1360.) *Pauper patients, and how they are classified.* 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.

§1440. (1361.) *Pauper patients, how supported.* 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.

§1441. (1362.) *Pauperism ceasing, patients must pay.* 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.

§1442. (1363.) *Discharged paupers must be clad, etc.* A pauper patient shall not be discharged from the Asylum without proper clothing and a sum of money necessary to carry him to his residence or the county from whence he was sent.

§1443. (1364.) *Trial of lunacy may be demanded, etc.* 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.

§1444. (1365.) *How trial may be demanded.* 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 affi-

davit that the cause of commitment has ceased to exist, and there is a refusal by the superintendent to discharge after demand made.

§1445. (1368.) *Insane negroes, etc.* Apartments must be provided for insane negroes, residents of this State, who are able or unable to support and take care of themselves. Those negroes who are able must pay for their support; those unable must be supported as other pauper patients. The certificate of the ordinary of the county where the negro resides, of his condition, mentally and pecuniarily, shall be sufficient to grant his admittance.

§1446. (1369.) *Insane convicts, how admitted.* If a penitentiary convict becomes afflicted so that the affliction would entitle another person to a place in said Asylum, 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 offense for which sentenced, the county from whence sentenced, and his term of service, which shall be filed away.

§1447. (1370.) *How supported.* If said convict has the necessary means, he shall pay for his support as long as he remains at the Asylum.

§1448. (1371.) *Cured convicts, how disposed of.* 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.

§1449. (1372.) *Temporary disposition of patients.* 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.

§1450. (1373.) *Absentees for three months must be recommitted in form.* 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.

§1451. (1374.) *Insane criminals, how dealt with.* 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.

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PRIVATE INSANE ASYLUMS, PROTECTION OF INMATES.

Acts 1892,
p. 109.

§1452. *Letters of inmates of asylums protected.* Each inmate of every private insane asylum in this State shall be permitted to select one person, a relative or friend, from the outside world, with whom he or she may correspond by letter whenever he or she may desire, and over every such letter or letters directed to such chosen relative or friend there shall be no censorship exercised or allowed by any of the asylum officials or employees; but the post-office rights of such inmates, so far as the person so chosen is concerned, shall be as free and unrestricted as those of any citizen of the United States and shall be under the protection of the postal laws; every such inmate shall have the right, if he or she so desires, to make a new choice of such correspondent every three months. It shall be the duty of the superintendent to furnish every such inmate, if requested to do so, with suitable materials for writing, inclosing, sealing, stamping, and mailing at least one letter a week, unless the inmate is otherwise furnished with such materials, and all such letters shall be dropped by the writers thereof, accompanied by an attendant when necessary, into a United States post-office box; but the attendant shall in all cases see that such letters are directed to the patient's correspondent, and if they are not so directed they shall be held subject to the superintendent's disposal.

Acts 1890-1,
p. 237.

§1453. *Regulating correspondence.* It is hereby made the duty of the superintendent to keep registered and posted in some public place in the asylum a true list of the names of all persons so chosen, and by whom chosen, and it is hereby made the duty of the superintendent to inform each person so chosen of the name of the party choosing him or her, and to request him or her to write his or her name on the outside of the envelope of every letter he or she writes to such inmate, and all such letters bearing the writer's name on the outside shall be promptly delivered to the person addressed and shall not be opened or read by any one without the voluntary consent of the party to whom the same is addressed being first obtained: *Provided, however,* if there is any reason to believe that the envelope contains material which might be used for medication, then, in that case, the letter shall be opened in the presence of a competent witness, and this substance shall be delivered to the superintendent to be disposed of at his discretion, but the letter must be delivered as directed.

Acts 1892,
p. 109.

§1454. *This law to be posted in every ward.* A copy of this law shall be printed, framed, and kept posted in every ward of every private insane asylum in the State.

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§1455. *Given in charge to grand juries.* The judges of the superior courts shall give this law in special charge to the grand juries of such counties as have private lunatic asylums located therein, and require said juries to see that the provisions of this Act are enforced. Acts 1892, p. 109.

CHAPTER 3.

HEALTH AND QUARANTINE.

§1456. (2226.) *Destroying property for public good.* 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.

Property in a city destroyed for public good, as to compensation for: 7 Ga. 200. When city responsible for destroying a house to prevent spread of fire, and one's effects injured: 48 Ga. 133–136.

If property is nuisance, endangering public health or safety, may destroy without compensating owner: 95 Ga. 323.

§1457. (1375.) *Hospitals, how established.* The authorities of any town or city may establish in them, respectively, or in the vicinity thereof, hospitals or pest-houses, to be subject to such regulations as the corporate authorities may make to prevent the spread of infectious or contagious disease; but in all cases where such hospitals or pest-houses shall be established out of the limits of such towns, they 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 ordinaries are vested with power to establish such hospitals and make such regulations.

§1458. (1376.) *Quarantine, how prescribed and regulated.* 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

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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: *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.

Acts 1880-1,
p. 70.
1884-5, p. 46. §1459. (1877.) *Quarantine towns.* Any town may establish a quarantine 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, and the jurisdiction of the corporation of Darien shall, in cases of quarantine, extend to all ships and vessels which shall enter at any port or inlet from St. Catharine's to Dobby Sound, and the jurisdiction of the corporation of Brunswick shall, in cases of quarantine, extend to all ships and vessels which shall enter any port or inlet from Altamaha Sound to St. Andrew's Sound, and the jurisdiction of the corporation of St. Mary's shall, in cases of quarantine, extend to all ships and vessels which shall enter any port or inlet from Cumberland Sound to St. Mary's river, including all inlets, rivers, and creeks within those limits.

§1460. (1878.) *Vessels may be removed to quarantine-ground.* The health officer or visiting physician of such town may, under the direction of the corporate authorities, cause any 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.

§1461. (1879.) *Persons escaping quarantine, how dealt with.* 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.

§1462. (1880.) *Master of vessels must deliver bill of health, etc.* 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.

§1463. (1881.) *Inland travelers to perform quarantine.* Any person coming into town by land from a place infected with a contagious disease may be compelled to perform quarantine by the health offi-

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cer, under the direction of the corporate authorities, and restrained from traveling until discharged.

§1464. (1382.) *Duty of pilots before entering vessels.* 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.

§1465. (1383.) *Persons on board of vessels shall observe quarantine.* No person on board such ship or vessel in which such disease shall exist, or whilst such ship or vessel is performing 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.

§1466. (1384.) *Proclamation of Governor as to contagious diseases.* 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.

§1467. (1385.) *Violators of quarantine may be indicted.* Any person coming into this State by land or water from any place infected with contagious disease, and in violation of quarantine regulations, may be indicted in any county in which he may be found.

§1468. (1386.) *Persons concealing smallpox indictable.* Any physician or other person who shall conceal a case of smallpox, 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 ordinary, may be indicted.

§1469. (1387.) *Fines, how disposed of.* 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 the treasury of the city or county, and may be expended in aid of the quarantine and other sanitary laws, and toward the support of the poor thereof.

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§1470. (1388.) *Performance of quarantine, how certified.* 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 every vessel of more than two hundred tons, and one dollar for every vessel of not more than two hundred tons.

§1471. (1389.) *Fees of health officer, how paid.* 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.

Acts 1865-6,
p. 88.

§1472. (1390.) *Smallpox hospitals.* The ordinary of each county, or the corporate authorities of any town or city in this State, within the limits of which the smallpox has appeared, or may appear, are authorized and empowered to provide a suitable hospital for those so afflicted, and to furnish them with medical or any other attention that in their judgment those so afflicted may require.

Acts 1865-6,
p. 88.
§4238.

§1473. (1391.) *Quarantine regulations.* Such ordinary or corporate authorities may also provide proper quarantine regulations to prevent the spread of said disease: *Provided*, that no person shall be forced to leave his or her home to go to the hospital aforesaid, when they are properly provided for and guarded at their own expense; said court shall not pay any expense of any case so situated.

Acts 1865-6,
p. 88.

§1474. (1392.) *Expenses.* Said ordinary or corporate authorities shall make, or cause to be made, a proper and just account of all expenses accruing from such quarantine and other attention, either medical or nursing, of all they may have under control, and who submit to the regulations of said court or corporate authorities.

Acts 1865-6,
p. 88.

§1475. (1393.) *Vaccine, how distributed.* The Governor is authorized and required to procure the necessary quantity of genuine vaccine matter, either by purchase or manufacture, at such reasonable compensation as he may contract for, and have the same transmitted to the ordinaries of each county in this State for immediate use.

§1476. (1465.) *Regulations for keeping gunpowder.* The several incorporated towns or cities of this State, within their corporate limits, and the ordinaries 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.

CHAPTER 4.

PRACTICE OF MEDICINE, HOW REGULATED.

ARTICLE 1.

PRACTITIONERS.

§1477. *Who may practice.* No person shall practice medicine with-^{Acts 1880-1,} in this State, unless he has been heretofore legally authorized so to^{pp. 172,} do, or shall be hereafter authorized so to do, by a diploma from an^{173.} incorporated medical college, medical school, or university, or has,^{1882-3, p. 68.} after attending one or more full terms at a regularly chartered med-^{1894, p. 86.} ical college, been in active practice of medicine since the year 1866, or who was by law authorized to practice medicine in 1866, or shall have been licensed by the medical board.

§1478. (1409 b.) “*Practice medicine*” defined. For the purpose of^{Acts 1880-1,} this Chapter, the words “practice medicine” shall mean, to suggest,^{p. 173.} recommend, prescribe or direct, for the use of any person, any drug, medicine, appliance, apparatus, or other agency, whether material or not material for the cure, relief, or palliation of any ailment or disease of the mind or body, or for the cure or relief of any wound, fracture, or other bodily injury or any deformity, after having received or with the intent of receiving therefor, either directly or indirectly, any *bonus*, gift, or compensation.

§1479. (1409 c.) *Practitioners must register.* Every person lawfully^{Acts 1880-1,} engaged in the practice of medicine within this State, before com-^{p. 173.} mencing to practice, shall register in the office of the clerk of the superior court of the county wherein he resides and is practicing, or intends to commence the practice of medicine, in a book to be kept for the purpose by said clerk, his name, residence, and place of birth, together with his authority for practicing medicine, as prescribed in this Chapter. The person so registering shall subscribe or verify, by oath or affirmation, before a person duly qualified to administer oaths under the laws of this State, an affidavit containing such facts, and whether such authority is by diploma or license, and the date of same, and by whom granted, which shall be exhibited to the county clerk before the applicant shall be allowed to register. The county clerk shall receive a fee of fifty cents for each registration, to be paid by the person so registering.

Failure to register, because clerk neglected to get book, will not prevent recovery of fees for services: 75 Ga. 439.

§1480. (1409 d.) *Must register again on removal.* Any such regis-^{Acts 1880-1,} tered physician in this State, who may change his residence from^{p. 173.}

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one county into another county in this State, shall register within the clerk's office of the county to which he removes and wherein he intends to reside, and to practice medicine, as provided in the preceding section.

Acts 1880-1,
p. 173.

§1481. (1409f.) *Medical officers excepted.* Nothing in this Chapter shall apply to commissioned medical officers of the United States army or navy, or to the United States marine hospital service, or to legally qualified dentists in the practice of their profession, or to any woman practicing only midwifery.

GENERAL NOTE.—Every obligation that springs out of the practice of the profession of medicine without a license is void: 10 Ga. 570. Liability for medical relief furnished a slave, as between the owner and the hirer: 14 Ga. 259. Hirer of the slave, in the absence of contract, was liable for necessary attention and nursing of a sick slave: 20 Ga. 87. Where A. paid a medical account for a physician furnishing professional aid to a son of B., yet to recover of B. he must show an urgent necessity or special request from B. for him so to do: 18 Ga. 457. Where it was not averred or proved that the plaintiff was a licensed physician, yet all this was waived by the defendant, not demurring to the declaration: 18 Ga. 693. Physician under section 2573 must be one licensed under and by the board of physicians of this State: 17 Ga. 595. Physicians, experts as to disease and their opinions as such evidence: 26 Ga. 705. Also their opinions as experts as to insanity: 31 Ga. 425-468. Also as to race: 39 Ga. 232. Proof of diploma of medical corporation out of the State must be shown by evidence of its legal existence and charter: 27 Ga. 76; 59/101. It is not an implied contract that an employer is to pay employee's physician's bill: 29 Ga. 399. Where a physician is licensed by authority of the State, the city of Savannah cannot compel him under penalty to take out license before he can practice in that city: 36 Ga. 460. Suit for medicines, visits, and prescriptions by one who was not licensed as a physician, although he was licensed as an apothecary: 41 Ga. 627. A physician attending on a child voluntarily in an exigency, although at the instance primarily of a third party, yet may hold the child's father responsible to him for such services eventually: 59 Ga. 409

ARTICLE 2.

MEDICAL BOARD.

Acts 1894,
p. 86.

§1482. *Medical board, how appointed.* The Governor shall appoint for this State three separate boards of medical examiners of five members each, as follows: One board to consist of five members of the regular school of medicine; one board of five members of the eclectic school of medicine; and one board of five members of the homeopathic school of medicine. The members of each of said boards shall be men learned in medicine and surgery, of good moral and professional character, and graduates of reputable medical colleges; but none of them shall be members of the faculty of any medical college. Each of said three boards shall be wholly independent

of and separate from the other two in the performance of the duties herein required of each of said boards. A majority of each board shall constitute a quorum.

§1483. *Terms of office.* The term of office of said members shall be ^{Acts 1894,} for the term of three years: *Provided*, that two members of each _{p. 86.} board shall first be appointed for one year, two for two years, and one for three years; and subsequently each appointment shall be for the full term of three years. Any vacancy that may occur in said board, in consequence of death, resignation, removal from the State, or from other cause, shall be filled for the unexpired term by the Governor.

§1484. *Oath of office.* Immediately and before entering upon the ^{Acts 1894,} duties of said office, the members of said boards of medical exam- _{p. 86.} iners shall take the following oath: “I do swear that I will faithfully perform the duties of a member of the board of medical examiners for the State of Georgia, to the best of my ability—so help me God;” and shall file the same in the office of the Governor of the State, who, upon receiving the said oath of office, shall issue to each examiner a certificate of appointment.

§1485. *Officers and meetings.* Immediately after the appointment ^{Acts 1894,} and qualification of said members, each board shall meet and or- _{p. 86.} ganize. The officers of said board shall be a president, vice-president, and secretary (who shall act as treasurer). Said officers shall be members of and elected by their respective boards. Each board shall hold at least two regular meetings in each year. One meeting shall be held on or just before graduation day of each medical college now chartered, or that may hereafter be chartered, in this State, and the board of examiners, after consultation with the faculty of said college, shall fix a time for its meeting to suit a majority of the students graduating from said college; the other, on the second Tuesday in October. The meetings of each board may be held in such city as each board may determine for itself. Special meetings may be held upon the call of the president and two members of each board; but there shall not be less than two regular meetings in each year. Each board may prescribe rules, regulations, and by-laws for its proceedings and government, and shall keep permanent record of its actions. And each board shall examine and pass upon the qualifications of applicants for the practice of medicine in the State, as herein prescribed.

§1486. *Who may be examined.* It shall be the duty of each board, ^{Acts 1894,} at any of its meetings, to examine only persons making applica- _{p. 87.} tion to it, who are graduates of an incorporated medical college, school, or university, that requires not less than three full courses of study of six months each, who shall desire to commence the practice of

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medicine or surgery in the State, and who shall not by the provisions of this Article be exempt from such examination; but any person now matriculated as a student of medicine at any medical college, after graduation, and any person from another State who shall have graduated prior to April 1st, 1895, at a lawfully chartered medical college requiring only two full courses of study, shall be eligible for examination and license: *Provided, always,* that the applicant for such examination shall hold a lawfully conferred diploma from an incorporated medical college which conforms to the system of practice represented by the board to which the application shall be made; unless the applicant desires to practice a different system from that recognized in his diploma, then he shall appear before the board which represents the system that he proposes to practice. But in no event shall an applicant who stands rejected by one of said boards be examined or licensed by either of the other boards. If the applicant desires to practice a system not represented by any of the boards hereby established, he may elect for himself the board before which he will appear for examination. When an applicant shall have passed an examination satisfactory as to proficiency before the board in session, the president thereof shall grant to such applicant a certificate to that effect. A fee of ten dollars shall be paid to such board through such officer or member as it may designate, by each applicant, before such examination is had. In case an applicant shall fail to pass a satisfactory examination before any board, he shall not be permitted to stand any further examination before any of the boards within the next three months thereafter. Nor shall he again have to pay the fee prescribed aforesaid for any subsequent examination: *Provided,* that when, in the opinion of the president of any board, any applicant has been prevented by good cause from appearing before said board, the president and two members of said board designated by him shall constitute a committee, who shall examine such applicant, and may, if they see fit, grant him a certificate which shall have the same force and effect as though granted by a full board, until the next regular meeting of the board, when, if the applicant fails to appear for examination, said certificate shall be void.

Acts 1894,
p. 88.

§1487. *Use of fund raised from fees.* The fund raised from the fees aforesaid shall be applied by each examining board to the payment of its expenses and to making a reasonable compensation to the president, secretary, and members thereof.

Acts 1894,
p. 88.

§1488. *Certificate must be recorded.* Before any person who obtains a certificate from any board, or from a committee of any board, may lawfully practice medicine or surgery in this State, he shall cause the said certificate to be recorded in the office of the clerk of

the superior court in the county in which he resides. But if he does not reside in the State of Georgia, he shall cause said certificate to be recorded in any county within this State in which he offers to practice. The certificate shall be recorded by the clerk in a book kept for that purpose. It shall be indexed in the name of the person to whom the certificate is granted. The clerk's fee for recording a certificate shall be the same as for recording a deed.

§1489. *Unlawful to practice without complying with this Article.* From and after the first day of January, 1895, it shall be unlawful for any person to commence the practice of medicine or surgery in this State without complying with the provisions of this Article. But nothing in this Article shall apply to persons then lawfully engaged in the practice of medicine or surgery in the State of Georgia, to any commissioned medical officer or contract surgeon of the United States army or navy or marine hospital service, in the performance of their duties as such; nor to any physician or surgeon residing in any State or Territory of the United States or in the District of Columbia, who may be *bona fide* called in consultation in a special case with a legally qualified physician or surgeon residing in this State; nor shall this Article be construed as affecting or changing, in any way, laws in reference to license tax to be paid by physicians and surgeons: *Provided*, that a non-resident physician or surgeon called in consultation in a special case, as above prescribed, shall not be permitted to engage in continuous practice or consultation in connection with any resident physician or surgeon under any form of contract or agreement, direct or indirect. Acts 1894,
p. 88.

§1490. *Who to be regarded as practicing.* Any person shall be regarded as practicing medicine or surgery, within the meaning of this Article, who shall prescribe for the sick or those in need of medicine or surgical aid, and shall charge or receive therefor money or other compensation or consideration, directly or indirectly: *Provided, however*, that midwives and nurses shall not be regarded as practicing medicine or surgery. Acts 1894,
p. 88.

§1491. *Penalty.* Any person who shall practice medicine or surgery in this State in violation of the provisions of this Article, shall, upon conviction, be punished as for a misdemeanor for each offense; and it shall not be lawful for him to recover compensation for service which may be claimed to have been rendered by him as such physician or surgeon. Acts 1894,
p. 89.

CHAPTER 5.

STATE BOARD OF PHARMACY.

Acts 1880-1,
p. 184.
1889, p. 89. §1492. *Appointment of.* The Governor of this State shall appoint five experienced druggists, or practical pharmacists, from the names of ten persons suggested by the Georgia Pharmaceutical Association, who shall have been actually engaged in the drug business within this State for the three years immediately preceding their appointment, and the five so appointed shall constitute the "Georgia State Board of Pharmacy," one of whom shall hold his office for one year, one for two years, one for three years, one for four years, and one for five years, or until his or their successors shall have been legally appointed and qualified; and at each and every annual meeting the said Georgia Pharmaceutical Association shall submit to the Governor the names of five persons, with the qualifications hereinbefore mentioned, and the Governor shall appoint from said names so submitted one member of said board, who shall hold his office for five years, until his successor is duly appointed and qualified.

§1493. *Oath and certificate of appointment.* Immediately, and before entering upon the duties of said office, the members of said board shall take the oath prescribed by the Constitution of the State for State officers, and shall file the same in the office of the secretary of State, who upon receiving the said oaths of office, shall issue to each of said examiners a certificate of appointment.

Acts 1880-1,
p. 184.
1889, p. 89. §1494. *Adopt rules and regulations.* Said board shall meet and organize as a State board of pharmacy, elect a chairman and secretary, adopt such rules, regulations, and by-laws as they shall deem necessary to carry into execution the provisions of this Chapter.

§1495. *Meetings.* Said board shall meet at least once every twelve months, at such place as a majority of the board may determine, and the board may also hold special meetings as frequently and at such places as the proper discharge of its duties shall require; the same to be convened by order of the chairman, and the rules or by-laws shall provide for the giving of proper notice of the time and place of all such meetings to the members of the board and to the public.

Acts 1890-1,
p. 234.
1883, p. 146. §1496. *Their duty.* It shall be the duty of the board to grant license—

1. To druggists, who, after three years experience in a drug-store managed by a licensed apothecary or pharmacist, shall have passed a satisfactory examination before the said board of pharmacy.

2. To such physicians, graduates of a regular medical college, and such graduates of schools of pharmacy as shall have passed a satisfactory examination before said board of pharmacy.

3. To pharmacists who have obtained license from such other State boards of pharmacy as may be recognized by said Georgia State board of pharmacy.

All licenses granted shall be signed by a majority of the whole board; shall specify the ground upon which such license is granted; shall be in such form as the board shall prescribe, and shall be posted in a conspicuous place in the place of business of such licentiate: *Provided*, that this Chapter shall not apply to physicians who are graduates of medical colleges in good standing, and who have been practicing medicine for five years prior to October 25th, 1889.

§1497. *Permanent license.* All persons applying for examination and license shall pay to the board of pharmacy the sum of five dollars, and if passing the examination shall be furnished with the license as hereinbefore provided, and an annual renewal fee of two dollars shall be paid to said board. Should an applicant prefer, he may at the time of examination pay said board fifteen dollars, and shall receive therefor a permanent license. Any one who has paid five dollars for examination, who is not in arrears for renewal fees, and who shall pay ten dollars to the board, shall receive a permanent license. Should the applicant fail to stand a satisfactory examination no fee shall be charged for a subsequent examination, such subsequent examination not to be granted within six months after the first. And it shall be the duty of the board to keep a record of its transactions in a book to be kept for that purpose by the secretary, said book to be turned over to their successors in office. All moneys received in excess of six hundred dollars by said board shall be paid into the treasury of the Georgia Pharmaceutical Association, and said board shall make an annual report to the Georgia Pharmaceutical Association. Acts 1893,
p. 108.

§1498. *Registration of druggists and apothecaries.* All persons now lawfully engaged in the compounding and vending of medicines, drugs, and poisons in this State, shall, on or before December 1st, 1881, and every person who shall be hereafter duly licensed under the provisions of this Article, shall, before engaging in any business under said license, register in the office of the ordinary of the county wherein he resides, or intends to conduct said business, in a book to be kept for that purpose by said ordinary, his name, nationality, and credentials and date thereof, under which he is entitled to engage in such vocation. For each registration the ordinary shall receive fifty cents, to be paid by the party so registering, and a certificate of such registration, stating the terms of the same, shall be given him by said ordinary.

§1499. *Exemption.* No person shall engage in the compounding or vending of medicines, drugs, or poisons within this State without a full compliance with this Article, except—

State board of pharmacy.

1. Such druggists as are exempted from the operations of the present law by the statutes of the State of Georgia, and such druggists as have heretofore obtained license, and are legally authorized by existing laws to compound and vend drugs, poisons, and chemicals.

2. Physicians putting up their own prescriptions, and dispensing medicines from their own office.

3. Merchants selling family medicines not poison, as prescribed and allowed by the Code of Georgia.

4. Assistants in drug-stores where the manager has complied with the requirements of this Article.

Acts 1880-1,
p. 185.
1889, p. 89.
1893, p. 108.

§1500. *Adulterated preparations; samples furnished for analysis.* No person shall, within this State, manufacture for sale, offer for sale, or sell, any drug, medicine, chemical, or pharmaceutical preparation which is adulterated. A drug, medicine, chemical, or pharmaceutical preparation shall be deemed to be adulterated: (1) If when sold under or by a name recognized in the United States Pharmacopœia it differs from the standard in strength, quality, or purity laid down therein. (2) If, when sold under or by a name not recognized in the United States Pharmacopœia, but which is found in some other standard work, it differs materially from the standard of strength, quality, or purity laid down in such work. (3) If its strength, quality, or purity falls below the professed standard. Every person manufacturing, offering for sale, or selling any drug, medicine, chemical, or pharmaceutical preparation shall furnish to the State board of pharmacy, or any person interested or demanding the same, who shall tender him the value of the same, a sample sufficient for the analysis of any such drug, medicine, chemical, or pharmaceutical preparation which is in his possession.

Acts 1880-1,
p. 185.
1889, p. 89.

§1501. *Board may prosecute dealer in adulterated drugs.* On complaint being made, the board of pharmacy is hereby empowered to employ an expert chemist or analyst to examine into the so-claimed adulteration, and report upon the result of his investigation, and if said report justify such action, the board shall cause the prosecution of the offender, and any person found guilty of adulteration, as defined in this Chapter, shall be adjudged to pay, in addition to the fine hereinafter provided for, all necessary costs and expense incurred in inspecting and analyzing such adulterated articles of which said person may have been found guilty of manufacturing, selling, or offering for sale.

§1502. *Penalty.* Any person who shall violate the provisions of this Chapter, or shall register fraudulently, shall be guilty of a misdemeanor. In all cases of prosecution under this Chapter, the burden shall be upon the defendant to show his authority.

Dentists and practice of dentistry.

§1503. *Fees paid, board, etc.* All the fees for examinations and licenses, and one-half the fines collected from convictions under this Chapter, shall be paid to the board of pharmacy, to defray the expenses of the same, and as compensation for their services.

CHAPTER 6.

DENTISTS AND PRACTICE OF DENTISTRY.

§1504. (1410.) *Who may practice.* It shall be unlawful for any person to engage in the practice of dentistry in the State of Georgia unless said person shall obtain a license from a board of dentists duly authorized and appointed under the provisions of this Chapter to issue license. Acts 1872, p. 27. 1884-5, p. 64.

§1505. (1411.) *Board of examiners.* The board of examiners shall consist of five dental graduates or practitioners of dentistry, who are members in good standing of the Georgia State Dental Society: *Provided*, said graduates or practitioners have been practicing in the State of Georgia for a term of not less than three years. Said board shall be elected to serve for two years. The president of said Georgia State Dental Society shall have power to fill all vacancies in said board for unexpired terms. Acts 1872, p. 27. 1884-5, p. 64.

§1506. (1412.) *Duty of board.* It shall be the duty of this board—
1. To meet annually at the time of meeting of the Georgia Dental Society, or oftener, at the call of any three members of said board. (Thirty days notice must be given of the annual meeting.)

2. To prescribe a course of reading for those who study dentistry under proper private instruction.

3. To grant license to all applicants who undergo a satisfactory examination.

4. To keep a book in which shall be registered the names of all persons licensed to practice dentistry in the State of Georgia.

§1507. (1413.) *Quorum of the board.* Three members of said board shall constitute a quorum for the transaction of business, and should a quorum not be present on the day appointed for their meeting, those present may adjourn from day to day until a quorum is present. Acts 1872, p. 28.

§1508. (1414.) *Books of the board are evidence.* The book so kept by the board shall be a book of record, and a transcript from it, certified to by the officer who has it in keeping, with the common seal, shall be evidence in any court in the State. Acts 1872, p. 28.

§1509. (1415.) *Temporary license, who may issue.* One member of said board may grant a license to an applicant to practice until the next regular meeting of the board, when he shall report the fact, at which time the temporary license shall expire; but such temporary Acts 1872, p. 28.

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license shall not be granted by a member of the board after the board has rejected the applicant.

Acts 1878-9,
p. 70.

§1510. (1417 a.) *Dentists must register.* Every person practicing dentistry in this State shall register his name, together with his post-office, and the date of his diploma or license, in the office of the clerk of the superior court of the county in which he practices, and shall, on the payment to such clerk of a fee of fifty cents, be entitled to receive from him a certificate of such registration.

GENERAL NOTE ON CHAPTER 6.—Services of, when necessities to infant: 30 Ga. 37, and note to section 3648.

CHAPTER 7.

PROTECTION OF CEMETERIES.

Acts 1887,
p. 86.

§1511. *Board for distribution of bodies.* Professors and demonstrators of anatomy, the deans of medical and dental colleges now or hereafter incorporated under the laws of this State, are a board for the distribution and delivery of dead bodies, hereinafter described, to and among such institutions as are entitled thereto. The board shall have power to establish rules and regulations for its government, and to appoint and remove its officers; and shall keep minutes of its transactions, and records shall be kept, under its direction, of all bodies received and distributed, and of the persons or institutions to whom the same may be distributed, which shall be open at all times to the inspection of members of said board, and of any solicitor-general, or solicitor of any city or county court.

Acts 1887,
p. 86.

§1512. *Delivery of certain bodies.* All public officers of this State and their assistants, and all officers and their deputies of every county, city, town, or other municipality, and of every prison, chain-gang, penitentiary company, morgue, or public hospital in this State, having control over any dead human body not dead from any contagious or infectious disease, and required to be buried at public expense, are required to notify the board of distribution, or such person as may from time to time be designated in writing by said board, or its duly authorized officer, whenever any such bodies come into their possession or control, and shall, without fee or reward, deliver such bodies, and suffer the board, and its duly authorized agents, who may comply with the provisions of this Chapter, to remove all such bodies, to be used only within this State, solely for the advancement of medical science: *Provided*, that no such notice shall be given, nor shall any such body or bodies be delivered, if any person claiming to be and satisfying the authorities in charge of

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said body or bodies that he or she is of any degree of kin, or is related by marriage to, or socially or otherwise connected with and interested in the deceased, shall claim the said body or bodies for burial, but it or they shall be at once surrendered to such person for interment, or shall be buried at public expense at the request of such claimant, if a relative by blood or a connection by marriage: *Provided*, he or she is financially unable to supply such body or bodies with burial.

§1513. *Travelers dying suddenly.* Such notice shall not be given or such bodies be delivered if the deceased person was a traveler who died suddenly, in which case said body shall be buried. Acts 1887, p. 86.

§1514. *How long retained.* Such body shall in each and every instance be held and kept by the person or persons having charge or control of it or them at least twenty-four hours after death, before delivery to said board or its agent, during which period notice of the death of such person shall be posted at the court-house door of the county in which said body or bodies are held. Acts 1887, p. 86.

§1515. *Distribution.* Said board, or its duly authorized agent, may take such bodies so delivered, and shall, upon receiving them, distribute them to and among the aforesaid schools or colleges, for lectures and demonstrations by said schools or colleges—the number assigned to each to be based upon the number of *bona fide* students in each dissecting or operative surgery class, which number of students shall be reported by the schools or colleges to the board at such times as it may direct: *Provided*, that said schools or colleges, upon receiving them and before any use is made of them, and without unnecessary mutilation or dissecting, shall cause them to be properly embalmed and carefully preserved and kept for a period of sixty days from the day of their reception, and shall deliver them properly prepared for burial to any person mentioned and described in section 1512, who shall claim such body for burial, within or before the expiration of said period of sixty days, and satisfy the officers of said school or college that he or she is such person as is under said section entitled to said body. If at the expiration of sixty days said body or bodies have not been claimed for burial, in the manner and by the person or persons herein described, said bodies shall then be used for the purposes specified by said school or colleges: *And provided further*, that when said bodies have been so used and are no longer needed or serviceable for the objects herein mentioned, they shall be decently interred by the said schools or colleges.

§1516. *Carriage of bodies.* The said board may employ a carrier or carriers for the conveyance of said bodies, which shall be well inclosed in a suitable incasement and carefully deposited free from public observation. Said carrier or carriers shall obtain receipts by

name, or if the person be unknown, by a description for each body delivered by him, and shall deposit said receipts with the secretary of said board, who shall record and preserve the same.

§1517. *Bond.* No school or college shall be allowed or permitted to receive any such body or bodies until a bond shall have been given to the Governor of this State, and his successors in office, by or in behalf of such school or college by its authorized officers, to be approved by the clerk of the superior court of the county in which said school or college may be situated, and to be filed in office of said clerk, which bond shall be in the sum of five thousand dollars, conditioned that said body or bodies, which the said school or college shall receive thereafter, shall be used only in the manner specified and solely for the promotion of medical science in this State. Suits thereon shall be in the name of the Governor, the recovery to be a part of the State educational fund.

§1518. *Expenses, how borne.* Neither the State, county, or municipality, nor officers thereof, shall be at any expense by reason of delivery or distribution of bodies; but all expenses thereof shall be borne by those receiving the body as prescribed by the board.

CHAPTER 8.

LIQUOR.

ARTICLE 1.

LICENSES FOR LIQUORS, SHOWS, ETC.

Act 1791,
Cobb, 1037.
Act 1825,
Cobb, 1038.
Acts 1884-5,
p. 59.
1890-1,
p. 128.
§§ 5472, 420.

§1519. (1419.) *License to sell, how obtained.* Persons, before obtaining license to sell spirituous, vinous, or malt liquors, must apply to the ordinary of the county, or to the county commissioners of the county where such boards exist, who have power to grant or refuse such application. Before any license shall be granted, the applicant shall present the written consent of ten of the nearest *bona fide* residents, five of whom shall be freeholders owning land, irrespective of county lines, nearest to the place of business where such liquors are to be sold: *Provided*, that this section shall not apply to incorporated towns or cities. 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 ordinary, 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 ordinary, filed in his office, and recorded in a

book kept for that purpose. Any person aggrieved may bring suit on such bond. Licenses granted in any other way are void.

Construing this section, license is to be issued for one year only: 65 Ga. 157. Section cited and construed: 42 Ga. 326; 30/679.

Arbitrary refusal of authorities to grant license gives no right to sell; remedy is *mandamus*: 65 Ga. 437.

Ordinary's discretion in granting or refusing liquor licenses, confined to retail licenses: 69 Ga. 743.

Granting license discretionary with commissioners: 78 Ga. 120.

Discretion of ordinary not divested by Schley county Act of 1875, providing that applicant must obtain consent of certain freeholders: 67 Ga. 583.

Authority to grant licenses to sell liquors in Putnam county, in commissioners of roads and revenues: 93 Ga. 38, 43.

Where consent of freeholders requisite, person selling under license granted without obtaining such consent does so at his peril: 76 Ga. 308.

License issued by clerk of Fulton's commissioners, without their authority void: 77 Ga. 661, 662.

Nearest resident to sign even if in adjoining county: 84 Ga. 140.

§1520. *Oath*. They shall also, at the same time, before said ordinary, take and subscribe the following oath: "I swear that I will not, during the next twelve months, sell, barter, give, or furnish spirituous or intoxicating liquors in any quantity, to any minor, either white or colored, without the consent of his or her parents, or guardian, and that I will not allow others to do so for me with my knowledge or consent. So help me God."

Section cited and construed; this oath to be made before the ordinary alone: 60 Ga. 636. Under the legislative grant to the commissioners of the town of Eatonton, referring to this law, they could require an oath of the clerk of the applicant: 14 Ga. 354, 355. This last preceding case referred to: 15 Ga. 346–348.

§1521. *Sale of domestic wines*. In every county in this State, where either under the general local-option law or any other local or general act the sale of spirituous and intoxicating liquors has been or may hereafter be prohibited, but with exceptions in relation to any kind of wines, a tax of ten thousand dollars shall be annually levied and collected from each and every dealer in domestic wines or other intoxicants not prohibited as aforesaid, for each place of business where it is sold: *Provided*, that nothing in this section shall be so construed as to levy a tax on dealers in or producers of wines manufactured from grapes or berries purchased by them or grown on lands owned, leased, or rented by said dealers: *And provided further*, that said wines shall not be sold in quantities less than one quart, and shall not be drunk on the premises where sold. Acts 1887,
p. 21.

§1522. *Method of collection*. Said tax shall be collected as now prescribed by law for collecting the liquor tax of this State, and it is made the duty of the tax-collector of the county to pay the same over when collected to the county treasurer as other county funds;

and upon his certificate of such payment to the ordinary of the county that said sum of ten thousand dollars has been paid, the ordinary shall issue a license to the proper party to sell such wines under the provisions of this Chapter.

Acts 1890-1,
p. 130.

§1523. *Domestic wines defined.* The term "domestic wine" shall mean wine made from berries, grapes, or other fruits grown in this State.

§1524. (535.) *Taxpayer may demand license.* Any taxpayer 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 its forfeiture; and if, on investigation, it appears that he has such license, he forfeits the sum of ten dollars and costs.

Process should be issued against the person who travels and vends without license: 51 Ga. 330.

§1525. (536.) *Violations, how punished.* If any ordinary, of his own knowledge, knows of such violation, or if any person will make affidavit of such fact, it is the duty of the several ordinaries 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 under *ca. sa.* Such process must be returned to the court whence it issues.

No application to the employer of peddler, or others than peddler himself: 84 Ga. 754.

§421.

§1526. (537.) *Shows, exhibitions, etc.* If any show is on exhibition in any county without the license required, it is the duty of the ordinary *instantly* to place such process in the hands of such officer; and if, on presentation, the license fee required and all costs are *instantly* paid, it shall discharge the same, but not otherwise; but if such course is not taken, it is no waiver of such forfeiture.

§1527. (538.) *Persons may defend.* 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.

§1528. (539.) *Damages.* 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

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verdict, and if they so find, the defendant shall pay twenty-five per cent. additional.

§1529. (540.) *Not to interfere with the Penal Code.* The penalties and forfeitures hereinbefore set forth are not to interfere with any provision of the Penal Code, that is or may be enacted, making such acts penal.

§1530. (541.) *Disposition of moneys.* The moneys arising from all 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. Act 1835, Cobb, 184.

ARTICLE 2.

INSPECTION OF LIQUORS.

§1531. (1580.) *Inspectors of liquors, etc., how appointed.* 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 ordinaries of the several counties shall have the same authority of appointment within the several counties out of the jurisdiction of the city authorities.

§1532. (1581.) *Oath and duty of such inspector.* Such inspector, after being duly appointed as aforesaid, and sworn by the clerk of the council, or ordinary, 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 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.

§1533. (1584.) *Fees of liquor-inspector.* 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 upward 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-

Regulating the sale of liquors.

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.

§1534. (1586.) *Inspection to be monthly.* 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.

ARTICLE 3.

REGULATING THE SALE OF LIQUORS.

Acts 1890-1,
p. 128.

§1535. *Unlawful to sell wholesale or retail without license.* No person, firm, or corporation, in this State, shall sell spirituous, vinous, or malt liquors in any county or village thereof, in any quantity, without first obtaining a license for the sale of such liquors.

Difference between liquors defined: 93 Ga. 816.

License necessary to sell in any quantity: 93 Ga. 38; 93/418; 95/337.

Whether bitters are intoxicating, is for jury: 93 Ga. 814.

Acts 1890-1,
p. 128.

§1536. (1420.) *Oath of venders.* By the first day in June in each year, and annually thereafter, venders of any quantity of spirituous liquors shall take and subscribe the oath, and upon neglecting to do so they are subject to all the penalties of venders without license.

Cited: 69 Ga. 743.

§1537. (1421.) *Sale confined to one place.* Such licenses do not authorize the persons to whom issued to sell at more than one place in the county, which place must be stated in the license. Different licenses are necessary for different places.

§1538. (1422.) *Corporate towns may grant license, when.* Said provisions do not apply to any corporation, town, or city which by charter has 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.

City of Griffin under its charter can so regulate the retailing of spirituous liquors as to make the fee for retail license \$500: 18 Ga. 586. Statutes empowering the common council of a town to levy a tax upon retailers of spirituous liquors do not apply to one who has already paid the State for the privilege: 29 Ga. 333. Where the legislature, on the 17th day of December, 1859, passed an act empowering the council of Cuthbert to regulate the retail of spirits, and "C." took out license on the 31st of December, 1859, to retail, he was subject to the ordinance passed by the council subsequent to the date of his license: 32 Ga. 211. City cannot, by ordinance subsequent to license by the county, collect additional tax: 5 Ga. 447. But see criticism on this case: 32 Ga. 213. Where by law corporate authorities can grant a license, the State's jurisdiction taken away: 14 Ga. 354. City ordinance to prevent retail of spirituous liquors by those to whom license had been granted, after ten o'clock at night, valid: 10 Ga. 532. Power not conferred on the commissioners of Decatur to

prohibit absolutely the sale of spirituous liquors in the town, but to exact a license fee of not more than \$50.00: 22 Ga. 203. City ordinance making it penal to sell spirits in quantities of a quart or more to be drunk on the premises where sold, is invalid, being inconsistent with the State law on the subject: 29 Ga. 56. Ordinance of Covington providing that the applicant for a license shall produce, before receiving such license, the written recommendation of four of his nearest neighbors, each signature to represent a separate and distinct establishment, is valid: 43 Ga. 421. Illegal license fee paid to a municipal corporation can be recovered back by the party: 48 Ga. 309. Section cited and construed: 42 Ga. 326; 30/679.

City ordinance here did not conflict with county act: 77 Ga. 663.

City grocery license does not confer authority to sell liquors: 77 Ga. 663.

Where ordinance requires license paid in advance of sale, town privately extending time of payment has no lien as against subsequent *bona fide* purchaser: 80 Ga. 724.

Baldwin county commissioners of roads and revenues could not grant licenses for Milledgeville for 1892: 91 Ga. 461.

§1539. (1423.) *Seller shall not sell to one who is drunk.* A seller 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 recover by law for any spirituous liquors furnished to such person during the current year. Acts 1875,
p. 17.

See notes to section 444 of Penal Code.

§1540. (1424.) *Who is a retailer.* The sale of such liquors in quantities less than one quart makes the seller a retailer.

Sale by druggist of whisky at his drug-store in quantities less than a quart, where he has no retail license, is subject to a penalty: 34 Ga. 533.

Cited: 69 Ga. 743.

Applied in defining word "retail" in act providing that certain liquors "shall not be delivered, sold, or furnished by retail," etc.: 69 Ga. 446.

GENERAL NOTE.—License to retail under the Act of 1809 (Cobb, 1038), city council cannot, by an ordinance subsequent to the date of such license, impose any additional tax: 5 Ga. 447. Where the city authorities could require an oath of the clerk of the applicant for license: 14 Ga. 354; 32/211. Party properly applying for a license is entitled to it: 15 Ga. 408. The Act of 1809 relates only to the price of licenses, not to the power of granting them: 30 Ga. 679. The special tax on retail dealers, under the Constitution of 1868, is legal, although license as retailer had been paid: 42 Ga. 596. In reference to the Acts of 1866 and 1868, providing for a tax on spirituous liquors, and the Act of 1869 is not to have a retroactive effect: 43 Ga. 480.

See notes to sections 428 *et seq.* of Penal Code.

Under prohibitory statutes concerning liquor traffic in Pike county, the incorporate towns therein are absolutely and unconditionally "dry": 83 Ga. 89.

Money paid for license voluntarily, though in good faith, and license illegally issued, not recovered back: 85 Ga. 468.

Whisky contracted and paid for in one county, to be sent by express to another, sold in first county when, and when in second: 93 Ga. 43, 44.

Local option.

ARTICLE 4.

LOCAL OPTION.

Acts 1890-1, §1541. *Election for or against sale of liquor.* Upon petition signed by one-tenth of the voters who are qualified to vote for members of the General Assembly in any county in this State, the ordinary shall order an election to be held at the places for holding elections for members of the General Assembly, to take place within forty days after the reception of such petition, to determine whether or not such spirituous liquors as are mentioned in section 1548 shall be sold within the limits of such designated places: *Provided*, that no election held under this Article shall be held in any month in which general elections are held, but all such elections as are held under this Article shall be separate and distinct from any other election whatever. The ordinary shall determine upon the sufficiency of the petition presented by the tax-books of the year before.

1884-5,
p. 121.
§§32, 34.

§1542. *After petition, what licenses issued.* No license shall be granted to sell intoxicating liquors in any county in this State, after the application has been made by the required number of voters and the order has been issued for holding an election, until the result has been declared: *Provided*, that no dealer whose license expires between the time said order for the election was issued and the time the result is declared shall be prevented from continuing his business until the result is declared, upon his depositing with the ordinary or board of commissioners the amount of his license; and in the event the sale of liquor is prohibited, the *pro rata* amount of said license shall be refunded, and said deposit shall operate as a license until such time as the result of such election is finally declared.

Acts 1884-5, §1543. *Publication of notices.* Notice of such elections to be held as by this Article provided shall be published once a week for four weeks, in the official organ of the ordinary or sheriff of the county where such elections are to be held, and such other notice may be given as the ordinary may think proper to give publicity to the election. Such election shall be held under the same regulations as are now prescribed by law for holding elections for members of the General Assembly, except as otherwise provided in this Article. All persons qualified to vote for members of the General Assembly are qualified to vote under the provisions of this Article: *Provided*, that they have actually resided within the territorial limits to be affected thereby at least six months next preceding the election.

Acts 1884-5, §1544. *Ballots.* All persons voting at any election held under the provisions of this Article, who are against the sale of such intoxi-

p. 121.

cating liquors as are mentioned in section 1548 of this Article, shall have written or printed on their tickets "Against the sale," and those who favor the sale of the articles, mentioned in said section 1548 shall have written or printed on their ballots "For the sale."

§1545. *Duplicate list of voters.* All managers of elections held as by this Article provided shall keep, or cause to be kept, duplicate lists of voters and tally-sheets, and it shall be the duty of such managers to deliver one list of the voters and tally-sheets to the clerk of the superior court, to be filed in his office, and one list of the voters, ballots, and tally-sheets to the ordinary, who shall carefully consolidate the returns, and decide all questions and contests arising under elections held by virtue of this Article. If the result of any election shall be against the sale, the ordinary shall publish the same once a week for four weeks in the paper in which he gave notice of the election. This Article shall take effect as soon as said publication has been made the time prescribed: *Provided*, no license to sell liquors of any description, prohibited by this Article, shall be granted during said time of publication.

Acts 1884-5,
p. 121.

Term "vested rights," as here referred to in original act, construed: 78 Ga. 668.

§1546. *Contest of elections.* Within twenty days from the day on which the ordinary declares the result, one-tenth of the number of voters having voted at such election may petition the superior court, setting out plainly and distinctly the cause of contest, when, if the cause set out is such as impeaches the fairness of the election, or the conduct of the ordinary, the judge shall grant an order, directed to three justices of the peace of the county, requiring them to recount the ballots on a given day, and report the result to the next term of the superior court of that county, or the term of the court to which the petition may be returnable, at which term the case shall be heard: *Provided*, ten days notice has been given the ordinary of the filing of the petition; but such petition shall not act as a *supersedeas* of the result as declared by the ordinary, nor shall the judge grant a *supersedeas*, and the contest so instituted shall not be continued by the superior court, but must be tried and determined at the term to which the same is returnable, and if the same is not held, then at the next regular term of the court; and in the event that any one or more of the plaintiffs or defendants to such contest shall die pending the contest, it shall not be necessary to make parties in place of such deceased party or parties. Either party may subpoena witnesses to prove either fraud in the ballots, the counting thereof, or in the conduct of the ordinary, or of the managers of the election, and introduce evidence to establish either proposition or the converse thereof. The judgment of the superior

Acts 1884-5,
p. 121.

Local option.

court shall be final, unless the case is carried to the Supreme Court for review. If the election shall appear to have been fraudulently conducted, or the votes fraudulently counted, the judge shall have power to declare the result and overrule the action of the ordinary in the premises.

Cited: 76 Ga. 263, 270; 17/673; 78/165.

Acts 1884-5, §1547. *Elections not oftener than once in four years.* If the result of p. 121. any election held under the provisions of this Chapter shall be for 1892, p. 106. or against the sale, then no other election shall be held in the same county in less than four years thereafter, which must be done upon a new petition and by otherwise conforming to this Chapter.

Stated: 94 Ga. 603.

Acts 1884-5, §1548. *Sale prohibited.* If a majority of the votes cast at any p. 121. election, held as by this Chapter provided, shall be against the sale, it shall not be lawful for any person within the limits of such county to sell or barter for valuable consideration, either directly or indirectly, or give away to induce trade at any place of business, or furnish at any other public places, any alcoholic, spirituous, malt, or intoxicating liquors, or intoxicating bitters, or other drinks which if drunk to excess will produce intoxication.

Cited: 77 Ga. 666; 89/483.

Acts 1884-5, §1549. *Domestic wine sold.* Nothing in this Chapter shall be so p. 121. construed as to prevent the manufacture, sale, and use of domestic wines or cider, or the sale of wines for sacramental purposes: *Provided*, such wines or cider shall not be sold in barrooms by retail, nor shall anything herein contained prevent licensed druggists from selling or furnishing pure alcohol for medicinal, art, scientific, and mechanical purposes.

Barroom defined: 79 Ga. 326.

Acts 1884-5, §1550. *No election where sale already prohibited.* No election shall p. 121. be held under the provisions of this Chapter for any county, city, town, or any other place in this State where by law the sale of spirituous liquors is already prohibited either by high license, local option, or other legislation, so long as these local laws remain of force.

GENERAL NOTE.—See notes to section 451 of Penal Code.

General local-option law not applicable to local acts merely regulating, but not prohibiting sale: 89 Ga. 121.

Act of August 11th, 1891, prohibiting sale of spirituous, etc., liquor within radius of three miles of church or schoolhouse, constitutional: 89 Ga. 821.

Power of mayor and council to adopt dispensary system: 89 Ga. 739.

Statute prohibiting sale of liquor, etc., within five miles of churches did not forbid sale under license granted under charter of town enacted by same legislature, two months before, when: 88 Ga. 635.

Local option.

Title of statute to regulate sale only, cannot absolutely prohibit: 88 Ga. 584.

Special local-option Act approved September 4th, 1885, not repealed by general local-option Act approved September 18th, 1885, in county of Douglas: 83 Ga. 616; see also 89 Ga. 121.

Special act subsequent to general local-option law, unconstitutional: 88 Ga. 584.

Act of 1887 no less prohibitory against sale of spirituous and intoxicating liquors than was Act of 1883 respecting incorporated towns in Pike county. Such towns are unconditionally "dry": 83 Ga. 89.

Local-option legislation being valid exercise of police power, incidental effect on value of property, *e. g.*, brewery, *damnum absque injuria*: 78 Ga. 668.

Act containing no provision for awarding costs, it was error to award them against the county: 78 Ga. 165.

"Vested" rights in fourth section of Act of 1885 means previously acquired rights to sell by virtue of license already taken out and paid for, not right to obtain new license after act goes into effect or to sell without license; applies to corporations: 78 Ga. 668.

In prosecution under one of the local-option laws passed by legislature, not necessary to allege or prove that law is operative in that county by adoption of people. Whether law of force is for court and not for jury: 81 Ga. 780.

Whenever legislature fails to except, in local-option law, persons who have already obtained licenses, its intention is manifestly to revoke such licenses: 82 Ga. 224.

Sale of domestic wines not inhibited in DeKalb: 79 Ga. 473.

City ordinance punishing the keeping for sale valid, notwithstanding section 10, Acts of 1884-5, p. 124: 77 Ga. 666.

Mandamus lies to compel ordinary to declare result of an election, but not any particular result, under Act of 1885: 77 Ga. 671; but not to compel him to receive and hear contest, when: 76 Ga. 263.

FOURTEENTH TITLE.

REGULATIONS FOR PARTICULAR BRANCHES OF TRADE AND AGRICULTURE.

CHAPTER 1.

INSPECTION.

ARTICLE 1.

INSPECTION, ANALYSIS, AND SALE OF FERTILIZERS.

SECTION 1.

ANALYSIS.

Acts 1890-1,
p. 143.

§1551. *Name of brand to be sold, filed with commissioner of agriculture.* All manufacturers of, or dealers in, commercial fertilizers, or chemicals, or cottonseed-meal to be used in manufacturing the same, who may desire to sell, or offer for sale, in the State of Georgia, fertilizers, chemicals, or cottonseed-meal, shall first file with the commissioner of agriculture of the State of Georgia the name of each brand of fertilizers or chemicals which they may desire to sell in said State, either by themselves or their agents, together with the name of the manufacturer, the place where manufactured, and also the guaranteed analysis thereof; and if the same fertilizer is sold under different names, said facts shall be so stated, and the different brands that are identical shall be named.

Acts 1890-1,
p. 143.

§1552. *Guaranteed analysis branded on packages.* All fertilizers, or chemicals for manufacturing the same, and all cottonseed-meal offered for sale or distribution in this State, shall have branded upon or attached to each bag, barrel, or package the guaranteed analysis thereof, showing the percentage of valuable elements or ingredients such fertilizer or chemical contains, embracing the following determinations:

Moisture at 212 degrees Fahrenheit, — per cent.

Insoluble phosphoric acid, — per cent.

Analysis.

Available phosphoric acid, — per cent.

Ammonia, actual and potential, — per cent.

Potash (K_2O), — per cent.

The analysis so placed upon or attached to any fertilizer or chemical shall be a guarantee by the manufacturer, agent, or person offering the same for sale, that it contains substantially the ingredients indicated thereby, in the percentages named therein, and said guarantee shall be binding on said manufacturer, agent, or dealer, and may be pleaded in any action or suit at law to show total or partial failure of consideration in the contract for the sale of said fertilizer, chemical, or cottonseed-meal.

Sale under guaranteed analysis, not exclude implied warranty of fitness here; may do so, if expressly agreed: 64 Ga. 601.

Act of 1877 cited, and held that note given for fertilizer not inspected, branded, and tagged, was void: 71 Ga. 162.

Seemle, that sale legal if packages, though not tagged, have analysis branded on them: 78 Ga. 634.

Unless lawfully inspected, contract for price not enforced: 79 Ga. 421.

Under plea that guano had not been inspected and branded, not necessary to show such fact beyond reasonable doubt. Rule of preponderance in civil cases applies: 67 Ga. 512.

In February, 1883, sale of fertilizers illegal unless sack had branded thereon manufacturer's analysis and inspector's tag attached thereto: 80 Ga. 417.

Sale by guarantee on each sack, not error to reject representations of agent as to grade and ingredients; if representations made from circular, circular should be produced: 81 Ga. 808.

Contract for fifteen tons guano, not severable; and one bag not branded, whole contract illegal and void: 84 Ga. 606.

Where defense to suit on fertilizer note that there was no analysis, burden was on defendant: 69 Ga. 761.

Plaintiff suing for price of fertilizers need not show inspection, tagging, and branding; *onus* is on defendant to show want thereof: 74 Ga. 398.

Georgia law requiring guano branded and tagged, not applicable where goods delivered out of State: 77 Ga. 257.

Statute does not contemplate inspection beyond limits of State, hence, commissioner cannot authorize same: 79 Ga. 421.

Georgia statutes as to the inspection of fertilizers, have no extraterritorial force: 82 Ga. 438.

Order on South Carolina house by letter, filled, purchase-money notes mailed thither, sale valid: 82 Ga. 438.

See notes to section 1576.

§1553. *Copy as evidence.* A copy of the official analysis of any fertilizer or chemical, under seal of the department of agriculture, shall be admissible as evidence in any of the courts of the State, on the trial of any issue involving the merits of said fertilizer.

Hearsay as to analysis by State chemist, and as to dissatisfaction of others in use of it, inadmissible: 81 Ga. 808.

To make copy evidence, analysis must be official—*i. e.*, by State chemist, from inspectors' samples, reported to and recorded by commissioner of agri-

Chemists and inspectors and fees.

culture; if recorded, *prima facie* "official," analysis at purchaser's instance, not "official": 94 Ga. 14.

Evidence of State chemist by interrogatories admissible in evidence to prove chemical ingredients of sample analyzed by him: 94 Ga. 14.

Acts 1890-1,
p. 222.
§1562.

§1554. *Inspection and analysis of cottonseed-meal.* No person or persons shall offer for sale in this State any cottonseed-meal until the same shall have been duly analyzed by the State chemist, and inspected as required by law in the matter of all fertilizers and chemicals for manufacturing or composting purposes. Nor shall it be lawful to offer such cottonseed-meal for sale in this State, if it be shown by the official analysis that the same contains less than seven and one-half per centum of ammonia: *Provided*, that the provisions of this Chapter as to the per centum mentioned in this section shall not apply to meal manufactured from sea-island cottonseed; but the commissioner of agriculture shall fix and make public a minimum per centum which shall control as to the cottonseed-meal referred to in this proviso: *Provided further*, that if any cottonseed-meal shall not analyze up to the required per centum of ammonia, the same may be offered for sale as a second-class meal: *Provided*, the true analysis be made known to the purchaser and stamped on the sacks.

§1555. *Analysis and number of pounds to be branded.* There shall be branded upon or attached to each sack, barrel, or package of cottonseed-meal offered for sale in this State, the true analysis as determined by the State chemist, and the number of pounds net in such sack, barrel, or package.

§1556. *Commissioner to carry out provisions* It shall be the duty of the commissioner of agriculture to take all steps necessary to make effective the provisions of this Article.

SECTION 2.

CHEMISTS AND INSPECTORS AND FEES.

Acts 1877,
p. 38.

§1557. (1553 c.) *Appointment of chemist.* It shall be the duty of the commissioner of agriculture to appoint an experienced and competent chemist to analyze all fertilizers, or chemicals for manufacturing the same, offered for sale or distribution in this State, and make such other analysis as may be required by the commissioner of agriculture. The said chemist shall take and subscribe, before some officer duly authorized to administer the same, an oath faithfully and impartially to perform all the duties which may be required of him under the provisions of this Chapter; which oath shall be filed in the office of the commissioner of agriculture.

Sale of fertilizers, when illegal.

His salary shall not exceed the sum of three thousand dollars per annum, which shall be full compensation for all duties which are or may be required of him under this Chapter, including the rent of laboratory and of apparatus, and cost of chemicals.

§1558. (1553 f.) *Term of office of chemist and inspectors.* The chemist and inspectors provided for in this Article shall hold their appointments at the pleasure of the commissioner of agriculture, during his term of office, unless otherwise removed according to law. Acts 1877,
p. 38.

§1559. *Assistants for State chemist.* It shall be the duty of the State chemist to employ two assistants, at a salary not exceeding one thousand dollars each per annum, whose duty it shall be to aid the State chemist in all matters pertaining to his office and laboratory as he may direct. They shall hold their positions at the pleasure of the State chemist during his term of office, and shall be subject to his direction in all matters pertaining to his duties. An amount not exceeding one thousand dollars annually shall be subject to the order of the State chemist for replenishing chemicals and apparatus used by him and his assistants in accomplishing the analysis of the various brands of fertilizers sold in the State of Georgia each year. Acts 1890-1,
p. 238.

§1560. *Salaries, how paid.* The salaries of the assistants and the amount for the chemicals shall be paid out of the fees arising from inspection of fertilizers.

§1561. *Inspector's fees.* The fees for inspecting fertilizers and chemicals shall be uniformly ten cents per ton, which fees shall be paid by the manufacturer, agent, or dealer procuring the inspection. Acts 1877,
p. 39.
1889, p. 67.
§1563.

SECTION 3.

SALE OF FERTILIZERS, WHEN ILLEGAL.

§1562. *Sale of certain fertilizers forbidden.* It shall be the duty of the commissioner of agriculture to forbid the sale of either of the following: Any acid phosphate which contains less than ten per centum of available phosphoric acid; any acid phosphate with potash which contains a sum total of less than ten per centum of available phosphoric acid and potash when the per cents. of the two are added together; any acid phosphate with ammonia which contains a sum total of less than ten per centum of available phosphoric acid and ammonia when the per cents. of the two are added together; any acid phosphate with ammonia and potash which contains a sum total of less than ten per centum of available phosphoric acid, ammonia, and potash when the per cents. of the three are added to- Acts 1890-1,
p. 143.
§1554.

Tags and registration.

gether; that no brands shall be sold as ammoniated superphosphates unless said brands contain two per cent. or more of ammonia.

SECTION 4.

TAGS AND REGISTRATION.

Acts 1890-1,
p. 143.
§1561.

§1563. *Requests for tags.* All persons or firms who may desire or intend to sell fertilizers, chemicals, or cottonseed-meal in this State shall forward to the commissioner of agriculture a printed or plainly written request for the tags therefor, stating the name of the brand, the name of the manufacturer, the place where manufactured, the number of tons of each brand, and number of tags required, and the person or persons to whom the same is consigned, the guaranteed analysis, also the number of pounds contained in each bag, barrel, or package in which said fertilizer, chemical, or cottonseed-meal is put up; and shall, at the time of said request for tags, forward directly to the commissioner of agriculture the sum of ten cents per ton as an inspection fee; whereupon, it shall be the duty of the commissioner of agriculture to issue tags to parties so applying, who shall attach a tag to each bag, barrel, or package thereof, which, when so attached to said bags, barrels, or packages, shall be *prima facie* evidence that the seller has complied with the requirements of this Chapter. Any tags left in the possession of the manufacturers or dealers at the end of a season shall not be used for another season, nor shall they be redeemable by the department of agriculture.

§1564. *Sale without registration prohibited.* It shall not be lawful for any person, firm, or corporation, either by themselves or their agents, to sell or offer for sale in this State any fertilizer, chemical, or cottonseed-meal, without first registering the same with the commissioner of agriculture as required by this Chapter, and the fact that the purchaser waives the inspection and analysis thereof shall be no protection to said party so selling or offering the same for sale.

No waiver in note can estop plea of want of legal inspection of fertilizer: 81 Ga. 158.

Effect of agreement not to plead failure of consideration to note given for fertilizer, discussed: 65 Ga. 124.

SECTION 5.

INSPECTORS.

§1565. *Inspectors.* The commissioner of agriculture shall appoint twelve inspectors of fertilizers, or so many inspectors as in said commissioner's judgment, may be necessary, who shall hold their offices for such terms as said commissioner of agriculture shall in his judgment think best for carrying out the provisions of this Chapter. The greatest compensation that any one inspector of fertilizers shall receive shall be at the rate of one hundred dollars per month, and his actual expenses while in the discharge of his duty as such inspector. It shall be their duty to inspect all fertilizers, chemicals, or cottonseed-meal that may be found at any point within the limits of this State, and go to any point when so directed by the commissioner of agriculture, and shall see that all fertilizers, chemicals, or cottonseed-meal are properly tagged.

§1566. *Duties as to tags, etc.* Each inspector of fertilizers shall be provided with bottles in which to place the samples of fertilizers, chemicals, or cottonseed-meal drawn by him, and shall also be provided with leaden tags, numbered in duplicate from one upward, and it shall be the duty of each inspector of fertilizers to draw a sample of all fertilizers, chemicals, and cottonseed-meal that he may be requested to inspect, or that he may find uninspected, and he shall fill two sample bottles with each brand, and place one leaden tag of same number in each sample bottle, and shall plainly write on a label on said bottles the number corresponding to the number on said leaden tags in said bottles, and shall also write on the label on one of said bottles the name of the fertilizer, chemical, or cottonseed-meal inspected, the name of the manufacturer, the place where manufactured, the place where inspected, the date of the inspection, and the name of the inspector, and shall send or cause to be sent to the commissioner of agriculture the samples so drawn by him, annexed to a full report of said inspection, written on the form prescribed by said commissioner of agriculture, which report must be numbered to correspond with the number on said sample bottles and number on the leaden tags placed therein; and it shall also be the duty of said inspectors of fertilizers to keep a complete record of all inspections made by them, on forms prescribed by said commissioner of agriculture. Before entering upon the discharge of their duties they shall take and subscribe, before some officer authorized to administer the same, an oath faithfully to discharge all the duties which may be required of them in pursuance of this Article.

§1567. *Rules prescribed by commissioner of agriculture.* The commissioner of agriculture shall have the authority to establish such

Acts 1890-1,
p. 143.

Acts 1890-1,
p. 143.

Regulating sale of fertilizers.

rules and regulations in regard to the inspection, analysis, and sale of fertilizers, chemicals, and cottonseed-meal, not inconsistent with the provisions of this Article, as in his judgment will best carry out the requirements thereof.

Cumulative and not exclusive: 94 Ga. 14.

§1568. *Accounting for money received from inspectors.* It shall be the duty of the commissioner of agriculture to keep a correct account of all money received from the inspection of fertilizers, and to pay the same into the treasury, after paying out of said sum the expenses and salaries of the inspectors, and for the tags and bottles used in making such inspections.

Acts 1890-1,
p. 142.

§1569. *Special inspectors.* The commissioner of agriculture shall appoint four special inspectors whose term of office shall be from January first to May first in each year, whose compensation shall be one hundred dollars per month for four months for each inspector; said amounts to be paid out of the fees arising from the inspection of fertilizers.

On inspectors of fertilizers: 61 Ga. 369.

GENERAL NOTE.—Fertilizer legally analyzed and inspected, then manipulated with other stuff and resacked, falls within this law: 65 Ga. 129.

Fertilizer from bag which had not been inspected, branded, etc., mixed with fertilizer from bags which had, and tags for the mixture procured from persons other than inspector, note therefor void even in hands of innocent purchaser: 71 Ga. 161.

See also 63 Ga. 215.

SECTION 6.

REGULATING SALE OF FERTILIZERS.

§1570. *Contracts for sale not made as required, void.* All contracts for the sale of fertilizers or chemicals in the State of Georgia, made in any other manner than as required by this Article, shall be absolutely void: *Provided*, that nothing in this Article shall be construed to restrict or void sales of acid phosphate, kainit, or other fertilizer material in bulk to each other by importers, manufacturers, or manipulators, who mix fertilizer materials for sale, or as preventing the free and unrestricted shipment of these articles in bulk to manufacturers or manipulators who mix fertilizer material for sale.

See notes to section 1552.

Acts 1890-1,
p. 142.

§1571. *Buyer may require sample.* It shall be lawful for any purchaser of fertilizers, from any owner thereof, or agent of such owner, to require of the person selling, and at the time of the sale or delivery, to take from each lot of each brand sold a sample of its contents.

Regulating sale of fertilizers.

§1572. *Sample delivered to ordinary.* Said sample so taken shall be mixed together and placed in a bottle, jar, or such other receptacle, as the purchaser may present. It shall then be the duty of such purchaser and seller to deliver said package to the ordinary of the county, who shall label same with the names of the parties and of the fertilizers.

§1573. *Ordinary to retain sample.* Said ordinary shall safely keep said package, allowing neither party access to the same, save as hereinafter provided. The ordinary shall receive a fee of ten cents from the party depositing such sample, for each sample so deposited.

§1574. *Sample forwarded for analysis.* Should said purchaser, after having used such fertilizers upon his crops, have reason to believe from the yields thereof that said fertilizer was totally or partially worthless, he shall notify the seller, and apply to the ordinary to forward the said sample, deposited with him (or a sufficiency thereof to insure a fair analysis) to the State chemist, without stating the names of the parties, the name of the fertilizer, or giving its guaranteed analysis, the cost of sending being prepaid by purchaser.

§1575. *Analysis.* It shall be the duty of said State chemist to analyze and send a copy of the result to said ordinary. Acts 1890-1,
p. 142.

§1576. *Analysis in evidence.* Should said analysis show that said fertilizer comes up to the guaranteed analysis upon which it is sold, then the statement so sent by the State chemist shall be conclusive evidence against a plea of partial or total failure of consideration. But should said analysis show that such fertilizer does not come up to the guaranteed analysis, then the sale shall be illegal, null and void, and when suit is brought upon any evidence of indebtedness given for such fertilizer, the statement of such chemist, so transmitted to the ordinary, shall be conclusive evidence of the facts, whether such evidence of indebtedness is held by an innocent third party or not.

See notes to sections 1552 and 1553.

Only guaranty law requires is that fertilizer contains ingredients indicated; practical results, if not guaranteed by contract, incompetent, except in aid of testimony impeaching analysis indicated: 78 Ga. 631 (1); citing 61 Ga. 392; 62/617; 64/94.

That guano had no effect on crops, insufficient by itself to show failure of consideration: 83 Ga. 29.

Personal analysis of fertilizer contradicting that guaranteed, admissible; effect on crops, inadmissible: 81 Ga. 808.

Notwithstanding express waiver in guano note as to effect on crops, effect admissible to impeach analysis branded on sack: 94 Ga. 14, 15.

Act of December 27th, 1890, touching preservation and analysis of samples of fertilizers, is cumulative and not exclusive: 94 Ga. 14, 15.

Inspection of oils.

§1577. *Chemist may be agreed on.* In lieu of the State chemist, should the parties to the contract agree upon some other chemist to make said analysis, all the provisions of the Article shall apply to his analysis and report to the ordinary.

§1578. *Refusal to take sample.* Should the seller refuse to take said sample when so requested by the purchaser, then upon proof of this fact the purchaser shall be entitled to his plea of failure of consideration, and to support the same by proof of the want of effect and benefit of said fertilizer upon his crops, which proofs shall be sufficient to authorize the jury to sustain defendant's plea in whole or in part, whether said suit is brought by an innocent holder or not.

See notes to section 1576.

ARTICLE 2.

INSPECTION OF OILS.

Acts 1890-1,
p. 138.

§1579. *Appointment of inspectors.* It shall be the duty of the commissioner of agriculture of this State to appoint an inspector of oils at Atlanta, Savannah, Augusta, Macon, Columbus, Rome, Newnan, Brunswick, Americus and Athens.

§1580. *Terms of office and clerks.* Each of said inspectors of oil shall hold his office for two years from the date of his appointment, unless sooner removed by the commissioner of agriculture for incompetence, malfeasance, or other sufficient cause. If any vacancy shall occur in any of the offices of inspectors of oils, the vacancy shall be filled by the commissioner of agriculture for the unexpired term. The said inspectors shall be authorized to appoint such clerks or deputies, with consent and approval of the commissioner of agriculture, as they may find requisite to the perfect carrying out of the laws of this State in reference to the inspection of oils, but each inspector shall be responsible for the perfect and proper performance of all the duties of his office, and shall pay his clerk or deputy out of the compensation provided for himself.

§1581. *Board of inspectors.* Each of said ten inspectors of oil, immediately after his appointment, and before entering upon his duty as inspector, shall give bond in an amount to be fixed by the commissioner of agriculture. Said bond shall be conditioned for the faithful and prompt accounting with the treasurer of the State for all moneys received by him and his deputies as fees for inspecting illuminating oils and other fluids, that shall be paid into the treasury. This bond shall be made payable to the Governor and shall be signed by the said inspector and sureties, and approved by the commissioner of agriculture.

Inspection of oils.

§1582. *Compensation.* All inspectors, shall receive compensation Acts 1893,
p. 1-6. as follows: Said inspectors shall remit to the treasurer each month, at the time of making their monthly statements, one-third of all fees received by them in excess of twenty-five dollars per month: *Provided*, that when any inspector's receipts for a month shall, under the operation of this section, be such that two-thirds thereof shall exceed one hundred and twenty-five dollars, he shall remit to the treasurer all of said receipts in excess of said amount of one hundred and twenty-five dollars, less five per cent. Each inspector shall keep a record of the amounts of oils inspected, with the name of the person, corporation or firm for whom said inspection is made, and also all the moneys received by him for said inspection, and he shall forward monthly reports on the first day of each month, containing an abstract from said record for the month preceding, to the commissioner of agriculture, and shall at the same time forward to the treasurer of the State all the moneys received by him as fees during that time, except what he is entitled to retain as his compensation. Said reports shall give the name of the inspector, or deputy, who inspected each lot of oil.

§1583. *Fees.* The following shall be the legal schedule of fees for Acts 1890-1,
p. 140. official inspection of oils in this State: For inspecting lots of four hundred gallons and upwards, one-half cent per gallon; for inspecting in quantities of more than two hundred and less than four hundred gallons, one cent per gallon; for inspecting in quantities of less than two hundred gallons, one and one-half cents per gallon. There shall be no difference of charges in cases where the oil inspected is in barrels from charges where the oil is in bulk.

§1584. *Additional inspectors.* The commissioner of agriculture shall appoint inspectors at such other places in this State, in addition to the ten provided for, as in his judgment may be proper and necessary to insure the inspection of oils throughout the State. These additional inspectors may be appointed at any time when the commissioner of agriculture shall find that a necessity for said inspectors, or any of them, exists; they shall hold their office for same time, and subject to the same conditions and duties, as inspectors hereinbefore provided for: *Provided*, that the compensation and bond of said inspectors shall be fixed in the same manner as in case of the ten inspectors provided for.

§1585. *Territory of inspectors.* Each of the said inspectors ap- Acts 1890-1,
p. 138. pointed under the terms of this Article shall, by themselves or their deputies, respond to all calls and demands for the inspection of oil from places within thirty miles of the town or city for which they were appointed. The mileage and traveling expenses allowed the inspectors under this Article, need not be accounted for in their

Inspection of oils.

monthly statements, but are in the nature of extra compensation allowed said inspectors for making inspections.

§1586. *Inspection in bulk.* In all cases where oil is inspected in bulk, before said oil is put into barrels, it shall be the duty of the inspector to either see the oil so inspected put into barrels on which he has placed his official brand, or else he shall again take samples from among the barrels into which said bulk oil has been unloaded before he shall place his official brand upon said barrels. In his discretion, the official inspector may refuse to inspect oil in bulk, and require the owner or dealer in oils to put said oil into barrels or other packages for retail trade, before he will accord it an official inspection: *Provided, always,* that no official inspection of bulk oils shall be made at any place in this State except where said bulk oils are to be unloaded and put in barrels or other packages for retail trade.

§1587. *Use of official brands.* The official brand used by the inspectors of oils shall in no case be used for branding barrels or cases of illuminating oils by any other person than the regularly appointed inspector, or his deputy. In no case shall an inspector be a dealer in oils, or be in the employ of a dealer in oils, or have as his deputy any person dealing in oils or in the employ of any person or corporation so dealing in oil. Whenever any party desires to have oil inspected he shall, at the time of sending the order for inspection to the inspector, send a duplicate of the order to the commissioner of agriculture.

§1588. (1577.) *Test of oils.*

1. No kerosene or fluid of any sort, the fire test of which is less than one hundred and twenty degrees Fahrenheit, shall be sold or offered for sale as an illuminator for consumption within this State.

2. The fire test shall be determined by an inspector, who shall use Tagliabue's, or other well-defined instrument, prescribed by the commissioner of agriculture, according to the following formula: "Heat with alcohol, small flame; when thermometer indicates ninety degrees, remove lamp; at ninety-five try for flash with small bead of fire on end of string held within a quarter of an inch of the surface of the oil; replace lamp and work oil up gradually from this point until the burning-point is reached, removing lamp every four degrees, and allowing oil to run up three degrees before replacing lamp, flashing the oil each time just before lamp is replaced, until result is obtained."

3. The inspector shall provide at his own expense instruments for testing oils, and stencils for branding packages to read thus: "State of Georgia, fire test, one hundred and twenty degrees," with name of inspector and date of inspection.

Inspection of naval stores and other articles; inspection of naval stores and lumber.

4. When the oil inspected shall stand a higher test, the inspector shall designate the same by his brand.

5. Inspectors, or other sworn clerks, or deputies, may enter any place where oils or illuminating fluids are kept for sale or consumption in this State, and may reinspect any fluid which he has reason to suspect is below the standard. But no fee shall be charged for reinspection.

6. If the inspector shall find any illuminating oil or fluid under the fire test required by law, and falsely branded, he shall cause the offender to be prosecuted.

7. Any person selling oil in violation of this section, in addition to the penalty prescribed in the Penal Code, shall be liable to any person who shall sustain damage to property or person by reason thereof: *Provided*, reasonable prudence was used by the party injured while handling the fluid.

8. Inspectors shall inspect from time to time oil in the tanks of retail dealers, whether previously inspected or not, and if the fluid is below the standard, the same shall be seized, and after ten days notice, be sold for redistillation only. Proceeds, after deducting necessary expenses of sale, notice, and seizure, shall be turned over to the school fund of the county in which the seizure is made.

9. Inspectors shall brand all oils and fluids falling below one hundred and twenty degrees fire test, "State of Georgia—rejected," with the name of the inspector, and date of inspection.

CHAPTER 2.

INSPECTION OF NAVAL STORES AND OTHER ARTICLES.

ARTICLE 1.

INSPECTION OF NAVAL STORES AND LUMBER.

§1589. *Inspector shall be disinterested.* No inspector of naval stores, Acts 1887, p. 110. now appointed or hereafter appointed by the corporate authorities of any city, or the ordinary of any county, shall be or become during his term of office the agent or clerk of any buyer of naval stores, or of any factor, brokerage or commission merchant engaged in the buying or selling of naval stores, or of any manufacturer engaged in the production of naval stores.

§1590. *Charges for inspection.* No corporate authority, incorporation, or ordinary having the appointment of naval stores inspectors Acts 1887, p. 110. shall have the power to authorize or empower inspectors of naval

stores to charge more than six cents per barrel for inspecting rosin, including weighing, inspection, and cooperage, nor more than nine cents per barrel for inspecting spirits of turpentine, including gauging, inspection, bunging, and cooperage; any inspector of naval stores charging and demanding more than six cents for inspecting a barrel of rosin, or more than nine cents for inspecting a barrel of spirits of turpentine, shall be guilty of a misdemeanor: *Provided*, that no inspector shall be compelled to make an inspection of rosin or spirits of turpentine until these fees are first paid.

Acts 1876,
p. 32.

§1591. (1563 a.) *What inspectors may be appointed.* No corporate authority, court, or other incorporation having the appointment of inspectors of lumber or timber, shall appoint any other class of inspectors of lumber or timber than those recognized and authorized by the Code.

Acts 1873,
p. 21.

§1592. (1564.) *Inimical local laws repealed.* All ordinances of any city or town inconsistent with the provisions of this Code are repealed, and any inspector or other person who shall violate any of the provisions of section 1600, so far as the same relates to the inspection and measurement of any timber or lumber, shall be punished as prescribed in section 617 of the Penal Code, any local law, rule, or regulation, or ordinance of any city or town to the contrary notwithstanding.

Acts 1876,
p. 32.

§1593. (1564 a.) *Fees of inspectors.* No corporate authority, incorporation, or court having the appointment of inspectors, shall have power to authorize or empower inspectors and measurers of lumber and timber to charge more than twenty-five cents per thousand feet for inspecting, measuring, and trimming lumber and timber.

§1594. (1565.) *Penalty for disposing of drifted timber.* No raftsman 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 such offense, 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 offense may be committed; 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 timber or lumber.

Acts 1876,
p. 33.

§1595. (1565 a.) *Fees.* The fee for receiving lumber shall not exceed three cents per thousand feet, which fee shall be charged only at the time of receipt, and the fee for boomage shall not exceed thirty cents per day for each raft.

§1596. (1567.) *Pitch, tar, etc., to be inspected before it is shipped.* 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 in-

spected and marked: *Provided*, there be at the port of exportation a sworn inspector of such articles, on 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.

§1597. (1568.) *Quality, etc., of turpentine barrels.* 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 inches 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.

§1598. (1569.) *Barrels of turpentine, how marked.* 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”.

ARTICLE 2.

APPOINTMENT OF INSPECTORS BY CITIES, AND THEIR DUTIES.

§1599. (1570.) *Powers of corporate authorities.* The corporate authorities of any seaport town may make such further regulations for the 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.

§1600. (1563.) *Inspectors may be appointed for any article.* 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 subject 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 ordinary 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:

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 offense, 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 duties thereof. All vacancies may be filled by the appointing power.

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.

3. All square timber shall be measured as follows: The length shall be counted from pinhole 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 wane-edge on the side and face; and other flatted timber, usually known as saw or mill logs, shall be measured one-third from the smallest end.

4. 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.

5. The hook to the dip-rod shall not be less than one inch and three-quarters long.

6. Ranging timber, scantlings, and boards shall be deemed merchantable only when they have square edges, and are 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.

7. 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, round 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.

8. 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.

9. 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.

“Cords of wood,” in contract, relate to quantity and length intended, shown by parol; “cord-wood” would indicate dimensions as well: 95 Ga. 652.

CHAPTER 3.

REGULATIONS OF AGRICULTURE, ETC.

ARTICLE 1.

COTTON, RICE, ETC.

§1601. (1599.) *Scalesmen, weighers of cotton and others to be sworn.* It shall not be lawful for any scalesman, salesman or other person, in any of the cities, towns, or villages of this State, 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 cotton 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.

Acts 1875,
pp. 18, 102.
1876, p. 27.
1889, p. 68.
§3546.

§1602. *Deduction.* The weigher may, nevertheless, make such deduction for wet, or other cause, as may be reasonable, when the seller or his agent shall thereto consent: *Provided*, that if the weigher, with the consent of the seller or his agent, makes a deduction from the gross weight of any bale, bag, or package of cotton because of the bagging and fastenings on said bale, bag, or package, the deduction shall be not more than twenty-four pounds if it is covered with jute bagging, and not more than sixteen pounds if it is covered with cotton bagging, except in the case of any bale, bag, or package of cotton not fastened with iron ties nor with ropes, in which case

the deduction shall be not more than ten pounds if it is covered with jute bagging, and not more than five pounds if it is covered with cotton bagging. And in every case in which a deduction is made from the gross weight of any bale, bag, or package of cotton because of the bagging and fastenings on said bale, bag, or package, the weigher, in tendering a true account thereof to the party or parties concerned, shall state the gross weight of each bale, bag, or package, and also the number of pounds deducted for bagging and fastenings, and the net weight.

Acts 1875,
pp. 18, 102.

§1603. (1600.) *Oath to be recorded, and penalty for weighing without oath.* Such oath, when taken, must be filed in the office of the ordinary of the county, and a minute made thereof; and if such person weighs such produce without having taken and filed such oath, he and the factor, or person who may employ him, shall be guilty of a misdemeanor.

§1604. (1601.) *Tare on rice.* 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.

§1605. (1602.) *Tare on other articles.* 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.

§1636.

§1606. (1603.) *No deduction to be made for turn of scales, etc.* 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 offense, of five hundred dollars, to be recovered 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 offense may be committed.

§1607. (1604.) *Corporate authorities may make further rules.* 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 ordinaries of the respective counties shall have the same power, to be exercised outside the jurisdiction of said incorporated cities or towns; but, until altered by such authorities or ordinaries, fees for weighing shall be such as are now fixed by law.

Acts 1873,
pp. 67, 68.
§719.

§1608. (1605.) *Produce not taxable by cities or towns.* No municipal corporation shall levy or assess a tax on cotton, or the sales thereof, nor levy or assess a tax on any agricultural products raised in this

State, or the sales thereof (other than cotton), until after the expiration of three months from the time of their introduction into said corporations.

See 84 Ga. 365.

Ordinance assessing tax on gross sales of cotton on commission, etc., violative of this provision: 65 Ga. 231.

§1609. (1606.) *Salesmen shall not charge tax.* No commission merchant, factor, or other salesman shall, in his bill of expenses for the sale or handling of cotton or other produce as aforesaid, include or collect, directly or indirectly, any tax or assessment levied upon the sales of cotton or other produce by any of said corporations; and in case of violation of the same, he shall be liable to the party damaged by such violation in the sum of fifty dollars for every dollar so collected, in an action of debt by said party. Acts 1873,
p. 68.

ARTICLE 2.

CULTIVATION OF RICE.

§1610. (1607.) *Water not to be diverted.* 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. And whenever the owner of any land in this State shall refuse to extend any drain or ditch through the same, they may be dug to the line of his lot by the owner or occupant of adjoining land, then the said adjoining owner or occupant shall be privileged to extend his drain at his own expense through any such lands to a proper outlet; and if his land shall be injured or decreased in value by reason of said draining, then the party injured shall receive full compensation from the person so draining for the injury done. The question of such injury in value may be submitted, on request of either party and notice given, to three disinterested freeholders, to be chosen by the ordinary of said county, and they shall make an award upon the same rules and regulations as are now provided by law touching arbitration and awards: *Provided*, said award shall be made and just compensation paid before the drain or ditch is commenced. Acts 1866,
p. 27.

Railroad building track-embankment along river-margin liable for consequent overflow damage on opposite side: 87 Ga. 246.

§1611. (1608.) *Rice-dams, when to be opened.* 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 keep up the water, and let off the same.

§1612. (1609.) *Penalty for violating the two preceding sections.* 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.

§1613. (1610.) *Person injured may apply for survey.* When any person has thus offended in the manner aforesaid, a person affected thereby may apply to a magistrate who has jurisdiction in the district for a warrant of a survey, and shall also thereupon notify the defendant of the complaint, and of the time and place of meeting.

§1614. (1611.) *Proceedings under the warrant.* The magistrate shall have summoned three disinterested freeholders of the neighborhood or district where the cause of the 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.

§1615. (1612.) *Award of freeholders.* 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 injure him, they shall furnish an immediate remedy in any way they think necessary to give the most effectual relief, the losing party paying the cost of the proceeding.

§1616. (1613.) *Drainage not prohibited.* 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.

§1617. (1614.) *Proceedings in case of obstructions.* 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.

§1618. (1615.) *Penalty for stopping up dam.* 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 Article, one thousand dollars for each offense to the person aggrieved, besides his liability for the actual damages.

§1619. (1616.) *Inadequate dams to be enlarged.* When any dam has been made to form reservoirs of water without sufficient wasteway, 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 wasteway. 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.

§1620. (1617.) *Compensation of freeholders, etc.* The freeholders are entitled each to three dollars per day, and if duly summoned and they fail to 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 3.

FLOUR, CORN, MEAL, AND GRAIN.

§1621. (1554.) *Inspectors, by whom appointed.* The ordinaries 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.

§1622. *Numbers of pounds stamped on each sack.* It shall be the duty of each and every miller or manufacturer of flour or corn meal (and every merchant or dealer), offering for sale said articles, to stamp or have printed on each sack in which either of said articles are packed, in plain figures not less than one and one-half inches in length, the exact number of pounds of flour or corn meal contained

Acts 1890-1,
p. 236.

therein: *Provided*, the provisions of this section shall not apply to grist ground for toll.

§1623. (1555.) *Flour shall be merchantable.* 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.

§1624. (1556.) *Flour-barrels, how made.* All flour-barrels packed for sale shall be well made and of good material, twenty-seven inches in length, tightened 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 one hundred and ninety-six pounds of flour, and shall put into every half-barrel the quantity of ninety-eight pounds of flour, and on failure thereof shall forfeit and pay the sum of four 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.

§1625. (1557.) *Flour shall be inspected, when.* 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 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 ordinary, 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.

§1626. (1558.) *Fraudulently packing flour.* 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 an 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.

§1627. (1559.) *Inspector cannot purchase.* 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.

§1628. (1560.) *Selling without inspection.* 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 an 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.

§1629. (1561.) *Inspector's oath.* 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 ordinary, 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 faithfully brand and mark the barrels or bags, as by law directed.

§1630. (1562.) *Corn meal, corn, and other grain.* Every inspector of flour shall inspect Indian corn and corn meal, wheat, and other grain in bags or in barrels, or in bulk, 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, and when the grain inspected is in bulk, the sum of twenty-five cents per car-load, to be paid by the owner or consignee, as aforesaid.

Acts 1880-1,
p. 77.

ARTICLE 4.

MILLS AND MILLERS.

§1631. (1460.) *Grain to be ground in turn.* 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.

§1632. (1461.) *Penalty for not grinding in turn.* 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

Weights and measures.

forfeit and pay for each offense, to the party injured, twenty dollars: *Provided*, such miller may do his own grinding first.

§1633. (1462.) *What are public mills.* All grist-mills which grind for toll for any person are public mills within the meaning of this Article.

Mills are not such a public use as authorizes the appropriation of private property: 42 Ga. 505.

CHAPTER 4.

WEIGHTS AND MEASURES.

Acts 1876,
p. 107.
1880, p. 150.
1894, p. 110.

§1634. (1587 a.) *Legal weights declared.* The legal weight of the following articles or commodities per bushel shall be as follows: Of wheat, sixty pounds; of shelled corn, fifty-six pounds; of corn in the ear, seventy pounds; of peas, sixty pounds; of rye, fifty-six pounds; of oats, thirty-two pounds; of barley, forty-seven pounds; of Irish potatoes, sixty pounds; of sweet potatoes, fifty-five pounds; of white beans, sixty pounds; of clover-seed, sixty pounds; of timothy-seed, forty-five pounds; of flaxseed, fifty-six pounds; of hemp-seed, forty-four pounds; of blue-grass seed, fourteen pounds; of buckwheat, fifty-two pounds; of dried peaches (unpeeled), thirty-three pounds; of dried peaches (peeled), thirty-eight pounds; of dried apples, twenty-four pounds; of onions, fifty-seven pounds; of stone coal, eighty pounds; of unslacked lime, eighty pounds; of turnips, fifty-five pounds; of corn meal, forty-eight pounds; of wheat bran, twenty pounds; of cottonseed, thirty pounds; of ground-peas, twenty-five pounds; of plastering hair, eight pounds; of rough rice, forty-three pounds; of tan-bark, per cord, two thousand two hundred and fifty pounds.

§1635. (1588.) *Seal or stamp for marking weights and measures.* The ordinaries must procure for their respective counties a marking instrument, seal or stamp, for the purpose of marking all weights and measures which they may find not to weigh or measure less than the standard established by the Congress of the United States, which is the standard of this State.

Does not extend to those buying, but exclusively to those selling: 49 Ga. 627-629.

Acts 1893,
p. 31.
§1606.

§1636. (1589.) *Penalty for selling by unmarked weights.* All persons engaged in selling by weights and measures shall apply to the ordinaries of their respective counties and have their weights and measures so marked, and in default thereof shall not collect more than three-fourths of any account, note, or other writing, the consideration of which is any commodity sold by their weights and measures:

Peddling.

Provided, this section shall not apply to any person selling by weights and measures who has applied to the ordinary of his county and found that the county has not been supplied with the necessary standards for testing weights and measures.

Construed where there could be no recovery under the form of action brought under this section: 49 Ga. 628, 629, 368. Burden of proof of violation of this section rests on defendant pleading it, and he must prove it: 61 Ga. 265.

Where this section invoked, affirmative proof that notice required by section 1639 was given, unnecessary: 87 Ga. 393.

§1637. (1590.) *Selling by deficient weights or measures, how punished.* Any citizen may complain to the ordinary of the deficiency of any weights and measures, whether marked or not, and when done it is the duty of said ordinary 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 ordinary, 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.

§1638. (1591.) *Standards of weights and measures to be procured.* 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 ordinary, shall be kept in his office for the inspection of the citizens.

§1639. (1592.) *Ordinary to give notice.* When such standards are obtained, it is the duty of such ordinary 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.

Section cited and construed: 49 Ga. 629.

When section 1636 invoked, presumption of law is that ordinary did his duty and gave the notice; besides, this section is simply directory to ordinary; his omission not remove obligation of section 1636: 87 Ga. 393.

CHAPTER 5.

PEDDLING.

§1640. (1631.) *License to peddle.* Every peddler or itinerant trader, by sample or otherwise, must apply to the ordinary of each county where he may desire to trade, for a license, which shall be granted to him on the terms said ordinary has or may impose. They are authorized to impose such tax as they may deem advisable,

Peddling.

to be used for county purposes. The license extends only to the limits of the county.

License as prerequisite to peddling, where interstate commerce involved, unconstitutional: 84 Ga. 754.

No application to the employer of peddler, or others than peddler himself: 84 Ga. 754.

Traveling lightning-rod dealer who puts up the rods he sells, is mechanic and not peddler: 76 Ga. 817.

An itinerant, trading by sample, a peddler: 84 Ga. 754.

Acts 1887,
p. 33.

§1641. (1632.) *Exceptions.* None of the provisions of this Article shall extend to persons selling the agricultural products of any State, nor to persons selling agricultural implements, nor to persons engaged in the manufacturing and selling of jugs and flower-pots within the State of Georgia.

Acts 1866,
p. 46.
1882-3, p. 64.
1889, p. 51.
1891, p. 63.
1895, p. 19.

§1642. (534.) *Disabled soldiers to peddle without license.* Any disabled or indigent Confederate soldier or soldiers of the Seminole, Creek, or Cherokee Indian war, or Mexican war, who are residents of this State, may peddle in any county or counties thereof without paying license for the privilege of so doing; and a certificate from the ordinary of any county, stating the fact of his being such disabled or indigent Confederate soldier or soldiers of the Seminole, Creek, or Cherokee Indian war, or Mexican war, who are residents of this State, shall be sufficient proof: *Provided*, that this section shall not authorize peddling ardent and intoxicating drinks: *And provided further*, that the privilege hereby granted shall not be transferred to, or used by, any other person.

Acts 1893,
p. 114.
1895, p. 93.

§1643. *What other Confederate soldiers may peddle without license.* All Confederate soldiers who are over the age of fifty years, and who have resided in this State for three years next preceding the filing of their applications, as hereinafter provided, are authorized to conduct the business of traveling life-insurance agents or solicitors, and peddle in the State without first obtaining a license therefor from the State or any county or municipality thereof, and without being subject to any tax therefor.

Acts 1893,
p. 114.
1895, p. 93.

§1644. *Oath required of such.* Before any such Confederate soldier shall avail himself of the privilege, he shall go before the ordinary of the county wherein he resides, and make oath in writing that he served as a soldier in the Confederate army, or navy, stating in what company and regiment or command; that he is over fifty years of age, and has resided in this State three years next preceding the filing of said affidavit; he shall also state what business he proposes to conduct, and if he proposes to peddle, shall state that the business which he proposes to carry on is his own, and that he will not sell, or offer to sell, any article for another, directly or indirectly.

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§1645. *Certificate of authority.* Upon making and filing the affidavit provided for in the preceding section, the ordinary shall issue a certificate stating that said Confederate soldier has taken the oath prescribed by law, which certificate shall authorize the Confederate soldier making such affidavit and holding such certificate to conduct the business hereinbefore designated, in any county or municipality in this State, without procuring a license or being subject to any tax therefor: *Provided*, he shall not sell whisky or sewing-machines. Acts 1893,
p. 114.
1895, p. 93.

§1646. *What Confederate soldier may do without license.* Any disabled Confederate soldier of this State, who is a daguerrean, ambrotype, photographic or similar artist, may carry on such business in any county without paying license. A certificate from the ordinary of any county stating the fact of his being such disabled Confederate soldier shall be sufficient evidence thereof. The privileges hereby granted shall not be transferable, and shall not extend to any person who, in the conduct of such business, has as many as three employees. Acts 1892,
p. 99.

§1647. (1634.) *Qualifications and oath of peddler.* Every peddler shall furnish said ordinary 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.

A corporation being incapable of taking oath, cannot be a peddler: 84 Ga. 754.

§1648. (1635.) *Must be a license for each vehicle.* There shall be separate license 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.

No application to the employer of peddler, or others than peddler himself: 84 Ga. 754.

§1649. (1636.) *Authority of ordinary.* Ordinaries are authorized to grant licenses to peddle to indigent and infirm persons, upon such terms as they in their discretion may impose.

§1650. (1637.) *Foreigners.* 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.

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GENERAL NOTE.—Injunction granted where the party was not an itinerant peddler under the terms of this Chapter, and not made to conform to an illegal ordinance of the city of Atlanta: 55 Ga. 678-686.

CHAPTER 6.

PILOTAGE.

Acts 1894,
p. 41.

§1651. (1504.) *Appointment, number, and term of commissioners; by whom.* The corporate authorities of Savannah, Darien, Brunswick, and St. Mary's shall each have power respectively to appoint commissioners of pilotage, seven in number, whose term of office shall be seven years, but the term of office of the commissioners first appointed shall be one, two, three, four, five, six, and seven years respectively; they shall exercise the duties of the former boards of pilot commissioners in this State; and for every year thereafter one pilot commissioner shall be appointed by said corporate authorities to succeed the commissioner whose term expired for that year. Said commissioners of pilotage to be appointed by the corporate authorities of Savannah for the bar of Tybee and river of Savannah and the several bars and inlets north of Sapelo bar; by the corporate authorities of Darien for Sapelo bar and the river Altamaha, and for the several bars and inlets south of Sapelo bar as far as St. Simon's bar; the corporate authorities of Brunswick for the bar of St. Simon's and Turtle river and St. Andrew's bar and the several bars and inlets north of and including the Great Satilla river; by the corporate authorities of St. Mary's for the bar of St. Mary's and all bars and inlets between the St. Mary's bar and the St. Andrew's bar.

Pilotage law cited: 72 Ga. 89.

Acts 1894,
p. 42.

§1652. *Vacancies.* All vacancies in boards of commissioners shall be filled by appointment by said corporate authorities for the unexpired term of the commissioner who has held the office vacated, but no owner or part owner of a pilot-boat shall be allowed to act as a commissioner of pilotage, and a majority of said boards shall be composed of men skilled in navigation or exporters engaged in active business at the respective ports.

Acts 1886,
p. 38.

§1653. *Licensing of pilots.* The commissioners of pilotage at each of the ports of this State are empowered to license such persons (being citizens of the United States) of good character as they shall think most fit to act as pilots, for the purpose of conducting vessels inward to and outward from the several ports and rivers for which they shall be licensed during their good behavior. Pilots already licensed for any of said ports or rivers shall continue to act until

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removed for cause. No additions shall be made to the present number of licensed pilots until the number shall not exceed twenty for the port of Savannah, ten for the port of Doboy and Darien, fifteen for the port of Brunswick, four for the Great Satilla river, and eight for the port of St. Mary's; and thereafter, when vacancies occur in the number of pilots in any one of the before-named ports or rivers, the commissioners of that port may in their discretion grant licenses as pilots as hereinbefore provided, until the number of pilots reaches the number allowed by this section for that port or river. This section shall not prevent the commissioners of any one of the before-named ports from, in their discretion, granting licenses to such apprentices as were apprentices December 1st, 1886, when any one of such apprentices has fulfilled the requirements of the laws of the State of Georgia and the rules and regulations established by the commissioners of the said port. 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, rivers, or harbors for which a pilot shall be licensed. If any person, having no authority or license to act as pilot, or who, having had any authority, has had it suspended or revoked by the commissioners, shall, while his license is suspended, pilot or conduct any vessel inwards to or outwards from any of the ports, rivers, or harbors of this State, or if any person interferes with or disturbs a licensed pilot in the way of his duty, such person 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 any pilot on board, if such person shall deliver up the vessel to the first pilot who comes on board and offers to conduct it, but the vessel must fly the signal for a pilot until one has been received or his services tendered.

Commissioners have jurisdiction of whole business of granting licenses to pilots—jurisdiction appearing, testimony to support grant, if valid, presumed: 68 Ga. 514.

Clear case of illegality, or abuse of discretion, required before courts will interfere with commissioners granting license: 68 Ga. 517, 518.

Contract with certain pilots to limit number for that port for three years to ten, held void: 69 Ga. 247.

§1654. *Removal of pilots.* The commissioners shall suspend any pilot, or deprive him of his license, for want of skillfulness or for negligently or carelessly losing or injuring any vessel in his charge, or when he is laboring under mental derangement, or is so addicted to habits of intoxication as to unfit him, in their judgment, to be intrusted with the charge of a vessel; but in every such case an appeal may be made as is provided for by law.

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Acts 1886,
p. 38.

§1655. *Rules, regulations, and fees.* 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 not inconsistent with this law for neglect of duty, or for a violation of the orders or of the rules and regulations of the commissioners, as they may think proper. They shall, from time to time hereafter, whenever necessary, revise and grade the existing pilotage fees, both inward and outward, on vessels drawing seventeen feet or less, when loaded, so that said fees shall not exceed the average of the fees charged at the ports of Norfolk, Wilmington, Charleston, Port Royal or Beaufort, Fernandina, Pensacola, Apalachicola, Mobile, and New Orleans. They shall exempt vessels from the payment of pilotage fees, either inward or outward, unless services are tendered outside the bar, and exempt from the payment of outward pilotage fees coastwise vessels changing ports by inside routes, either in changing ports or going to sea, after having changed ports by inside route, unless a pilot is actually employed. They shall allow vessels running coastwise under United States license to pay, after paying the inward pilotage for that trip, an annual license fee of twenty-five cents per registered ton, which shall belong to the pilot entitled to the inward pilotage fee, and the payment of said license fee shall exempt at that port said vessel for twelve months thereafter from compulsory employment of a pilot, either inward or outward, or payment therefor unless services of a pilot are accepted; licenses shall be renewed to vessels after having arrived in port, and if they approach the port after the expiration of a former license, the licenses shall be granted only after they have paid the inward pilotage for that trip if service has been tendered outside the bar; and any vessel, while in a port for which she has had a license, may within ninety days after the expiration of said license make application for and on payment of the license fee shall receive a new license for twelve months from the date of the expiration of the old license. They shall allow half the regular pilotage fees to be collected from all vessels, except those exempt by laws of the United States, or licensed as provided for in this Chapter, calling at the bar of any of the before-named ports or rivers in ballast seeking for orders if they do not load but leave in ballast, and allow half the regular pilotage fees both inward and outward on all vessels returning to the port at which they loaded, before completing the voyage, from stress of weather or from being damaged or disabled; but vessels subject to go into quarantine shall pay full pilotage fees inward and outward.

Acts 1886,
p. 38.

§1656. *Vessel refusing to take pilot.* Any person, master or commander of a ship or vessel, except vessels exempt by United States

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laws and vessels while licensed under the provisions of this Article and vessels of less than one hundred tons burden, bearing towards any of the ports, rivers, or harbors of this State, and who refuse to receive a pilot on board, shall be liable, on his arrival in such port, river, or harbor in 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, inward and outward, established by law for such vessel.

Construed at length, from many standpoints: 69 Ga. 409.

Stated. Policy of State in this regard: 69 Ga. 409.

Considered in connection with sections 4236, 4237, 4444 and 4401 of Revised Statutes United States; held repugnant in certain particulars, but good in others: 69 Ga. 409; 118 U. S. 90.

Not repugnant to Constitution of United States, Article 4, section 2, paragraph 1, nor to Fourteenth Amendment: 69 Ga. 409.

This liability is upon implied contract, and is not penalty: 69 Ga. 409.

Prior contract with another pilot to receive him near the bar, not give right to reject pilot first offering, etc.: 69 Ga. 409.

Cited, in holding pilot not entitled to recover fees or damages of a new ship to which he offered services going out: 72 Ga. 234.

Pilot offering to take vessel out can recover fees, if rejected: 75 Ga. 219.

§1657. *Pilot bringing in may take out.* The pilot who brings in a vessel into port, or one attached to his pilot-boat, 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 while in charge of the vessel or was in the meantime 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 shall be employed, and in that event the outward pilotage fees shall belong to the pilot who takes her out. Acts 1886, p. 38.

Compared with sections 1656, 1664 and 1659: 69 Ga. 409.

Cited, in holding pilot not entitled to recover fees or damages of a new ship to which he offered services going out: 72 Ga. 234.

A pilot bringing in a British vessel which was libeled and sold under decree in admiralty, and refitted as an American vessel, not entitled to pilot her out: 72 Ga. 234.

Doubtful if this gives a lien, or anything more than a right against the master, owner, or consignee: 72 Ga. 236.

§1658. *Mooring and docking.* Every pilot in any of the ports, rivers, or harbors aforesaid, bringing any vessel to anchor in any of said ports, rivers, or harbors, shall moor such vessel, or give proper directions for the mooring of the same and the safe-riding thereof, or shall dock such vessel if required by the master on arrival, and said pilot shall not be entitled to compensation in addition to his pilotage fees for so doing. Acts 1886, p. 38.

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Acts 1886,
p. 38.

§1659. *Collection of fees.* A pilot bringing a vessel into port, or who has tendered his services to her outside the bar, unless his services have been refused because of her being licensed, as hereinbefore provided, shall be entitled to his fees, both inward and outward, 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.

Applied to different right from that given by section 1656: 69 Ga. 409.

Cited, in holding pilot not entitled to recover fees or damages of a new ship to which he offered services going out: 72 Ga. 234.

Acts 1886,
p. 38.

§1660. *Delivering letters.* Whenever a vessel shall touch off the bar of any of the ports, rivers, or harbors of this State for instructions, any pilot delivering on board such vessel any letters or orders, shall be allowed one-half of the bar pilotage in and out.

§1661. (1506.) *Pilot's license and oath.* 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 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 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 convey 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."

Bound to tender services, but cannot recover for refusal by vessel going out for first time: 72 Ga. 234.

§1662. (1507.) *Pilot's bond.* 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 the condition faithfully to perform his duties as

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pilot, which bond shall be renewable at the discretion of the commissioners, with such security or additional security as they may require.

§1663. (1510.) *License, how forfeited.* 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.

§1664. (1511.) *Duty of pilots.* Every pilot-boat cruising, or standing out to sea, must offer the services of a pilot to the vessel nearest the bar, unless a 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.

Compared with sections 1656, 1657 and 1659: 69 Ga. 409.

Cited in holding pilot not entitled to recover fees or damages of a new ship to which he offered services going out: 72 Ga. 234.

§1665. (1514.) *Rights and duty of pilots.* 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, and shall, moreover, be liable to the pilot having the right for carrying the same vessel out: *Provided*, the commissioners have not sufficient evidence of the necessity of his acting.

Cited and discussed: 72 Ga. 236.

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§1666. (1515.) *Pilot to be notified of vessel's departure.* 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.

§1667. (1518.) *Penalty for carrying off or detaining pilot.* 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 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.

§1668. (1519.) *Fees for taking pilot from vessel.* 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.

§1669. (1521.) *Pilot's fees for carrying vessel to another port.* 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.

§1670. (1522.) *Default of pilot, how punished.* 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 he shall sustain thereby.

§1671. (1523.) *Other cases of damages, how settled.* 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

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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.

§1672. (1524.) *Commissioners must keep a record of rules, etc.* 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 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.

§1673. (1525.) *Fees of secretary.* 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.

§1674. (1526.) *Office of commissioners, where kept.* 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.

§1675. (1527.) *Attendance of witnesses.* 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 subpœna, 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

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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 subpœna.

§1676. (1528.) *Defaulting witnesses punished.* 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 court of the county; and such court may fine such witnesses 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.

§1677. (1529.) *May cite witnesses to answer interrogatories.* When any witness may be a seaman or transient person, the commissioners may issue subpœna 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 ordinary of the county, to answer written interrogatories to be propounded to him.

§1678. (1530.) *Service of subpœnas, etc.* The subpœna 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 indorse 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.

§1679. (1531.) *Fees for serving subpœnas, etc.* The secretary's fees for each subpœna 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 subpœna, shall receive twenty-five cents, and for executing and returning an attachment to court, fifty cents.

§1680. (1532.) *Appeal from judgment of commissioners, etc.* 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 upon the acting chairman or secretary of such board at least three days before the

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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 is shown for a continuance; and if upon such trial, a verdict shall be rendered in favor of the appellant, the said judge shall make rule remitting such fine, or restoring the suspended pilot or the pilot whose warrant or license may have been reyoaked as aforesaid.

Commissioners cannot move for new trial or have writ of error to Supreme Court; are not parties on the appeal; they only represent the State: 72 Ga. 89.

§1681. (1533.) *Commissioners to take testimony, etc.* 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.

§1682. (1534.) *Fines and forfeitures, how disposed of.* All fines and forfeitures collected by the commissioners shall be applied toward payment of the ordinary expenses of the board, and the residue shall be expended by the commissioners toward improving the navigation of the port or harbor where such fines and forfeitures are inflicted.

§1683. *Term of service as apprenticeship.* No person shall receive a certificate to act as pilot until he shall have served as an apprentice two full years in a decked pilot-boat on the bar for which he seeks to be a pilot (the crew not to be considered as apprentices unless so registered in the office of the commissioners of pilotage), and have given satisfactory evidence of character and skill, and any certified pilot shall serve eighteen months before he shall be entitled to an increased authority; but, in case of emergency, such additional pilot may be appointed as the mayor or other chief officer of the port may determine—the foregoing restrictions to the contrary notwithstanding.

Acts 1882-3,
p. 70.

Where pilot has served two years in decked boat, no necessity to determine that emergency exists before issuing him license: 68 Ga. 514.

§1684. (1536.) *Branch pilots, how appointed.* 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.

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§1685. (1537.) *Penalty for discharging ballast in harbor.* 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 offense, 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 offense to the commissioners, and the other half to the use of the commissioners of said harbors, respectively, for improvement of navigation.

Section construed in connection with section 1686, and there was no evidence under this attachment proceeding to justify the verdict of guilty: 46 Ga. 199-201.

§1686. (1538.) *Proceeding for violating preceding section.* Upon the commissioners receiving satisfactory evidence of the offense 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 attachments, on the oath of the informer or of one of the commissioners, and be levied on the vessel from which the offense 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 the condition to have the vessel forthcoming to satisfy such judgment as may be rendered in the suit.

Section construed in connection with the one preceding it: 46 Ga. 199.

§1687. (1539.) *Penalty against pilot for concealing such offense.* It shall be the duty of every pilot, having knowledge of the commission of the offense 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.

§1688. (1540.) *Incorporated towns may prohibit the discharge of ballast in navigable waters.* 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 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.

§1689. (1541.) *Suits in name of commissioners.* The same boards of commissioners are hereby authorized, in their own names or

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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.

§1690. (1542.) *Present commissioners, etc., to stand.* 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.

GENERAL NOTE.—Pilots not public or civil officers so as to be subject to writs of *quo warranto*: 66 Ga. 503.

Pilots already licensed not proper parties to proceedings to license another, to oppose the grant, etc.: 68 Ga. 514.

Pilot cannot claim entire business of port under contract with commissioners, and enjoin licensing of other pilots: 69 Ga. 247.

CHAPTER 7.

OYSTERS.

§1691. *Unlawful to catch oysters from May first to August thirty-first.* <sup>Acts 1889,
p. 143.</sup> It shall not be lawful to pick, tong, dredge, or in any other manner take or catch oysters from any of the waters of this State, except from private beds, from the first day of May to the thirty-first day of August inclusive, of each and every year, except for the purpose of replanting the same in the waters of this State; nor shall it be lawful for oysters to be taken for any purpose during any season from one hour after sunset on Saturday until one hour before sunrise on the succeeding Monday.

§1692. *Unlawful to rough take.* It shall not be lawful to “rough” <sup>Acts 1889,
p. 143.</sup> take, or catch oysters from any of the public beds within the waters of this State, unless the same shall be culled over the beds from which they may be taken, except when the weather is such as to render it dangerous to remain at the beds: *Provided*, the terms of this section shall not apply to the taking of oysters for the purpose of replanting the same in any of the waters of this State.

§1693. *Non-residents forbidden to procure beds in this State.* It shall <sup>Acts 1890-1,
p. 211.</sup> not be lawful for any person or persons, corporation or corporations, or agents thereof, who are engaged in any other State in the business of shipping or canning oysters, to procure the oyster-beds of this State.

§1694. *Unlawful to use scoop, etc., in certain waters.* It shall not <sup>Acts 1889,
p. 143.</sup> 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

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other instrument than the oyster-tongs heretofore in general use for taking oysters, except within the waters more than one thousand feet distant from the shore-line at ordinary mean low tide. Oysters may be taken by any means or device from any private bed by the owner or lessee thereof, and for the purpose of transplanting to other beds in this State from territory unleased within said limits of one thousand feet; but, in the last case, only upon the consent and approval of the county commissioners for the county within which said territory may be located, or upon the consent and approval of the ordinary for those counties which may have no board of county commissioners, which consent shall be given in all cases in which application is made for the purpose of transplanting oysters to other beds within the waters of this State, from such beds as are not resorted to by the citizens of this State for the purpose of procuring oysters for consumption or for sale.

Acts 1889,
p. 143.

§1695. *Beds in waters not wider than one hundred and thirty feet, private property.* When oyster-banks or beds of oysters of natural formation are within rivers or creeks of this State, not exceeding one hundred and thirty feet in width at ordinary mean low tide, and not used for purposes of navigation, the persons having the ownership of the lands of both sides of such creeks or rivers shall have the exclusive right to the usufruct of such banks or beds of oysters as aforesaid: *Provided, however,* that the rights of opposite riparian proprietors shall only extend to the middle of the stream.

Acts 1890-1,
p. 214.

§1696. *Leasing and staking lots.* The county commissioners in any county, or where there is no board of county commissioners, the ordinary for said county, upon the application of any person for certain territory in any of the navigable waters of this State, and within a distance of one thousand feet from the shore at ordinary mean low tide, upon satisfactory proof, on hearing had before the county commissioners or the ordinary, that said territory had been duly staked off at the line of ordinary mean high water where the leased ground is opposite the public marshes of this State, and in all other cases at the line of low water, except where the consent of the adjacent landowners is obtained for the staking off at said line of high tide, for a period of thirty days before the hearing of such application, shall execute a lease for twenty years, with a privilege of renewal for thirty years more, to such applicant as may first apply for such territory, where there are no natural beds as evidenced by the survey referred to in section 1700. Any person who has already planted any ground within said county shall have the preference in obtaining the lease of such grounds, and upon application of any other person for said territory, the proper authorities for executing such leases shall give thirty days notice of

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such application, by posting a notice at the court-house door, and if the person who has planted oysters thereon shall make application therefor before the expiration of said thirty days, it shall be leased to him, but otherwise to the aforesaid applicant: *Provided*, that the provisions of this section shall not apply to oyster-beds staked out under laws heretofore existing, nor to territory within one hundred and twenty feet of the line of ordinary mean low tide in front of and adjoining habitable high land returned for taxation.

§1697. *Planting-grounds, etc.* Said lease shall convey the exclusive privileges of bedding or planting oysters thereon to the distance of one thousand feet beyond mean low-water mark, and within such limits each applicant shall be entitled to not more than five acres of such territory, which need not be continuous, but within such allotment such lessee shall not be entitled to more than two planting-places: *Provided*, that such lessee deposits at least one hundred bushels of dead shells, or plants one hundred bushels of oysters to every acre of planting-ground, at the rate of one acre or more each year, until five acres have been planted: *And provided also*, that he cause to be placed, at intervals of one hundred yards along the line of ordinary mean high water of such planting-ground in all cases where the leased ground is opposite to the public marshes of this State, and in all other cases at the line of low water, except where the consent of the adjacent land-owners is obtained to the staking off at said line of high water, a post not less than six feet above ground, and board attached, the latter not less than one foot square, upon which a black letter "O," not less than eight inches long, has been plainly painted on a white ground: *Provided also*, that along navigable streams subject to entry under this Chapter, the right of no lessee of a five-acre tract shall extend beyond the middle of the stream: *Provided further*, that in the event that said lessee shall fail to comply with the requirement of this section as to the cultivation of his territory, he shall forfeit so much of his territory as has not been cultivated as hereinbefore required, and if said lessee shall, at any time during the term of his lease, abandon said territory and cease to cultivate oysters for the space of one year, said lease shall be void and territory shall revert to the State.

Acts 1890-1,
p. 214.

§1698. *Notice of application for lease, advertised.* Upon the application of any person, or persons, made to the county commissioners of the county within which said territory may be situated, or where there are no county commissioners, then to the ordinary for said county, for territory within the navigable waters of this State, for which no application has already been duly made, and which is located more than one thousand feet distant from any shore-line at

Acts 1889,
p. 143.

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ordinary mean low tide, upon which to cultivate oysters or propagate the same by artificial methods, which said application shall particularly describe the territory desired, said county commissioners or said ordinary shall require the applicant to advertise in the newspaper which is the official paper of the county in which the territory is located, for thirty days, a notice of said application, particularly describing the territory desired and its location in reference to the nearest lands, and upon the expiration of said advertisement the said county commissioners or said ordinary shall grant, in the name of and in behalf of the State, to such person or persons, by written instrument, a lease of such territory for fifty years for the purpose of cultivating and propagating oysters, and thereupon the person or persons to whom the same may be leased shall, under the direction of the county surveyor, distinctly stake or buoy the same, and shall cause a survey of said territory to be made and placed on file in the office of the clerk of the superior court for record with said lease: *Provided*, that no applicant shall be entitled to receive from said authority a lease for more than five hundred acres within said waters: *And provided further*, that the planting, cultivating, and dredging of oysters therein shall in nowise interfere with navigation.

Acts 1890-1,
p. 214.

§1699. *Lease within one thousand feet, when.* Whenever it is impracticable to obtain as much as five hundred acres of continuous territory beyond the limits of one thousand feet from mean low water, or whenever, in the judgment of the county commissioners or the ordinary, it is for the best interests of the State so to do, said county commissioners or ordinary, upon due application thereof, may grant leases to extend within said limits of one thousand feet to the line of low water where the land adjacent thereto consists of marshes, and to a point one hundred and twenty feet from said line of low water where the land adjacent thereto is habitable high land returned for taxation. If impracticable to maintain the buoys in position, in consequence of the strength of the current, or for other cause, ranges and range-stakes, if shown on the survey recorded in the office of the clerk of the superior court, shall be deemed sufficient.

Acts 1890-1,
p. 214.

§1700. *Natural beds.* The natural oyster-beds of the State shall forever remain the property of this State, open to all her citizens for the procuring of oysters for consumption, sale, seed, or propagating purposes; and for the better securing of this purpose, the charts made and published in consequence of a resolution passed by the legislature of this State, by United States Geodetic Survey known as "Bulletin No. 19," shall be conclusive evidence of the location of such natural oyster-beds and of vacant ground: *Provided*, that wherever beds, shown by said "Bulletin No. 19" to be natural oyster-beds,

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shall as a matter of fact not extend below low-water mark, then the territory below low-water mark shall nevertheless be open to lease. Except as herein stated, it shall not be lawful for the county commissioners or ordinary to grant leases to any grounds shown on said "Bulletin No. 19" to contain a natural bed, and it shall be lawful for them to grant leases on any or all territory indicated on said "Bulletin No. 19" as vacant.

§1701. *Tonging and catching at night.* It shall not be lawful to tong or catch oysters between sunset and sunrise, unless an unobstructed light six feet above the gunwale be carried on board the boat used for such purpose.

§1702. *Former leases validated.* Nothing in this Chapter shall be construed to affect the titles of the lessees of oyster territory which has heretofore been leased by county commissioners or ordinaries, and all leases executed by them before September 22d, 1891, or any assignments which have been made of the leases of five-acre tracts are hereby confirmed and validated.

§1703. *Leased territory planted, how.* Each person applying for and receiving a lease of five hundred acres or less, shall plant at least one-tenth of said leased territory, at the rate of not less than one hundred bushels of oysters or shells per acre, in each and every year, beginning with the planting season next after a lease therefor has been executed, and for a failure thereof the lessee of said territory shall forfeit to the State so much of said territory as is not so cultivated as prescribed by this section; and if said lessee shall at any time during the term of his lease abandon said territory, and cease to cultivate oysters thereon for one year, said lease shall be void, and said territory revert to the State. Oysters shall not be taken from said territory for sale or for consumption until at least one year after oysters or shells have been planted thereon in the proportions hereinbefore prescribed. Acts 1889, p. 143.

§1704. *Leases recorded.* All leases and transfers thereof shall be recorded by the persons to whom such leases or transfers are made, in the office of the clerk of the superior court, in like manner as deeds of real estate are required to be recorded, in a separate book to be kept for that purpose; but no lessee of tracts larger than five acres shall be authorized to sublet or assign his lease, or any portion of the territory conveyed thereby, until he shall have reduced to cultivation at least one-tenth of the territory leased by him.

§1705. *One dollar per acre.* The person or persons to whom such leases are made shall pay to the authorities making such leases the sum of one dollar for each and every acre so leased, and all money so paid shall be appropriated to the school fund of the State, and in addition to said sum, a fee of fifty cents for leases of five-acre Acts 1889, p. 143.

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tracts or less, and for all leases of territory beyond said limit of one thousand feet, a fee of two and one-half per cent. estimated upon the amount paid for the territory thus leased, shall be paid to the authority making the lease.

§1706. *Leases approved by attorney-general.* The applications and leases, hereinbefore provided for, shall be in manner and form as shall be approved by the attorney-general of this State.

§1707. *Removing oysters from private beds, or marks.* It shall not be lawful, without authority from the owner or owners, for any person to take or catch any oysters from any private bed, nor to remove or deface any oyster-marks.

§1708. *Returnable for taxation.* The lessees of all such leased territory shall return the same for State and county taxation in the same manner as other property is returned.

§1709. *Rights of citizens protected.* No provision of this Chapter shall be so construed, as in any manner, during the open season herein provided, to abridge or interfere with the rights of any citizen of this State to enter upon and take from any public beds oysters by the use of such implements as may have been heretofore in general use in this State; and no provision of this Chapter shall be so construed as to interfere with or abridge the wharfing privileges of riparian owners. It shall not be lawful for any applicant for territory upon which to replant oysters, to receive a lease for any of the beds or planting-grounds of any of the natural oyster-beds which are resorted to by the public for the purpose of procuring oysters by the use of tongs for consumption or sale.

§1710. (1620.) *Planted oyster-beds protected.* 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.

§1711. (1621.) *Exclusive right of certain landowners.* When oyster-banks, or beds of oysters, of 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.

 State geologist.

CHAPTER 8.

STATE GEOLOGIST.

§1712. *State geologist.* The Governor shall appoint, with the consent of the advisory board, a competent person as State geologist, who shall have a thorough, scientific and practical knowledge of the science of geology and mineralogy, and who is not connected with any school or college as an instructor. The State geologist shall enter upon the duties of his office on the first of July, 1890, and shall hold until removed by the appointing power for inefficiency, incompetency, or misconduct, or until the office is abolished by the General Assembly. The office of the State geologist shall be at the seat of government. Acts 1889,
p. 18.

§1713. *Advisory board.* There shall be an advisory board, consisting of the Governor of the State (who shall be president of the board), the commissioner of agriculture, the State school commissioner, the State treasurer, the comptroller-general, the secretary of State, and the attorney-general. Four members present at any meeting shall constitute a quorum for the transaction of any business. Acts 1894,
p. 111.

§1714. *Duty of geologist.* It shall be the duty of the State geologist to give his attention to the administration of the affairs of the survey; to visit all parts of the State, so as to make himself familiar with the needs of each section; to supervise the work of his assistants, including all reports submitted by them for publication; to undertake such field-work as his time will permit, and to perform such other duties as properly pertain to his office. Acts 1894,
p. 111.

§1715. *Assistant State geologists.* Two competent assistant State geologists shall be chosen by the State geologist, who may remove them at any time for incompetency, inefficiency, or misconduct. So soon as a general outline of a geological survey of the entire State shall have been made, the State geologist shall divide up the work between himself and his assistants in such way as shall be to the State's best interest, and under his direction and control the corps shall proceed to make a careful and complete geological, mineralogical, and physical survey of the State; to enter upon record, to be kept for that purpose in his office, an accurate statement of the extent of all water-powers, roads, springs, and watercourses, and the climate, topography, and general physical character of the country, and locate the belts of ores, useful minerals, and building materials; to report characteristics and composition of soils, and the deposits of marls and phosphates; to collect, analyze, and classify specimens of minerals, rocks, ores, fossils, and soils, and enter the same on record; to cause to be preserved in a museum specimens illus-

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trating the geology, mineralogy, soils, and whatever else may be discovered in the mineral or geological resources of Georgia, having scientific or economic value; and he shall make a report of the survey of every county of this State, accompanied with all necessary maps and illustrations.

Acts 1894,
p. 113.

§1716. *Survey of watercourses, lakes, etc.* It shall also be the duty of said State geologist to make a survey of the watercourses, ponds, lakes, and swamp region of Georgia, and submit, in the report provided for, a topographical map showing the location, extent, means, and plans of drainage, and also an estimate of the cost of said drainage of the ponds, lakes, and swamps of Georgia. The said State geologist shall also make an estimate of the value and extent of the lands to be reclaimed by said drainage.

§1717. *Employment of topographers and drivers.* The State geologist is hereby authorized to employ two competent topographers and four assistant topographers and two drivers, as may be necessary to carry out the purpose of this Chapter.

§1718. *State geologist to supervise.* The State geologist shall have supervision of the entire work of the survey, and shall be responsible for the accuracy of the same. It shall be the duty of the State geologist to make report to the advisory board once every three months—to wit, on the second Wednesdays in March, June, September, and December of each year.

§1719. *No special surveys.* No individual, firm, or corporation shall have the right to call upon or require the State geologist to enter upon any special survey for his or their special benefit; but the survey is to proceed upon a settled plan for the benefit of the public, and investors and developers in general.

Acts 1889,
p. 18.

§1720. *Supervision of expenses by board.* The advisory board shall have the supervision of the money expenditures in the prosecution of the work contemplated. The State geologist shall make to the advisory board monthly statements under oath, of all incidental expenses necessarily incurred by himself and his assistants, accompanied by proper vouchers, in the discharge of their labors. The board shall audit such accounts, item by item, and approve or reject the same, as in their judgment may be right. When an account is allowed, the Governor shall draw his warrant for the amount thereof. The Governor, with the advice and consent of the board, may at any time suspend the field-operations.

Acts 1880-1,
p. 129.
1889, p. 18.

§1721. *Clerical work.* The State geologist shall keep his office in a room to be set aside for that purpose by the Governor, and the commissioner of agriculture shall furnish the clerical work required by the State geologist.

Phosphate deposits.

§1722. *His salary.* The salary of the State geologist shall be ^{Acts 1880-1,} twenty-five hundred dollars per annum, and the two assistants ^{p. 129.} shall each receive a salary of twelve hundred and fifty dollars per ^{1889, p. 18.} annum, to be paid as now provided by law for the payment of other State-house officers.

§1723. *Specialist.* The State geologist, with the consent of the ^{Acts 1880-1,} board of advisement, may employ a specialist, or specialists, at any ^{p. 129.} time. ^{1889, p. 18.}

§1724. *When results of surveys may be published.* Neither the State ^{Acts 1894,} geologist, nor his assistants, shall disclose to any person, except to ^{p. 113.} the owner of the land, the result of a survey, until the same is made public by publication of the report by the advisory board.

§1725. *Maps of surveys State property.* The State geologist and his ^{Acts 1880-1,} assistants shall deposit, in the office of the Governor, all maps, sur- ^{p. 129.}veys, notes, or memorandum of surveys, when the surveys are completed, which are hereby declared to be the property of the State.

CHAPTER 9.

PHOSPHATE DEPOSITS.

§1726. *Rights of discoverers of phosphate deposits.* Whenever any ^{Acts 1884-5,} person shall discover phosphate rock or phosphatic deposits in the ^{p. 125.} navigable streams or waters of this State, or in any public land on their banks or margins, and shall file with the secretary of State notice of said discovery, and a description of the location thereof, he shall be entitled to receive from the secretary of State a license giving him, or his assigns, the exclusive right, for ten years from the date of said license, of digging, mining, and removing from the aforesaid location, and from an area for a distance of five miles in any or all directions therefrom, the phosphate rock and phosphatic deposits that may be found therein: *Provided*, that those receiving or holding such license shall in no way interfere with the free navigation of the streams and waters of the State, or the private rights of any citizen residing or owning the lands upon the banks of the said navigable rivers and waters of the State: *Provided*, that no person or persons, natural or artificial, shall have the privilege of locating a claim within twenty miles of any other claim for which they have received a license, during the continuance of such license.

§1727. *Fees to State.* Licenses shall be granted upon the express ^{Acts 1884-5,} condition that the grantees shall pay to the treasurer of this State ^{p. 125.} the sum of one dollar per ton for every ton of phosphate rock and phosphatic deposit mined and removed from the said navigable rivers and waters of this State and the banks and margins thereof;

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said grantees shall pay the treasurer of this State the sum of one hundred dollars as a license fee before commencing business under said license.

Acts 1884-5,
p. 125.

§1728. *Affidavit and bond.* Before commencing operations, the holders of each of said licenses shall file, or cause to be filed in the office of the treasurer of this State, an affidavit and bond in the penal sum of twenty thousand dollars, approved by the attorney-general, and conditioned that the said holders shall make true and faithful returns to said treasurer, annually, on or before the first day of October, and oftener if required by the said treasurer, of the number of tons of phosphate rock and phosphatic deposits mined and removed by him or them from the beds of the navigable streams and waters of this State and the banks or margins thereof, and shall punctually pay to the treasurer of this State, annually, on the first day of October, one dollar per ton for every ton of phosphate rock and phosphatic deposits by him or them mined and removed from the beds of the navigable streams and waters of this State and the banks and margins thereof during the year preceding.

§1729. *Lapse of licenses.* Any license granted under the provisions of this Chapter shall lapse and become void unless within three years from the date of the license the privileges granted are utilized and work in good faith is commenced.

CHAPTER 10.

STATE BUREAU OF IMMIGRATION.

Acts 1894,
p. 104.

§1730. *Commissioner of immigration.* The commissioner of agriculture of this State shall be *ex officio* commissioner of immigration, with the duties hereinafter enumerated.

Acts 1894,
p. 104.

§1731. *Information to be collected and arranged by him.* It shall be the duty of the said commissioner to collate and arrange in systematized order, in his office, full and accurate information as to the mineral, geological, metallurgical, agricultural, horticultural, and timber and fishing resources of the State; the cost and prospect of the profitable development and utilization of the same; as to the adaptation of the soil of the State and the counties thereof to the various products of the temperate zone; as to the streams and waters of the State and their adaptability to navigation, manufacturing, and other purposes; as to the advantages of the seaports of the State; as to the facilities for transportation, both passenger and freight, by water and by rail, with the cost of same; as to the climatic, health, social, and religious conditions of the State; as to the capital invested in the various lines of manufacture in the State and the records of the same as to profitableness; and as to any and all

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other matters which he may deem of interest to home-seekers, investors, and the general public: *Provided*, that all such information shall be arranged according to counties, as far as practicable, and be so arranged as to be readily accessible and intelligible to all parties seeking information along the lines herein indicated.

§1732. *Correspondence by him with bureaus, societies, etc.* It shall be the duty of the said commissioner to correspond with all bureaus, societies, corporations and organizations having for their purposes the development of this State and of the Southern States of these United States, the bringing of capital, home-seekers, and acceptable immigrants to this and to the said Southern States; to advise them as to the resources and advantages of this State; to communicate, correspond with, and furnish all information to all persons seeking same along the lines indicated. Acts 1894,
p. 105.

§1733. *Handbook to be prepared, published, etc.* Said commissioner shall, from the information collated and arranged as prescribed, prepare, publish, and disseminate two thousand copies of a handbook of this State, neatly printed, bound and arranged according to counties, plainly and intelligibly setting out the resources and advantages of the State to home-seekers, investors, and the general public: *Provided*, that said handbook shall not cost in excess of one thousand dollars. Acts 1894,
p. 105.

§1734. *Funds to be used.* The commissioner of agriculture is authorized to use and appropriate to the carrying out of the objects and purposes of this Article all moneys and funds now unused in his office or to his credit in the treasury of the State, or so much thereof as may be necessary. Acts 1894,
p. 105.

§1735. *Sale of handbook.* The commissioner of agriculture and *ex officio* commissioner of immigration is authorized to sell to all persons desiring said handbook as many copies thereof as they may desire, at the actual cost thereof. Acts 1894,
p. 105.

CHAPTER 11.

PROTECTION OF TRADE-MARKS.

§1736. *Trade-marks of labor unions.* Whenever any person, association or union of working men have adopted, or shall hereafter adopt for their protection, any label, trade-mark, or form of advertisement announcing that goods to which such label, trade-mark, and forms of advertisement shall be attached were manufactured by such person or by a member or members of such association or union, it shall be unlawful for any person or corporation to counterfeit or imitate such label, trade-mark, or form of advertisement with intent to use Acts 1893,
p. 134.
§1035.

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the same for the purpose of deceiving the public in the sale of the goods.

§1737. *Use of counterfeit prohibited.* Every person who shall use any counterfeit or imitation of any label, trade-mark, or form of advertisement of any such person, union, or association, knowing the same to be counterfeit or imitation, shall be guilty of a misdemeanor.

§4035.

§1738. *Union labels and trade-marks filed with secretary of State.* Every person, association, or union of working men that has adopted or shall hereafter adopt a label, trade-mark, or form of advertisement, may file the same for record in the office of the secretary of State by leaving two copies, counterparts or facsimiles thereof, with the secretary of State. Said secretary shall deliver to such person, association, or union, a duly attested certificate of the record of the same, for which he shall receive the fee of one dollar; such certificate of record shall, in all suits under this Chapter, be sufficient proof of the adoption of such label, trade-mark, or form of advertisement, and of the right of said person, association, or union to adopt the same. No label shall be recorded that probably would be mistaken for a label already of record.

Acts 1893,
p. 134.

§1739. *Remedies against using counterfeits.* Every such person, association, or union adopting a label, trade-mark, or form of advertisement as aforesaid, may proceed by suit to enjoin the manufacture, use, display, or sale of any such counterfeits or imitations, and all courts having jurisdiction thereof shall grant injunction to restrain such manufacture, use, display, or sale, and shall award the complainant in such suits such damages resulting from such wrongful manufacture, use, display, or sale as may by said courts be deemed just and reasonable, and shall require the defendant to pay such person, association, or union the profit derived from such wrongful manufacture, use, display, or sale, and such court shall also order that all counterfeits or imitations in the possession or under the control of any defendant in such case be delivered to an officer of the court, or to the complainant, to be destroyed.

§1740. *Suits, how brought.* In all cases where such associations or unions are not incorporated, suits may be commenced and prosecuted by any officer or member of such association or union on behalf of and for the use of such association or union.

§1741. *Unlawful use of name, etc.* Any person or persons who shall in any way use the name or seal of any such person, association, or union, or officer thereof, in and about the sale of goods or otherwise, not being authorized to so use the same, knowing that such use is unauthorized, with the intent to deceive the public in the sale of goods, shall be guilty of a misdemeanor.

FIFTEENTH TITLE.

INCLOSURES AND STOCK.

CHAPTER 1.

ESTRAYS.

§1742. (1427.) *Who may take up estrays.* 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.

§1743. (1428.) *Estrays, how disposed of.* 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 ordinary of the county. He shall, at the time of handing the same to said ordinary, 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.

Two freeholders are necessary, and this law is to be construed strictly: 61 Ga. 341, 342.

Taker-up not liable for failure to make return in five days where conduct shows good faith. Interest in homestead estate, sufficient for freeholder here: 65 Ga. 425.

§1744. (1429.) *Estrays, how advertised.* Such ordinary 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 justice's court of the district where taken up, and in the public gazette where the sheriff of the county advertises his sales.

§1745. (1430.) *Estrays, when sold.* If by the end of that time the 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.

§1746. (1432.) *Proceeds, how disposed of.* The purchase-money, after deducting all lawful expenses, shall be paid to the treasurer of

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the educational fund of the county, to be paid to the owner of the estray if property is proven therein within twelve months.

§1747. (1433.) *Estrays, how reclaimed by owner.* Property may be proven by an affidavit of ownership before the ordinary, and the filing with him bond and security in double the appraised value, payable to such ordinary, conditioned to answer any demand thereon that may be proven against the obligor within two years.

§1748. (1434.) *Conflicting claims, how tried.* 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 court of ordinary, with privilege of appeal.

Acts 1866,
p. 20.

§1749. (1435.) *Expenses, how determined.* The taker-up of any estray shall be entitled to and receive such compensation as shall be awarded and determined by the freeholders before whom said estray may be exhibited, as provided in section 1743 of this Code, and said freeholders are empowered and required to award and determine such compensation as to them may seem reasonable and just, from all the circumstances in each case.

§1750. (1436.) *Penalty against taker-up for not appraising, etc.* 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 ordinary, 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 willful abuse or neglect of the animal.

A successful suit under this section; the section cited, and to be strictly construed: 61 Ga. 341.

Where good faith has been observed, quintuple damages not allowed: 65 Ga. 425.

Acts 1877,
p. 17.

§1751. (1431.) *Sale of estrays.* If the property is not of sufficient value to pay the expenses of said proceedings, said ordinary may order it sold by the sheriff, or constable of the district where taken up, on the freehold where taken up, after ten days notice at the court-house door, and at the place of holding justice's court of the district in which said property is taken up: *Provided*, that if such estray or estrays be a sheep, hog, or goat, it shall only be necessary for the ordinary to advertise the same at the court-house door of the district where taken up, and at the court-house door of the county-site, for ten days, without advertising the same in a public gazette.

Acts 1884-5,
p. 146.

§1752. *Description and appraisement.* Whenever any stock taken up in this State as estrays shall be appraised at the value of twenty

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dollars or less, it shall be the duty of the taker-up to hand the description and appraisement provided by law, within the time prescribed, to the justice of the peace, or notary public *ex officio* justice of the peace, in the district where taken up, instead of to the ordinary, and to make before such justice or *ex officio* justice the prescribed affidavit; and it shall be the duty of such officer to order the sale of such estrays by the constable of the district, on the freehold where taken up, after ten days notice at the door of the court-house of the county and at the place for holding justice's court in said district, and such sale shall take place pursuant to such order.

§1753. *Filing papers, fees, claims, and costs.* The said justice shall file the affidavit and appraisement and description in his office, and shall at once enter the case on his docket, together with the order of sale, and for the services thus rendered shall receive the sum of fifty cents. All claims of ownership of such property made before sale shall be made in such justice's court, under the same rules and regulations provided for hearing the same before the court of ordinary, and the costs in such cases shall be the same as now provided by law for similar services in justice's court. Acts 1884-5, p. 146.

§1754. *General estray laws applicable.* All the laws with reference to estrays, and with reference to the disposition of the proceeds of sale, shall apply to the class of estray provided for in sections 1752 and 1753, except in so far as the same are altered by the said two sections. Acts 1884-5, p. 146.

§1755. (4612 b.) *Abandoned and diseased animals, how dealt with.* For the purpose of putting an end speedily to the suffering of hopelessly diseased and disabled animals, any person finding any domestic animal which is abandoned, glandered, or otherwise diseased or injured past recovery and not properly cared for, may apply to any justice of the peace of the county, who may summarily decide whether such animal should be destroyed, after giving notice to the owner, if known, whenever such notice can be given without defeating the object of this section. The order authorizing the destruction of such animal shall not defeat the owner's claim for damages against the person destroying or procuring the destruction of such animal. Acts 1878-9, p. 183. §2261.

§1756. (1437.) *Stone-horses may be gelded, when.* 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 2.

MARKS AND BRANDS.

§1757. (1438.) *Marks and brands must be recorded.* All persons having marks and brands on cattle, or other property in this State, shall have them recorded by the ordinary 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.

§1758. (1439.) *Preference in favor of marks and brands recorded.* 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 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.

§1759. (1440.) *Oldest record has preference.* When two or more persons have the same marks and brands, and both are recorded, the *prima facie* right is with the older record.

§1760. (1441.) *Marking, etc., by whom done.* Marking and branding shall not take place except by or under the supervision of some competent 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.

§1761. (1442.) *Marks, etc., how changed.* 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 ordinary, and a minute made thereof.

CHAPTER 3.

INCLOSURES AND FENCES.

ARTICLE 1.

FENCES.

§1762. (1443.) *Lawful fence.* All fences or inclosures, commonly called worm fences, shall be five feet high, with or without being staked and ridered, and from the ground to the height of three feet the rails shall 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.

Section cited as to a barbed-wire fence with two strands of wire: 62 Ga. 679, 684.

 Proceedings in case of damage by animals.

Average height of five feet, not sufficient if too low at some places: 68 Ga. 288.

No distinction as to different kinds of animals: 68 Ga. 288.

§1763. (1444.) *Inclosures by ditches, etc.* Any inclosure 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.

Section cited as to fence of wire three feet high and with barbs: 62 Ga. 679, 684.

§1764. (1444a.) *Wire fence.* The following inclosure shall be deemed and held to be a lawful fence: Any inclosure made by stretching not less than six horizontal strands of barbed wire between posts firmly set in the ground or between growing trees not more than ten feet apart, the bottom wire to be not more than four inches from the ground, the next wire to be not more than four inches from the first, the next wire to be not more than six inches from the second, the next wire to be not more than eight inches from the third, the next wire to be not more than ten inches from the fourth, and the topmost wire to be not less than four and a half feet from the ground, with a plank strip not less than four inches in width either above or below the topmost wire.

Acts 1878-9,
p. 165.
1893, p. 129.
1882-3,
p. 139.

§1765. *Not applicable to "no-fence" counties.* The provisions of the preceding section shall not apply to any county in this State now having, or that may hereafter have, in operation the "no-fence" or stock law.

 ARTICLE 2.

PROCEEDINGS IN CASE OF DAMAGE BY ANIMALS.

§1766. (1445.) *When owner is liable for trespass, etc.* If any trespass or damage shall be committed in any inclosure, 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 inclosure shall kill or injure such in any manner, he is liable in three times the damage.

Trespass brought by the owner against a railroad for killing of mules running at large on uninclosed track: 19 Ga. 437-439. Liability of trespasser to the owner of stock destroyed on uninclosed river bottom land: 28 Ga. 239. Loose stock on uninclosed land are not trespassers: 30 Ga. 911. Allegations necessary for plaintiff to make in a suit under this section: 57 Ga. 253.

This statute is penal, and applied only to cases clearly within it: 72 Ga. 815.

Owner of inclosure not liable for acts of overseer: 72 Ga. 815.

Killing hog not justified if fence not lawful, although sufficient to keep out other hogs than plaintiff's: 68 Ga. 288.

Gates.

Damages to crop not set-off against action for trespass on hog, when defendant did not have lawful fence: 68 Ga. 288.

Suit in justice court for triple damages for killing cow, not convertible into mere action for value of cow under section 3817: 73 Ga. 98.

Declaration under this section not amendable by count for exemplary damages independent of it: 82 Ga. 732.

One who has hay-barn on land trespassed on, and fires on cattle trespassing on hay, is "owner" hereunder: 88 Ga. 234.

§1767. (1446.) *When owners of inclosures may kill stock.* When fences are made pursuant to law and any animal breaks in, the owner of the inclosure 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.

Agreement to dispense with partition fence not equivalent of legal fence so as to justify killing cattle damage feasant: 82 Ga. 732.

§1768. (1447.) *Poisoning crops.* If stock is killed or injured from poisoning crops, or other poison upon the premises, the presumption is that it was done by the person in possession and charge of the same.

ARTICLE 3.

GATES.

Acts 1884-5, §1769. *Erection of gates.* It shall be lawful for any person living on or near the line, and owning or controlling land in counties and districts of this State, in one of which the "fence law" is of force, and the adjoining counties and districts have adopted the "no-fence law," to erect, on any highway or public road on the line of said county and districts, gates, which gates shall be self-latching, opening each way, and shall be kept in good repair by the person or persons so erecting said gates, and upon failure to do so the same shall be removed as other obstructions across public roads; and said person or persons shall have hitching-posts placed on each side of said gate or gates.

Acts 1884-5, §1770. *Leaving gates open.* After said gates shall have been so erected, should any person or persons open and leave the same open or in a condition for stock to enter, said person or persons shall be guilty of a misdemeanor.

ARTICLE 4.

WATERCOURSES AND LINES FENCES, WHEN.

§1771. (1448.) *When watercourses are deemed fences.* All watercourses 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 freshet, or otherwise, fences cannot be kept on said streams, and shall be subject to the rules applicable to other fences.

§1772. (1449.) *Lines of county and district fences, when.* In each and every county and district in this State the boundary lines of each lot, tract, or parcel of land in said counties and districts shall be, and the same are hereby, declared a lawful fence: *Provided*, that this section shall not become operative in any county or district of this State which has not heretofore abolished or removed fences, either by a vote of the people or in pursuance of legal or illegal legislative action; or which has not heretofore abolished or removed fences by an election, although not held at the time prescribed in Act approved September 5th, 1883, unless by an election and in the manner provided for in section 1777. Acts 1892, p. 105. 1890-1, p. 69.

This and following sections not *in pari materia* with sections 2321 and 2322, as to damages by railroads: 71 Ga. 461.

The stock law may be considered by the jury in passing on the negligence of both plaintiff and railroad: 71 Ga. 461.

Act of November 26th, 1890, a general law and constitutional: 92 Ga. 1.

When Act of November 26th, 1890, applies, live stock, running at large on premises other than owner's, could be taken up and impounded: 92 Ga. 1, 7.

ARTICLE 5.

IMPOUNDING ANIMALS.

§1773. (1450.) *Animals shall be confined.* No horse, mule, cow, or hog, or any other animal or animals, used or fit either for food or labor, shall be permitted to run at large beyond the limits of the lands of its owner or manager. Acts 1872, p. 34.

§1774. (1451.) *Animals impounded, when.* If any of the animals enumerated in the foregoing section shall commit any trespass or damage, or shall be found going at large on the premises of any other person than the owner of such animals or stock, whether inclosed or uninclosed, and whether such animals wandered from the premises of the owner in the county in which the trespass was committed or from another county, it shall be lawful for the owner of such

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premises to impound such animals and retain them until the owner thereof shall make full satisfaction or reparation for the damages committed by such animals, including all costs and expenses, unless disposed of according to the provisions of the following sections.

See 84 Ga. 76.

Possessory warrant not lie to recover horse impounded under city ordinance: 70 Ga. 628.

At common law, damage by straying hogs made owner liable in trespass; or, injured party might impound. Statutory remedy merely cumulative: 78 Ga. 50.

Cattle wandering about, damage feasant, could be taken up and impounded at common law: 70 Ga. 628.

After unsuccessful claim for damages, expenses accruing pending said damage claim not recoverable: 90 Ga. 54.

Acts 1872,
p. 34,
1888, pp. 36,
37.

§1775. (1452, 1453.) *Impounded animals, how disposed of, and damages, how assessed.* In case any of the said animals shall be impounded under the provisions of the preceding section, it shall be the duty of the party so impounding them to give them all necessary care, feed, and attention, for which he shall have such compensation as is allowed sheriffs for like care, feed, and attention to stock. And it shall also be his duty to give the owner, if known, notice of the fact of such impounding in twenty-four hours, and if not known or ascertained within three days from the taking up and impounding such animals they shall be disposed of as provided by law in cases of estrays, except that in case any such animal or animals shall be sold under the provisions of law, the proceeds of such sales, after the payment of legal costs, including advertising, shall be applied first to the payment of the damages sustained by the aggrieved party, including compensation for the care, feed, and attention. In case of disagreement between taker-up, or party claimed to be damaged, and the owner of such animal or animals, as to the amount of damages sustained on account of the alleged trespass of such animal or animals, or for the expenses for care, feed, and attention, the aggrieved party may make complaint to the justice of the peace of the district, and if no justice in such district, then to the most convenient justice in any other district, setting forth the amount claimed. Whereupon, such justice shall issue a summons as in other suits, returnable within five days from the date thereof, requiring the owner or claimant of such stock to appear at a time and place therein named, and which shall be served as other summons, at least three days before the time of hearing, when such justice shall proceed to hear evidence, and give judgment against such owner or claimant for such damages as shall appear reasonable and just, including the expenses of care and feeding such stock, and all legal costs, which shall be enforced by execution, levy and sale, as other judgments of such justice: *Provided, nevertheless,*

Election for no fences.

that a special lien upon the trespassing animal or animals for the payment of such judgment shall attach, from the time of the committing of such trespass, superior to all liens or previous claims, except public dues, and superior also to all exemptions under the homestead and exemption laws. But the defendant in such case against whom a judgment for damages has been rendered may appeal to a jury, as other appeals are allowed in justices' courts.

§1776. (1453.) *Improperly impounding or breaking pound, penalty.* If any person shall, under the pretext of the provisions of this law, unnecessarily or out of mere vexation, take up and impound any such animal or animals, or, after having taken up and impounded any such animal or animals, shall fail to give the notice required by the preceding section, or to stray them in case the owner is not known or ascertained within the time prescribed by said section, or shall fail to give proper care and attention as herein provided, or in any manner shall injure or maltreat any such animal or animals, or if any such person shall break a pound and release any animal which has been legally impounded or estrayed, without having first paid all damages that may have been incurred, such person so offending shall be deemed guilty of a misdemeanor, and in addition shall pay the owner of such animal or animals, or pounds, double the amount of damages actually sustained by a violation of the provisions of this Chapter.

Acts 1872,
p. 34.
1882-3, p. 51.

Cited: 71 Ga. 465.

ARTICLE 6.

ELECTION FOR NO FENCES.

§1777. *Election, how ordered.* The provisions of sections 1772, 1773, 1774, 1775 and 1776 shall become operative in any county in this State, upon the following terms and conditions: Whenever so many as fifty freeholders in any county in this State shall petition the ordinary of any county for the benefit of the provisions of said sections, said ordinary shall at once make known throughout said county, by advertisement in the public gazette if there be one published in said county, and by notices at all election precincts and public places therein, that such petition has been filed in his office, such notices to be published twenty days. If a counter-petition of freeholders is filed amounting to fifty persons, then the ordinary shall proceed no further. If such petition of freeholders is not met by such counter-petition, or, if met by such counter-petition, is supported by a petition of so many as twenty-five additional freeholders, then the ordinary aforesaid shall at once proceed to have

Acts 1880-1,
pp. 60, 61.
1882-3, p. 49.
1889, p. 60.
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an election held in such county on first Wednesday in July following, in which the question shall be submitted to the lawful voters of said county of "fence" or "no fence," said election to be held at the court-ground in each militia district and under the same rules and regulations as provided for members of the General Assembly, and after thirty days notice at the most public places in said county: *Provided*, that no person shall be allowed to vote at said election except in the militia district in which he resides: *Provided*, that such election shall not be held oftener than one time in every year. The returns of said election shall be made to the ordinary of said county, who, after examining the same and deciding upon all questions which may arise out of said election, shall proclaim the result by notice as aforesaid. If the lawful majority in said election is for "no fence," then said provisions shall take effect in such county within six months thereafter.

Agreement in mass-meeting to disregard stock law did not repeal it: 78 Ga. 204.

Application to ordinary to examine returns, etc., must be in writing. Such application must be made before result of election proclaimed: 71 Ga. 205.

Power to cause or prevent election exclusively in freeholders, and they alone proper parties to election-contest: 69 Ga. 280.

Returns properly consolidated by managers of the districts before being returned to ordinary: 71 Ga. 205.

After ordinary proclaimed result of election, too late to seek redress by injunction: 73 Ga. 377.

Validity of stock-law election cannot be attacked by petition to enjoin threatened putting the law in force: 92 Ga. 441.

Ordinary compelled by *mandamus* to declare result of election: 77 Ga. 668.

Intimation that ordinary's decision final and not reviewable by *certiorari*: 69 Ga. 280.

Legislature seems to have intended action of ordinary to be final and conclusive: 73 Ga. 377; see also 72 Ga. 812.

Jurisdiction of fence election rests with ordinary exclusively, and writ of prohibition refused: 75 Ga. 112.

Quo warranto does not lie: 73 Ga. 377.

Election on question of "fence or no fence," held on 12th of August, 1891, held illegal and void: 92 Ga. 309.

Voter must vote at the court-ground of his militia district: 71 Ga. 205.

§1778. *Election in militia districts.* The provisions of sections 1772, 1773, 1774, 1775 and 1776 shall become operative in any militia district of this State, upon the following terms and conditions: Whenever so many as fifteen freeholders, or a majority of freeholders, in any militia district of this State, shall petition the ordinary of any county in which said district is located, for the benefit of the provisions of said sections, said ordinary shall give notice of said petition by advertising the same in the public gazette if there be one published in said county, and by public notices at all election precincts and public places in said district, which said notices shall

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be published for twenty days; and said ordinary shall at once proceed to have an election held in said militia district at as early a day as practicable, to be designated by him, after said notices have been given, in which the question shall be submitted to the lawful voters of said district in the following form, to wit, "For fence" or "Stock law;" said election to be held at the places and under the same rules and regulations as are provided for members of the General Assembly, and after fifteen days notice at the most public places in said district; at which election all persons who are qualified to vote for members of the General Assembly, and who have been *bona fide* residents of said district for ninety days immediately preceding said election, shall be qualified to vote. The returns of said elections shall be made to the ordinary of said county, who, after examining the same and deciding upon all questions which may arise out of said election, shall proclaim the result by notice as aforesaid. If the lawful majority in said elections is for stock law, then the provisions of said sections shall take effect in such militia district within six months thereafter: *Provided*, that said last election shall not be held oftener than one time in every year.

Ordinary acts ministerially; *certiorari* not lie to decision: 82 Ga. 738.

Failure to advertise for twenty days mere irregularity, notice being given to all voters in district: 82 Ga. 397.

No provision for counter-petition, or for any contest or hearing before ordinary: 82 Ga. 738.

Thirteen freeholders did not affirmatively appear to be a majority. Tax digest, closed July 1st, not conclusive when petition was filed in November following, as to number of freeholders: 82 Ga. 397.

Part of "fence" militia district transferred to "no-fence" district becomes subject to impounding laws: 88 Ga. 716.

Where militia district lines legally changed, territory added becomes subject to fence law in such district: 91 Ga. 141; see also 84 Ga. 432.

§1779. *Deposit of cost of notices, etc.* None of the ordinaries of this State shall publish and post notices of the filing of a petition of freeholders for an election upon the question of fence or no fence, as provided for in this Code, until there shall be deposited with such ordinary an amount sufficient to pay the legal cost of advertisement and the actual cost of posting notices. Acts 1882-3, p. 129.

§1780. *Expense of publishing, etc., notices after election.* The cost of publishing and posting the notices required after the election has been had, shall be paid out of the county treasury of such county as other county expenses are now paid. Acts 1882-3, p. 129.

ARTICLE 7.

MISCELLANEOUS PROVISIONS.

Acts 1880-1, §1781. (1455 a.) *Militia districts, fences around.* Whenever any militia district shall adopt the provisions of the stock law, it shall be the duty of the ordinary (or such other tribunal as may have jurisdiction over county matters), as soon as practicable after said adoption, to have good and substantial fences erected around the lines of said district in order to prevent the incursion of stock from other counties or districts, and for this purpose he is empowered to enter upon the land of any person of said district or county, and have fences constructed across any public or private road: *Provided*, that proper gates are established in such public or private roads.

Law providing that ordinary may levy and collect tax upon property within district, to build and maintain such fences, held unconstitutional: 75 Ga. 7.

Stock law goes into effect within six months after adoption, whether fence has been built around district or not: 80 Ga. 781; see also 81 Ga. 624.

Acts 1880-1, §1782. (1455 c.) *Fences protected.* The laws now of force with regard to the legal fences shall apply to all fences erected in pursuance of the foregoing section, and all persons disturbing or injuring the same shall be punished as now prescribed by law.

Acts 1880-1, §1783. (1455 d.) *Stock-drivers shall avoid trespass.* It shall be the duty of any person or persons driving stock of any kind through the public roads of any district in which the "stock law" is of force, so to herd and drive the same that they shall not be allowed to enter upon or work injury to the lands or crops of the citizens thereof, and for violation of this section shall be dealt with as other trespassers.

Acts 1880-1, §1784. (1455 e.) *Gates to be erected.* It shall be the duty of the ordinary (or such tribunal as aforesaid) in any county where any district of the same has adopted the provisions of the stock law aforesaid, to have erected substantial and convenient gates in fences at the crossings of all public highways and neighborhood roads, and whenever any person residing in said district shall desire a crossing on his own lands, he shall be permitted to erect and keep up such gates at his own expense. Any gate erected across a public road under the provisions of this Chapter shall be so constructed that the same can be opened and shut without dismounting from any horse or vehicle that may be desired to pass through the same.

Acts 1880-1, §1785. (1455 f.) *Pasturage furnished, when.* Each owner or proprietor of lands, in any militia district adopting the provisions of this Chapter, who shall rent his lands, or establish a system of tenantry thereon, shall furnish pasturage for at least one cow and calf for the family of each tenant: *Provided*, that said tenant shall do his proportionate part of fencing.

Miscellaneous provisions.

§1786. (1455 g.) *Rights of voters.* Nothing herein contained shall prevent any district which has adopted this law from voting at any county election on the stock law.

§1787. (1455 h.) *Where streams are fences.* The provisions of sections 1772 to 1777, inclusive, shall become operative in any part of any county in this State that is divided by any watercourse that is or shall be deemed and considered a fence, upon the following terms and conditions: Whenever so many as fifty freeholders residing on that side of such watercourse in any county in this State that is divided by any watercourse, that is or shall be deemed and considered a fence, shall petition the ordinary of said county for the benefit of said stock law in that portion of the county, said ordinary shall at once make known throughout said portion of said county, by advertisement in the public gazette if there be one published in said county, and by posting notices at all election precincts and public places therein, that such petition has been filed in his office, such notice to be published at least twenty days, and all subsequent proceedings shall be the same as now provided when whole counties apply for the provisions of said sections.

Acts 1880-1,
p. 177.

§1788. (1455 i.) *Part of county excepted.* The result of such election shall have no force or effect in that part of the county lying on the opposite side of such watercourse.

GENERAL NOTE.—Special fence laws applicable to particular counties, unconstitutional: 84 Ga. 804, 812.

SIXTEENTH TITLE.

DEPARTMENT OF AGRICULTURE.

CHAPTER 1.

COMMISSIONER OF AGRICULTURE.

Acts 1874,
p. 6.

§1789. (1465 a.) *Agricultural department established.* There is established a department of agriculture for the State of Georgia.

Acts 1874,
pp. 5, 6.
1889, p. 63.

§1790. *Commissioner, how elected.* Said department shall be under the control and management of one officer, who shall be known as the commissioner of agriculture, who shall be a practical farmer, elected by persons qualified to vote for members of the General Assembly, at the same time, in the same manner, and under the same rules and regulations as the Governor and State-house officers; he shall hold his office for two years and until his successor is elected and qualified, unless removed in the manner now prescribed by law for the removal of officers of the State government. In case of a vacancy in the office of commissioner of agriculture from any cause, such vacancy shall be filled by appointment by the Governor, which appointee shall hold the office until his successor is elected and qualified. Said commissioner shall be allowed one clerk, to be chosen by himself, to assist in the discharge of the clerical duties of his office. The office of said commissioner shall be held at the capitol of the State, and the office and furniture necessary for the transaction of the duties of the office shall be furnished him by the Executive of this State.

§1791. (1465 c.) *Salary of commissioner.* The salary of said commissioner shall be two thousand dollars per annum, and the salary of his clerk shall be twelve hundred dollars per annum.

Acts 1874,
p. 6.

§1792. (1465 d.) *Commissioner's duties.*

1. He shall prepare, under his own direction, a handbook describing the geological formation of the various counties of this State, with information as to the general adaptation of the soil of said counties for the various products of the temperate zone, and for the purpose of giving a more general and careful estimate of the capacity and character of the soil of the counties of this State; the

Commissioner of agriculture.

above subjects, and others of interest to those who till the soil of this State, shall be given in circular or pamphlet form, to the ordinaries and to the agricultural associations of the various counties in this State, for distribution at such times as the commissioner may be prepared to do so.

2. Said commissioner shall provide for the proper and careful distribution of any seeds that the government of the United States may desire to introduce into the State of Georgia, and he shall make arrangements for the importation of seeds that he may deem of value to this State, and for the proper, careful, and judicious distribution of the same; also, for the exchange of seeds with foreign countries or adjoining States, for seed from this State; and their distribution in a proper manner shall be entirely under his supervision and control.

3. Said commissioner shall have under his especial charge the study of the various insects that are injurious to the crops, plants, and fruits of this State, their habits and propagation; and he shall, at various times, as he may deem proper, issue circulars for distribution as aforesaid in this State, as to the proper mode for their destruction, and any information upon said subject that he may deem of interest to the planters, farmers, and horticulturists of this State.

4. Said commissioner shall examine into any question that may be of interest to the horticulturists and fruit-growers of this State, and in all endeavors that he may deem proper toward encouraging these industries.

5. Said commissioner shall have under his especial charge the diseases of the grain, fruits, and other crops of this State, and he shall, at various times, report upon any remedy for said diseases or any useful information upon said subject, and he shall employ, in a manner that he may deem fit, a chemist to assist him in his researches, and a geologist to assist him in preparing a geological survey of the State, and other business that he may deem of importance to advance the purpose for which this department is created.

6. Said commissioner shall have under his especial charge the analysis of fertilizers. A fair sample of all fertilizers sold in this State shall be first submitted to said commissioner, and the same shall be thoroughly tested by him, and if any brand of fertilizers so tested by said commissioner is pronounced of no practical value, the sale of the same shall be prohibited in this State; and any person violating the provisions of this Article, or selling any fertilizer in this State without first submitting a fair sample of the same to said commissioner, under rules to be prescribed by him, shall be guilty of a misdemeanor.

Commissioner of agriculture.

7. Said commissioner shall report, as is hereinbefore set forth, upon any matter of interest in connection with the dairy that he may deem of interest to the people of this State.

8. It shall be the especial duty of said commissioner to investigate and report, as is hereinbefore set forth, upon the culture of wool, the utility and profits of sheep-raising, and all information upon this subject that he may deem of interest to the people of this State.

9. Said commissioner shall investigate the subject of irrigation, and what portion of this State can be most benefited thereby, and all information upon this subject that he may deem important to the people of this State.

10. Said commissioner shall give attention to the subject of fencing, and shall report at such times as he may deem proper upon said subject, as is hereinbefore set forth.

Acts 1893,
p. 136.

11. The commissioner of agriculture shall annually collect and present in his report, statistics, accurate and full as possible, relating to agriculture in all of its branches as practiced in this State. The statistics thus collected shall show, by counties, the acreage, the total yield and the average yield per acre of the crops grown in this State.

12. Said commissioner may report, in the manner as is hereinbefore set forth, upon any matter or subject that he may deem of interest to the agriculture of this State.

Acts 1874,
p. 7.

§1793. (1465e.) *Rules to be made by commissioner.* The commissioner shall be empowered to make all necessary rules and regulations for the purpose of carrying out the design and intentions of this Article.

Acts 1874,
p. 7.

§1794. (1465f.) *Appropriation for department.* For the purpose of practically carrying out the designs for which this department of agriculture is instituted in this State, an appropriation shall be made for the support and maintenance of said department, and for the payment of employees that it will be necessary to employ to properly carry out the intentions of this Article, ten thousand dollars per annum; said sum not to include the salary of the commissioner or his clerk. Said amount shall be especially appropriated from the treasury for said purpose, and shall be accounted as an annual expense of the State; and said amount shall be drawn from the State treasury by the commissioner, under rules to be established for said commissioner by the Governor. Said commissioner shall make an annual report, and also make a quarterly report of the receipts and expenditures of his office; and the same shall be approved by the Governor before any further amount is drawn by said commissioner from the treasury.

CHAPTER 2.

DUTY AS TO PROPAGATION AND PROTECTION OF FISH.

§1795. (1465 k.) *Propagation of fish confided to commissioner of agriculture.* The commissioner of agriculture shall have specially in charge the propagation of migratory fish in the waters of this State, and is hereby authorized to employ a superintendent of fisheries, who, under the direction of the commissioner, shall have charge of the propagation of fish. Acts 1876, pp. 20, 21.

§1796. (1465 l.) *Artificial propagation.* The commissioner of agriculture shall secure the artificial propagation in the various rivers of this State of the principal migratory food fish adapted to the waters and climate of this State. Acts 1876, p. 21.

§1797. (1465 m.) *Appropriation.* The sum of five hundred dollars is appropriated for the payment of all necessary employees, and for other necessary expenses for carrying out the provisions of sections 1795–1799, as a part of the expenses of said department: *Provided*, nothing contained in this section shall be so construed as to constitute this appropriation as an additional appropriation to said department. Acts 1876, p. 21.

§1798. (1465 n.) *“Closed time” for shad.* There shall be a “closed time” in all the rivers of Georgia in which shad are caught, of forty-eight hours, commencing at sunrise on Saturday morning of each week, and ending at sunrise on Monday morning of the next week, during which “closed time” no shad or other migratory fish shall be caught by nets, wires, pounds, or any other means whatever, nor shall such nets, wires, pounds, or other apparatus be left set in said rivers during said “closed time.” The meshes of nets or other apparatus for catching said fish shall not be less than five inches. Acts 1876, p. 21.

§1799. (1465 o.) *Taking shad regulated.* No shad shall be taken by any means whatever, except between the first day of January and the twentieth day of April of each year, except for spawning purposes. Acts 1876, p. 21.

§1800. *Fish-wardens.* The commissioner of agriculture is authorized to appoint, in such counties of this State as he may deem expedient, one or more fish-wardens, whose duties it shall be “to encourage the propagation of fish,” and who shall have the same power to make arrests as the sheriffs of this State. Acts 1884-5, p. 139.

§1801. *Compensation.* The compensation of such fish-wardens shall be one-half of the fines and forfeitures imposed by the court and paid by the violators.



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