A MANUAL

CONTAINING THE

CONSTITUTION

OF SOUTH CAROLINA,

THE

RULES OF COURT,

AND THE

FEE BILL,

OF FORCE JULY 1st, 1882.

WITH NOTES AND REFERENCES, TOGETHER WITH A MONOGRAPH ON APPEALS TO THE SUPREME COURT.

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PREFACE.

The Monograph, entitled, Appeals to the Supreme Court, was written in April last with the purpose of publishing it as a note in Fifteenth South Carolina Reports. Upon the suggestion, coming from a high source, that it would be more convenient if separately published in connection with the Rules of the Supreme Court, and through the liberality of Messrs. Walker, Evans & Cogswell, the note has grown to be a little book. To give this little book a better size, and also to increase its usefulness the amended rules of the Circuit and Probate Courts were added, together with the Statutory Law upon the subject of costs, and the Fee-bill now of force. Finally, the Constitution was inserted for the reason that it is not now to be found in any handy form. All of these additions have been as carefully annotated as my other engagements would permit.

My part of the work has been done for the convenience of the profession; and I hope that the compilation will be to them a useful manual.

R. W. SHAND.

UNION, S. C., July 1st, 1882.

CONSTITUTION.

Preamble.—*We, the People of the State of South Carolina, in Convention Assembled*, Grateful to Almighty God for this opportunity, deliberately and peaceably of entering into an explicit and solemn compact with each other and forming a new Constitution of civil government for ourselves and posterity, recognizing the necessity of the protection of the people in all that pertains to their freedom, safety and tranquility, and imploring the direction of the Great Legislator of the Universe, do agree upon, ordain and establish the following

DECLARATION OF RIGHTS AND FORM OF GOVERNMENT AS THE CONSTITUTION OF THE COMMONWEALTH OF SOUTH CAROLINA.

[This Constitution was adopted by the Constitutional Convention which met in the city of Charleston, from January 14th to March 17th, inclusive, in the year 1868. It was submitted to a vote of the people at an election held on April 14th, 15th and 16th, of the same year, and ratified by a majority of the votes cast at such election.

This Constitution is closely modelled after the Ohio Constitution of 1851. Its general arrangement and many of its sections are certainly copied from the Constitution of Ohio.

The Constitution as here printed, is a literal and exact copy of the only Constitution to be found in the Secretary of State's office in Columbia, except that the side notes in black have been added That Constitution is preserved and recognized as the enrolled and original Constitution of 1868, although not signed nor attested in any manner. To it is prefixed the following statement:

Certificate.—"This is to certify that this Constitution was adopted by a majority of votes by the Constitutional Convention of the State of South Carolina, assembled under the Reconstruction Acts of Congress, and which was held at Charleston, beginning on the fourteenth day of January, and ending on the sixteenth day of March, in the year of our Lord, one thousand eight hundred and sixty-eight, and in the ninety-second year of the Sovereignty and Independence of the United States of America, and was ratified by the votes of a majority of the qualified electors of the State, at an election which was holden on the fourteenth, fifteenth and sixteenth days of April in the same year."

This Constitution must be regarded as the fundamental law of the State —*Bond Debt Cases*, 12 S. C., 200.

A decision of the Supreme Court on a Constitutional question must be regarded as an authoritative construction, binding in like cases. *Ibid*, 202.

In its interpretation, on doubtful questions, weight is given to contemporary construction. *Simpson vs. Willard*, 14 S. C., 191.]

ARTICLE I.

DECLARATION OF RIGHTS.

[Many of the rights declared in this Article will be found to be more specifically provided for in subsequent Articles. Compare, for instance, Section 20, with Article II, §32; Section 27 with Article II, §12; Section 34 with Article II, §4; Sections 31 and 32, with Article VIII, §§2, 7 and 8, &c. See, too, remarks of McGowan, A. J., in *Pelzer, Rodgers & Co. vs. Campbell & Co.*, 15 S. C., 581.]

Equality of Men.—SECTION 1. All men are born free and equal—endowed by their Creator with certain inalienable rights, among which are the rights of enjoying and defending their lives and liberties, of acquiring, possessing and protecting property, and of seeking and obtaining their safety and happiness.

[This Section was not substantially amended on its passage, and provoked no debate. See *Proceedings of Constitutional Convention of* 1868, pp., 255, 267.]

Slavery Prohibited.—SEC. 2. Slavery shall never exist in this State; neither shall involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted.

[As reported by the committee, this Section read: "Slavery shall not exist in this State, nor involuntary servitude, otherwise than for the punishment of crime," &c, It was amended to read as it now stands. *Proceedings Convention*, 276.]

Political Power in People.—SEC. 3. All political power is vested in and derived from the people only; therefore they have the right, at all times, to modify their form of government in such manner as they may deem expedient, when the public good demands

[This Section was not amended. Several substitutes and amendments were proposed, but they were all rejected. The second clause of the Section was the part objected to—*Proceedings Convention*, 269]

Paramount Allegiance.—SEC. 4. Every citizen of this State owes paramount allegiance to the Constitution and Government of the United States, and no law or ordinance of this State in contravention or subversion thereof, can have any binding force.

Union Indissoluble.—SEC. 5. This State shall ever remain a member of the American Union, and all attempts, from whatsoever source, or upon whatever pretext, to dissolve the said Union, shall be resisted with the whole power of the State.

Petition and Discussion.—SEC. 6. The right of the people peaceably to assemble, to consult for the common good, and to petition the government, or any department thereof, shall never be abridged.

Freedom of Speech and Press.—SEC 7. All persons may freely speak, write and publish their sentiments on any subject, being responsible for the abuse of that right; and no laws shall be enacted to restrain or abridge the liberty of speech or of the press.

Prosecutions for Publications.—Libel.—Sec. 8. In prosecutions for the publication of papers investigating the official conduct of officers or men in public capacity, or when the matter published is proper for public information, the truth thereof may be given in evidence; and in all indictments for libel, the jury shall be judges of the law and the facts.

[After a long debate, the concluding words of this Section 'shall be judges of the law and the facts," were substituted for the words 'shall determine the law under the direction of the Court," reported by the Committee —P. C., 302.]

Liberty of Conscience.—Sec. 9 No person shall be deprived of the right to worship God according to the dictates of his own conscience: *Provided*, That the liberty of conscience hereby declared shall not justify practices inconsistent with the peace and moral safety of society.

Religious Worship.—Sec. 10. No form of religion shall be established by law; but it shall be the duty of the General Assembly to pass suitable laws to protect every religious denomination in the peaceable enjoyment of its own mode of worship.

Trial by Jury.—Sec 11 The right of trial by jury shall remain inviolate.

Personal Rights.—Sec. 12. No person shall be disqualified as a witness, or be prevented from acquiring, holding and transmitting property, or be hindered in acquiring education, or be liable to any other punishment for any offence, or be subjected in law to any other restraints or disqualifications in regard to any personal rights than such as are laid upon others under like circumstances.

Rights of Accused.—Sec. 13. No person shall be held to answer for any crime or offence until the same is fully, fairly, plainly, substantially and formally described to him; or be compelled to accuse or furnish evidence against himself; and every person shall have a right to produce all proofs that may be favorable to him to meet the witnesses against him face to face to have a speedy and public trial by an impartial jury, and to be fully heard in his defence by himself or by his counsel, or by both, as he may elect.

Protection of the Law — Expost Facto Laws.—Sec. 14. No person shall be arrested, imprisoned despoiled or dispossessed of his property, immunities or privileges, put out of the protection of the law, exiled or deprived of his life, liberty, or estate, but by the judgment of his peers or the law of the land. And the General Assembly shall not enact any law that shall subject any person to punishment without trial by jury; nor shall he be punisbed but by virtue of a law already established or promulgated prior to the offence, and legally applied.

[This Section is not violated by a Statute giving to a private person a right of way to the nearest highway.—*State vs. Stackhouse*, 14 S. C., 417.]

Courts Public.—Sec. 15. All Courts shall be public, and every person, for any injury that he may receive in his lands, goods, person or repu-

tation, shall have remedy by due course of law and justice administered without unnecessary delay.

Bail—Corporal Punishment.—Sec. 16. All persons shall, before conviction, be bailable by sufficient sureties, except for capital offences, when the proof is evident or the presumption great; and excessive bail shall not, in any case, be required, nor corporal punishment inflicted.

Habeas Corpus.—Sec. 17. The privilege of the writ of *Habeas Corpus* shall not be suspended, except when, in case of insurrection, rebellion or invasion, the public safety may require it.

Not Tried Twice.—Sec 18. No person, after having been once acquitted by a jury, shall again, for the same offence, be put in jeopardy of his life or liberty.

[This Section was not violated where a prisoner was a second time tried under the order of the Court, granting a new trial on a motion made in his behalf for an arrest of judgment—*State vs Stephens*, 13 S. C., 285. Where defendant is acquitted in the Court of Sessions, the State cannot appeal.—*State vs. Gathers*, 15 S. C., 370.]

Petit Crimes—Grand Jury.—Sec. 19. All offences less than felony, and in which the punishment does not exceed a fine of one hundred dollars, or imprisonment for thirty days, shall be tried summarily before a Justice of the Peace, or other officer authorized by law, on information, under oath, without indictment or intervention of a Grand Jury, saving to the defendant the right of appeal; and no person shall be held to answer for any higher crime or offence unless on presentment of a Grand Jury, except in cases arising in the land and naval service, or in the militia when in actual service in time of war or public danger.

[The Committee reported the following as this Section: "No person shall be proceeded against criminally by information for any indictable offence, except in cases arising in the land or naval service, or in the militia, when in actual service in time of war or public danger, or by leave of Court, for oppression or misdemeanor in office." The Section as it finally passed was proposed as a substitute and adopted. It is Section 11, in Article I, of the Constitution of Iowa. P. C. 315.

Under this Section, together with Art. IV., §1, the Legislature may establish new tribunals for the trial of offences already committed.—*State vs. Shumpert*, 1 S. C., 85.

The powers here given to Justices of the Peace may be conferred upon Trial Justices.—*State vs. Fillebrown*, 2 S. C., 404. He is the "other officer authorized by law."—*State vs Harper*, 6 S. C., 464. But he has no jurisdiction in cases of petit larceny.—*State vs. Williams*, 13 S. C., 546, (overruling a contrary decision in Harper's case, *supra*.) See Art. IV., §22.

This Section in connection with Art. IV., §§1 and 22, construed.—*State vs. Glenn*, 14 S. C., 118.]

Imprisonment for Debt—Homestead.—Sec 20. No person shall be imprisoned for debt, except in cases of fraud; and a reasonable amount of property, as a homestead, shall be exempted from seizure or sale for the payment of any debts or liabilities, except for the payment of such obligations as are provided for in this Constitution.

[As reported, the words succeeding "liabilities" were "except for taxes, that may be contracted after the adoption of this Constitution." It was amended so as to read as above. Amendments proposing "seizure and sale" for "seizure or sale," and "except upon conviction of fraud," for "except in cases of fraud," were rejected.

The homestead is defined and restricted in Art. II, §32.—*Duncan vs. Barnett* 11 S. C., 333.

The first seven words of this Section do not impair the obligation of contracts made prior to 1868.—*Ware vs. Miller*, 9 S. C., 13]

Prohibited Laws.—Sec. 21. No bill of attainder, *expost facto* law, nor any law impairing the obligation of contracts, shall ever be enacted; and no conviction shall work corruption of blood or forfeiture of estate.

[An Act to determine the value of contracts made in Confederate States Notes or their equivalent does not impair the obligation of contracts.—*Neely vs. McFadden*, 2 S. C., 169; *Harmon vs. Wallace, Ibid*, 208; *Johnstone vs Crooks*, 3 S. C., 200.]

Searches and Seizures—Warrants.—Sec. 22, All persons have a right to be secure from unreasonable searches or seizures of their persons, houses, papers or possessions. All warrants shall be supported by oath or affirmation, and the order of the warrant to a civil officer to make search or seizure in suspected places, or to arrest one or more suspected persons, or to seize their property, shall be accompanied with a special designation of the persons or objects of search, arrest or seizure; and no warrant shall be issued but in the cases and with the formalities prescribed by the laws.

[A warrant must be supported by oath, a statement in writing is not sufficient.—*State vs. Wimbush*, 9 S. C., 309.]

Private Property—Right of Way.—Sec. 23. Private property shall not be taken or applied for public use, or for the use of corporations, or for private use, without the consent of the owner or a just compensation being made therefor: *Provided, however*, That laws may be made securing to persons or corporations the right of way over the lands of either persons or corporations, and, for works of internal improvement, the right to establish depots, stations, turnouts, etc.; but a just compensation shall, in all cases, be first made to the owner.

[The Committee recommended this Section as it reads, except that the word "corporations," where it first occurs was followed by the words "other than municipal," which were stricken out by the Convention, and the word "or," in the third line, was "and" in the report, P. C. 340.

The proviso to this Section does not affect a right of way existing before 1868.—*Guignard vs Kinsler*, 4 S. C., 330. This Section considered in connection with the right of a county to open a new road.—*State vs. Brown*, 14 S. C., 383. Not violated by the Statute giving a right of way to the nearest highway.—*State vs. Stackhouse, Ibid.* 417]

Suspension of Laws.—Sec. 24. The power of suspending the laws, or the execution of the laws, shall never be exercised but by the Gen-

eral Assembly, or by authority derived therefrom; to be exercised in such particular cases only as the General Assembly shall expressly provide for.

Martial Law.—Sec. 25. No person shall, in any case, be subject to Martial Law, or to any pains or penalties by virtue of that law, except those employed in the army or navy of the United States, and except the militia in actual service, but by authority of the General Assembly.

Departments Distinct.—Sec. 26. In the government of this Commonwealth, the Legislative, Executive and Judicial powers of the Government shall be forever separate and distinct from each other, and no person or persons exercising the functions of one of said departments shall assume or discharge the duties of any other.

[See *McLaughlin vs. County Commissioners*, 7 S. C., 375. Considered, and construed not to prevent a *mandamus* to the Secretary of State to compel him to do what the law requires. *State ex rel Wallace vs. Hayne*, 8 S. C., 367.]

General Assembly – Sec. 27 The General Assembly ought frequently to assemble for the redress of grievances and for making new laws as the common good may require.

Right to Bear Arms—Military Subject to Civil.—Sec. 28. The people have a right to keep and bear arms for the common defence. As in times of peace, armies are dangerous to liberty, they ought not to be maintained without the consent of the General Assembly. The military power ought always to be held in an exact subordination to the civil authority and be governed by it.

Quartering of Soldiers.—Sec. 29. In time of peace no soldier shall be quartered in any house without the consent of the owner; and, in time of war, such quarters shall not be made, but in a manner prescribed by law.

Non-Combatants —Sec. 30. No person who conscientiously scruples to bear arms shall be compelled to do so, but he shall pay an equivalent for personal service.

Elections Free.—Sec. 31. All elections shall be free and open, and every inhabitant of this Commonwealth possessing the qualifications provided for in this Constitution, shall have an equal right to elect officers and be elected to fill public office.

[This Section does not authorize a person to hold two incompatible offices. *State vs. Buttz*, 9 S. C. 186.]

Qualification for Office—Duel.—Sec. 32. No property qualifications shall be necessary for an election to or the holding of any office, and no office shall be created, the appointment to which shall be for a longer time than good behavior. After the adoption of this Constitution, any person who shall fight a duel, or send or accept a challenge for that purpose, or be an aider or abetter in fighting a duel, shall be deprived of holding any office of honor or trust in this State, and shall be otherwise punished as the law shall prescribe.

Suffrage.—Sec. 33. The right of suffrage shall be protected by laws regulating elections, and prohibiting, under adequate penalties, all undue influences from power, bribery, tumult or improper conduct.

Representation. Sec. 34. Representation shall be apportioned according to population, and no person in this State shall be disfranchised or deprived of any of the rights or privileges now enjoyed except by the law of the land or the judgment of his peers.

Forfeiture of Residence.—Sec. 35. Temporary absence from the State shall not forfeit a residence once obtained.

Taxation of Property—Personal Service.—Sec. 36 All property subject to taxation shall be taxed in proportion to its value. Each individual of society has a right to be protected in the enjoyment of life, liberty and property, according to standing laws. He should, therefore, contribute his share to the expense of his protection and give his personal service when necessary.

[This Section compared with Art. II, § 33, and considered. *State vs. Hayne*, 4 S. C., 422. A license tax on business is supported by this Section. *Ibid.*]

Subsidy, Imports &c.—Sec, 37. No subsidy, charge, impost tax or duties shall be established, fixed laid or levied, under any pretext whatsoever, without the consent of the people or their representatives lawfully assembled.

[This Section compared with Article II, § 33, and considered. *State vs Hayne*, 4 S. C., 422.]

Fines—Punishment.—Sec. 38. Excessive fines shall not be imposed, nor cruel and unusual punishment inflicted, nor shall witnesses be unreasonably detained.

Titles of Nobility—Distinctions.—Sec. 39. No title of nobility or hereditary emolument shall ever be granted in this State. Distinction on account of race or color, in any case whatever, shall be prohibited, and all classes of citizens shall enjoy equally all common, public, legal and political privileges.

Navigable Waters—Shores and Wharves.—Sec. 40. All navigable waters shall remain forever public highways, free to the citizens of the State and the United States, without tax, impost or toll imposed; and no tax, toll, impost or wharfage shall be imposed, demanded or received from the owner of any merchandise or commodity, for the use of the shores or any wharf erected on the shores, or in or over the waters of any navigable stream, unless the same be authorized by the General Assembly.

[This is as it read in the original draft and as passed on its third reading, but on its second reading, the words "the shores, or any wharf erected on the shores, or in or over the waters of," seem to have been stricken out. P. C., 356, 792.]

Reserved Rights.—Sec. 41. The enumeration of rights in this Constitution shall not be construed to impair or deny others retained by

the people, and all powers not herein delegated remain with the people.

[This does not reserve legislative powers, for they are granted in Art. II, § 1—*State vs. Hayne*, 4 S. C., 420.
Several Sections in this and other Articles of the original draft of the Constitution were stricken out, but they have no important bearing upon the proper construction of the Sections retained.]

ARTICLE 2.

LEGISLATIVE DEPARTMENT.

[It is the duty of the Courts to so construe an Act of the Legislature, if possible, that it will not come in conflict with the Constitution. *Hayes vs. Clinkscales*, 9 S. C., 452.]

Legislative Power.—SECTION 1. The Legislative power of this State shall be vested in two distinct branches, the one to be styled the "Senate," and the other the "House of Representatives," and both together the "General Assembly of the State of South Carolina."

[Full Legislative power is here vested in the General Assembly, *State vs. Hayne*, 4 S. C., 420; which may not be diminished by implication not necessary. *State* vs. *Gaillard*, 11 S. C., 312. This subject is fully discussed in *Pelzer, Rodgers & Co. vs. Campbell & Co.*, 15 S. C., 581.]

House of Representatives—SEC. 2. The House of Representatives shall be composed of members chosen by ballot every second year, by the citizens of this State, qualified as in this Constitution is provided.

Counties—New Counties.—SEC. 3. The Judicial Districts shall hereafter be designated as Counties, and the boundaries of the several Counties shall remain as they are now established, except the County of Pickens, which is hereby divided into two Counties, by a line leaving the southern boundary of the State of North Carolina where the Taxaway River enters this State, and thence down the centre of said river, by whatever names known, to Ravenel's Bridge, on Seneca River, and thence along the centre of the road leading to Pendleton Village, until it intersects the line of the County of Anderson; and the territory lying east of said line shall be known as the County of Pickens; and the territory lying west of said line shall be known as the County of Oconee: *Provided*, That the General Assembly shall have the power at any time to organize new Counties by changing the boundaries of any of the old ones; but no new County shall be hereafter formed of less extent than six hundred and twenty-five square miles, nor shall any existing Counties be reduced to a less extent than six hundred and twenty-five square miles. Each County shall constitute one Election District.

[In the original draft, this Section provided for a County of Berkley, and a County of Edisto, to be composed of portions of the old District of Charleston, and did not provide for the County of Oconee. P. C., 387, 527. The word "Taxaway" was inserted by amendment in 1875. 15

Stat., 494, 1014. In the Constitution as adopted in 1868, "White Water" was the river designated as the initial boundary of Oconee. At the extra session of the legislature which was adjourned July 5th, 1882, the following amendment to this section was directed to be submitted to the qualified voters of the State at the general election to be held in November, 1882:

Strike out in Section 3, Article II, of the Constitution the words "but no new county shall be hereafter formed of less extent than six hundred and twenty-five square miles, nor shall any existing counties be reduced to less extent than six hundred and twenty-five square miles," and insert in lieu thereof the following: "*Provided*, That no new county shall be formed which has a population of less that one one-hundred and twenty-fourth part of the whole number of inhabitants of the State, and an area less than four hundred square miles, nor shall any existing counties be reduced to a less area than four hundred square miles."]

House—Membership—Census.—SEC. 4. The House of Representatives shall consist of one hundred and twenty-four members, to be apportioned among the several Counties according to the number of inhabitants contained in each. An enumeration of the inhabitants, for this purpose, shall be made in eighteen hundred and sixty-nine, and again in eighteen hundred and seventy-five, and shall be made in the course of every tenth year thereafter, in such manner as shall be by law directed; and Representatives shall be assigned to the different Counties in the above mentioned proportion, by Act of the General Assembly at the session immediately succeeding every enumeration: *Provided*, That until the apportionment, which shall be made upon the next enumeration shall take effect, the representation of the several Counties, as herein constituted, shall be as follows:

Number of Members.—Abbeville five, Anderson three, Barnwell six, Beaufort seven, Charleston eighteen, Chester three, Clarendon two, Colleton five, Chesterfield two, Darlington four, Edgefield seven, Fairfield three, Georgetown three, Greenville four. Horry two, Kershaw three, Lancaster two, Laurens four, Lexington two, Marion four, Marlboro' two, Newberry three, Oconee two, Orangeburg five, Pickens one, Richland four, Spartanburg four, Sumter four, Union three, Williamsburg three, York four.

Census.—SEC. 5. If the enumeration herein directed shall not be made in the course of the year appointed for the purpose, it shall be the duty of the Governor to have it effected as soon thereafter as shall be practicable.

House—Apportionment.—SEC. 6. In assigning Representatives to the several Counties, the General Assembly shall allow one Representative to every one hundred and twenty-fourth part of the whole number of inhabitants in the State: *Provided*, That if in the apportionment of Representatives any County shall appear not to be entitled, from its population, to a Representative, such County shall nevertheless send one Representative; and if there be still a deficiency of the number of Representatives required by Section fourth of this Article, such deficiency shall be supplied by assigning Representatives to those Counties having the largest surplus fractions.

When to take effect.—Sec. 7. No apportionment of Representatives shall be construed to take effect, in any manner, until the general election which shall succeed such apportionment.

Senate—Membership.—Sec. 8. The Senate shall be composed of one member from each County, to be elected, for the term of four years, by the qualified voters of the State, in the same manner in which members of the House of Representatives are chosen; except the County of Charleston, which shall be allowed two Senators.

[The provision for Charleston County was added by the Convention on the second reading of this Section. At the time this amendment was adopted it was supposed that the County of Charleston would include only the Parishes of St. Philip's and St. Michael's. The change in Section 3 was made seven days later. P. C., 375, 536. Several propositions to make population the basis of representation in the Senate were rejected.]

Senate—Classes.—Sec. 9. Upon the meeting of the first General Assembly which shall be chosen under the provisions of this Constitution, the Senators shall be divided, by lot, into two classes, as nearly equal as may be; the seats of the Senators of the first class to be vacated at the expiration of two years after the Monday following the general election, and of those of the second class at the expiration of four years; so that, except as above provided, one-half of the Senators may be chosen every second year.

[Compared with Act IV., §2 —*Simpson vs. Willard*, 14 S. C., 198.]

Eligibility of Senators and Representatives —Sec. 10. No person shall be eligible to a seat in the Senate or House of Representatives who at the time of his election is not a citizen of the United States; nor any one who has not been for one year next preceding his election a resident of this State, and for three months next preceding his election a resident of the county whence he may be chosen, nor any one who has been convicted of an infamous crime. Senators shall be at least twenty five, and Representatives at least twenty-one years of age.

Time of Election.—Sec. 11. The first election for Senators and Representatives under the provisions of this Constitution shall be held on the fourteenth, fifteenth and sixteenth days of April, of the present year; and the second election shall be held on the third Wednesday in October, eighteen hundred and seventy, and forever thereafter on the first Tuesday following the first Monday in November, in every second year, in such manner, and in such place, as the Legislature may provide.

[The words "first Tuesday following the first Monday in November," were substituted for the words "same day," by an amendment adopted January 29, 1873.—15 Stat., 288, 467. The following amendment to this section will be submitted to the qualified voters of this State at the general election in November, 1882 (See joint Resolution, July 5th, 1882.)

That Section 11, of Article II, of the Constitution of this State, as amended, be, and is hereby, stricken out, and the following inserted in lieu thereof: "The general election for Senators and Representatives

shall be held in every second year, in such manner, at such time, and at such places as the Legislature may provide."]

Capital.—Sec. 12. The first Session of the General Assembly after the ratification of this Constitution shall be convened on the second Tuesday of May of the present year in the city of Columbia (which shall remain the seat of government until otherwise determined by the concurrence of two-thirds of both branches of the whole representation), and thereafter on the fourth Tuesday in November annually. Should the casualties of war or contagious disease render it unsafe to meet at the seat of government, then the Governor may, by proclamation, appoint a more secure and convenient place of meeting.

Term of Office.—Sec. 13. The term of office of the Senators and Representatives chosen at a general election, shall begin on the Monday following such election.

Election Returns, &c.—Quorum.—Sec. 14. Each House shall judge of the election returns and qualifications of its own members; and a majority of each House shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may compel the attendance of absent members in such manner, and under such penalties as may be provided by law.

[There must be sixty-three members to constitute a quorum.—*State ex rel. Wallace vs. Hayne*, 8 S. C., 367.]

Officers—Rules—Expulsion.—Sec, 15.—Each House shall choose its own officers, determine its rules of proceeding, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member, but not a second time for the same cause.

Right to Punish.—Sec. 16. Each House may punish by imprisonment, during its sitting, any person not a member, who shall be guilty of disrespect to the House by any disorderly or contemptuous behavior in its presence; or who, during the time of its sitting, shall threaten harm to body or estate of any member for anything said or done in either House, or who shall assault any of them therefor, or who shall assault or arrest any witness or other person ordered to attend the House, in his going thereto or returning therefrom, or who shall rescue any person arrested by order of the House: *Provided*, That such time of imprisonment shall not in any case extend beyond the session of the General Assenbly.

Privileges of Members —Sec. 17. The members of both Houses shall be protected in their persons and estates during their attendance on, going to, and returning from, the General Assembly, and ten days previous to the sitting, and ten days after the adjournment thereof. But these privileges shall not be extended so as to protect any member who shall be charged with treason, felony, or breach of the peace.

Bills for Revenue.—Sec. 18. Bills for raising a revenue shall originate in the House of Representatives, but may be altered, amended or rejected by the Senate; and all other bills may originate in either House, and may be amended, altered or rejected by the other.

Style of Laws.—Sec. 19. The style of all laws shall be "Be it enacted by the Senate and House of Representatives of the State of South Carolina, now met and sitting in General Assembly, and by the authority of the same."

One Subject.—Sec. 20. Every Act or Resolution having the force of law shall relate to but one subject, and that shall be expressed in the title.

[Construed.—*Morton, Bliss & Co., vs. Comptroller-General*, 4 S. C., 430. See, too—*State vs. County Treasurer, Ibid*, 520; *Bond Debt Cases*, 12 S. C., 203.]

Formalities of Act.—Sec. 21. No bill shall have the force of law until it shall have been read three times, and on three several days, in each House, has had the great seal of State affixed to it, and has been signed in the Senate House, by the President of the Senate and the Speaker of the House of Representatives.

[Every part of a bill must pass through all the constitutional stages of enactment before it becomes a law.—*State vs Platt*, 2 S. C., 150; *State vs. Hagood*, 13 S. C., 46.]

Money in Treasury.—Sec. 22. No Money shall be drawn from the Treasury, but in pursuance of an appropriation made by law; and a regular statement and account of the receipts and expenditures of all public moneys shall be published annually, in such manner as may be by law directed.

Pay of Members.—Sec. 23. Each member of the first General Assembly under this Constitution shall receive six dollars per diem while in session; and the further sum of twenty cents for every mile of the ordinary route of travel in going to and returning from the place where such session is held; after which they shall receive such compensation as shall be fixed by law; but no General Assembly shall have the power to increase the compensation of its own members. And when convened in extra session they shall receive the same mileage and per diem compensation as are fixed by law for the regular session, and none other.

Voting to be Viva Voce.—Sec. 24. In all elections by the General Assembly or either House thereof, the members shall vote "*viva voce*," and their votes, thus given, shall be entered upon the journal of the House to which they respectively belong.

[As to recording on the journal, compare with Section 26, and with Art. IX, §7.]

Adjournments.—Sec. 25. Neither House during the session of the General Assembly, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the Assembly shall be at the time sitting.

Journals—Yeas and Nays—Dissent and Protest.—Sec. 26. Each House shall keep a journal of its own proceedings, and cause the same to be published immediately after its adjournment, excepting such parts as in its judgment may require secrecy; and the yeas and nays of the

members of either House, on any question, shall, at the desire of any two members present, be entered on the journals. Any member of either House shall have liberty to dissent from, and protest against, any Act or Resolution which he may think injurious to the public or to an individual, and have the reasons of his dissent entered on the journals.

[The journals of the Legislature may be resorted to to ascertain whether an Act as enrolled, ratified and approved, was the Act as passed, and if not the part affected is void. *State vs. Platt*, 2 S. C., 150; *State vs. Hagood*, 13 S. C., 46. The journals are the best evidence of the pendency of a certain matter before the legislature at a time stated. *State vs. Smalls*, 11 S. C., 262. Compare with Section 24, and with Art. IX, §7.]

Doors Open.—Sec. 27. The doors of each House shall be open, except on such occasions as in the opinion of the House may require secrecy.

Disqualifying Offices.—Sec. 28. No person shall be eligible to a seat in the General Assembly whilst he holds any office of profit or trust under this State, the United States of America, or any of them, or under any other power, except officers in the militia, magistrates, or Justices of inferior Courts, while such Justices receive no salary. And if any member shall accept or exercise any of the said disqualifying offices, he shall vacate his seat: *Provided*, That this prohibition shall not extend to the members of the first General Assembly.

Vacancies.—Sec. 29. If any election district shall neglect to choose a member or members on the day of election, or if any person chosen a member of either House shall refuse to qualify and take his seat, or shall resign, die, depart the State, accept any disqualifying office, or become otherwise disqualified to hold his seat, a writ of election shall be issued by the President af the Senate, or Speaker of the House of Representatives, as the case may be, for the purpose of filling the vacancy thereby occasioned, for the remainder of the term for which the person so refusing to qualify, resigning, dying, departing the State, or becoming disqualified, was elected to serve, or the defaulting election district ought to have chosen a member or members.

Oath of Office.—Sec. 30. Members of the General Assembly, and all officers before they enter upon the execution of the duties of their respective offices, and all members of the bar, before they enter upon the practice of their profession, shall take and subscribe the following oath:

"I do solemnly swear (or affirm as the case may be) that I am duly qualified according to the Constitution of the United States and of this State to exercise the duties of the office to which I have been elected (or appointed) and that I will faithfully discharge to the best of my abilities the duties thereof; that I recognize the supremacy of the Constitution and laws of the United States, over the Constitution and laws of any State; and that I will support, protect and defend the Constitution of the United States and the Constitution of South Carolina, as ratified by the people on the sixteenth day of April 1868. So Help me God." (And the President of this Convention is authorized to fill the blanks

in this Section whenever he shall receive satisfactory information of the day on which this Constitution shall be ratified.)

Removal of Officers.—Sec. 31. Officers shall be removed for incapacity, misconduct, or neglect of duty, in such manner as may be provided by law, when no mode of trial or removal is provided in this Constitution.

Homestead.—Sec. 32. The General Assembly shall enact such laws as will exempt from attachment and sale under any mesne or final process issued from any Court to the head of any family residing in this State a homestead in lands, whether held in fee or any lesser estate, not to exceed in value one thousand dollars, with the yearly products thereof; and every head of a family residing in this State, whether entitled to a homestead exemption in lands or not, personal property not to exceed in value the sum of five hundred dollars: *Provided*, That in case any woman having a separate estate shall be married to the head of a family who has not of his own sufficient property to constitute a homestead as hereinbefore provided, said married woman shall be entitled to a like exemption as provided for the head of a family: *Provided further*, That there shall not be an allowance of more than one thousand dollars worth of real estate and more than five hundred dollars worth of personal property to the husband and wife jointly: *Provided*, That no property shall be exempt from attachment, levy or sale for taxes, or for payment of obligations contracted for the purchase of said homestead or the erection of improvements thereon: *Provided further*, That the yearly products of said homestead shall not be exempt from attachment, levy or sale, for the payment of obligations contracted in the production of the same. It shall be the duty of the General Assembly at their first session to enforce the provisions of this Section by suitable legislation.

[This is Section 32, as amended December 13, 1880. 17 *Stat*, 213, 320. By this amendment to the Constitution, it was provided: "That Section 32, Article 2, of the Constitution of this State be, and is hereby, stricken out, and the following inserted in lieu thereof."

The Section thus stricken out was as follows: The family homestead of the head of each family, residing in this State, such homestead consisting of dwelling-house, out-buildings and lands appurtenant, not to exceed the value of one thousand dollars, and yearly product thereof, shall be exempt from attachment, levy or sale on any mesne or final process issued from any Court. To secure the full enjoyment of said homestead exemption to the person entitled thereto, or to the head of any family, the personal property of such person, of the following character, to wit: household furniture, beds and bedding, family library, arms, carts, wagons, farming implements, tools, neat cattle, work animals, swine, goats, and sheep, not to exceed in value in the aggregate the sum of five hundred dollars, shall be subject to like exemption as said homestead and there shall be exempt in addition thereto all necessary wearing apparel: *Provided*, That no property shall be exempt from attachment, levy or sale, for taxes, or for payment of obligations contracted for the purchase of said homestead, or the erection of improvements thereon: *Provided further*, that the yearly products of said homestead shall be exempt from attachment, levy or sale, for the pay-

ment of obligations contracted in the production of the same. It shall be the duty of the General Assembly at their first session to enforce the provisions of this Section by suitable legislation.

This original Section was a substitute for the section reported by the committee, and was adopted as proposed, after being amended so as to include the words "or to the head of any family," in the seventh line, and the word "goats," in the eleventh line; and the words "occupied by such person as a homestead," after "appurtenant," in the third line were stricken out. P. C., 314, 452, 865, 880.

Section 32, as it now stands, has not yet been considered by the Supreme Court. All the decisions have been made under this Section as it was adopted in 1868 The Court at first sustained this provision of the Constitution as against debts contracted, and even against judgments entered, before its passage, holding that the obligation of contracts was not thereby impaired *In re. Kennedy*, 2 *S. C.*, 216, and also 2 *S. C.*, 228, 229, 309. But in obedience to the decision of the Supreme Court of the United States in *Gunn vs. Barry*, 15 Wall., 628, these cases were overruled and the contrary doctrine asserted in *Cochran vs. Darcy*, 5 S. C., 125, and in *Ex parte Hewett*, *Ibid*, 409. As to pre-existing debts, the exemptions of this Section are void. *Bull vs. Rowe*, 13 *S. C.*, 355, and *Ibid*, 371, 376, 385. Homestead cannot be claimed against a mortgage executed before the adoption of the Constitution, *Shelor vs Mason*, 2 S. C., 233; and is also inoperative against a mortgage executed before the assignment of homestead; *Homestead Association vs. Enslow*, 7 S. C., 1; *Rosenberg vs. Lewi*, *Ibid*, 344; and against debts due for improvements erected prior to 1868 *Allen vs. Harley*, 3 S. C., 412. It cannot be allowed against debts contracted for the purchase money. *Calhoun vs. Calhoun*, 2 S. C., 283. Until assignment, the owner may sell or encumber property in which he is entitled to an exemption. *Smith vs. Mallone*, 10 S. C., 39. Personal property cannot be claimed as exempted by one who was not the head of a family at the time of levy. *Pender vs. Lancaster*, 14 S. C., 25. Homestead is for the benefit of the family of the debtor. *Howze vs. Howze*, 2 S. C., 229. There may be a family without children; a widow is herself the family of her deceased husband, and may demand homestead in his land; *Bradley vs. Rodelsperger*, 3 S. C., 226; *Moore vs. Parker*, 13 S. C., 486; but not against his mortgage. *Calmes vs. McCracken*, 8 S. C., 87. A bachelor with servants and employees residing with him is not the head of a family. *Garaty & Armstrong vs. Dubose*, 5 S. C., 493. Only real estate subject to levy and sale can be claimed as a homestead. *Ibid.* And, it seems, that it should appear that the property was held as a homestead. *Howze vs. Howze*, 2 S. C., 229. Lands adjoining residence may be claimed. *Riley vs. Gaines*, 14 S. C., 454. A note given for money borrowed with which to pay the purchase-money, is not an "obligation contracted for the purchase." *Calmes vs. McCracken*, 8 S. C., 87 See, too, *Agnew vs. Adams*, 15 S. C, 36. Rent is an obligation contracted in the production of the crop. *Prince vs. Nance*, 7 S C., 351. The Legislature cannot exempt articles of personalty not enumerated in the Constitution *Duncan vs. Barnett*, 11 S. C, 33. Where no special mode of assigning homestead is provided, the Circuit Court is competent to afford relief *Howze vs. Howze*, 2 S. C., 229. Where a mode is provided, the remedy must be sought in the mode prescribed. *Ex parte Lewis*, MS., April, 1882 This Section and Acts passed in pursuance thereof have been further considered in *Keller vs. Myers*, 5 S. C, 11; *McKeown vs. Carroll*, *Ibid*, 75; *DeLaHowe vs. Harper*, *Ibid*, 470; *Ryan vs. Pettigrew*, 7 S C, 146; *Choice vs. Charles*, *Ibid*, 171; *Prince vs. Nance*, *Ibid*, 351; *Adger vs. Bostick*, 12 S. C, 64; *Edwards vs. Edwards*, 14 S. C., 11; *Riley vs. Gaines*, 14 S. C., 454; *Sheriff vs. Welborn*, *Ibid*, 480; *Vermillion vs. Mattison*, *Ibid*, 625; *Kerchner vs. Singletary*, 15 S. C., 454.]

Assessments and Taxes.—SEC. 33. All taxes upon property, real or personal, shall be laid upon the actual value of the property taxed, as the same shall be ascertained by an assessment made for the purpose of laying such tax.

[This does not confine the Legislature to that mode of taxation, but only prescribes the rule by which taxes on property shall be governed. *State vs. Hayne*, 4 S. C., 421.]

ARTICLE 3.

EXECUTIVE DEPARTMENT.

Executive Authority.—SECTION 1. The Supreme Executive authority of this State shall be vested in a Chief Magistrate, who shall be styled "The Governor of the State of South Carolina."

Governor—Term—Election—State Officers.—SEC. 2. The Governor shall be elected by the electors duly qualified to vote for members of the House of Representatives, and shall hold his office for two years, and until his successor shall be chosen and qualified, and shall be re-eligible. He shall be elected at the first general election held under this Constitution for members of the General Assembly, and at each general election thereafter, and shall be installed during the first session of the said General Assembly after his election, on such day as shall be provided for by law. The other State officers elect shall, at the same time, enter upon the performance of their duties.

[If one claiming to be elected his own successor, takes the oath of office for the new term, such act amounts to a resignation of the old office, or at least estops him from afterwards claiming to hold over. *Ex parte Norris*. 8 S. C., 408; *Ex parte Smith*, *Ibid*, 515. By taking the oath of office required in Section 20, the Governor elect has "qualified." *Ibid*, 519.]

Governor—Who Eligible.—SEC. 3. No person shall be eligible to the office of Governor who denies the existence of the Supreme Being; or who at the time of such election has not attained the age of thirty years, and who, except at the first election under this Constitution, shall not have been a citizen of the United States and a citizen and resident of this State for two years next preceding the day of election. No person while Governor shall hold any other office or commission (except in the militia) under this State, or any other power, at one and the same time.

Election—How Declared.—SEC. 4. The returns of every election of Governor shall be sealed up by the managers of elections in their respective counties, and transmitted, by mail, to the seat of government, directed to the Secretary of State; who shall deliver them to the Speaker of the House of Representatives at the next ensuing session of the General Assembly, and a duplicate of said returns shall be filed with the Clerks of the Court of said counties, whose duty it shall be to for-

ward to the Secretary of State a certified copy thereof, upon being notified that the returns previously forwarded by mail have not been received at his office. It shall be the duty of the Secretary of State, after the expiration of seven days from the day upon which the votes have been counted, if the returns thereof from any county have not been received, to notify the Clerk of the Court of said county, and order a copy of the returns filed in his office to be forwarded forthwith. The Secretary of State shall deliver the returns to the Speaker of the House of Representatives, at the next ensuing session of the General Assembly; and during the first week of the session, or as soon as the General Assembly shall have organized by the election of the presiding officers of the two Houses, the Speaker shall open and publish them in the presence of both Houses. The person having the highest number of votes shall be the Governor ; but if two or more shall be equal, and highest in votes, the General Assembly shall, during the same session, in the House of Representatives choose one of them Governor *viva voce*. Contested elections for Governor shall be determined by the General Assembly in such manner as shall be prescribed by law.

[This Section considered and construed. *Ex parte Smith*, 8 S. C., 516.]

Lieutenant-Governor.—Sec. 5. A Lieutenant-Governor shall be chosen at the same time, in the same manner, continue in office for the same period, and be possessed of the same qualifications as the Governor, and shall *ex-officio* be President of the Senate.

Vote in Senate.—Sec. 6. The Lieutenant-Governor, while presiding in the Senate, shall have no vote, unless the Senate be equally divided.

President Pro Tem.—Sec. 7. The Senate shall choose a President *pro tempore*, to act in the absence of the Lieutenant-Governor, or when he shall exercise the office of Governor.

Acting Governor —Sec. 8. A member of the Senate, or of the House of Representatives, being chosen and acting as Governor or Lieutenant-Governor, shall thereupon vacate his seat, and another person shall be elected in his stead.

Who to Act.—Sec. 9. In case of the removal of the Governor from his office, or his death, resignation, removal from the State, or inability to discharge the powers and duties of the said office, the same shall devolve on the Lieutenant-Governor, and the General Assembly, at its first session, after the ratification of this Constitution, shall, by law, provide for the case of removal, death, resignation, or inability, both of the Governor and Lieutenant-Governor, declaring what officer shall then act as Governor, and such officer shall act accordingly, until such disability shall have been removed, or a Governor shall have been elected.

Commander-in-Chief.—Sec. 10. The Governor shall be Commander-in-Chief of the militia of the State, except when they shall be called into the actual service of the United States.

Pardons.—Sec. 11. He shall have power to grant reprieves and pardon after conviction, (except in cases of impeachment,) in such manner, on such terms, and under such restrictions as he shall think proper; and he shall have power to remit fines and forfeitures, unless otherwise directed by law. It shall be his duty to report to the General Assembly, at the next regular session thereafter, all pardons granted by him, with a full statement of each case, and the reasons moving him thereunto.

Execution of Laws.—Sec. 12. He shall take care that the laws be faithfully executed, in mercy.

Salary—Sec. 13. The Governor and Lieutenant-Governor shall, at stated times, receive for their services a compensation, which shall be neither increased nor diminished during the period for which they shall have been elected.

Officers to Report.—Sec. 14. All officers in the Executive Department shall, when required by the Governor, give him information in writing upon any subject relating to the duties of their respective offices.

Information to Legislature —Sec. 15. The Governor shall, from time to time, give to the General Assembly information of the condition of the State and recommend for their consideration such measures as he shall judge necessary or expedient.

Extra Session—May Adjourn the Legislature.—Sec. 16. He may on extraordinary occasions, convene the General Assembly; and should either House remain without a quorum for five days, or in case of disagreement between the two Houses with respect to the time of adjournment, may adjourn them to such time as he shall think proper; not beyond the time of the annual session then next ensuing.

Commissions.—Sec. 17. He shall commission all officers of the State.

Seal of State.—Sec. 18. There shall be a seal of the State, for which the General Assembly, at its first session, shall provide, and which shall be used by the Governor officially, and shall be called "The Great Seal of the State of South Carolina."

Grants and Commissions.—Sec. 19. All grants and commissions shall be issued in the name and by the authority of the State of South Carolina, sealed with the great seal, signed by the Governor and countersigned by the Secretary of State.

Oath.—Sec. 20. The Governor and the Lieutenant-Governor, before entering upon the duties of their respective offices, shall take and subscribe the oath of office as prescribed in Article two, Section thirty of this Constitution

Residence.—Sec. 21. The Governor shall reside at the capital of the State; but during the sittings of the General Assembly he shall reside where its sessions are held, except in case of contagion.

Approval and Veto.—Sec. 22. Every bill or joint resolution which shall have passed the General Assembly, except on a question of ad-

journment, shall, before it becomes a law, be presented to the Governor, and, if he approve, he shall sign it; if not, he shall return it, with his objections to the House in which it shall have originated; which shall enter the objections at large on its journals, and proceed to reconsider it. If, after such reconsideration, two-thirds of that House shall agree to pass it, it shall be sent, together with the objections, to the other House, by which it shall be reconsidered, and, if approved by two-thirds of that House, it shall have the same effect as if it had been signed by the Governor; but, in all such cases the vote of both Houses shall be taken by yeas and nays, and the names of the persons voting for and against the bill or joint resolution, shall be entered on the journals of both Houses respectively. If a bill or joint resolution shall not be returned by the Governor, within three days after it shall have been presented to him, Sundays excepted, it shall have the same force and effect, as if he had signed it, unless the General Assembly, by their adjournment, prevent its return, in which case it shall not have such force and effect unless returned within two days after their next meeting.

[Every part of a bill must pass through all the constitutional stages of enactment before it becomes a law. *State vs. Platt*, 2 S. C., 150; *State vs. Hagood*, 13 S. C, 46 The word "adjournment" in the last sentence means the adjournment of both Houses by concurrent action. *Corwin vs. Comptroller-General*, 6 S. C., 390. The bill may be returned to a House in session without a quorum, and received by it, although it may not be acted upon. *Ibid. Quere:* may it be transmitted to the officers of a House which is not in session? The three days should be computed by excluding Sunday and the day on which presented to the Governor. *Ibid*, 391. "Next meeting" means next regular annual session, and does not refer to call sessions. *Arnold vs. McKellar*, 9 S. C., 335.]

Election of State Officers.—Sec. 23. There shall be elected by the qualified voters of the State, a Comptroller-General, Secretary of State, Treasurer, Attorney General, Adjutant and Inspector General, and Superintendent of Education, who shall hold their respective offices for the term of two years, and whose duties and compensation shall be prescribed by law.

[Until 1875 this section provided for the election of a "Comptroller General, a Treasurer and a Secretary of State" whose term of office was *four* years; otherwise the original section read as above. This amendment was ratified March 5, 1875, 15 Stat, 806, 1009.]

ARTICLE 4.

JUDICIAL DEPARTMENT.

Judicial Power—Other Courts—Sec. 1. The judicial power of this State shall be vested in a Supreme Court, in two Circuit Courts, to wit: A Court of Common Pleas, having civil jurisdiction, and a Court of General Sessions, with criminal jurisdiction only; in Probate Courts, and

in Justices of the Peace. The General Assembly may also establish such municipal and other inferior Courts as may be deemed necessary.

[District Courts in the report were stricken out. A motion to strike out "in Probate Courts and in Justices of the Peace" was lost. P. C., 513, 595. The Court of General Sessions may by *scire facias* estreat a recognizance. *State vs. Wilder*, 13 S. C., 344. Court of Justice of the Peace is an inferior Court. *State vs. Fillebrown*, 2 S. C., 404. The term *inferior Court* in this Section is used in its technical sense. *Ibid.* Under this Section, together with Art. I, §19, the General Assembly may create the office of Trial Justice with the same powers intended by the constitution for Justices of the Peace. *Ibid*; *Rhodes vs. Railroad Company*, 6 S. C., 385. It is within the competency of the General Assembly to establish new tribunals for offences already committed. *State vs. Shumpert*, 1 S. C., 85. The legislature may confer upon trial justices all the jurisdiction given to justices of the peace in Sections 22, 23. Sections 1 and 22 of this Article, and Section 19 of Article I, construed. *State vs. Glenn*, 14 S. C., 118.]

Supreme Court.—Sec. 2. The Supreme Court, shall consist of a Chief Justice and two Associate Justices, any two of whom shall constitute a quorum. They shall be elected by joint vote of the General Assembly, for the term of six years, and shall continue in office until their successors shall be elected and qualified. They shall be so classified that one of the Justices shall go out of office every two years.

[A Chief Justice elected to fill a vacancy, holds only for the unexpired term of his predecessor. *Simpson vs. Willard*, 14 S. C., 191. There being a vacancy, the two remaining Justices constitute a valid Court. Compare with Art. II, §4. *Sullivan vs. Speights*, 14 S. C., 358.]

Justices' Term of Office.—Sec. 3 The Chief Justice elected under this Constitution shall continue in office for six years, and the General Assembly immediately after the said election shall determine which of the two Associate Justices elect shall serve for the term of two years and which for the term of four years; and having so determined the same, it shall be the duty of the Governor to commission them accordingly.

Jurisdiction.—Sec. 4. The Supreme Court shall have appellate jurisdiction only in cases of Chancery, and shall constitute a Court for the correction of errors at law, under such regulations as the General Assembly may by law prescribe: *Provided*, The said Court shall always have power to issue writs of injunction, *mandamus, quo warranto, habeas corpus*, and such other original and remedial writs as may be necessary to give it a general supervisory control over all other Courts in the State.

[In cases of Chancery, this Court has appellate jurisdiction. *Sullivan vs. Thomas*, 3 S. C., 531. But cannot pass upon an alleged insufficiency of proof in a criminal case. *State vs. Washington*, 13 S. C., 453; *State vs. Belcher*, *Ibid*, 459; nor the findings of fact by a jury in a civil case, *Warren vs. Lagrone*, 12 S. C., 51. And generally, in common law cases, this Court can correct only errors of law, and has no appellate jurisdiction. 12 S. C., 610. The Supreme Court has original jurisdiction in *mandamus*. *State vs. McIver*, 2 S. C., 25. But the legislature may determine in what cases *mandamus* shall issue, and may deprive this Court of

the power in a particular instance. *State vs. Gaillard*, 11 S. C., 309. Original jurisdiction in *quo warranto* cannot be taken away by the legislature, although the form of proceeding may be regulated by Statute. *Alexander vs. McKenzie*, 2 S. C., 81. The words "as may be necessary to give it a general supervisory control over all other Courts in the State," limit only the next preceeding phrase, but do not limit the jurisdiction in injunction. *mandamus*, *quo warranto*, and *habeas corpus*. *State ex rel. Wallace vs. Hayne*, 8 S. C., 367. The concluding clause considered and construed; it embraces the writ of *certiorari* when necessary to a supervisory control over inferior Courts to keep them within bounds. *Ex parte Childs*, 12 S. C., 111. And also the writ of prohibition in proper cases. *State vs. Railroad Company*, 1 S. C., 46.]

Sessions.—Sec. 5. The Supreme Court shall be held at least once in each year, at the seat of government, and at such other place or places in the State as the General Assembly may direct.

Special Judges.—Sec. 6. No Judge shall preside on the trial of any cause in the event of which he may be interested, or where either of the parties shall be connected with him by affinity or consanguinity, within such degrees as may be prescribed by law, or in which he may have been counsel, or have presided in any inferior Court, except by consent of all the parties. In case all or any of the Judges of the Supreme Court shall be thus disqualified from presiding in any cause or causes, the Court or the Judges thereof shall certify the same to the Governor of the State, and he shall immediately commission, specially, the requisite number of men learned in the law for the trial and determination thereof. The same course shall be pursued in the Circuit and inferior Courts as is prescribed in this section for cases of the Supreme Court.

Reporter and Clerk.—Sec. 7. There shall be appointed by the Judges of the Supreme Court a Reporter and Clerk of said Court, who shall hold their offices for two years, and whose duties and compensation shall be prescribed by law.

All Points to be Decided.—Sec. 8. When a judgment or decree is reversed or affirmed by the Supreme Court, every point made and distinctly stated in writing in the cause, and fairly arising upon the record of the case, shall be considered and decided; and the reasons therefor shall be concisely and briefly stated in writing, and preserved with the records of the case.

Salary.—Sec. 9. The Judges of the Supreme Court and Circuit Courts shall, at stated times, receive a compensation for their services, to be fixed by law, which shall not be diminished during their continuance in office. They shall not be allowed any fees or perquisites of office, nor shall they hold any other office of trust or profit under this State, the United States, or any other power.

Eligibility.—Sec. 10. No person shall be eligible to the office of Judge of the Supreme Court or Circuit Courts who is not at the time of his election a citizen of the United States, and has not attained the age of thirty years, and been a resident of this State for five years next preceding his election, or from the adoption of this Constitution.

Vacancies.—Sec. 11. All vacancies in the Supreme Court or other inferior tribunals shall be filled by elections as herein prescribed: *Provided*, That if the unexpired term does not exceed one year, such vacancy may be filled by executive appointment. All Judges, by virtue of their office, shall be conservators of the peace throughout the State.

[A Circuit Judge elected to fill a vacancy holds under Section 13 for full four years. *Whipper vs. Reed*, 9 S. C., 5. The Governor cannot fill a vacancy in the office of Judge of Probate, where the vacancy is for a longer period than one year. *Whitmire vs. Langston*, 11 S. C, 381. This Section compared with Section 2 and construed. *Simpson vs. Willard*, 14 S. C., 194.]

Two Must Concur.—Sec. 12 In all cases decided by the Supreme Court, a concurrence of two of the Judges shall be necessary to a decision.

Circuit Judges.—Sec. 13. The State shall be divided into convenient Circuits, and for each Circuit a Judge shall be elected by joint ballot of the General Assembly, who shall hold his office for a term of four years, and during his continuance in office he shall reside in the Circuit of which he is Judge.

[In the original draft, a Judge in each Circuit was to be elected "by the qualified electors thereof." These words were stricken out and the words "by the joint vote of the General Assembly" substituted instead. P. C., 617. How "joint-vote" was changed to "joint-ballot," does not appear. *Ibid*, 854. Upon this term *joint ballot* was based the decision in *State vs. Shaw*, 9 S. C., 94, in which it was held, that a Circuit Judge could not be elected *viva voce* under Art. II, §24.]

Interchange Circuits.—Sec. 14. Judges of the Circuit Court shall interchange Circuits with each other in such manner as may be determined by law.

Common Pleas.—Sec. 15. The Courts of Common Pleas shall have exclusive jurisdiction in all cases of divorce, and exclusive original jurisdiction in all civil cases and actions *ex delicto*, which shall not be cognizable before Justices of the Peace, and appellate jurisdiction in all such cases as may be provided by law. They shall have power to issue writs of *mandamus*, prohibition, *scire facias*, and all other writs which may be necessary for carrying their powers fully into effect.

[They have concurrent jurisdiction in all civil cases cognizable before Justices of the Peace *Burge vs. Willis*, 5 S. C., 212. The Legislature may deprive these Courts of the power to issue the writ of prohibition in a particular case. *State vs. County Treasurers*, 4 S. C., 520.]

Sessions—Equity.—Sec. 16. The Court of Common Pleas shall sit in each Judicial District in this State at least twice in every year, at such stated times and places as may be appointed by law. It shall have jurisdiction in all matters of Equity, but the Courts heretofore established for that purpose shall continue as now organized until the first day of January one thousand eight hundred and sixty-nine for the disposition of causes now pending therein, unless otherwise provided by law.

[All jurisdiction belonging to the Court of Equity at the time this Constitution was adopted, is here conferred upon Courts of Common Pleas. *Jordan vs. Moses*, 10 S. C., 431.]

Equity Records—Decision in Sixty Days.—Sec. 17. The General Assembly shall provide by law for the preservation of the records of the Courts of Equity, and also for the transfer to the Court of Common Pleas and Probate Courts for final decision of all causes that may remain undetermined. It shall be the duty of the Judges of the Supreme and Circuit Courts to file their decision within sixty days from the last day of the term of Court at which the causes were heard.

[As a substitute for this section, Mr. Rutland proposed in the Convention that the Judges of the Courts of Common Pleas should be invested with all the powers of Chancellors, to hear and determine equity causes; that the Courts of Equity should be held twice a year, and that a Commissioner in Equity should be elected in every county. P. C. 628. But this substitute was indefinitely postponed. *Ibid.*, 684.

A judgment is valid, notwithstanding the Circuit Judge failed to file it within the sixty days. *Koon vs. Munro*, 11 S. C., 140.]

General Sessions.—Sec. 18. The Court of General Sessions, shall have exclusive jurisdiction over all criminal cases which shall not be otherwise provided for by law. It shall sit in each county in the State at least three times in each year, at such stated times and places as the General Assembly may direct.

[This Court has no jurisdiction in *mandamus* which is "otherwise provided for by law." *State vs. McIver*, 2 S. C., 1 An offense which a statute authorizes to be tried by the Intendant of a town, is not within the exclusive jurisdiction of this Court. *State vs. Williams*, 11 S. C., 288. A Trial Justice is an "other officer authorized by law," and jurisdiction being given to him in cases of petit larceny, the Court of General Sessions has no jurisdiction. See Section 22. *State vs. Harper*. 6 S. C., 464. But this case was overruled in *State vs Williams*, 13 S. C., 546, as the punishment in petit larceny is not restricted within the limits declared in Art. I, § 19. This Court has no jurisdiction of simple assaults, or of assaults and batteries not of an aggravated character. *State vs. McKettrick*, 14 S. C., 346.]

County Commissioners.—Sec. 19. The qualified electors of each County shall elect three persons for the term of two years, who shall constitute a Board of County Commissioners which shall have jurisdiction over roads, highways, ferries, bridges, and in all matters relating to taxes, disbursements of money for County purposes, and in every other case that may be necessary to the internal improvement and local concerns of the respective Counties: *Provided*, That in all cases there shall be the right of appeal to the State Courts.

[The words "Board of County Commissioners" were adopted as an amendment for the words *District Court*. The word *full* before the word "jurisdiction" on the third line was stricken out. A substitute, leaving their duties and powers to the direction and control of the Legislature, was rejected P. C., 629.

Compared with Art. IX, § 8, and considered *State vs. Railroad Company*, 13 S. C., 316. Does not prevent Legislature from directing a tax levy to pay claim audited by the Board. *McLaughlin vs. County Commisssoners*, 7 S. C., 375.]

Court of Probate.—Sec. 20. A Court of Probate shall be established in each County, with jurisdiction in all matters testamentary and of administration, in business appertaining to minors and the allotment of dower in cases of idiocy and lunacy, and persons *non compotes mentis*. The Judge of said Court shall be elected by the qualified electors of the respective Counties for the term of two years.

[No jurisdiction by *cestui que trust* against trustee, not involving a matter testamentary. *Poole vs. Brown*, 12 S. C., 556. And see *Waller vs. Cresswell*, 4 S. C., 353; *Caldwell vs. Little*, 15 S. C., 236. Its jurisdiction in cases of idiocy, lunacy, &c., is not exclusive, but concurrent with Court of Common Pleas. *Walker vs. Russell*, 10 S C., 82. Questions arising under an inquisition of lunacy requiring a trial by jury, may not be determined in this Court. *Ibid.* As partition is not mentioned in this grant of powers, the Legislature cannot confer upon Courts of Probate, jurisdiction in partition. *Davenport vs. Caldwell*, 10 S C., 317. A Judge of Probate holds his office for only two years. *Whitmire vs. Langston*, 11 S. C, 381.]

Justices of Peace.—Constables.—Sec. 21. A competent number of Justices of the Peace and Constables shall be chosen in each County by the qualified electors thereof, in such manner as the General Assembly may direct; they shall hold their offices for a term of two years and until their successors are elected and qualified. They shall reside in the County, city or beat for which they are elected, and the Justices of the Peace shall be commissioned by the Governor.

[There is no such officer in this State as a regular constable, no direction having been yet given by the Legislature. *State vs. Cohen*, 13 S. C., 201]

Powers.—Sec. 22. Justices of the Peace, individually, or two or more of them jointly, as the General Assembly may direct, shall have original jurisdiction in cases of bastardy, and in all matters of contract, and actions for the recovery of fines and forfeitures where the amount claimed does not exceed one hundred dollars, and such jurisdiction as may be provided by law in actions *ex delicto*, where the damages claimed do not exceed one hundred dollars: and prosecutions for assault and battery and other penal offences less than felony, punishable by fines only.

[See Sections 1 and 15, and Article I, § 19. This same jurisdiction may be conferred upon Trial Justices by the Legislature. *State vs. Glenn*, 14 S. C., 118.]

In Criminal Matters.—Sec. 23. They may also sit as examining Courts and commit, discharge, or recognize, (except in capital cases) persons charged with offences, subject to such regulations as the General Assembly may provide; they shall also have power to bind over to keep the peace, or for good behavior. For the foregoing purposes they shall have power to issue all necessary processes.

Place of Trial.—Sec. 24. Every action cognizable before Justices of the Peace instituted by summons or warrant, shall be brought before some Justice of the Peace in the County or city where the defendant

resides, and in all such causes tried by them, the right of appeal shall be secured under such rules and regulations as may be provided by law.

Compensation of Officers.—Sec. 25. The Judges of Probate, County Commissioners, Justices of the Peace, and Constables, shall receive for their services such compensation and fees as the General Assembly may from time to time by law direct.

Charge on Facts.—Sec. 26. Judges shall not charge juries in respect to matters of fact, but may state the testimony and declare the law.

[Considered in *Fripp vs. Williams*, 14 S. C., 502; *Sullivan vs. Blythe, Ibid*, 621. Construed in *State vs. Green*, 5 S. C., 65; *Redding vs. Railroad Company, Ibid*, 67; *State vs. White*, 15 S. C., 381. See, too, *Flenniken vs. Scruggs, Ibid*, 88

Clerk.—Sec. 27. There shall be elected in each County, by the electors thereof, one Clerk for the Court of Common Pleas, who shall hold his office for the term of four years, and until his successor shall be elected and qualified. He shall, by virtue of his office, be Clerk of all other Courts of Record held therein; but the General Assembly may provide by law for the election of a Clerk, with a like term of office, for each or any other of the Courts of Record, and may authorize the Judge of the Probate Court to perform the duties of Clerk for his Court, under such regulations as the General Assembly may direct. Clerks of Courts shall be removable for such cause, and in such manner as shall be prescribed by law.

[A person can hold the office of Clerk only by election. One appointed by the Judge, discharges the duties only until an election, which may be provided for by the Legislature to fill vacancies. *Reister vs. Hemphill*, 2 S. C., 178. A Clerk of Court holds for four years from his election, and not for the unexpired term of his predecessor. *Wright vs. Charles*, 4 S. C., 178. This term commences to run from the election, and not from the date of the commission or qualification. *Macoy vs. Curtis*, 14 S. C., 367.]

Attorney-General—Sec. 28. There shall be an Attorney-General for the State, who shall perform such duties as may be prescribed by law. He shall be elected by the qualified electors of the State for the term of two years, and shall receive for his services such compensation as shall be fixed by law.

[The term of office was four years, until 1875, when the amendment to Art III, § 23, went into effect, by which it was provided that the term of the office of the Attorney-General should be two years. 15 Stat., 806, 1,009.]

Solicitor.—Sec. 29. There shall be one Solicitor for each Circuit, who shall reside therein, to be elected by the qualified electors of the Circuit, who shall hold his office for the term of four years, and shall receive for his services such compensation as shall be fixed by law. In all cases where an Attorney for the State, of any Circuit, fails to attend and prosecute, according to law, the Court shall have power to appoint an Attorney *pro tempore*.

[The last sentence considered, and *quere*; could the legislature empower a Solicitor to appoint a deputy. *State vs. Buttz*, 9 S. C., 186]

Sheriff and Coroner.—Sec. 30. The qualified electors of each County shall elect a Sheriff and a Coroner, for the term of four years, and until their successors are elected and qualified; they shall reside in their respective Counties during their continuance in office, and be disqualified for the office a second time, if it should appear that they or either of them are in default for money collected by virtue of their respective offices.

Writs and Processes.—Sec. 31. All writs and processes shall run, and all prosecutions shall be conducted in the name of the State of South Carolina; all writs shall be attested by the Clerk of the Court from which they shall be issued; and all indictments shall conclude "against the peace and dignity of the State."

Decisions of Supreme Court.—Sec. 32. The General Assembly shall provide by law for the speedy publication of the decisions of the Supreme Court made under this Constitution.

Fourteenth Amendment—Sec 33. The first General Assembly convened under this Constitution, at their first session. immediately after their permanent organization, shall ratify the amendment to the Constitution of the United States, known as the Fourteenth Article, proposed by the Thirty-Xinth Congress.

[This Section was adopted as a part of Article XIV. It was probably put here by the Committee on Revision. P. C., 905.]

Slave Contracts.—Sec. 34. All contracts, whether under seal or not, the consideration of which were for the purchase of slaves, are hereby declared null and void, and of no effect, and no suit, either at law or equity, shall be commenced or prosecuted for the enforcement of such contracts, and all proceedings to enforce satisfaction or payment on judgments or decrees, rendered, recorded enrolled or entered upon such contracts, in any Court of this State, are hereby prohibited, and all orders heretofore made in this State, in relation to such contracts, whereby property is held subject to decision as to the validity of such contracts, are also hereby declared null and void, and of no effect.

[This Section, and also Ordinance of January 30th, 1868, to same effect are void under the Constitution of the United States. *Calhoun vs. Calhoun*, 2 S. C., 283.]

ARTICLE 5.

JURISPRUDENCE.

Arbitrators.—Sec. 1. The General Assembly shall pass such laws as may be necessary and proper, to decide differences by arbitrators, to be appointed by the parties who may choose that summary mode of adjustment.

Change of Venue.—Sec. 2. It shall be the duty of the General Assembly to pass the necessary laws for the change of venue in all cases, civil and criminal, over which the Circuit Courts have original jurisdiction, upon a proper showing, supported by affidavit, that a fair and impartial trial cannot be had in the county where such trial or prosecution was commenced.

Digest of Laws—Sec. 3. The General Assembly, at its first session after the adoption of this Constitution, shall make provision to revise, digest, and arrange, under proper heads, the body of our laws, civil and criminal, and form a penal code, founded upon principles of reformation, and have the same promulgated in such manner as they may direct; and a like revision, digest and promulgation shall be made within every subsequent period of ten years. That justice may be administered in a uniform mode of pleading without distinction between law and equity, they shall provide for abolishing the distinct forms of action, and for that purpose shall appoint some suitable person or persons, whose duty it shall be to revise, simplify, and abridge the rules, practice, pleadings, and forms of the Courts now in use in this State.

ARTICLE 6.

EMINENT DOMAIN.

Boundary and Navigable Waters—Section 1. The State shall have concurrent jurisdiction on all rivers bordering on this State, so far as such rivers shall form a common boundary to this and any other State bounded by the same; and they, together with all other navigable waters within the limits of the State shall be common highways, and forever free, as well to the inhabitants of this State as to the citizens of the United States, without any tax or impost therefor, unless the same be expressly provided for by the General Assembly.

[A motion was made in the Convention to amend this Section so that it would read, "The Legislature shall have such control over all rivers and other streams as may be necessary to keep them open and clean, and for drainage purposes;" but the motion was lost. P. C., 652.]

State Lands.—Sec. 2. The title to all lands and other property, which have heretofore accrued to this State by grant, gift, purchase, forfeiture, escheats, or otherwise, shall vest in the State of South Carolina the same as though no change had taken place.

Escheat.—Sec. 3. The people of the State are declared to possess the ultimate property in and to all lands within the jurisdiction of the State; and all lands, the title to which shall fail from defect of heirs, shall revert or escheat to the people.

[*In their right of sovereignty*, after word "State," in the first line, were stricken out. P. C., 653.]

ARTICLE 7.

IMPEACHMENTS.

Power of Impeachment.—SECTION 1. The House of Representatives shall have the sole power of impeachment. A vote of two-thirds of all the members elected shall be required for an impeachment, and any officer impeached, shall thereby be suspended from office until judgment in the case shall have been pronounced.

Trial.—SEC. 2. All impeachments shall be tried by the Senate, and when sitting for that purpose, they shall be under oath or affirmation. No person shall be convicted except by vote of two-thirds of all the members elected. When the Governor is impeached, the Chief Justice of the Supreme Court or the Senior Judge, shall preside, with a casting vote in all preliminary questions.

Who May Be.—SEC. 3. The Governor and all other executive and judicial officers, shall be liable to impeachment; but judgment in such case shall not extend further than removal from office. The person convicted, shall nevertheless be liable to indictment, trial and punishment according to law.

Removal on Address.—SEC. 4. For any wilful neglect of duty, or other reasonable cause which shall not be sufficient ground of impeachment, the Governor shall remove any executive or judicial officer on the address of two-thirds of each House of the General Assembly. *Provided*, That the cause, or causes, for which said removal may be required, shall be stated at length in such address, and entered on the journals of each House. *And provided further*, That the officer intended to be removed shall be notified of such cause or causes, and shall be admitted to a hearing in his own defence, before any vote for such address; and in all cases, the vote shall be taken by yeas and nays, and be entered on the journals of each House respectively.

ARTICLE 8.

RIGHT OF SUFFRAGE.

Ballot.—SECTION 1. In all elections by the people the electors shall vote by ballot.

Qualification of Electors.—SEC. 2. Every male citizen of the United States, of the age of twenty-one years and upwards, not laboring under the disabilities named in this Constitution, without distinction of race, color, or former condition, who shall be a resident of this State at the time of the adoption of this Constitution, or who shall thereafter reside in this State one year, and in the county in which he offers to vote, sixty days next preceding any election, shall be entitled to vote for all officers that are now, or hereafter may be, elected by the people, and upon all questions submitted to the electors at any elections. *Provided*,

That no person shall be allowed to vote or hold office who is now or hereafter may be disqualified therefor by the Constitution of the United States, until such disqualification shall be removed by the Congress of the United States. *Provided further*, That no person, while kept in any alms-house or asylum, or of unsound mind, or confined in any public prison, shall be allowed to vote or hold office.

[The following additional proviso, recommended by the Committee, was stricken out by a very large majority: "*Provided*, That every person coming of age after the year 1875, to be entitled to the privilege of an election, shall be able to read and write; but this qualification shall not apply to any person prevented by physical disability from complying therewith." P. C., 824]

Registration.—Sec. 3. It shall be the duty of the General Assembly to provide from time to time for the registration of all electors.

Loss of Residence.—Sec. 4. For the purpose of voting no person shall be deemed to have lost his residence by reason of absence while employed in the service of the United States, nor while engaged upon the waters of this State or the United States, or of the high seas, nor while temporarily absent from the State.

Soldiers and Sailors.—Sec. 5. No soldier, seaman or marine in the army or navy of the United States shall be deemed a resident of this State in consequence of having been stationed therein.

Privileges of Electors.—Sec. 6. Electors shall, in all cases, except treason, felony or breach of the peace, be privileged from arrest and civil process during their attendance at elections, and in going to and returning from the same.

Eligibility to Office.—Sec. 7. Every person entitled to vote at any election shall be eligible to any office which now is or hereafter shall be elective by the people in the County where he shall have resided sixty days previous to such election, except as otherwise provided in this Constitution or the Constitution and laws of the United States.

[Considered and construed; and held not to authorize one who accepts the office of member of Congress to be a circuit solicitor. *State vs. Buttz*, 9 S. C., 156]

Disqualifying Crimes.—Sec. 8. The General Assembly shall never pass any law that will deprive any of the citizens of this State of the right of suffrage except for treason, murder, robbery, or duelling, whereof the persons shall have been duly tried and convicted.

[By Joint Resolution approved February 9th, 1882 (17 Stat., 1156), an amendment to this Section of the Constitution will be submitted to the qualified voters of the State at the general election to be held in November, 1882. If this amendment is adopted, the Section will then read as follows:

Section 8. The General Assembly shall never pass any law that will deprive any of the citizens of this State of the right of suffrage, except for treason, murder, burglary, larceny, perjury, forgery, or any other infamous crime, or duelling, whereof the person shall have been duly tried and convicted.]

Presidential Electors.—Sec. 9. Presidential electors shall be elected by the people.

Who Elected.—Sec. 10. In all elections held by the people under this Constitution, the person or persons who shall receive the highest number of votes shall be declared elected.

[Considered in *Ex parte Smith*, 8 S. C., 515, and *Ex parte Norris, Ibid*, 485.]

First Election.—Sec. 11. The provision of this Constitution concerning the term of residence necessary to enable persons to hold certain offices therein mentioned, shall not be held to apply to officers chosen by the people at the first election, or by the General Assembly at its first session.

Crimes by Slave.—Sec. 12. No person shall be disfranchised for felony, or other crimes committed while such person was a slave.

ARTICLE 9.

FINANCE AND TAXATION.

[There is nothing in the Constitution that prevents the Legislature from furnishing the data by which taxes are to be levied, and then directing a ministerial officer to fix the *per centum*. *Morton, Bliss & Co. vs. Comptroller-General*, 4 S. C., 431.]

Assessment and Taxation.—Section 1. The General Assembly shall provide by law for a uniform and equal rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, real, personal and possessory, except mines and mining claims, the proceeds of which alone shall be taxed; and also excepting such property as may be exempted by law for municipal, educational, literary, scientific, religious or charitable purposes.

[This does not inhibit other taxes than those on property and the poll tax. The Section construed. *State vs. Hayne*, 4 S. C., 423.]

Poll Tax.—Sec. 2. The General Assembly may provide annually for a poll tax not to exceed one dollar on each poll, which shall be applied exclusively to the public school fund. And no additional poll tax shall be levied by any municipal corporation.

[Does not prevent a license tax on business. *State vs. Hayne*, 4 S. C., 424. See Article X, § 5.]

Ordinary Expenses.—Sec. 3. The General Assembly shall provide for an annual tax sufficient to defray the estimated expenses of the State for each year; and whenever it shall happen that such ordinary expenses of the State for any year shall exceed the income of the State for such year, the General Assembly shall provide for levying a tax for the ensuing year sufficient, with other sources of income, to pay the deficiency of the preceding year, together with the estimated expenses of the ensuing year.

[Does not prevent a license tax on business. *State vs Hayne*, 4 S. C., 424. The appropriation of an unexpended balance in the treasury at the end of a fiscal year does not violate this Section. *State vs. Leaphart*, 11 S. C., 459.]

Object.—Sec. 4. No tax shall be levied except in pursuance of a law, which shall distinctly state the object of the same; to which object such tax shall be applied.

[See *State vs. Cardoza*, 5 S. C., 311. This Section is an appropriation made by law of money raised by taxation to pay interest on a public debt, and the duty so imposed upon the State Treasurer may be enforced by the Courts *Morton, Bliss & Co. vs. Comptroller-General*, 4 S. C., 520. Meaning of word "object" considered. *State vs. Leaphart*, 11 S. C., 459.]

Exemptions.—Sec. 5. It shall be the duty of the General Assembly to enact laws for the exemption from taxation of all public schools, colleges, and institutions of learning, all charitable institutions in the nature of asylums for the infirm, deaf and dumb, blind, idiotic and indigent persons, all public libraries, churches and burying grounds; but property of associations and societies, although connected with charitable objects, shall not be exempt from State, County or municipal taxation: *Provided*, That this exemption shall not extend beyond the buildings and premises actually occupied by such schools, colleges, institutions of learning, asylums, libraries, churches and burial grounds, although connected with charitable objects.

Time of Valuation.—Sec. 6. The General Assembly shall provide for the valuation and assessment of all lands and the improvements thereon prior to the assembling of the General Assembly of one thousand eight hundred and seventy, and thereafter on every fifth year.

[Sections 5 and 6 do not prevent the legislature from imposing a license tax on business. *State vs. Hayne*, 4 S. C., 424]

Extraordinary Expenditures.—Sec. 7. For the purpose of defraying extraordinary expenditures, the State may contract public debts; but such debts shall be authorized by law for some single object, to be distinctly specified therein; and no such law shall take effect until it shall have been passed by a vote of two-thirds of the members of each branch of the General Assembly, to be recorded by yeas and nays on the journals of each House respectively; and every such law shall levy a tax annually sufficient to pay the annual interest of such debt.

[This Section so far as it authorizes a public debt to be created by the action of the General Assembly alone, has been repealed by the amendment to the Constitution known as Article XVI, which see. This Section does not prevent a license tax on business, *State vs. Hayne*, 4 S C., 424. This Section is exhaustively considered and construed in the two cases of *Morton, Bliss & Co., vs. Comptroller-General*, 4 S. C. 430, and the *Bond Debt Cases*, 12 S. C., 202. The two-thirds vote here required means two-thirds of a quorum, and not of the entire membership. *Ibid.* The two-thirds vote must affirmatively appear on the journals, but if it so appear on the final passage, it is sufficient. *Bond Debt Cases*, 12 S. C, 203. The appropriation of an unexpended balance in the treasury at

the end of a fiscal year does not violate this Section. *State vs. Leaphart*, 11 S. C., 459. Compare this Section with Art II, §§24, 26.]

Counties, Cities, &c.—Sec. 8. The corporate authorities of Counties, Townships, School Districts, Cities, Towns and Villages may be vested with power to assess and collect taxes for corporate purposes; such taxes to be uniform in respect to persons and property within the jurisdiction of the body imposing the same. And the General Assembly shall require that all the property, except that heretofore exempted within the limits of municipal corporations, shall be taxed for the payment of debts contracted under authority of law.

[See Art. IV, §19. "Heretofore" in this Section means hereinbefore. *Rose vs. Charleston*, 3 S. C., 369. This Section authorizes a license tax on business, and does not require such license to be the same for the several avocations taxed. The phrase "uniform with respect to persons and property" construed. *State vs. Columbia*, 6 S. C., 1.]

Incorporation of Cities, &c.—Sec. 9. The General Assembly shall provide for the incorporation and organization of cities and towns, and shall restrict their powers of taxation, borrowing money, contracting debts, and loaning their credit.

Scrip &c.—Sec. 10. No scrip, certificate, or other evidence of State indebtedness shall be issued, except for the redemption of stock, bonds, or other evidences of indebtedness previously issued, or for such debts as are expressly authorized in this Constitution.

[Section 10 does not prohibit the legislature from issuing certificates of indebtedness in payment of claims against the State for printing. *State vs. Cardoza*, 5 S. C., 297, 317.]

Annual Statement.—Sec. 11. An accurate statement of the receipt and expenditures of the public money shall be published with the laws of each regular session of the General Assembly in such manner as may, by law, be directed.

Appropriation.—Sec. 12. No money shall be drawn from the Treasury but in pursuance of appropriations made by law.

[Money once paid into the Treasury cannot be withdrawn except "in pursuance of appropriations made by law." *State vs. Baldwin*, 14 S. C., 138.]

Fiscal Year.—Sec. 13. The fiscal year shall commence on the first day of November in each year.

Debts—Registry.—Sec. 14. Any debt contracted by the State shall be by loan on State bonds, of amounts not less than fifty dollars each, on interest, payable within twenty years after the final passage of the law authorizing such debt. A correct registry of all bonds shall be kept by the Treasurer in numerical order, so as always to exhibit the number and amount unpaid, and to whom severally made payable

[The registry here required is not a condition precedent to their issue and validity. *Bond Debt Cases*, 12 S. C., 203. The appropriation of an unexpended balance in the Treasury at the end of a fiscal year does not violate this Section. *State vs. Leaphart*, 11 S. C., 459.]

Keeping and Disbursement of Public Funds.—Sec. 15. Suitable laws shall be passed by the General Assembly for the safe keeping, transfer and disbursement of the State, County and School funds, and all officers and other persons charged with the same, shall keep an accurate entry of each sum received, and of each payment and transfer; and shall give such security for the faithful discharge of such duties as the General Assembly may provide. And it shall be the duty of the General Assembly to pass laws making embezzlement of such funds a felony punishable by fine and imprisonment proportioned to the amount of deficiency or embezzlement, and the party convicted of such felony, shall be disqualified from ever holding any office of honor or emolument in this State: *Provided, however*, That the General Assembly, by a two-third vote, may remove the disability upon payment in full of the principal and interest of the sum embezzled.

Rebel Debt.—Sec. 16. No debt contracted by this State in behalf of the late rebellion, in whole or in part, shall ever be paid.

ARTICLE 10.

EDUCATION.

Superintendent of Education.—Section 1. The supervision of public instruction shall be vested in a State Superintendent of Education, who shall be elected by the qualified electors of the State in such manner and at such time as the other State officers are elected; his powers, duties, term of office and compensation shall be defined by the General Assembly.

[The term of office is now two years. See Art. III, §23.]

School Commissioner—State Board.—Sec. 2. There shall be elected biennially, in each County by the qualified electors thereof, one School Commissioner, said Commissioners to constitute a State Board of Education, of which the State Superintendent shall, by virtue of his office, be Chairman; the powers, duties, and compensation of the members of said Board shall be determined by law.

Free Schools.—Sec. 3. The General Assembly shall, as soon as practicable after the adoption of this Constitution, provide for a liberal and uniform system of free public schools throughout the State, and shall also make provision for the division of the State into suitable School Districts. There shall be kept open at least six months in each year one or more schools in each School District.

Compulsory Attendance.—Sec. 4. It shall be the duty of the General Assembly to provide for the compulsory attendance, at either public or private schools, of all children between the ages of six and sixteen years, not physically or mentally disabled, for a term equivalent to twenty-four months at least: *Provided*, That no law to that effect shall

be passed until a system of public schools has been thoroughly and completely organized and facilities afforded to all the inhabitants of the State for the free education of their children.

School Tax.—Sec. 5. The Boards of County Commissioners of the several Counties shall levy an annual tax of not less than two mills on the dollar upon all the taxable property in their respective Counties, which levy shall not be increased unless by special enactment of the General Assembly, for the support of the public schools in their respective Counties, which tax shall be collected at the same time and by the same officers as the other taxes for the same year, and shall be held in the County Treasuries of the respective Counties, and paid out exclusively for the support of the public schools as provided by law. There shall be assessed on all taxable polls in the State an annual tax of one dollar on each poll, the proceeds of which tax shall be applied solely to educational purposes: *Provided*, That no person shall ever be deprived of the right of suffrage for the non-payment of said tax. No other poll or capitation tax shall be levied in the State, nor shall the amount assessed on each poll exceed the limit given in this Section. The school tax shall be distributed among the several school districts of the Counties in proportion to the respective number of pupils attending the public schools. No religious sect or sects shall have exclusive right to, or control of any part of the school funds of the State, nor shall sectarian principles be taught in the public schools.

[This Section was amended in 1878, to read as above. 15 Statute, 1,025 and 16 Statute, 640. When first adopted, this Section read as it now reads, except the first sentence, which was as follows:

The General Assembly shall levy at each regular session after the adoption of this Constitution an annual tax on all taxable property throughout the State for the support of public schools, which tax shall be collected at the same time and by the same agents as the general State levy, and shall be paid into the Treasury of the State.

Upon the subject of the poll tax, see Article IX, § 2.]

State Normal School—Sec. 6. Within five years after the first regular session of the General Assembly, following the adoption of this Constitution, it shall be the duty of the General Assembly to provide for the establishment and support of a State Normal School, which shall be open to all persons who may wish to become teachers.

Benevolent Institutions.—Sec. 7. Educational institutions for the benefit of all the blind, deaf and dumb, and such other benevolent institutions, as the public good may require, shall be established and supported by the State, subject to such regulations as may be prescribed by law.

State Reform School.—Sec. 8. Provisions shall be made by law, as soon as practicable, for the establishment and maintenance of a State Reform School for juvenile offenders.

State University, Agricultural College.—Sec. 9. The General Assembly shall provide for the maintenance of the State University, and as soon as practicable, provide for the establishment of an Agricul-

tural College, and shall appropriate land given to this State, for the support of such a college, by the Act of Congress, passed July second, one thousand eight hundred and sixty-two, or the money or scrip, as the case may be arising from the sale of said lands, or any lands which may hereafter be given or appropriated for such purpose, for the support and maintenance of such college, and may make the same a branch of the State University, for instruction in Agriculture, the Mechanic Arts, and the Natural Sciences connected therewith

State Schools Open to All—Sec. 10. All the public schools, colleges, and universities of this State, supported in whole or in part by the public funds, shall be free and open to all the children and youths of the State, without regard to race or color.

State School Fund.—Sec. 11. The proceeds of all lands that have been or hereafter may be given by the United States to this State for educational purposes, and not otherwise appropriated by this State or the United States, and of all lands or other property given by individuals, or appropriated by the State for like purpose, and of all estates of deceased persons who have died without leaving a will or heir, shall be securely invested and sacredly preserved as a State School Fund, and the annual interest and income of said fund, together with such other means as the General Assembly may provide, shall be faithfully appropriated for the purpose of establishing and maintaining free public schools, and for no other purposes or uses whatever.

ARTICLE 11.

CHARITABLE AND PENAL INSTITUTIONS.

To be Supported.—Section 1. Institutions for the benefit of the insane, blind, deaf and dumb, and the poor, shall always be fostered and supported by this State, and shall be subject to such regulations as the General Assembly may enact.

Penitentiary.—Sec. 2. The Directors of the Penitentiary shall be elected or appointed, as the General Assembly may direct.

Directors of Institutions.—Sec. 3. The Directors of the benevolent and other State institutions, such as may be hereafter created, shall be appointed by the Governor, by and with the consent of the Senate; and upon all nominations made by the Governor, the question shall be taken by yeas and nays, and entered upon the journals.

Vacancies.—Sec. 4. The Governor shall have power to fill all vacancies that may occur in the offices aforesaid, until the next session of the General Assembly, and until a successor or successors shall be appointed and confirmed.

Poor and Infirm.—Sec. 5. The respective Counties of this State shall make such provision, as may be determined by law, for all those inhabitants who by reason of age, and infirmities or misfortunes, may have a claim upon the sympathy and aid of society.

Lunatic Asylum.—Sec. 6. The Physician of the Lunatic Asylum, who shall be Superintendent of the same, shall be appointed by the Governor, with the advice and consent of the Senate. All other necessary officers and employees shall be appointed by the Governor.

ARTICLE 12.

CORPORATIONS.

General Laws.—Section 1. Corporations may be formed under general laws; but all such laws may from time to time be altered or repealed.

[In the original draft, this Section was Section 2. Section 1, in the report of the committee was stricken out. It read as follows: "The General Assembly shall pass no special Act conferring corporate powers." P. C., 754.]

Subject to Taxation.—Sec. 2. The property of corporations now existing or hereafter created, shall be subject to taxation, except in cases otherwise provided for in this Constitution.

Right of Way.—Sec. 3. No right of way shall be appropriated to the use of any corporation until full compensation therefor shall be first made, or secured by a deposit of money to the owner, irrespective of any benefit from any improvement proposed by such corporation, which compensation shall be ascertained by a jury of twelve men, in a Court of Record, as shall be prescribed by law.

Dues.—Sec. 4. Dues from corporations shall be secured by such individual liability of the stockholders and other means, as may be prescribed by law.

Liability of Stockholders.—Sec. 5. All general laws and special acts passed pursuant to this section, shall make provisions therein for fixing the personal liability of stockholders under proper limitations; and shall prevent and punish fraudulent misrepresentations as to the capital property and resources of such corporations; and shall also regulate the public use of all franchises which have heretofore been, or hereafter may be created or granted, by or under the authority of this State, and shall limit all tolls, imposts, and other charges and demands under such laws.

Banking Corporations.—Sec. 6. The General Assembly shall grant no charter for banking purposes, nor renew any banking corporations now in existence, except upon the condition that the stockholders shall be liable to the amount of their respective share or shares of stock in such banking institution, for all its debts and liabilities, upon note, bill, or otherwise; and upon the further condition that no director or other officer of said corporation shall borrow any money from said corporation; and if any director or other officer shall be convicted upon indictment of directly or indirectly violating this Section, he shall be

punished by fine or imprisonment, at the discretion of the Court. The books, papers, and accounts of all banks shall be open to inspection, under such regulations as may be prescribed by law.

ARTICLE 13

MILITIA.

Of Whom Composed.—SEC. 1. The Militia of this State shall consist of all able-bodied male citizens of the State between the ages of eighteen and forty-five years, except such persons as are now, or may hereafter be, exempted by the laws of the United States, or who may be adverse to bearing arms, as provided for in this Constitution ; and shall be organized, armed, equipped and disciplined as the General Assembly may by law provide.

[The words "or who may be adverse to bearing arms as provided for in this Constitution" were substituted in the Convention for the words *or of this State*, which were in the original draft. P. C 751.]

Call Out.—SEC. 2. The Governor shall have power to call out the militia to execute the laws, repel invasion, repress insurrection, and preserve the public peace.

Adjutant and Inspector General—Staff.—SEC. 3. There shall be an Adjutant and Inspector General elected by the qualified electors of the State, at the same time and in the same manner as other State officers, who shall rank as a Brigadier General, and whose duties and compensation shall be prescribed by law. The Governor shall appoint, by and with the advice and consent of the Senate, such other staff officers as the General Assembly may direct.

[The term of office of the Adjutant and Inspector General is fixed in Art III, §23.]

ARTICLE 14.

MISCELLANEOUS.

Officer.—SEC. 1. No person shall be elected or appointed to any office in this State, unless he possess the qualifications of an elector.

Lotteries.—SEC. 2. Lotteries, and the sale of lottery tickets, for any purpose whatever, are prohibited, and the General Assembly shall prevent the same by penal laws.

Library.—SEC. 3. The State Library shall be subject to such regulations as the General Assembly may prescribe.

Claims Against State.—SEC. 4. The General Assembly may direct, by law, in what manner claims against the State may be established and adjusted.

[Instance of a tribunal created under the authority of this Section may be found in the Court of Claims *Ex parte Childs*, 12 S. C., 111.]

Divorces.—Sec. 5. Divorces from the bands of matrimony shall not be allowed but by the judgment of a Court, as shall be prescribed by law.

Supreme Being.—Sec 6. No person who denies the existence of the Supreme Being shall hold any office under this Constitution.

Printing.—Sec. 7. The printing of the laws, journals, bills, legislative documents and papers for each branch of the General Assembly, with the printing required for the Executive and other departments of State, shall be let, on contract, in such manner as shall be prescribed by law.

Married Women's Property.—Sec. 8. The real and personal property of a woman, held at the time of her marriage, or that which she may thereafter acquire, either by gift, grant, inheritance, devise, or otherwise, shall not be subject to levy and sale for her husband's debts; but shall be held as her separate property and may be bequeathed, devised, or alienated by her the same as if she were unmarried: *Provided*, That no gift or grant from the husband to the wife shall be detrimental to the just claims of his creditors.

[This Section could not and did not act retrospectively, so as to impair the vested rights of a husband. Nor did it operate as a settlement upon the wife of lands then owned by her. *Bouknight vs. Epting*, 11 S. C, 71. A wife may acquire property directly from her husband, but such acquisition is not established by proof of the use by the wife of property purchased by the husband. *State vs Pitts*, 12 S. C., 180. A married woman has the right to alienate stock held by her as her separate property at the time of the adoption of the Constitution. *Witsell vs. Charleston*, 7 S. C., 88. And may pledge it as security for her husband's debts *Ibid* This Section may be considered in construing acts done by married women prior to 1868. *Oliver vs. Grimball*, 14 S. C., 556 But does not affect rights vested prior to 1868. *Withers vs. Jenkins*, 14 S. C., 597; *Shuler vs. Bull.* 15 S. C., 421. Considered and construed, *Ex parte Dial*, 14 S. C., 586; and very fully in *Pelzer, Rodgers & Co. vs. Campbell & Co.*, 15 S. C, 581.]

Removal of Causes.—Sec. 9. The General Assembly shall provide for the removal of all causes, which may be pending when this Constitution goes into effect, to Courts created by the same.

Time of Election.—Sec. 10. The election for all State officers shall take place at the same time as is provided for that of members of the General Assembly, and the election for those officers whose terms of service are for four years, shall be held at the time of each alternate general election.

ARTICLE 15.

AMENDMENT AND REVISION OF THE CONSTITUTION.

Amendments—How Made.—Sec. 1. Any amendment or amendments to this Constitution, may be proposed in the Senate or House of Representatives. If the same be agreed to by two-thirds of the mem-

bers elected to each House, such amendment or amendments shall be entered on the journals respectively, with the yeas and nays taken thereon ; and the same shall be submitted to the qualified electors of the State, at the next general election thereafter for Representatives, and if a majority of the electors qualified to vote for members of the General Assembly, voting thereon, shall vote in favor of such amendment or amendments, and two-thirds of each branch of the next General Assembly shall, after such an election, and before another, ratify the same amendment or amendments, by yeas and nays, the same shall become part of the Constitution : *Provided*, That such amendment or amendments shall have been read three times, on three several days in each House.

Two or More.—Sec. 2. If two or more amendments shall be submitted at the same time, they shall be submitted in such manner that the electors shall vote for or against each of such amendments separately.

Convention.—Sec. 3. Whenever two-thirds of the members elected to each branch of the General Assembly shall think it necessary to call a Convention to revise, amend, or change this Constitution, they shall recommend to the electors to vote at the next election for representatives, for or against a Convention and if a majority of all the electors voting at said election shall have voted for a Convention, the General Assembly shall, at their next session, provide by law for calling the same ; and such Convention shall consist of a number of members, not less than that of the most numerous branch of the General Assembly.

ARTICLE 16.

Public Debt—Vote of People.—To the end that the public debt of South Carolina may not hereafter be increased, without the due consideration and free consent of the people of the State, the General Assembly is hereby forbidden to create any further debt or obligation, either by the loan of the credit of the State, by guaranty, endorsement, or otherwise, except for the ordinary and current business of the State, without first submitting the question as to the creation of any such new debt, guaranty, endorsement, or loan of its credit, to the people of this State at a general State election ; and, unless two-thirds of the qualified voters of this State, voting on the question, shall be in favor of a further debt, guaranty, endorsement, or loan of its credit, none such shall be created or made.

[This Article is an amendment adopted in 1873.—15 Stat., 295 and 466. All other amendments were made as changes to the existing sections and will be found incorporated in the text.—See Art. II, §§ 3, 11, and 32; Art. III, § 23 : Art. VIII. § 8 ; Art. X, §5.]

RULES OF THE SUPREME COURT,

IN FORCE JULY 1, 1882.

I. Return—When Filed—Dismissal of Appeal for Default—Motion to Restore.—For the purpose of an appeal to this Court the appellant shall cause the return to be made and filed with the Clerk of this Court within forty days after the record constituting said return has been completed. If he fail to do so within the time prescribed by this Rule, the appellant shall be deemed to have waived the appeal, and upon an affidavit to that effect, and the certificate of the Clerk of this Court that no return has been filed as above required, the respondent may obtain from the Clerk of this Court an order dismissing the appeal for want of prosecution, with costs, and the Court below may thereupon proceed as though there had been no notice of appeal: *Provided, however,* that it being made to appear to the satisfaction of this Court that such default on the part of the appellant has arisen from unavoidable causes, he may, on motion, upon at least eight days' notice, apply to this Court for an order reinstating the appeal.

II. Return—What to Contain.—When the appeal is from a judgment, the return spoken of in the foregoing Rule shall consist of copies of the judgment roll, the notice of appeal and exceptions, certified to by the Clerk of the Court below. When the appeal is from an order, as allowed by the eleventh section of the Code of Procedure, the return shall consist of copies of the order appealed from, with the papers on which the Court below acted in granting the order, together with the notice of appeal and the exceptions: *Provided, however,* If the parties agree upon a statement of the case, as allowed by an Act entitled "An Act to facilitate and save expenses in appeals," approved March 25, 1875, such statement, with the notice of appeal and exceptions, shall constitute the return.

III. Returns—Remedy for Defects.—If said return shall be defective, either party may, on affidavit specifying the defect, and after eight days' notice to the opposite party, apply to one of the Justices of this Court for an order that the appellant cause a further return to be made without delay.

IV. Attorneys and Guardians ad Litem—Representatives of Deceased Parties.—The attorneys and guardians *ad litem* of the respective parties in the Court below, shall be deemed the attorneys and guardians of the same parties respectively in this Court, until others shall be

retained or appointed, and notice thereof shall be served on the adverse party. When any party to a judgment, brought by appeal into this Court, shall die pending such appeal, any party in interest shall be entitled to move the Court for an order making the proper representative of such deceased person a party to such appeal; and when, by reason of such decease, the proper parties appellant are not before the Court, and due means to have the proper parties represented on the record of this Court are not taken at the next ensuing term, the respondent shall be entitled, on due proof of such fact, to move this Court to dismiss such appeal.

V. Case or Brief—What to Contain.—The "case" required to be served by the Second Section of the Act in relation to appeals, approved December 9, 1878, shall set forth the following particulars:

1. The title of the action
2. The time of commencement of action.
3. The names of all parties to the action, designating which of them are appellants and which are respondents.
4. The general nature and character of the pleadings, specifying such defendants as answered or demurred, and the general nature of each answer when several answers are filed.
5. When issues of fact are settled, the order settling the same.
6. The mode in which the case was tried, whether by the Court, by a jury, or by referees.
7. When error of law is alleged, the facts or conclusions of fact to which such error relates.
8. When error of fact is alleged, the evidence or fact on which the determination complained of was based.
9. The judgment, order, finding, ruling or decision complained of.
10. If error is alleged in the charge to the jury, the request to charge the charge and exceptions.
11. When the question to be determined involves the construction of any pleading, judgment, order, charge or instrument, the whole matter thereof shall be set forth, but if only some matter constituting a distinct and separate part thereof is involved in such construction, only such distinct and separate part need be stated in full, and the residue thereof may be briefly stated according to its general nature and effect.
12. All changes in parties.
13. The date of the judgment or order appealed from.
14. Copy of the exceptions:

Provided, however, If the parties agree upon a "statement of the case," as allowed by an Act entitled "An Act to facilitate and save expenses in appeals," approved March 5, 1875, such statement shall constitute said "case." If the case is voluminous, an index to the pleadings, exhibits, depositions and other principal matters shall be added.

Exceptions to Decree.—An exception for the purpose of an appeal must contain a statement of the proposition of the law or fact which it is desired to review, and a mere reference to an exception taken to the

report of the master or a referee, or to the decree of a judge of probate, will not be sufficient, and an exception so taken will not be considered.

Amendments to be Incorporated in Case —In the preparation of the case for argument in this Court, where amendments have been proposed and allowed, the case must be printed, or in a case where printing is dispensed with, must be written, as it would read after the amendments allowed are incorporated, and it will not be sufficient to set out the proposed amendments with a statement as to which of them have been allowed.

These amendments shall not apply to any appeal taken before the 1st day of July, 1882.

[See Circuit Court Rules, No. 50.]

VI Printed Papers—How Prepared.—All papers printed for the use of the Court shall be on white writing paper, in book form, and each case or other paper comprising more than two leaves shall be stitched or bound. Such printed matter shall conform, as to external form and dimensions, and as to dimensions of printed page, to the volumes of the current series of the South Carolina Reports.

Small pica solid is the smallest and most compact mode of composition allowed. The folio (of one hundred words), numbering from the commencement to the end of the case, shall be printed on the outer margin of the page.

Title—Effect of Non-Compliance.—Each separate paper printed for the use of the Court shall, instead of being endorsed, set forth on the first page, or, if covered, on the first page of the cover, the following particulars: The style of the Court, the title of the cause, which, in case of appeal, shall stand as it stood in the Circuit Court, without further change than adding the words "Appellant" and "Respondent," so as to indicate the parties appealing to this Court, the nature of the paper, and the names of the attorneys. No charge for printing the papers mentioned in this rule shall be allowed as a disbursement in a cause, unless the foregoing requirements shall be shown, by affidavit, to have been complied with in all papers hereafter printed, nor where the brief shall be held by the Court to be insufficient.

VII. Case or Brief—Service of—Effect of Non-Compliance —Within twenty days after the "case" has been settled or agreed upon, the appellant shall serve three printed copies of the case or brief, as prepared for argument, on the attorney of the adverse party. If he fail to do so, the respondent may, by notice in writing, require the service of such copies within ten days after the service of the notice; and if the copies be not served in pursuance of such notice, the appellant shall be deemed to have waived the appeal; and on an affidavit proving the default and the service of such notice, the respondent may enter an order with the Clerk, dismissing the appeal for want of prosecution with costs; and the Court below may, thereupon, proceed as though there had been no appeal.

VIII. Case or Brief and Points Furnished.—Three days previous to the commencement of the argument of any case, the counsel for the appellant shall deliver to the Clerk of the Court six copies of the case or brief, which shall be disposed of as follows: one copy to each of the Judges, one for the Clerk, one for the Reporter, and one for the Library of the Supreme Court; and, at the same time, each party shall deliver to the Clerk eight copies of the points, as required by Rule IX, six copies to be disposed of as above stated, and the remaining two copies to be delivered to the counsel of the other party on demand.

Parties failing to furnish points, will be confined to the discussion of questions that arise upon such points as shall be furnished by other parties to the cause, in accordance with this rule.

IX. Points and Authorities—Statements—What Facts Considered.—The points referred to in Rule VIII shall be preceded by a brief statement of the nature of the action and defences, and the nature of the questions brought up by appeal, and shall set forth the propositions of law and fact relied on, and a note of the authorities and reference by folio to the evidence when an examination of the evidence is necessary. At the opening of the case such statement shall be first read, after which counsel may read such portions of the record as they may deem necessary for a proper understanding of the points made. But this Court will not consider any fact which does not appear in the "case" as prepared for argument in this Court; and, therefore, it is altogether useless for counsel to embody in their arguments or in the statements of facts preceding the points and authorities required by this rule any fact which does not appear in the "case" as agreed upon or settled. Nor will any fact stated in the exceptions or grounds of appeal which does not appear in the "case" be considered by the Court. If counsel desire to add any facts to those stated in the "case" they must either obtain the written consent of opposing counsel to the insertion of such additional facts, or they must, upon due notice move this Court, before the argument commences, to recommit the "case" to the Circuit Court for amendment.

X. Docketing Causes—Order of Docket—By Consent.—Upon the filing of the return of the Court below, in conformity with the rules of this Court, the cause will be docketed by the Clerk. Causes will be placed upon the docket according to the respective Circuits in which they originally depended, and in the order in which the returns were filed. Every cause shall be docketed before the first day of each term, and not afterwards, except by consent of the opposing party.

[On a second and each subsequent appeal, or upon its restoration to the docket when dismissed for defect or irregularity, the cause shall be placed upon the calendar as of the time of filing the first appeal. Code, § 13.]

XI. Default of Appearance—Order Upon.—If, on the call of a cause, either party fail to appear, or shall neglect to furnish and deliver the papers required by rule VIII, the opposite party may proceed as fol-

lows: the appellant may argue or submit the cause in his behalf, the respondent may have an order dismissing the appeal. When neither party appear to argue on the call of a cause, it will stand continued at the first term.

XII. Criminal Causes—Order of Hearing—Criminal causes shall have a preference, and may be moved, on behalf of the State, out of their order.

[In Section 13 of the Code of Procedure, it is provided that whenever the State, or any State officer, or any Board of State officers, is or are sole plaintiff or defendant, the appeal in such case shall have preference in the Supreme Court, and may be moved by either party out of the order on the calendar.]

XIII. Counsel Limited in Number and Time.—Unless before the argument begins, special leave of the Court be obtained, not more than two counsel shall be heard in argument on either side in a cause before the Supreme Court, each side being limited to two hours.

[See Revised Code, §2166.]

XIV. Members of the Bar and Officers of the Court not to sign as Sureties.—No member of the Bar or officer of the Court shall sign, as surety, any bond or other obligation which may be required by any order of this Court, under pain of being in contempt.

XV. Members of the Bar—Dress.—No member of the Bar will be heard unless wearing a black coat.

XVI. Attorneys—Affidavits Before.—No affidavit will be considered by the Court which has been sworn to before an attorney engaged in the cause, or matter, or before any party interested therein.

XVII. No Argument After Decision—Counsel shall not attempt to argue or explain a case, or any matter arising therein, after he has been heard, and the opinion of the Court has been pronounced.

XVIII. Consent Must be in Writing.—No private agreement or consent between the parties or their attorneys, in respect to the proceedings in a cause shall be binding, unless the same shall have been reduced to the form of an order by consent and entered; or, unless the evidence thereof shall be in writing, subscribed by the party against whom the same shall be alleged, or by his attorney or counsel.

XIX. Special Motions—When Heard.—Motions, other than those that arise on the call of a cause, will be heard at the opening of the Court on the morning of the day fixed for the call of causes from the circuit to which they appertain, and not afterwards, without the special leave of the Court.

Notice.—When a party intends to move the Court that an appeal be dismissed, or the cause stricken from the docket, for any irregularity in the taking of the appeal, or in the record filed in this Court, such motion must be made at the time assigned by this Rule for the hearing of special motions. All motions, whether made before the Court, or a Justice at Chambers, as to all matters of fact involved, not appearing on

the record filed in this Court, and not appertaining to the class of which this Court takes judicial notice, must be made on affidavits, copies of which must be served on the opposite party with notice of the motion, in conformity with Chap. XI., Title 12, Second Part of the Code of Procedure, at least eight days before the day on which such motion may be heard.

XX. Remittitur—Form of—When to be sent to Court Below—In cases of Default.—The remittitur shall contain a copy of the judgment of the Court, and shall be sealed with the seal and signed by the Clerk of the Court, and shall not be sent to the Court below until ten days after the final determination, unless this Court shall otherwise direct. When a decree or order shall be affirmed or an appeal dismissed by default of appearance by the appellant, the remittitur shall not be sent to the Court below, unless this Court shall otherwise direct, until ten days after notice of the affirmance or dismissal shall have been served on the attorney of the party in default. Service of notice shall be proved to the Clerk, by affidavit, or by written admission of the attorney on whom it was served.

Stay Of.—On application, showing sufficient cause, either of the Justices at Chambers, may by order, require the remittitur to be further retained for such time as he may deem proper, not beyond the third day of the ensuing term, subject to the order of the Court.

XXI. Order for Extension of Time or Stay of Proceedings by a Single Justice —The time prescribed by these rules for doing any act may be enlarged by the Court or by either of the Justices thereof; and either of the Justices may make orders in any cause pending in this Court to stay proceedings, which, when served, with the papers on which it was made, shall stay the proceedings, according to the terms of the order. Any order may be revoked or modified by the Justice who made it, or in case of his absence or inability to act, by either of the other Justices.

XXII. Orders—Service of—Cases of Contempt.—To make the service of an *ex parte* order, or rule to show cause effectual, a copy of the affidavits, or other proofs on which it was granted, must be served with a copy of such order or rule; and in order to bring any person into contempt for the disobedience of an order, the original order must be exhibited to such person, and a copy thereof left with him. When any person avoids the service of an order, on application to this Court, or to one of the Justices thereof, making proof of such fact, special directions will be given as to the service thereof.

XXIII. Admission to the Bar.—Applicants for admission to practice as attorneys and counsellors in this Court who are entitled to examination shall be examined in open Court at a regular term thereof, and no private examination shall be permitted. Such applications shall be in writing, accompanied by the proofs required by law, and shall be filed on or before the second Tuesday of each regular term. After the peti-

tions are filed, a day for the examination will be appointed, of which due notice will be given.

In pursuance of an Act entitled "An Act to enable citizens of this State to apply for admission to the Bar," approved 23d December, 1879, the following course of study is hereby prescribed for persons wishing to apply for admission to practice in the Courts of this State, viz:

Blackstone's Commentaries, Kent's Commentaries, Parsons on Contracts or Chitty on Contracts, Daniel on Negotiable Instruments or Chitty on Bills, Williams on Executors, Pldg's Practice, Pomeroy on Remedies, Greenleaf on Evidence, Story's Equity Jurisprudence, Adams's Equity, Daniel's Chancery Pleading and Practice, Bishop on Criminal Law, Bishop on Criminal Procedure, Constitution of the United States, Constitution of South Carolina, General Statutes of South Carolina, and all Acts of a public nature which have been passed since the adoption of the General Statutes, Rules of Supreme, Circuit and Probate Courts.

[Any graduate of a recognized law school, or any attorney who has been admitted to practice in any Court of record in any of the States of this Union, or in any United States Court, may be admitted on motion. —Revised Code, Sect. 2160. The original diploma or license should be exhibited, as it is the best evidence of the fact.]

XXIV Motions—Will Not be Heard on Written Application — No motion will be heard by the Court, or by either of the Justices at Chambers, on written application. If the counsel of record cannot attend, the motion must be submitted by counsel representing them.

XXV. Rules—When to Take Effect—Former Rules.—These Rules, as hereby amended and republished, shall take effect on the first day of July, 1879, from which time all rules inconsistent herewith are abrogated, except so far as it may be necessary to follow them in cases where causes are already prepared for argument, and except, also, that all cases not herein provided for are governed by the existing rules and practice of this Court and of the late Court of Appeals, so far as such rules and practice are conformable to existing laws.

[Several of these rules have been amended since July 1st, 1879, but the amendments are incorporated into the text as here printed, and the date of the changes are not important.]

APPEALS TO THE SUPREME COURT.

This monograph treats only of matters of practice, under the law as it now exists, without any attempt at an historical investigation. It is intended to aid the practitioner, by directing his attention to the Statute law, the rules of Court, and the decisions of the Supreme Court, regulating appeals from the Circuit Courts. When to appeal and how to appeal, when and how in the progress of a cause to take the necessary steps to make an appeal available, how and in what time to perfect the appeal through its several stages and bring it to a hearing, and what are the points of practice affecting the cause in this Court after decision rendered and until it has been remitted to the jurisdiction of the Circuit Court—are the questions here considered.

Exceptions.—Technically speaking, grounds of appeal, as in the former practice of the Court of Appeals, are not now required. A simple notice of intention to appeal, with the subsequent perfection of the appeal papers, and a filing of the return with the Clerk of this Court, brings the cause into the Supreme Court for review; and any matter properly appealable may then be argued and will here be considered to which due and timely exception was taken, as appears by the record. *Sullivan vs. Thomas*, 3 S. C., 548.

It is very important, therefore, to take exceptions at the proper time and to have those exceptions noted or served, as the case may be; for this Court will not consider points made on appeal, unless they rest upon exceptions duly taken. *Shelton vs. Maybin*, 4 S. C., 541; *Fox vs. Railroad Company, Ibid*, 544; *Winsmith vs. Walker*, 5 *Ibid*, 473; *Railroad Company vs. Railroad Company*, 7 *Ibid*, 410; *Clarke vs. Harper*, 8 *Ibid*, 256; *State ex. rel. Cason vs. Coleman*, 11 *Ibid*, 392; *Lawrence vs. Grambling*, 13 *Ibid*, 120; *Johnson vs. Clarke*, 15 S. C., 72; *Cureton vs. Dargan*, MS., Dec., Oct. 6, 1881, not yet reported. A mere reference to exceptions taken to the report of a Referee or Master or to a decree of the Probate Judge, is not sufficient, and will not be considered. *Rule 5 of the Supreme Court.* An objection is not an exception; and while this Court will consider matters which the Circuit Judge at the time was apprised that the appellant would rely upon as exceptions to his rulings, the better and the only safe practice is to use the technical word *except*. *Crotwell vs. Boozer*, 1 S. C., 272; *Railroad Company vs. Railroad Company*, 7 *Ibid*, 410; *Coleman vs. Heller*, 13 *Ibid*, 491. In some exceptional cases the appellant may be permitted to take positions not covered by his exceptions, or they may be taken by the Court of its own motion; but the *rule* requires the appellant in every case to show by his brief that the point discussed was duly excepted to and (as we shall hereafter see) in proper time; and a disregard of this rule is risky. The exceptional cases are, where objection is to the jurisdiction of the Court, *Code*, §* 169; *Poole vs. Brown*, 12 S. C., 556; *Ex parte Lewis*, MS., Dec., April 17, 1882, not yet reported; where the question arises out of the construction of a public statute, *Farrar & Miller vs. Nunnamaker*, 5 Rich., 489; where in a capital case the errors are apparent on the record, and affect the substantial rights of the prisoner, *State vs. McNinch*, 12 S. C., 89; *State vs. Washington*, 13 *Ibid*, 455; *State vs. Dodson*, MS., Dec., Feb. 21, 1882; and possibly, where the objection is that the complaint does not state facts sufficient to constitute a cause of action. *Code*, § 169. In this connection see *Elliott vs. Rhett*, 5 Rich., 417.

When to Except.—In trials by jury, objection to a juror must be made before the trial. *Revised Code*, § 2265; *State vs. Stephens*, 11 S. C., 319. Irregularity in the writ of *venire facias*, or in the drawing, summoning, returning, or empanelling of jurors, will not be sufficient to set aside a verdict unless the party making the objection was injured by the irregularity, or unless the objection was made before the returning of the verdict. *Revised Code* § 2266; *State vs. Stephens*, 11 S. C., 319. Objection to the excusing of a juror comes too late after verdict, unless appellant was injured thereby. *State vs. Gill*, 14 S. C., 410. And in every case where an objection is taken and the objection is overruled, exception to such ruling should be noted; otherwise the party cannot renew the objection in this Court as of right. *Thompson vs. Brannon*, 14 S. C., 542

Objection to the competency of a witness must be taken before he gives his testimony. *Bollman vs. Bollman*, 6 S. C., 44. Evidence received without objection cannot be excepted to afterwards. *Burris vs Whitner*,

* This refers to the new numbering of the Sections of the Code, as re-enacted in the Revised Code or General Statutes of 1882.

3 S. C., 510; *Means vs. Feaster*, 4 *Ibid*, 249; *Powers vs. McEachern*, 7 *Ibid*, 290; *Lawrence vs. Grambling*, 13 *Ibid*, 120; *Fripp vs. Williams, Birnie & Co.*, 14 *Ibid*, 502; *Cooke vs. Pennington*, 15 *Ibid*, 185. Objection should be made at the time, or the evidence is competent; and if the objection is overruled, exception should be taken at once and noted by the presiding Judge. By so doing, a failure to serve upon the Circuit Judge and respondent, exceptions to these rulings within ten days after the rising of the Court, will not be fatal. *Coleman vs. Heller*, 13 S. C., 491; *Buttz vs. Campbell*, 15 S. C., 600. If not noted at the time, however, the language of the Act of 1878 (16 Stat., 698) seems to be broad enough to permit exceptions to the rulings upon such objections to be taken and served within ten days after the Court adjourns. But the Revised Code having limited the first section of the Act of 1878 to cases tried by a jury, in all other cases exceptions to rulings had better be taken at the time. *Code Proc.*, § 345. If improper testimony is received after objection, this Court will not disturb the judgment if the testimony was immaterial. *Thompson vs. Brannon*, 14 S. C., 542.

The next point to be considered is the judge's charge in cases tried by a jury. Requests to charge must be submitted in writing to the Court at the close of the argument. *Rule* 11 *of Circuit Court*. Care should be taken to exclude questions of fact, and not to assume the existence of any fact which is at all disputed; or the requests will be properly refused. *Bamberg vs. Railroad Company*, 9 S. C., 61. Each separate request should be confined to a single proposition of law; for if correct in part, but incorrect in part, the judge is not bound to divide the propositions—he may properly refuse the whole of the request in which such incorrect principle is asserted. *Gunter vs. Graniteville Manufacturing Co.* 15 S. C., 444. And they ought, of course, to be free from all possible ambiquity. *Blake vs. DeLiessline*, 4 McC., 496. The requests to charge should contain every legal proposition deemed material; for a number of cases have established the rule that no error of law is committed by the neglect to charge upon matters not brought specially to the attention of the trial Judge at the time, by a request to charge them. *Madsden vs. Phœnix Co.*, 1 S. C., 24; *Abrahams vs. Kelly & Barrett*, 2 *Ibid*, 238; *Fox vs. Railroad Company*, 4 *Ibid*, 544; *Clarke vs. Harper*, 8 *Ibid*, 256; *Sullivan vs. Jones*, 14 *Ibid*, 584; *Ancrum vs. Wehmann*, 15 S. C., 118; *State vs. Dodson*, MS Dec. Feby, 21, 1882. Misstatements of law, it was held in 1871, should be called to the attention of the presiding Judge at the time. *Abrahams vs. Kelly & Barrett*, 2 S. C., 238. It may be that this is not necessary now, but it would be safer to invite attention at the time of the charge to mere inaccuracies or misstatements; and it has been held since the Act of 1878, that an error of the Circuit Judge in submitting to the jury a question which he should have himself decided, will not be corrected unless he was reminded at the time of the error. A general charge is not error where specific instructions were not asked *Congdon, Hazard & Co. vs. Morgan*, 13 S. C. 191; *Norton vs. Livingston*, 14 S. C., 177. Appellant cannot raise and discuss in this Court a legal point waived on Circuit. *Gatewood vs. Moses*, 5 Rich, 244.

There can be no exceptions to a verdict or notice of intention to appeal therefrom. *Winsmith vs. Walker*, 5 S. C., 473; *Bank vs. Gary*, 14 *Ibid*, 571, and see *Boylston vs. Crews*, 2 S. C., 426.

The proper practice of motions for new trial on the minutes or otherwise, is not within the scope of this article. Such motion is not necessary to entitle the party against whom is the verdict, to bring his case before the Supreme Court to have his exceptions considered and ajudicated. *Detheridge vs. Earle*, 3 S. C., 396; *Redding vs. Railroad Company*, 5 *Ibid*, 67; *Brice vs. Hamilton*, 12 *Ibid*, 32.

Within ten days after the adjournment of the Circuit Court at which the cause was tried, the appellant must serve upon the respondent's

attorney and furnish to the presiding judge, exceptions to every matter which it is desired to bring before this Court as error in the rulings of the presiding judge at the trial, except such as have been already duly excepted to, Act of 1878, §1, 16 Stat., 608. This section of the Act of 1878, had been construed to include orders, judgments and decrees rendered during term time, *Rogers vs. Nash*, 12 S. C., 560; *Ex parte Clyde* 14 *Ib.*, 385; (which in its head notes 3 and 4 is unaccountably inaccurate in using the words "notice of his intention to appeal" instead of the words his exceptions:) *In re., Fifty-four first mortgage bonds*, 15 S. C., 304; but in its re-enactment in the Revised Code, which went into effect May 1st, 1882, this Section is limited to cases tried by a jury, *Code Procedure*, §345. The effect of this change in the law would seem to be, that in cases not tried by jury, exceptions to rulings, orders, decrees or judgments rendered during term time, must be taken under Section 2 of the Act of 1878, and Judd. 2 of Section 345 of the Code, within thirty days after notice of intention to appeal, and that a copy need not be furnished to the presiding Judge. Until the point is adjudicated, however, the safer practice as to mere rulings (which are not mentioned in the second Section) is to follow the old law as laid down in Rule 50 of the Circuit Court.

No exceptions can be considered by this Court unless properly noted during the trial, or duly taken afterwards within the prescribed time.

These are Statutory requirements and therefore obligatory upon the Courts. *Bell vs. Wheeler*, 3 S. C., 104; *Weatherly vs. Jackson*, *Ibid*, 228; *Spratt vs. Pierson*, 4 *Ibid*, 308; *Kibler vs. McIlwain*, 12 *Ibid*, 555; *Rogers vs. Nash*, *Ibid*, 559; *Sullivan vs Speights*, *Ibid*, 561; *Ex parte*, *Clyde*, 14 *Ibid*, 385; *Blakely & Copeland vs Frazier*, 15 S C., 600. Agreement as to what papers shall constitute the appeal record is not waiver of due service of exceptions where respondent was ignorant of the failure to serve them. *Ex parte Clyde*, 14 S. C., 385.

Exceptions to an order, decree or judgment other than in cases tried by jury must be taken within thirty days after giving notice of intention to appeal therefrom, which will be considered presently—16 Stat., 608, and Code Procedure §345. It is not necessary to furnish the presiding judge with a copy of exceptions in such case. *Godbold vs. Vance*, 14 S. C, 458.

It is not necessary in any case to serve a copy of the exceptions or of the notice of intention to appeal upon the Clerk *Crane, Boylston & Co. vs. Moses*, 13 S. C., 43. Exceptions in the words 'that the verdict, (or decree, &c.,) is contrary to the law and the evidence,' or 'that his honor erred throughout his whole charge thereby causing the jury to bring in a verdict contrary to the law and the evidence,' are of too general and indefinite a character, charge no specific error and will not be considered. *State vs. Branham*, 13 S. C., 389; *Norton vs. Livingston*, 14 *Ibid*, 177; *State ex rel. Detheridge vs. Gilreath*, MS. Dec., Oct 3, 1881. All exceptions should distinctly state the error complained of. *Blake vs. DeLiessline*, 4 McC, 491.

Time within which to serve exceptions may be extended, and errors of omission or inadvertence in their service corrected, under the Act of 1880, 17 *Stat.*, 368, in the same way as in the service of the case—matters which are considered hereafter.

Exceptions should be taken within the proper time as above indicated, although the purpose is not to prosecute the appeal until after further proceedings had in the Circuit Court. While this is not in all cases necessary, it is the safer practice; it may be too late afterwards. *Jones vs. Massey*, 14 S. C., 292; *Kerchner vs. Singletary*, 15 S C., 537.

Where an interlocutory decree was filed at Chambers, in the main adverse to defendants, but which ordered a reference whose results might protect the interests of the defendants, and the plaintiffs ap-

pealed and obtained a reversal of so much of the interlocutory decree as ordered the reference, it was held that the defendants might afterwards except to the final decree and thereby raise objections to so much of the interlocutory decree as may have led to or affected the final judgment. *Hyatt vs.. McBurney*, MS. Dec., April 17, 1882. This decision is based upon the proviso to subdivision 1, of Section 11 of the Code. See too, Section 341. In such case it could have done the defendants no harm if they had duly excepted to the interlocutory decree, and in like cases such a course will avoid the discussion of what may prove to be nice distinctions.

A party satisfied with the result of an interlocutory decree may properly except to points which, in his judgment, were erroneously decided against him, and put his exceptions upon the record. But there should be no exceptions to a final judgment in his favor, no matter what the grounds are by which the result is reached. The proper course in such case, if the other party appeals, will be noticed hereafter.

Notice of Appeal.—This notice is sufficient if in the words of the Act: "Take notice that the plaintiff intends to appeal to the Supreme Court from the judgment rendered in the above stated case on the—— day of ——— last." Where, however, the appeal is from an order granting a new trial, the notice of appeal must contain an assent on the part of the appellant, that if the order be affirmed, judgment absolute shall be rendered against him. *Code*, §11, subd. 2. Without this he loses his appeal. *Caston vs. Brock*, 14 S. C., 104.

Only the party prejudiced by a decision may appeal therefrom. *Rodger vs. Smith*, MS. Dec., 1866 If, however, the losing party appeals, the respondent may ask the Supreme Court to sustain the result of the judgment appealed from upon grounds other than those upon which the Circuit Judge has placed it. *Southern Porcelain Man. Co. vs. Thew*, 5 S. C., 5. Positions overruled by the Circuit Judge, and even grounds not taken in the Court below may be urged here to support the judgment. *Wienges vs. Cash*, 15 S. C., 44 The party in whose favor is the decree or judgment, cannot appeal from it, but he should give notice to the appellant that if this Court should find itself unable to sustain the judgment below on the grounds upon which it is rested by the Circuit Judge, that he would then insist that said judgment should be sustained on grounds specified in such notice. *Ibid.* The rule does not fix the time when such notice should be given. Reasonable time is sufficient, but it should be before the perfection of the appeal record, so that it may be included in the return, and so that appellant may have the opportunity of incorporating into the record the facts bearing upon those points. If, however, the brief is sufficient for the purpose, it is probable that this Court would consider a point in support of the Circuit decree, although raised for the first time in argument here.

A defendant convicted in the Court of General Sessions can take his appeal only from the sentence. *State vs. McKettrick*, 13 S. C., 439.

From every appealable ruling, order, decree or judgment, made, granted or rendered during term time, the party intending to appeal must, within ten days after the rising of the Court, give notice to the opposite party, or his attorney, of the intention to appeal. Act of 1878, 16 Stat., 698. If lodged with the sheriff within the ten days, for service, it is sufficient. *Carter vs Evans*, Minutes of Supreme Court, April 19, 1882. The Act of 1878, with its amendments, having been held to cover the whole ground of appeals (*Godbold vs. Vance*, 14 S. C., 458), it was not considered necessary under that Act that the notice should be in writing. *Bank vs. Gary*, 14 S. C., 571. But the Revised Code re-enacts the Act of 1878 (Code Proc., § 345), and at the same time Section 339 of the Code, which requires every notice of appeal to any Court to be in writing.

If the appeal be from a final judgment, notice within ten days after entry of judgment of intention to appeal would seem to be sufficient. *Bank vs Gary*, 14 S. C., 571. If the prevailing party refuses or neglects to enter up his judgment, the losing party may demand of him to do so, and upon his refusal, obtain leave, upon motion on notice, to enter up the judgment and then appeal from such judgment. *Johnson vs. Henagan*, 11 S. C., 94.

From every order made, or decree or judgment rendered, in vacation or at Chambers, the appellant must give his notice of intention to appeal within ten days after written notice served upon him of the filing of such order, decree or judgment. This notice must be given to the opposite party, or his attorney. Act of 1878, § 2, (16 Stat., 698); Code Proc., § 345. And should be in writing. Code Proc, § 339. If notice of appeal in any case is not served in the time prescribed by statute, the appeal is waived. Act of 1878, § 4; Code Proc., § 345.

The notice above referred to, of the filing of an order, decree or judgment in vacation or at Chambers, to be given in writing, means notice from the adverse party: until then, the time for giving notice of appeal does not commence to run. Where attorney for defendant read the decree in the clerk's office, procured a copy, and gave notice of its filing to counsel of the other party, it was held not to be the notice to defendant of the decree contemplated in the Act, from which would commence to run his time for giving notice of appeal. *Lake vs. Moore*, 12 S. C., 563 But admission of notice of filing endorsed on the original decree, will give currency to the time for notice of appeal. *McElwee vs. McElwee*, 14 S. C., 623. It is not necessary to give to the presiding Judge notice of intention to appeal. It is not necessary to serve such notice upon the Clerk of the Circuit Court in any case. *Crane, Boylston & Co. vs. Moses*, 13 S. C., 43.

Where there is a final judgment, or where there is an order which in effect determines the action, appeal should be at once taken and perfected. Code, § 11 From an intermediate judgment, order or decree involving the merits, an appeal may be taken at once, or the appeal may be delayed until final judgment. If there is a doubt whether the judgment is final, it is better to go on with the appeal. If one party carries the cause on appeal to the Supreme Court, and the other party is dissatisfied with any part of the judgment, and has excepted, it would be the better practice to carry the whole case up, so that all exceptions may be considered at once. This is not necessary. *Hyatt vs. McBurney*, MS. Dec., April 17, 1882; but advisable, *Austin vs. Kinsman*, 1 S. C., 100; *Kirkpatrick vs. Atkinson*, 4 S. C., 126; *Pringle vs. Sizer*, 7 S. C., 132.

Application to amend notice of appeal should be made in writing and on due notice. *Caston vs. Brock*, 14 S. C., 104. Due notice means notice in writing served upon the opposite Counsel not less than eight days before the day named for the hearing of the motion. *Rule* 19 *of Supreme Court.*

Preparation and Settlement of Case.—Within thirty days from the serving of the notice of appeal, the appellant must prepare and serve his "case," or his appeal will be deemed to have been waived, unless the time has been extended. Code, § 348; *Rogers vs Nash*, 12 S. C., 559; *Scurry vs. Coleman*, 14 *Ib*, 166. An agreed statement of the case will be a sufficient record for the Supreme Court, and a sufficient brief for the hearing of the appeal—at least in civil causes. Code, § 345, subd. 5. Whether it would be so in criminal causes is doubtful. *State vs. Pitts*, 12 S. C., 180. In criminal causes the appeal will be heard on the report of the Judge. *Ibid* If there is no report, but the Solicitor waives the irregularity, this Court may hear the appeal *State vs. McGreer*, 12 S. C., 465. Or, human life being involved, time may be given to procure the report. *State vs. Dodson*, 14 S. C., 619. The rule is,

not to go outside of the report of the Judge for the facts of the case. *Salley vs. Gunter*, 13 Rich., 72. But facts submitted to the Judge and not corrected by him, were assumed to be true in *State vs. Harden*, 11 S. C., 360. It is therefore suggested that in every appeal from the Court of General Sessions, the appellant should request from the Presiding Judge a report of the case directing attention to the points involved in the appeal and covered by the exceptions, with a statement of appellant's recollection of those points, and asking for the notes of evidence bearing on them; let this paper be submitted to the Solicitor within thirty days from the time notice of apreal was given, for his amendments or suggestions, and then forward both of them to the Presiding Judge; or if the Solicitor suggests no amendments within ten days after the service upon him, let the appellant's paper be forwarded alone. The case should contain the Judge's report with exceptions and notice of appeal and, if necessary, a copy of the indictment.

In civil causes a statement of the case prepared and agreed upon by the attorneys of record will constitute a sufficient return Code, § 345, subd. 5. If no agreed statement is adopted, the appellant must prepare a case, or exceptions, or case containing exceptions, according to the directions of Rule 50 of the Circuit Court. Justice Willard defines these terms in the leading case of *Sullivan vs. Thomas*, 3 S. C., 548, and again in *Caston vs. Brock*, 14 *Ib.*, 108. But an exact definition is unnecessary. This Court in the administration of its own rules will not permit form to override substance. *Ex parte Clyde*, 14 S. C., 285. A clear and intelligible history of all proceedings important to a review of the cause is all that can be insisted upon. *Sullivan vs. Thomas*, 3 S. C., 548. But the case in connection with the pleadings should certainly contain no less than the matters required by Rule 5 of the Supreme Court to be inserted in the brief prepared for argument. Every fact deemed at all material to the points involved in the appeal, should be clearly stated. As the brief is to be based upon the record, all that is necessary to a proper brief, as below stated, is of course necessary to the record; and the case is that statement of the cause which, when added to the ordinary judgment roll, makes a record complete for the appeal Court. *Code*, § 302.

The case as prepared should be written on paper with the pages numbered and also the lines, and the copy served should be made to conform line by line with the original. A neglect of this rule has caused confusion in some instances, as the amendments are generally designated by the page and line of the copy served This case must be served upon respondent's attorney within thirty days from the service of the notice of appeal, Code, § 345, Subd., 2; but the Judge who heard the cause, or one of the Justices of the Supreme Court, may extend the time on motion, four days' notice of such motion being first given to the opposite party. *Act of* 1880, 17 *Stat.*, 368; *Code*, § 348. This motion must be made before the time has expired; it is too late afterwards. *Scurry vs. Coleman*, 14 S. C., 166; *Wheeler vs. Broadaway*, Minutes, Dec. 19, 1881. If made before a Circuit Judge, it must be the Judge who tried the cause, if still in office; and his ruling on the motion is not appealable. *Stribling vs. Johns*, MS., Dec., Oct. 8, 1881. From August 2d to September 2d is not within time, it being thirty-one days. *Whitmire vs. Westfield*, Minutes, June 2d, 1881.

If the proposed case is not served within the thirty days, the appeal will be deemed to have been waived. 16 *Stat.*, 698; *Code*, § 345, Subd., 4; *Rogers vs. Nash*, 12 S. C., 559. But the appeal being *bona fide* and the notice of intention to appeal having been duly given, if any party shall omit through mistake or inadvertence to do any act necessary to perfect the appeal or stay proceedings, the Supreme Court may, in their discretion, permit such act to be done at any time to perfect the appeal on

such terms as may be just. 17 *Stat.*, 368; Code, § 349; and see Section 339, Subd., 2, to which Sections direct reference is made in Section 345, Subd , 4. These two Sections of the Code made by their re-enactment of equal force are not necessarily inconsistent; the latter provision is more comprehensive than the former, and the two being found in the same Act, the word Court in Section 339 will probably be construed to mean the Appellate Court. The Supreme Court will not grant relief under this second Section of the Act of 1880 (Code, § 349), unless the applicant can show to the Court that the omission was the result of mistake or inadvertence. *Wheeler vs. Broadaway*, Minutes, Dec. 19, 1881. Failure from press of business is not a sufficient excuse. *Symmes vs. Symmes*, Minutes, May 19, 1882.

If the respondent desires any amendments to the proposed case, he must serve on appellant notice of his proposed amendments within ten days after the service upon him of the proposed case, or he will be deemed to have agreed to the case as proposed. Rules 47, 50 and 51 of Circuit Court. But it would seem that, within the ten days, the time might be extended under Section 1 of the Act of 1880 (Code, § 348), and afterwards, under Section 2 of the same Act (Code, § 349), if there was shown to have been mistake or inadvertence. 17 *Stat.*, 368.

If the proposed amendments are duly served, the appellant must, within four days thereafter, serve upon respondent a notice that the proposed case and amendments will be submitted, at a time and place to be specified in the notice, to the Judge before whom the cause was tried, for settlement, or the appellant will be deemed to have accepted the proposed amendments. *Rule 51 of Circuit Court.* The failure of the respondent to appear before the Judge will not be considered an abandonment of his proposed amendments. *Chalk vs. Patterson*, 4 S. C., 98. If the Judge who tried the cause is out of office, the case may be settled by his successor, or probably other Circuit Judge upon affidavits and other proof. *Ibid*

As already noticed, this Court cannot disregard statutory provisions regulating the practice on appeals; but where the requirements are prescribed only by rules of Court, it is within the power of the Court to relieve a party of his default. The rules of Court, however, are necessary for the orderly conduct of business, and they should not be lightly disregarded. Any irregularity in the preparation, service or settlement of a case, or other papers not violating statute regulations, *may* be corrected. Application for leave to correct must be on notice and affidavits. If the application is made before the cause has been removed from the jurisdiction of the Circuit Court by the filing with the clerk of this Court of the return or agreed statement as hereafter stated, then it must be made to the Circuit Judge, as all the papers in the cause are records of the Circuit Court and subject to its control until removed here. *Sullivan vs. Thomas*, 3 S. C., 548; *Gibson vs. Gibson*, 7 *Ib.*, 356. After the cause is transferred to the jurisdiction of the Supreme Court, the Circuit Court loses its jurisdiction for the time, and all motions affecting the appeal must be made here, as we shall presently see.

But it would seem to follow from the decision in *Hammond vs. Port Royal Railroad Company*, 15 S. C., 10, that an appeal from an order overruling a demurrer to one cause of action stated in the complaint suspends further proceedings under that cause of action, but does not prevent a trial of the other; and see too *Code Proc.*, §353.

The proposed case is settled when ten days have expired after its service upon respondent without amendments proposed, or amendments being proposed when amendments are accepted; or, the case being submitted to the Circuit Judge when he returns it with his rulings upon the proposed amendments and his settlement of it, or in criminal causes, from the filing of the Judge's report Within ten days

after the case is settled by any of these modes, the appellant shall procure the same to be filed with the clerk of the Circuit Court, or the appeal will be deemed abandoned *Rule* 49 *of Circuit Courts.* The case when filed becomes a part of the judgment roll. *Code*, §302

Return. When the parties agree upon a statement of the case for a hearing of the appeal, such agreed statement constitutes both return and brief. 15 Stat., 862; *Code*, §345, subd. 5. In other cases the return and brief may or may not be identical. Where there is an agreed statement it should be filed, it would seem, with the clerk of the Circuit Court, and a certified copy must be sent by him to the clerk of the Supreme Court. *Ibid.* In practice it is usual to have the agreed statement printed, and one copy (wherein the agreement is signed by the attorneys in their own handwriting) filed with the clerk of the Circuit Court, who certifies on the fly-leaf of another copy that that is a true copy of the agreed statement signed by counsel and on file in his office, and such certified copy is then transmitted to the clerk of this Court. Attorneys who send a printed agreed statement to the clerk of this Court for docket without filing the original with the clerk below and obtaining his certificate, overlook what seems to be the requirement of the Act of March, 1875, *supra.*

Where a statement for the hearing of the appeal is not agreed upon, and the appeal is from a judgment, the return shall consist of certified copies of the notice of appeal, exceptions, case and all papers constituting a part of the judgment roll. *Rule* 2 *of Supreme Court; Sullivan vs. Thomas*, 3 S. C., 548. If the appeal is from an order as allowed by Section 11 of the Code, the return shall consist of certified copies of the notice of appeal, the order appealed from, and the papers on which the Court below acted in making the order. *Ibid.* In criminal causes it should consist of indictment, sentence, notice of appeal, exceptions and judge's report. The appellant shall procure the return, whether it be an agreed statement or otherwise, from the clerk of the Circuit Court, and cause it to be filed with the clerk of this Court within forty days after the record constituting the return has been completed. *Rule* 1 *of Supreme Court.* If appellant fails to do so, the respondent may cause such return to be transmitted to the clerk of this Court, *Code*, §340; or he may deem the appeal waived and obtain an order from the clerk of this Court dismissing the appeal for want of prosecution. *Rule* 1, *supra.*

If the return shall be defective, either party may, on affidavit specifying the defect, and after eight days' notice to the opposite party, apply to one of the Justices of this Court for an order that the appellant cause a further return to be made without delay. *Rule* 3.

The return being properly filed here, the cause is then docketed by the clerk of this Court for the term next succeeding the day of filing. After the first day of a term, a cause may be docketed for that term, only by consent. *Rule* 10.

After the return has been filed with the clerk of this Court this Court acquires jurisdiction of the cause, and the authority and jurisdiction of the Circuit Court over it, is suspended, as to the matters involved in the appeal. *Ex parte Whaley*, 8 S. C., 344. But the Court below may proceed upon any other matter included in the action and not affected by the judgment appealed from. *Code*, § 353. Further action in the Circuit Court may be had however by order of this Court. Thus, argument on appeal was stayed until petition for rehearing could be presented. *Tomlinson vs. Tomlinson*, 10 Rich. Eq., 300. Hearing of appeal was suspended to enable appellant to move the Circuit Court (notwithstanding the pendancy of the appeal) for a rehearing of the case upon the ground of after-discovered evidence *Tarrant vs. Gilletson*, 14 S. C., 620; *Coleman vs. Smith* MS. Dec., Dec. 8, 1879. But this will not be done

where such evidence would not authorize the Circuit Court to grant the motion for new trial. *Mars vs. Va Ins. Co.*, MS. Dec., May 24, 1882. Where the amount in a case in Chancery was large and appellants submitted affidavit showing that they were misled by the allegations of the complaint as to the proof necessary on their part, and asked for leave to sustain their allegations, this Court seeing no bad faith remanded the case to enable such proof to be made. *Fraser & Dill vs. Charleston*, 8 S. C., 338.

Brief.—As already suggested, the brief or case for argument is not necessarily a copy of the return. Where there is a statement agreed upon by counsel for the hearing of the appeal, such statement constitutes the return and also the brief for this Court. *Code*, § 345, subd. 5. But where the return consists of the entire record, the brief shall then set forth the particulars enumerated in Rule 5 of the Supreme Court, and in addition thereto, (it is suggested,) "the Judge who tried the cause, the county in which and the term at which it was heard:" *Provided*, The brief be printed and served in the manner provided in Rules 6 and 7. In those cases where the return is not the judgment roll, the brief must consist of a copy of the return, and the reasons of the Court below for its judgment if the same can be procured. The brief must incorporate the amendments allowed into the body of the case, so that it will read as amended; it will not be sufficient to set out the amendments proposed with a statement as to which of them were allowed.

In preparing the brief two precautions should be observed: Be sure not to put in too much; be sure not to put in too little. In matters of doubt, redundancy is better than omission: for while much money is spent every year in printing matter wholly unnecessary, the appeal may be dismissed if the brief is not in compliance with the rules, and does not furnish information enough to enable this Court to understand the points presented *Shumate vs. Powell*, 5 S. C., 286. Questions to be discussed before this Court should be raised with precision and care, and all the necessary elements of the question should be brought to view clearly and succinctly. *Charles vs. Jacobs*, 6 S. C., 73. The bearing on the issues of the questions of law presented should be made clearly to appear and nothing left to surmise. *Ibid.* Detached portions of a charge to a jury are not sufficient; this Court must see the whole charge, or at least so much of it as embraces fully the error complained of. *Shaw vs. Cunningham*, MS Dec., March 7, 1882. And every fact which is deemed material must appear in the brief. Facts stated only in argument of counsel, or in the statement of facts preceding their points and authorities, *Hornesby vs. Burdell*. 9 S. C., 306; *State vs Wilder*, 13 S. C., 346; *State vs. Scott*, 15 S. C., 437; or in exceptions taken, will not be considered as facts in the cause. *Thompson vs. Thompson*, 6 S. C., 279; *Sheriff vs. Welborn*, 14 *Ib.*, 480; *Rule 9 of Supreme Court.* Matters most apt to be omitted are the facts so well known to counsel and jury, that they are accepted in the Circuit Court without question.

The brief must be printed in accordance with the requirements of Rule 6; otherwise, or where the brief is held by this Court to be insufficient, no charge for printing it shall be allowed as a disbursement in the cause. But if the party makes, and files with the Clerk of the Supreme Court, an affidavit that he is unable to pay for such printing, the copies of the brief may be in manuscript. *Code*, § 343; 15 *Stat.*, 500.

Within twenty days after the case has been settled or agreed upon in the Circuit Court, the appellant shall serve three copies of this printed brief on the attorney of the adverse party. If appellant fail to do so, the respondent may by notice in writing require the service of such copies within ten days thereafter, and if not so served, the appellant will be deemed to have waived his appeal. Rule 7.

If counsel find in any case that there have been omitted from the brief facts that are necessary to the discussion of questions involved which they deem important, the proper practice is to obtain the consent of the counsel on the other side, before the argument has commenced, to the amendment of the brief by the insertion of such facts, or if such consent cannot be obtained, to move the Court upon affidavits submitted to recommit the record of the Circuit Court for amendment. *State vs. Wilder*, 13 S. C., 346; and see *Rule* 9 Where, however, the facts appear in the return on file in this Court, but are omitted from the brief, the necessary correction of the brief could be made by this Court, without recommitting the record Objections to the brief come too late at the hearing; they should be on notice and motion to correct or amend. *Sullivan vs. Thomas*, 3 S. C., 548; *Redding vs. Railroad Company*, 5 *Ib.*, 67; *Green vs. Railroad Company*, 6 *Ib.*, 342.

Death of Party.—When a party to the cause dies while the appeal is pending, any party in interest will be entitled to move the Court for an order making the proper representative of such deceased person a party to the appeal; and if means be not taken at the term next ensuing the decease of a party to have his representative brought in, the respondent will be entitled on due proof of such fact to move this Court to dismiss such appeal. Rule 4

Hearing.—Appellant and respondent must prepare a statement of the points which they desire to bring to the attention of this Court, or the propositions of law and fact relied on, followed as to every one, by the authorities cited to sustain them, and a reference by folio to the evidence, when an examination of the evidence is necessary. *Rule* 9. Instead of a mere statement of the points and authorities, counsel may, and generally do, submit a full argument; but no rule requires it. The points and authorities, or the argument, as the case may be, must be preceded by a brief statement of the nature of the action and defences, and the nature of the questions brought up by the appeal. At the opening of the cause such statement shall be first read, after which counsel may read such portions of the brief as they may deem necessary for a proper understanding of the points made. *Ibid.* There is no rule which requires the points and authorities to be printed, but if printed, they must conform to the requirements of Rule 6. See *Detheridge vs. Gilreath*, 14 S. C., 616.

Three days previous to the commencement of the argument of any cause, the counsel for the appellant shall deliver to the clerk of this Court six copies of the brief; and at the same time all the counsel shall deliver to the clerk eight copies of the points and authorities, two of which are to be delivered by the clerk to the counsel of the other party on demand. *Rule* 8. Parties failing to furnish points will be confined to a discussion of questions that appear upon such points as shall be furnished by other parties to the cause, in accordance with this rule. *Ibid.* This provision has been recently enforced in this Court.

The cause being called on the docket of the Supreme Court, neither party may enforce a hearing against the consent of the other, unless the cause was docketed before the commencement of the term. *Whaley vs. Keitt*, Minutes, Jan'y 23, 1882. If either party fail to appear or neglect to furnish and deliver the brief and points and authorities as required by *Rule* 8, the opposite party may proceed as follows: the appellant may argue or submit the cause in his behalf, the respondent may have an order dismissing the appeal *Rule* 11. This rule was enforced on respondent's demand in *Scott vs. Carpenter*, 13 S. C., 44. When neither party appears to argue on the call of a cause at the first term, it will stand continued. *Rule* 11.

Motion to docket and submit will not be entertained where the Circuit to which it belongs has been passed for the term *Hellams vs. Aber-*

crombie, Minutes, Jan'y 27, 1880. If a cause is submitted and either party fails to file his points and authorities within the time limited by the order, the Court will proceed to render judgment on the brief and points which are on file. *Clark vs Porcelain Manf'g Co.* 8 S. C., 43. Unless before the argument begins special leave of the Court be obtained, not more than two counsel shall be heard in argument on either side, each side being limited to two hours. *Rule* 13. Argument in reply may be submitted in print by appellant at the hearing, without his having served copies upon the respondent; and this applies not only to the points raised by appellant on his appeal, but also to the additional grounds taken by respondent in support of the Circuit judgment. *Ash ley vs. Holman*, 15 S C., 103.

Motions. Motions other than those that arise on the call of a cause will be heard at the opening of the Court on the morning of the day fixed for the call of causes from the circuit to which they appertain, and not afterwards, without the special leave of the Court. This includes motions to dismiss appeals. All motions whether made before the Court or a Justice at Chambers, as to all matters of fact involved, not appearing on the record filed in this Court, and not appertaining to the class of which this Court takes judicial notice, must be made on affidavits, copies of which must be served on the opposite party, with notice of the motion in conformity with Chapter XI., Title 12, second part of the Code of Procedure, at least eighty days before the day on which such motion is to be made. *Rule* 19.

Motion to dismiss appeal may be entertained on the proper day, although the case is not ready to be docketed *Levy vs. Williams*, 9 S. C., 153. When an appeal has been waived, it is nevertheless competent to ask this Court for an order dismissing the appeal. *Rogers vs. Nash*. 12 S. C., 559. It would involve much repetition to repeat all the grounds upon which an appeal may be dismissed; it must suffice to say that a failure to comply with any of the several steps hereinabove stated to be necessary, entitles the respondent to his motion to dismiss. But where an application to dismiss an appeal is made on technical grounds, the respondent must be technically right himself. The respondent will not be heard unless he has complied with the practice prescribed for such motions by the rules of Court. *Ware vs. Miller*, 9 S. C., 13. Where seven days' notice was given of a motion to be made on the day before the Circuit was called, the motion was not entertained. *Fripp vs. Williams, Birnie & Co.*, 14 S. C., 502. Failure to file the return with the clerk as required by *Rule* 1, and failure to serve three copies of the brief after notice, as required by *Rule* 7, amount to a waiver of the appeal; and upon the proper proof furnished to the clerk of this Court, he may, without notice to appellant, dismiss the appeal. *Stokes vs Greenville*, 14 S. C., 629. For all other defaults entitling respondent to have the appeal dismissed, application must be made to the Supreme Court under *Rule* 19; except that under *Rule* 49 of the Circuit Court, it would seem that an order declaring the appeal abandoned may be made by that Court, where the case is not filed with the clerk of the Circuit Court within ten days after settlement, or to use the exact words "more than ten days" having elapsed

When an appeal is dismissed by the clerk of this Court for failure to file return, application may be made to this Court on eight days' notice for an order reinstating the appeal; and if it appear to the satisfaction of this Court that the delay arose from unavoidable causes, the motion will be granted. *Rule* 1 *of Supreme Court*. The motion should be made promptly, and must be supported by affidavits. *Stokes vs. Greenville*, 14 S. C., 629. There is no reason why the same motion should not be entertained where an appeal is dismissed by the clerk for failure to serve the briefs. This was done in *Duncan, Malony & Co. vs. Brown*, 14 S. C, 631, and recognized in *Hogg vs. Pinckney*, 15 S. C., 600.

REMITTITUR.—The Court files its judgment in the clerk's office. Ten days thereafter having expired, it is the duty of the Clerk to send a remittitur to the Court below, after which this Court loses all jurisdiction over the cause. *Pringle vs. Sizer*, 3 S. C., 335; *Whaley vs. Bank*, 5 *Ibid*, 262; *Ex parte Dial*, 14 *Ib.* 584. If the remittitur is sent by the clerk of this Court, the jurisdiction of this Court then ceases, although the clerk of the Circuit Court fails to file it. *Ex parte Dunnovant*, MS. Dec., Nov. 21, 1881. Clerical errors in the title of the case, or a misspelling of the word remittitur are immaterial. *Ibid.* Filing a full copy of the opinion with the clerk of the Circuit Court will cause this Court to lose its jurisdiction, even though no remittitur had issued. *Ibid.* Therefore this Court cannot entertain a petition for a rehearing after the remittitur has been sent down *Sullivan vs. Speights*, 14 S. C., 358. The Court may order the remittitur sent down within the ten days, if they deem it proper.

When an order or decree is affirmed, or an appeal dismissed, by default of appearance of appellant, the remittitur will not be sent to the Court below, unless this Court otherwise direct, until ten days after notice of the order of this Court has been served upon the attorney in default. *Rule* 20. In all other cases, notice to the attorneys is unnecessary. *Brown vs. Buttz*, Jan. 30, 1882.

PETITION FOR REHEARING.—At any time, however, before the remittitur is sent down by the clerk, application may be made to either of the Justices of this Court for a stay of remittitur, which may be granted, on sufficient cause shown, for such time as the Justice may deem proper, not beyond the third day of the ensuing term. *Rule* 20 *of Supreme Court.* The Court, within the time limited may further extend the stay, and has never refused a motion to do so, to enable a party to present a petition for rehearing. The petition should be ready by the third day of the term, unless counsel agree to a later day. If a later day is agreed upon, order must be taken staying remittitur meantime. Motions to stay remittitur and petitions for rehearing are generally *ex parte* and not on notice. But the mere filing of a petition for rehearing cannot have the effect of staying the remittitur without an order to stay it. *Ex parte Dunnovant*, MS. Dec., Nov. 21, 1881.

Petition for rehearing must be certified to as meritorious by two attorneys, one of whom has no connection with the cause. *Ex parte Terry*, Rice's Ch. 1.

The practice is. to receive it when presented, and to consider and pass upon it without argument. It will not be entertained to allow counsel to submit additional grounds and authorities. *Knox & Gill vs. Railroad Company*, 5 S C., 73. Nor generally, to reopen argument upon the points considered and determined, or properly left undetermined because immaterial. Otherwise, the business of this Court would be greatly increased. It is believed that only one petition for rehearing has been granted since 1868, and there it was done to permit argument upon a question of jurisdiction upon which the Court had based its judgment at the first hearing; and in that case the first decision was affirmed in the second judgment

END OF THE APPEAL.—When the *remittitur* is sent down, the Circuit Court resumes its jurisdiction of the cause. Where no *remittitur* had been sent down, but a party gave notice of trial in the Circuit Court after the judgment of this Court had been rendered, and brought the cause on to trial, such party cannot afterwards object that the Circuit Court was without jurisdiction because no *remittitur* had been issued. *Pringle vs. Sizer*, 3 S. C., 335.

SECURITY FOR COSTS.—The Supreme Court cannot require security for costs from appellant who had since the trial below removed to another State *Railroad vs Earle*, 13 S. C., 44. Nor, it would seem, in any case.

RULES OF PRACTICE

OF THE

CIRCUIT COURTS,

OF FORCE JULY 1, 1882.

[Rules do not make law, but they regulate practice and should be enforced *Rice vs. Mahaffey*, 9 S. C., 283. In the adoption and administration of its own rules, while a proper regard will always be had to forms of procedure, in so far at least as to prevent uncertainty and confusion in the conduct of causes before the Court, yet, as far as practicable, the Court will always see to it that mere forms shall not override substance. *Ex parte Clyde*, 14 S. C., 389.]

CLERK.

I. **Statutes and Rules.**—Every clerk of the Circuit Court who cannot produce the Statutes at Large, and the Rules of Court, when required, shall be fined ten dollars for each default.

II. **Clerk to keep Books.**—The several clerks of the Circuit Courts shall keep, in their respective offices, in addition to the judgment book required to be kept by Section 300 [303], of the Code of Procedure, and by Rule XXXIX., a book, properly indexed, in which shall be entered the titles of all civil papers filed, the orders made, and the steps taken therein, with the dates of the several proceedings; also, an index of all undertakings filed in the office, stating, in appropriate columns, the title of the cause, or proceeding, in which it is given, (with a general statement of its condition,) or a reference to the Statute under which it is given, the date, when and before whom approved, and when filed, with a statement of any disposition or order made of, or concerning it; and such other books, properly indexed, as may be necessary to enter the Minutes of the Court, docket judgments, enter orders, and all necessary matters and proceedings.

III. **Entry of Judgment.**—The clerk shall not enter, without special leave of the Court, any judgment until the expiration of five days after the Court has adjourned for the term.

SHERIFF.

IV. **Sheriff to file Affidavits on Arrest.**—The sheriff shall file with the clerk the affidavits on which an arrest is made, within five days after the arrest

V. **Sheriff compelled to return Process.**—At any time after the day when it is the duty of the sheriff, or other officer, to return or deliver or file any process, undertaking, orders, or other papers, by the pro-

visions of the Code of Procedure, any party entitled to have such act done, may serve on the officer a notice to return, deliver or file such process, undertaking, order, or other paper, as the case may be, within ten days; or show cause, at a time to be designated in said notice, why an attachment should not issue against him.

[A proceeding by rule to compel the sheriff to return a process is in the nature of a special proceeding, and the final order thereon is a judgment. *Emory vs. Davis*, 4 S. C., 33.]

GUARDIAN AD LITEM.

VI. **Who may be Guardian ad litem.**—No person other than the general guardian of an infant, shall be appointed guardian *ad litem*, either on the application of the infant or otherwise, who is not fully competent to understand and protect the rights of the infant; who has any interest adverse to that of the infant, or who is connected in business with the attorney or counsel of the adverse party.

ATTORNEYS AND OFFICERS.

VII. **Change of Attorney.**—An attorney may be changed by consent, or upon cause shown, and upon such terms as shall be just, upon the application of the client, by order of the Circuit Judge, and not otherwise.

VIII. **Dress.**—The habit of the Bar and of the officers of the Court shall be black coats, and no gentleman of the Bar shall he heard unless so habited, and it shall be the duty of the Sheriff to attend to the execution of this rule.

IX. **Attorneys and other Officers not to be Sureties.**—No attorney or other officer of the Court, shall become surety upon any recognizance in the Court of General Sessions, or upon any undertaking of the Court of Common Pleas.

SECURITY FOR COSTS.

X. **Security for Costs.**—If plaintiff resides beyond the State, security for costs may be required. Whenever the plaintiff shall be required to give security for costs, the security shall be taken in the form following; and no other security for costs shall be regarded as a compliance with the order; but nothing in this rule shall be construed to prevent the plaintiff from depositing a sufficient sum of money with the clerk to pay the costs:

THE STATE OF SOUTH CAROLINA,
..... COUNTY.

A. B.....
vs. } *Complaint for*.....
C. D.....

I (or we, as the case may be) acknowledge myself (or ourselves) liable for the costs of this case, and consent that, if the plaintiff fail to recover,

the defendant may have execution for his costs against me (or us, as the case may be).

Given under ..... hands, this ..... day of ....., 18....

E. F..... .... (F G.....)

[This rule applies to Circuit Courts. There is no original jurisdiction in the Supreme Court to require from an appellant, who has removed to another State, security for the costs of his appeal. *Railroad Company vs. Earle*, 13 S. C., 44. There is no authority for requiring such security from an absent defendant to an action of interpleader. *Ibid.* If security for costs is ordered to be furnished by a time stated but no penalty is imposed for noncompliance, a succeeding Judge may permit the security to be furnished after the time fixed in the first order. *Williams, Black & Co. vs Connor*, 14 S. C., 621. Otherwise, where the order imposes the penalty of dismissal. *Burke vs. Dillingham*, 8 Rich , 256. Security endorsed on the declaration before the order was passed, is not a compliance with the rule. *Willis vs. Potter*, 9 Rich., 411. Order concerning security for costs is not final, nor does it involve the merits, and therefore is not appealable. *McMillan vs. McCall* 2 S. C., 390. A judgment against the surety without any proceeding against him, is void. *Earle vs. Cureton*, 13 S. C., 19. But see *Stuckey vs. Croswell*, 12 Rich., 273. The Attorney-General or Circuit Judge may require security for costs from a relator, in whose behalf the Attorney-General brings an action under the Code of Procedure, in the nature of *scire facias, quo warranto*, &c. Code, § 430; *Tharin vs Seabrook*, 6 S. C., 114.]

CONCERNING COUNSEL.

XI. **Argument.**—Counsel shall not attempt to argue or explain a case, or any matter arising therein, after he has been heard, and the opinion of the Court has been pronounced.

Requests to Charge.—And all requests for instructions to the jury shall be submitted to the Court, in writing, without comment by counsel on either side, at the close of the arguments.

[Counsel are limited to two hours in their argument unless by special permission of the Court first obtained Revised Code, § 2166. There is no error in failing to charge what was not requested. *Abrahams & Son vs. Kelly & Barrett*, 2 S. C., 235; *Fox vs. Railroad Company*, 4. S. C., 543. See further ante, page 52.]

PAPERS—HOW PREPARED.

XII. **Manner of Preparing Papers.**—All pleadings and other proceedings shall be written on each side of legal cap paper (with a margin of one and one-half inch on the left). If more than two pages are used, they shall be fastened at the top so as to be read continuously. Papers shall be folded from the bottom in four equal folds, and endorsed with the style of the Court, the names of the parties, the nature of the paper, and the name of the attorney.

XIII. **Pleadings to be Legibly Written and Endorsed.**—All pleadings and other proceedings and copies thereof shall be fairly and legibly written, and endorsed with the title of the cause, and if not so written and endorsed, the Clerk shall not file the same, nor will the Court hear any motion, or application founded thereon.

CONSENT ORDERS.

XIV. **Consent Must be in Writing.**—No private agreement or consent between the parties or their attorneys, in respect to the proceedings in a cause, shall be binding, unless the same shall have been reduced to the form of an order by consent and entered; or unless the evidence thereof shall be in writing, subscribed by the party against whom the same shall be alleged, or by his attorney or counsel.

DEFAULT ORDERS.

XV. **Orders by Default to be Endorsed by Counsel.**—When any order is obtained by default, the counsel obtaining the same shall endorse his name, as counsel, on the paper containing the proof of notice; and the Clerk, in entering the order, shall specify the name of such counsel.

PROOF OF SERVICE.

XVI. **Affidavit of Serving Summons.**—Where the service of summons, and of the complaint or notice accompanying the same, if any, shall be made by any person other than the Sheriff, it shall be necessary for such person to state, in his affidavit of service, when and at what particular place he served the same, and that he knew the person served to be the person mentioned and described in the summons as defendant therein; and also to state that he left with the defendant a copy of the papers so served; and when the service is made by the Sheriff in person, his certificate shall state the time and place of service.

APPEARANCE.

XVII. **What to be Deemed an Appearance.**—Service of notice of an appearance or retainer generally, by an attorney for the defendant, shall, in all cases, be deemed an appearance; and the plaintiff, on filing such notice, at any time thereafter, with proof of service thereof, may have the appearance of the defendant entered as of the time when such notice was served.

PLEADINGS.

XVIII. **Numbering Causes of Action or Grounds of Defence.**—In all cases of more than one distinct cause of action, defence, counter claim, or reply, each shall be separately stated and numbered; and, where the defendant intends to set up a counter claim, it shall be distinctly entitled and designated as such.

[See *Hammond vs. Railroad Company*, 15 S. C., 10.]

Demurrer.—A demurrer must, in every case, be accompanied by a certificate of the counsel filing it, that it is meritorious, and not intended merely for delay.

XIX. **Extending Time to Answer.**—No order extending the time to answer or demur to a complaint shall be granted, unless the party applying for such order shall present to the Judge, to whom the appli-

cation shall be made, a certificate of the attorney or counsel retained to defend the action, that, from the statement of the case in the action, made to him by the defendant, he verily believes that the defendant has a good and substantial defence upon the merits to the cause of action set forth in the complaint, or to some part thereof. And if any extention of time to answer or demur has been previously granted, by stipulation or order, the fact shall be stated in the certificate.

XX. **Motions to Correct Pleadings.**—Motions to strike out of any pleading matter alleged to be irrelevant or redundant, and motions to correct a pleading on the ground of its being "so indefinite or uncertain that the precise nature of the charge or defence is not apparent," must be noticed before demurring or answering the pleading, and within twenty days from the service thereof.

[See *State ex rel. Van Wyck vs. Norris*, 15 S. C., 242. This rule in its spirit includes motions to strike out a part of defendant's answer as inconsistent, contradictory or for other cause. *Cohrs vs. Fraser*, 5 S. C., 351.]

XXI. **Defence of Plene Administravit.**—The defence of *plene administravit* shall not be effectual, unless the party making such defence shall file with the pleading, on oath, a full and particular account of the administration of the estate, with a certified copy of the inventory and appraisement; or, if the party be charged as executor of his own wrong, a full statement, on oath, of all the assets which have come into his possession, and the value thereof, and an account showing the manner in which the same may have been disposed of.

Real Owner Admitted to Defend Action against Tenant.—XXII. Where a tenant is sued for land of which he is in possession, the real owner may, on motion, be admitted as a defendant to the action, and shall be entitled to the service of a copy of the complaint, and to answer or demur thereto, as if he had been the original defendant.

JURIES.

XXIII. **Venire and Summons for Jurors—What to State.**—To all writs of *venire* for jurors, the Sheriff and his deputies shall make a return, on oath, before the Clerk of the Court from which the *venire* issues, including in *one* class, the names of those who have been summoned personally; in the *second* class, of those for whom summonses have been left at their houses; and in the *third* class, of those who could not be found. The summons for each juror shall state the day, the hour, and the Court, at which he is to appear, the penalty for default, and, also, whether he is to serve as a grand or petit juror.

XXIV. **Defaulting Jurors.**—If any juror, in attendance upon the Court, shall refuse or neglect to attend punctually, and to answer to his name whenever the same shall be called, the Clerk shall note such default, and the defaulter shall forthwith be served with a rule to show cause why he should not be fined therefor. Upon the adjournment of each term of the Court, the Clerk shall cause to be served by the Sheriff,

on each and every juror noted for non-attendance at that Court, a notice, requiring him to show cause, by affidavit, at ten o'clock, on the first day of the next regular term, why he should not be fined according to law, for failing to attend and serve as a grand or petit juror, as the case may be.

Judgment Against.—And on or before the first day of the next regular term, the Sheriff shall make return of all such notices to the Clerk, who shall, after entering the same on the Contingent Docket, deliver them to the Attorney-General or Solicitor, and the Attorney-General or Solicitor shall, upon the call of the docket, move for the judgment of the Court thereon.

XXV. **Jury in Criminal Cases.**—In the empanelling of a jury in criminal cases, where the right of peremptory challenge is claimed and allowed, a child under ten years of age shall, in the presence of the Court, draw one from the names of all the jurors in attendance, which one, having answered, shall be presented to the accused; and so on until, in regular course, the panel be exhausted, or a jury formed.

[The proper mode of empanelling a jury in criminal cases is considered in *State vs. Cardoza*, 11 S. C., 196.

Where the jury were drawn by a child over ten years of age, but who at the time was supposed to be within that age, the Supreme Court refused to arrest the judgment. *State vs. White*, 15 S. C., 381.]

CALENDARS.

XXVI. **Common Pleas Calendar.**—The Clerk in preparing the Calendar for the Court of Common Pleas, shall arrange the cases in six classes, as follows:

1. In the first class he shall include all cases, not excepting appeals, in which there is an issue of fact to be tried by a jury.
2. In the second class, all cases, including appeals, in which all the issues of fact are to be tried by the Court.
3. In the third class, all cases, including appeals, in which there are issues of law only.
4. In the fourth class, all supplementary and special proceedings, rules to show cause, and other motions set down for argument.
5. In the fifth class, all cases in which orders are to be taken in administration of the judgment, and all cases on final appeal to the Supreme Court.
6. In the sixth class, all default cases, whether for money demand or for relief.

The respective classes shall be arranged each in a separate docket, properly numbered.

No case shall be on more than one Calendar at the same time, except in cases in which some of the defendants have pleaded, and others have made default.

Where an issue has been settled by an order of the Court, the Clerk shall give it place on the Calendar according to the date of the order.

The Clerk shall preserve the Calendar as a record of the Court. He shall not only number the causes thereon, but shall indicate the number of terms they may have been at issue; and he shall also, in a separate column, copy the memoranda of the disposition of the case at the previous term.

During the daily sessions of the Court, the Calendar shall not be subject to the inspection of the Bar; but it shall be the duty of the Clerk to make a copy thereof, for the use of the Bar.

[Default cases may be docketed at any time before the Court of Common Pleas is actually opened. *McComb vs. Woodbury*, 13 S. C., 479.]

CONTINUANCE.

XXVII. **Motions for Continuance.**—No motion for the postponement of trial beyond the term, either in the Common Pleas or General Sessions, shall be granted on account of the absence of a witness, without the oath of the party, his counsel or agent, to the following effect, to wit: that the testimony of the witness is material to support the action or defence of the party moving; that the motion is not intended for delay, but is made solely because he cannot go safely to trial without such testimony; that he has made use of due diligence to procure the testimony of the witness; or of such other circumstances as will satisfy the Court that his motion is not intended merely for delay. In all such cases where a writ of subpœna has been issued, the original shall be produced with proof of service, or the reason why not served endorsed thereon, or attached thereto; or if lost, the same proof shall be offered, with additional proof of the loss of the original subpœna. After the first term, a party applying for such postponement on account of the absence of a witness, shall set forth, in addition to the foregoing matters, what he believes the witness, if present, would prove.

[Where no ground is stated for the Judge's refusal to grant a continuance, the Supreme Court cannot grant a new trial. *Bowden & Earle vs. Winsmith*, 11 S. C., 409.]

TRIAL.

XXVIII. **Issue to a Jury—How Settled.**—In cases where the trial of issues of fact is not provided for in Sections 274 [276] of the Code, if either party shall desire a trial by jury, such party shall, within ten days after issue joined, give notice of a special motion to be made upon the pleadings that the whole issue, or any specific questions of fact involved therein, be tried by a jury. With the notice of motion, shall be served a copy of the questions of fact proposed to be submitted to the jury for trial, and in proper form to be incorporated in the order; and the Court or Judge may settle the issues, or may refer it to the Referee to settle the issues. Such issues must be settled in the form prescribed in Sections 92 [95] of the Code of Procedure.

[To entitle himself to a jury trial in cases triable by the Court, under Section 275 of the Code, the party must comply with this rule. *Lucken vs. Wichman*, 5 S. C., 412. If the issue of fact referred to the jury be in a

Chancery case, the verdict of the jury is only for the purpose of enlightening the conscience of the judge, who must give his own independent judgment upon the facts of the case as well as upon the law. No judgment can be entered upon the verdict of the jury in such case. *Flinn & Hart vs. Brown*, 6 S C., 209; *Gadsden vs. Whaley*, 9 *Ibid*, 147; *Ivy vs. Clawson*, 14 S. C., 273, and cases cited.]

XXIX. **Calling Plaintiff—Submitting to Non-Suit.**—It shall not be necessary to call the plaintiff when the jury return to the Bar to deliver their verdict, and the plaintiff shall have no right to submit to a non-suit, after the jury have gone from the Bar to consider of their verdict.

XXX. **Submitting to Non-Suit or Dismissal before a Master or Referee.**—On a hearing before a Master or Referee, the plaintiff may submit to a non-suit or dismissal of his complaint, or may be non-suited, or his complaint be dismissed, in like manner as upon a trial, at any time before the cause has been finally submitted to the Master or Referee for his decision; in which case, the Master or Referee shall report according to the fact, and judgment may thereupon be perfected by the defendant.

Form of Report on all Issues.—Upon a trial by a Master or Referee he shall, in his decision or report, state the facts found by him, and his conclusions of law separately, a copy of which shall be served with notice of the judgment; and the time within which exceptions may be taken to the report shall be computed from the time of such service.

In other Cases.—In references other than for the trial of the issues in an action, upon the coming in of the report of the Master or Referee, the same shall be filed, and a note of the day of the filing shall be entered by the Clerk in the proper book, under the title of the cause or proceeding; and the said report shall become absolute, and stand as in all things confirmed, unless exceptions thereto are filed and served within ten days after service of notice of the filing of the same. If exceptions are filed and served within such time, the same may be brought to a hearing on the notice of any party interested therein.

[The Supreme Court will not disturb a Circuit decree which confirms a Referee's report in a particular not excepted to. *Cureton vs. Mills*, 13 S C., 410 The provision that a Referee or Master shall state the facts found by him and his conclusions of law separately, is directory and not mandatory. If the Referee or Master fail to do so, the proper practice is a motion to recommit for such separate findings. *Bollman vs. Bollman*, 6 *Ibid*, 30. The matter is fully considered and a report set aside for a failure in this regard in *Moore vs. Johnson*, 7 *Ibid*. 303.]

XXXI. **Examination of Witnesses—How Conducted—Only Two Counsel.**—On the trial of issues of fact, one counsel only on each side shall examine or cross-examine a witness, and not more than two counsel on each side shall sum up or be heard in any cause; and during such examination, the examining counsel shall stand;' and the testimony, if taken down in writing, shall be written by some other

person than the examining counsel; but the Judge who holds the Court may otherwise order, or may dispense with this requirement.

COPY—PAPERS.

XXXII. **Papers to be Furnished.**—The papers to be furnished on motion shall be a copy of the pleadings, when the question arises on the pleadings, or any part thereof, or of such parts only as relate to the question raised by the demurrer; a copy of the special verdict, return, or other papers on which the question arises.

Penalty for Failure.—The party whose duty it is to furnish the papers, shall serve a copy on the opposite party (except upon trial of issues of law) at least four days before the time the matter may be noticed for argument. If the party whose duty it is to furnish the papers shall neglect to do so, the opposite party shall be entitled to move, on affidavit and notice of motion, that the cause be stricken from the Calendar, (whichever party may have noticed it for argument,) and that judgment may be rendered in his favor: *Provided*, however, that in mortage and partition cases, where the plaintiff's rights are not contested, no copies of pleadings need be furnished the Court.

By whom.—The papers shall be furnished by the plaintiff, when the question arises on special verdict, and by the party demurring, in cases of demurrer, and in all other cases by the party making the motion.

CHANGE OF VENUE.

XXXIII. **Order to stay with view to change Venue.**—No order to stay proceedings for the purpose of moving to change the place of trial shall be granted, unless it shall appear from the papers that the party moving has used due diligence in preparing the motion for the earliest practicable day after issue joined. Such order shall not stay the plaintiff from taking any steps except subpœnaing witnesses for the trial, without a special clause to that effect.

[For the cases in which the Court may change the place of trial, see Constitution, Art. V., § 2; Code, § 147, and Revised Code, § 2114. Motion for change of venue is not appealable unless a question of jurisdiction be involved. *Parker & Co. vs. Grimes & Co.*, 9 S. C., 284. See further, as to change of venue, *State vs. Addison*, 2 S. C., 356; *Lebeschultz vs. Magrath*, 9 *Ibid*, 276; *Blakely & Copeland vs. Frazier*, 11 S. C., 122.]

COMMISSIONS TO TAKE TESTIMONY.

XXXIV. **Commissions to take Testimony—When Opened.**—Commissions when executed shall be sealed up by the Commissioners who shall have executed the same, and directed to the Clerk of the Court from which they were issued. Upon the envelope shall appear the names of the Commissioners, written by themselves across the seals, the title of the cause, and, when sent by mail, the proper postmark. Commissions shall not be opened, but upon motion, in open Court, or before a Master, or Referee, or Referees, hearing the cause, or by con-

sent of the parties, in writing, or by the Clerk or Master, or Referee, upon request of any of the parties, and eight days' notice to all parties of the time and place of such opening.

[Commission may be opened and read by the Commissioner in Equity, to whom it was referred to report on the facts. *Leaphart vs. Leaphart*, 1 S. C., 199. Where the witness resided abroad, it is no objection to the Commission that it bore the postmark of a foreign office. *Ibid.*]

TRIAL IN GENERAL SESSIONS.

XXXV. **Presence of the Accused on Trial—Dock.**—No person shall be tried on an indictment unless personally present, except for misdemeanors, and upon the trial of any person charged with an offence for which the law requires that he should be arraigned, the prisoner shall be placed in the dock.

SURVEYS.

XXXVI. **Surveys.**—Surveys of lands in any quantity of two hundred acres or less, shall be laid down by a scale of ten chains to the inch; all over that quantity, by a scale of twenty chains to the inch.

Notice of.—No survey made under an order of the Court shall be received in evidence, unless it appear that at least ten days' notice of the time and place of commencing such survey has been given to the parties.

Particulars Required.—Every surveyor shall represent in his plat, as nearly as he can, the different enclosures of the parties, and the extent or boundaries within which each party may have exercised acts of ownership. He shall also represent a fence, buildings, or the like, by a mark in due proportion in size, according to the scale of the plat He shall, by some small but distinct letter or figure, distinguish every corner, station, blazed tree, or other point which is likely to be the subject of dispute. He shall take care not to render the plat confused or indistinct by crowding too much upon it; but he shall rather refer the letters or figures to a table (which may contain the courses and distances of lines, the marks at corners, stations and noted points, explanations and remarks,) than attempt to write much on the lines, or near to points on the plat. He shall also make two drafts or duplicates of the plat, so that on the trial there may be one for the use of the Judge, and the other for the parties in Court.

Objections to Survey.—After a cause has gone to a jury, and any evidence has been heard on it, neither party shall be allowed to make any objection to the order of survey, or the manner in which it may have been obtained, or the survey executed.

Copy of Rule, for Surveyor.—A copy of this Rule shall be appended to every order of survey served on a surveyor.

JUDGMENT AND EXECUTION.

XXXVII. **Judgment on failure to Answer—Where to be applied for.**—When the plaintiff in the action is entitled to judgment, upon the failure of the defendant to answer the complaint, and the relief

demanded requires application to be made to the Court, such application must be made to the Circuit Court in the County in which the action is triable.

Judgment after Service by Publication—Affidavit—Undertaking. XXXVIII. In actions for the recovery of money only, when the summons has been served by publication, under Section 156 [158] of the Code, and the defendant is a non-resident of the State, no judgment shall be entered, unless the plaintiff, at the time of making the application for judgment, shall show, by affidavit, that an attachment has been issued in the action, and levied upon property belonging to the defendant; which affidavit shall contain a specific description of such property, and a statement of its value, and shall be attached to, and filed with the affidavit of publication; nor, unless the plaintiff shall, at the same time, produce and file with the Clerk an undertaking with two sureties to be approved by the Court, or the Clerk thereof, that the plaintiff will abide the order of the Court touching the restitution of any estate or effects which may be directed by such judgment to be transferred or delivered, or the restitution of any money that may be collected under or by virtue of such judgment, in case the defendant, or his representative shall apply, and be admitted to defend the action, and shall succeed in such defence.

XXXIX. **Recording Judgments.**—The Clerk shall record in the Judgment Book, at length, all judgments entered in his office, with the names of all parties, plaintiff or defendant, who have appeared or been served with a summons therein, and the name of the attorneys, with the time and place of the rendition of such judgment, and the number of the roll; and when, by any judgment, any matter shall be adjudged, or act or thing commanded other than the payment of money, space sufficient shall be left after the entry thereof, for the entering of such proceedings as may be thereafter had for the enforcement or satisfaction of such judgment.

Abstract of Judgments.—When any judgment shall require the payment of money, either as damages or costs, it shall be noted in an Abstract of Judgment, which abstract shall be in tabular form, and contain in separate columns the following matters: *First*, the names of all parties bound to discharge such payment. *Second*, the names of the parties having the right to enforce such payment. *Third*, the date of the judgment. *Fourth*, the amount adjudged to be paid. *Fifth*, the costs. *Sixth*, the aggregate of the amount and costs. *Seventh*, the issueing of execution, with the date thereof. *Eighth*, the return to such execution.

XL. **Recording Judgments of the Supreme Court—Adjudging Costs Thereon.**—When a judgment, rendered by the Supreme Court, shall be certified to the Circuit Court, it shall be the duty of the Clerk of the Circuit Court to adjust the costs and disbursements in the Supreme Court to which any party may be entitled, upon due notice, as provided in the case of the adjustment of costs in the Circuit Court;

and he shall record such judgment, and enter an abstract thereof in like manner as is provided in the case of judgments rendered by the Circuit Court. At the foot of such record a reference shall be made to the page at which the judgment appealed from is recorded, and a like reference shall be entered at the foot of the entry of the original judgment to the page at which the judgment on appeal is recorded.

SALE OF LANDS

XLI. **Sale of Lands at Auction.**—When lands are directed to be sold at auction, notice of the sale shall be given for the same time, and in the same manner, as is required by law on sales of real estate by Sheriffs on execution.

INFANTS' MONEY.

XLII. **General Guardian—Security.**—After the appointment of the general guardian of an infant, he shall not be entitled to receive any money or other property to which the ward shall thereafter become entitled, until the Court is satisfied, upon due inquiry, that he has given a good and sufficient bond to account therefor.

DISCOVERY OF BOOKS AND PAPERS.

XLIII. **Application for Discovery—How Made.**—Applications may be made in the manner provided by law to compel the production and discovery of books, papers, and documents relating to the merits of any civil action pending in this Court, or of any defence in such action, in the following cases:

1. By the plaintiff, to compel the discovery of books, papers or documents in the possession or under the control of the defendant which may be necessary to enable the plaintiff to frame his complaint, or to answer any pleading of the defendant.

2. The plaintiff may be compelled to make the like discovery of books, papers or documents, when the same shall be necessary to enable the defendant to answer any pleadings of the plaintiff.

3. Either party may be compelled to make discovery, as provided by Section 390 [405] of the Code.

XLIV. **Moving Papers—What to State.**—The moving papers, upon application for such discovery, shall state the facts and circumstances on which the same is claimed, and shall be verified by affidavit, stating that the books, papers and documents whereof discovery is sought, are not in the possession nor under the control of the party applying therefor. The party applying shall show, to the satisfaction of the Court or Judge, the materiality and necessity of the discovery sought, and the particular information which he requires.

XLV. **Order for Discovery.**—Discovery may be compelled by requiring the party to produce and deposit the matters to be discovered with the Clerk for the County in which the trial is to be had, or by requiring him to deliver sworn copies thereof to the moving party, or in such other manner as may be directed by the Court. The order therefor shall specify the mode of making the discovery, and the time within

which it is to be made; and, when papers are required to be deposited, the order shall specify the time that the deposit shall continue.

XLVI. **Order for Discovery to Operate as a Stay of Proceedings.** The order directing the discovery of books, papers, or documents, shall operate as a stay of all other proceedings in the cause, until such order shall have been complied with or vacated; and the party obtaining such order, after the same is complied with or vacated, shall have the time to prepare his complaint, answer, reply, or demurrer to which he was entitled at the making of the order, but the judge in granting the order may limit its effect, by declaring how far it shall operate as a stay of proceedings.

NEW TRIAL, AND APPEALS.

XLVII. **Settling Cases and Objections.**—Whenever it shall be intended to move the Circuit Court for a new trial (except for irregularity, surprise, or on the minutes of the Judge), in an action tried by a jury, a case, or exceptions, or case containing exceptions, as may be proper and the party may elect, shall be prepared by the party intending to make the motion or to review the trial, and a copy thereof shall be served on the opposite party within ten days after trial, if by a jury, or within ten days after written notice of the filing of the decision, if the trial be by referees; and the party served may, within ten days thereafter, propose amendments thereto, and serve a copy on the party proposing the case or exceptions, who may then, within four days thereafter, serve the opposite party with a notice that the case or exceptions, with the proposed amendments, will be submitted at a time and place to be specified in the notice, to the Judge, or Referee, before whom the cause was tried, for settlement. The Judge, or Referee, shall thereupon correct and settle the case as he shall deem to consist with the truth of the facts. The time for settling the case must be specified in the notice, and it shall not be less than four, nor more than twenty, days after service of such notice. The lines of the case shall be so numbered that each copy shall correspond. Cases reserved for argument and special verdicts, shall be settled in the same manner.

["Case or exceptions, or case containing exceptions;" these terms defined. *Sullivan vs. Thomas*, 3 S. C., 547; and see, too, *Caston vs. Brock*, 14 S. C., 104. The respondent need not appear before the Circuit Judge at the time of settlement; his non-appearance will not be deemed an abandonment of his proposed amendments. *Chalk vs. Patterson*, 4 S. C., 98. If the trial judge is out of office, it may be settled, it would seem, upon affidavits and other proof, by another judge. *Ibid.* See Code, §345, subd. 2.]

XLVIII. **Exceptions—What to Contain.**—Exceptions shall only contain so much of the evidence as may be necessary to present the questions of law upon which the same were taken on the trial; and it shall be the duty of the Judge, upon settlement, to strike out all the evidence and other matters not necessarily inserted.

Amendments.—Whenever amendments to a case or exceptions are proposed, the party proposing such case or exceptions shall, before sub-

mitting the same to the judge for settlement, mark upon the several amendments his proposed allowance or disallowance thereof.

XLIX. **Filing Case or Exceptions.**—Where a party makes a case or exceptions, he shall procure the same to be filed within ten days after the same shall be settled, or it shall be deemed abandoned.

Order Declaring Case Abandoned.—And on filing affidavit that such case or exceptions have not been filed, and showing the time of the settlement thereof, and that more than ten days have elapsed from the time of such settlement, an order of course may be entered declaring the same abandoned, and the party may proceed as if no case or exceptions had been made.

L. **Mode of Preparing a Case on Appeal to the Supreme Court.**—In every appeal to the Supreme Court from matter appealable, the appellant, or his attorney, shall, within ten days after written notice of the filing of such matter appealable, or if filed within term time, within ten days after the rising of the Circuit Court, give written notice to the opposite party, or his attorney, of his intention to appeal therefrom, and within thirty (30) days after such notice the appellant or his attorney, shall prepare a case or exceptions, or a case containing exceptions (which exceptions shall have been taken and served within the time prescribed by law,) and serve them on the opposite party, or his attorney, or within such further time as upon ten (10) days' notice to the opposite party, or his attorney, the Judge who tried the cause may for good cause grant. But should the parties, within the times above named, be unable to agree upon a case, then the proposed case, with the proposed amendments and allowances and disallowances, shall be within ten days after failing to agree, referred for settlement to the Circuit Judge who heard the cause, who shall settle the same within the time and in the manner provided for settling a case in Rule XLVII

Conform to Rules.—The parties, if they agree on a case, or the Circuit Judge who may settle the same, must see that the case shall, as to the matter it contains, conform to the requirements of the Rules of the Supreme Court in regard to the form and substance of a case for hearing before that Court.

(See Supreme Court Rules, No. 5, and Code of Procedure, §§ 345, 348, 349, as to time within which to serve exceptions. See *Godbold vs. Vance*, 14 S. C., 458, in connection with Code, § 345.)

LI. **Case—How Waived and When Deemed Settled** —If the party shall omit to make a case. or exceptions, or statement of facts, within the times above limited, he shall be deemed to have waived his right thereto; and when the same is made, and the parties shall omit, within the several times above limited, the one party to propose amendments, and the other to notify an appearance before the Judge, Master or Referee, they shall respectively be deemed, the former to have agreed to the case as proposed, and the latter to have agreed to the amendments as proposed.

LII. **Reference to Compute Amount due on Mortgage—Other Facts.** If, in action to foreclose a mortgage, the defendant fails to answer within the time allowed for that purpose, or the right of the plaintiff, as stated in the complaint is admitted by the answer, the plaintiff may have an order referring it to the Clerk, or to some suitable person, as Referee, to compute the amount due to the plaintiff, and to such of the defendants as are prior incumbrancers of the mortgaged premises, and to examine and report whether the mortgaged premises can be sold in parcels, if the whole amount secured by the mortgage has not become due. If the defendant is an infant, and has put in a general answer by his guardian, or if any of the defendants are absentees, the order of reference shall also direct the person to whom it is referred, to take proof of the facts and circumstances stated in the complaint and to examine the plaintiff, or his agent on oath, as to any payments which have been made, and to compute the amount due on the mortgage, preparatory to the application for judgment of foreclosure and sale.

Further Proof to Obtain Judgment.—The plaintiff in such case, when he moves for judgment, must show, by affidavit or otherwise, whether any of the defendants who have not appeared are absentees; and, if so, he must produce the report as to the proof of the facts and circumstances stated in the complaint, and of the examination of the plaintiff or his agent, on oath, as to any payments which have been made. And, in all foreclosure cases, the plaintiff, when he moves for judgment, must show by affidavit, or by the certificate of the Clerk for the county in which the mortgaged premises are situated, that a notice of the pendency of the action containing the names of the parties thereto, the object of the action and a description of the property in that county affected thereby, the date of the mortgage, and the time and place of recording the same, has been filed at least twenty days before such application for judgment, and at or after the time of filing the complaint, as required by Section 153 [155] of the Code of the Procedure.

LIII. **Judgment for sale of Mortgaged Premises—Application of Proceeds.**—Unless otherwise specially ordered by the Court, the judgment shall direct that the mortgaged premises, or so much thereof as may be sufficient to raise the amount due to the plaintiff, for principal, interest, and costs, and which may be sold separately without material injury to the parties interested, be sold by or under the direction of the Sheriff of the County, or the Clerk or Master; and that the plaintiff, or any other party, may become a purchaser on such sale; that the officer making the sale execute a deed to the purchaser; that out of the proceeds of the sale he pay the plaintiff or his attorney, the amount of his debt, interests and costs, or so much as the purchase money will pay of the same, and that he take the receipt of the plaintiff, or his attorney, for the amount so paid, and file the same with his report of sale, and

that the purchaser, at such sale, be let into possession of the premises on production of the deed.

Surplus.—All surplus moneys arising from the sale of mortgaged premises under any judgment, shall be paid or deposited by the Sheriff or other officer making the sale within five days after the same shall be received, in the manner provided by law for the securing of moneys in the custody of this Court.

[Attachment to require surrender of possession may not be before confirmation of sale. *Crotwell vs. Boozer*, 1 S. C., 271. Writ of *habere facias possessionem* is not proper mode of putting into possession a purchaser at a sale under decree in foreclosure. *Armstrong vs. Humphrey*, 5 S. C., 128. Purchaser of property under decree of foreclosure against mortgagor is entitled to be let into possession under rule against the widow of the mortgagor, who died after decree and before sale. *Trenholm vs. Wilson*. 13 S. C., 174.]

LIV. **Claims for Surplus Money—Notice of Application.**—On filing the report of the sale, any party to the action, or any person who had a lien on the mortgaged premises at the time of the sale, upon filing with the Clerk where the report of sale is filed, a notice, stating that he is entitled to such surplus money or some part thereof, and the nature and extent of his claim, may have an order of reference to ascertain and report the amount due to him, or to any other person, which is a lien upon such surplus moneys, and to ascertain the priorities of the several liens thereon; to the end, that, on the coming in and confirmation of the report on such reference, such further order may be made for the distribution of such surplus moneys as may be just. Every party who appeared in the cause, or who shall have filed such notice with the Clerk previous to the entry of the order of reference, shall be entitled to service of a notice of the application for the order of reference, and to attend on such reference, and to the usual notices of subsequent proceedings relative to such surplus. But if such claimant has not appeared or made his claim by an attorney of this Court, the notice may be served by putting the same into the postoffice, directed to the claimant at his place of residence, as stated in the notice of his claim.

PARTITION.

LV. **Partition of Intestate's Lands—Debts.**—No partition of the real estate of an intestate shall be had unless it be made to appear to the Court that the debts of the intestate are paid, or that the personal estate in the hands of the administrator is sufficient for the purpose, or unless in the decree of partition due provision is made for the payment of the debts.

One Action.—Infants—Where several tracts or parcels of land, lying in this State, are owned by the same persons in common, no separate action for a partition of a part thereof only, shall be brought, without the consent of all the parties interested therein; or, if brought without such consent, the share of the plaintiff may be charged with the whole

costs of the proceeding. And, when infants are interested, it shall be stated whether the parties own any other lands in common.

[Lands in several counties may be partitioned in one proceeding, but there should be separate writs for each county. *Daniels vs. Moses*, 12 S. C., 130.]

LVI. **Reference as to title, where no Defence is Interposed.**—Where the rights and interests of the several parties, as stated in the complaint are not denied or controverted, if any of the defendants are infants or absentees, or unknown, the plaintiff, on an affidavit of the fact, and notice to such of the parties as have appeared, may apply for an order of reference, to take proof of the plaintiff's title and interest in the premises, and of the several matters set forth; and to ascertain and report the rights and interests of the several parties in the premises, and an abstract of the conveyances by which the same are held.

MOTIONS AND ORDERS.

LVII. **Arguments and Motions — How Noticed, and Defaults Thereon—Irregularities to be Stated.**—All questions for argument, and all motions, shall be brought before the Court on a notice, or by an order to show cause, under Section 403 [418] of the Code; and, if the opposite party shall not appear to oppose, the party making the motion or obtaining the order, shall be entitled to the rule or judgment moved for, on proof of due service of the notice, or order, and papers, required to be served by him, unless the Court shall otherwise direct.

Order to Show Cause—Such order to show cause shall only be granted when a special reason for a notice, less than four days, appears on the papers presented; and the party shall, in his affidavit, state the present condition of the action, and whether at issue.

Irregularities—And when the motion is for irregularity, the notice or order shall specify the irregularity complained of.

[A party desiring to have an irregularity corrected must proceed at the first opportunity or offer a reasonable excuse for not having done so. *Smith & Melton vs. Walker*, 6 S. C, 169. See too, *Green vs. Railroad Company, Ibid*, 344.]

LVIII. **Points on Motions—Discussion on Facts.**—In all calendar motions, each party shall briefly state upon his points the leading facts which he deems established, with a reference to their folios, where the evidence of such facts may be found; and the Court will not hear an extended discussion on a mere question of fact.

OPENING AND REPLY.

LIX. **Argument and Reply.**—On all rules to show cause, where a party failing to answer would be in contempt, the party called on shall begin and end his cause; and on all motions or special matters, either springing out of a cause or otherwise, the actor or party submitting the same to the Court, shall, in like manner, begin and close; and so shall the defendant, where he admits the plaintiff's cause by the pleadings, and takes upon himself the burthen of proof, have the like privilege.

The party having the opening in an argument, shall disclose his entire case; and, on his closing, shall be confined strictly to a reply to the points made and the authorities cited by the opposite party.

[Where answer admits the plaintiff's case and pleads counterclaim, the defendant is entitled to open and reply. *Brown vs. Kirkpatrick*, 5 S. C., 269. Who is entitled to open and reply depends upon the pleadings as they exist when made up. *Ibid* The defendant must admit the plaintiff's cause of action as prescribed by this rule, to entitle himself to the reply. *Davis vs. Winsmith, Ibid*, 335. On appeal by defendant from a trial justice's Court, and a trial *de novo* in the Circuit Court, the plaintiff is entitled to open and reply. *Bennett vs. Sandifer*, 15 S. C. 418]

MISCELLANEOUS.

LX. **Costs of a former Suit.**—Where a party has suffered a nonsuit, or discontinuance, or has otherwise let fall his action, all proceedings in any new action for the same cause shall be suspended until the costs of such former action have been paid.

[Unpaid costs of action against testator cannot stay suit against executor on same cause of action. *Blakely & Copeland vs. Frazier*, 11 S C.. 123. The enforcement of this rule must, to a large extent, be left to the discretion of the Circuit Judge, and his order in this matter would not, ordinarily, be the subject of appeal *Daniels vs. Moses*, 12 S. C., 130. A motion to stay, made for the first time after the case has been called for trial, comes too late. *Ibid.* A second action (especially if it is for the recovery of a debt) should not be stayed to await the payment of costs in the former action, where the latter was not tried upon its merits, unless the Court is satisfied that the second action is vexatious. *Ibid.* Where the Court of Probate refused to stay an action for dower, until the costs of a former action in the Court of Equity, which had been stricken from the docket, were paid, the Supreme Court declined to interfere. *Tibbetts vs. Langley Manf'g Co., Ibid*, 466.]

LXI. **Subsequent application for Order after a Refusal.**—If any application for an order be made to any Judge, and such order be refused, in whole or in part, or be granted conditionally, or on terms, no subsequent application, upon the same state of facts, shall be made to any other Judge; and if, upon such subsequent application, any order be made, it shall be revoked; and in the affidavit for such order, the party, or his attorney, shall state whether any previous application for such order has been made

LXII **Affidavit in Mitigation—How Submitted.**—In the Court of General Sessions, the defendant, after verdict against him, shall not be permitted to submit any affidavit to the Court which goes to deny matters of fact; but he may submit affidavits as to matters in extenuation or mitigation: *Provided*, they are filed so as to allow the Attorney-General, or Solicitor, a reasonable time to answer them.

LXIII. **Time for Complying with Orders.**—In all cases where a motion shall be granted on payment of costs, or on the performance of any condition, or where the order shall require such payment or performance, the party whose duty it shall be to comply therewith shall have twenty days for that purpose, unless otherwise directed in the

order; but, where costs to be adjusted are to be paid, the party shall have fifteen days to comply with the order, after the costs shall have been adjusted by the clerk on notice, unless otherwise ordered.

LXIV. **Orders on Petitions—For Payment of Money to be Enrolled.**—Orders granted on petitions, or relating thereto, shall refer to such petitions by the name and description of the petitioners; and the date of the petitions, if the same be dated, without reciting or setting forth the tenor or substance thereof unnecessarily. Any order or judgment directing the payment of money, or affecting the title to property, if founded on petition, where no complaint is filed, may, at the request of any party interested, be enrolled and docketed as other judgments.

LXV. **Staying Sale in Foreclosure or Partition.**—No order to stay a sale, under a judgment in partition, or for the foreclosure of a mortgage, shall be granted or made by a Judge out of Court, except upon notice of at least four days to the plaintiff, or his attorney.

[This rule was recognized and enforced in *Rice vs. Mahaffey*, 9 S. C., 281.]

SURETIES.

LXVI. **Sureties to Justify—Undertakings to be Acknowledged.**—Whenever a Justice, or other officer, approves of the security to be given in any case or reports upon its sufficiency, it shall be his duty to require personal sureties to justify. And all bonds and undertakings shall be duly proved by a subscribing witness, or acknowledged in like manner as deeds of real estate, before the same shall be received or filed.

LXVII. **Bail—Where to Justify.**—Wherever sureties are required to justify, they shall justify within the County where the defendant shall have been arrested, or where the sureties reside.

FILING PAPERS.

LXVIII. **Where Papers to be Filed—Change of Venue.**—Papers shall be filed in the County specified in the complaint as the place of trial, or in the County to which the place of trial has been changed. And in case the place of trial is changed, for the reason that the proper County is not specified, papers on file at the time of the order making such change, shall be transferred to the County specified in such order; and all other papers in the cause shall be filed in the County so specified.

LXIX. **Undertakings and Affidavits to be Filed.**—It shall be the duty of the plaintiff's attorney, forthwith to file with the Clerk for the proper County, all undertakings given upon procuring an order of arrest, an injunction order, or an attachment, with the approval of the Judge taking the same endorsed thereon; and in case such undertakings shall not be filed within five days after the order for arrest, of injunction, or attachment has been granted, the defendant shall be at liberty to move the Court to vacate the proceedings, for irregularity, with costs, as if no undertaking had been given. It shall also be the

duty of the attorney to file, within the same time, and under the like penalty, the affidavits upon which an injunction or attachment has been granted, and also the affidavit upon which an order for the service of a summons by publication, or an order for a substituted service of a summons has been granted, together with the order for such service.

RECEIVERS.

LXX. **Powers of Receiver of Debtor's Estate—When to have Costs—Sale of Claims.**—Every receiver of the property and effects of the debtor shall, unless restricted by the special order of the Court, have general power and authority to sue for and collect all the debts, demands, and rents, belonging to such debtor, and to compromise and settle such as are unsafe and of a doubtful character. He may, also, sue in the name of a debtor where it is necessary or proper for him to do so; and he may apply for and obtain an order of course that the tenants of any real estate belonging to the debtor, or of which he is entitled to the rents and profits, attorn to such receiver, and pay their rents to him. He shall also be permitted to make leases from time to time, as may be necessary, for terms not exceeding one year. And it shall be his duty, without any unreasonable delay, to convert all the personal estate and effects into money; but he shall not sell any real estate of the debtor, without the special order of the Court, until after judgment in the cause. He is not to be allowed for the cost of any suit brought by him against an insolvent, from whom he is unable to collect his costs, unless such suit is brought by order of the Court, or by the consent of all the parties interested in the funds in his hands. But he may, by leave of the Court, sell such desperate debts, and all other doubtful claims to personal property, at public auction, giving at least ten days' public notice of the time and place of such sale.

[See Code, § 265, as to cases where receivers may be appointed]

REPEAL.

LXXI. **Repeal of former Rules—Former Practice.**—All Rules heretofore adopted for the government of the practice of the Circuit Courts of this State shall be, and they are hereby repealed. In cases where no provision is made by Statute, or by these Rules, the proceedings shall be according to the practice as it has heretofore existed in the Courts of Law and Equity of this State, in cases not provided for by Statute, or the written Rules of the Court.

[The rules of Westminster which were made of force by Rule 87 in Miller's Compilation (p. 46) are such rules as are consistent with our rules and in harmony with our laws—matters within the scope of their provisions and probably overlooked. *Brown vs. Dunlap*, 3 S. C., 101.]

RULES OF PRACTICE

FOR THE

COURTS OF PROBATE,

OF THE

STATE OF SOUTH CAROLINA.

IN FORCE JULY 1, 1882.

THE STATE OF SOUTH CAROLINA,
IN THE SUPREME COURT. } *April Term*, 1879.

At a Session of the Supreme Court, held on the thirtieth day of May, one thousand eight hundred and seventy nine, the following Rules of Practice for the several Courts of Probate in this State, were adopted, viz:

I. **Books.**—The Judge of Probate shall, in addition to the books required by law, keep a book, properly indexed, in which shall be entered the titles of all cases instituted in his Court, with proper entries under each, denoting the papers filed, the orders made, and the steps taken therein, with the dates of the several proceedings. Also, a calendar of all cases which are pending in his Court, until the same shall be disposed of by a final decree or order.

II. **Sheriff Compelled to Return Process.**—At any time after the day when it is the duty of the Sheriff or other officer to return, deliver, or file any process, undertaking, order or other paper, by the provisions of the Code of Procedure, any party entitled to have such act done, may serve on the officer a notice to return, deliver, or file such process, undertaking, order or other paper, as the case may be, within ten days; or show cause, at a time to be designated in said notice, why an attachment should not issue against him.

III. **Guardian ad litem.—Decree against Infants.**—No person other than the general guardian of an infant shall be appointed guardian *ad litem*, either on the application of the infant or otherwise, who is not fully competent to understand and protect the rights of the infant, who has an interest adverse to that of the infant, or who is connected in business with the attorney or counsel of the adverse party; and no

decree against an infant or other person not *sui juris* shall be made, except upon proof of the facts necessary to support such decree.

IV. **Duty of Guardian ad litem.**—It shall be the duty of every attorney or other officer of this Court to act as the guardian *ad litem* of any infant defendant, in any suit or proceeding, whenever appointed for that purpose by an order of the Court. And it shall be the duty of the guardian *ad litem* to examine into the circumstances of the case, so far as to enable him to make the proper defence for the protection of the rights of the infant.

V. **Summons** —After a petition or complaint has been filed, it shall be the duty of the Judge of Probate to issue his summons, directed to each of the defendants named in said petition or complaint, notifying them of the filing of such petition or complaint, and that unless they plead thereto within twenty days from the time of service of such summons, judgment will be rendered against them for the relief demanded. Such summons shall be served in the same manner and according to the same rules as are prescribed by law in the case of a summons in the Court of Common Pleas

Publication.—And, in case any of the parties defendant are absent from or reside beyond the limits of the State, or whose residence is unknown, upon such fact being made to appear to the satisfaction of the Judge of Probate, by affidavit, such summons shall be published, in the same manner as required by law, in the case of the publication of a summons for an absent defendant in the Court of Common Pleas.

Personal service.—Personal service on any absent party, under an order of the Court, shall be deemed sufficient without publication.

VI. **Pleadings.—Time of Trial.** All pleadings in the Court of Probate must be in writing; and the only pleading necessary on the part of the defendant shall be an answer, in which issues both of law and fact may be raised.

When the petition or complaint is verified, the answer must also be verified.

Each case shall stand for trial at the session commencing on the first Monday in the month, after the day on which the time for answering shall expire; but may, on just cause shown, be continued to such other day as may be appointed by the Probate Judge.

Provided, however, that the case may be tried on any day after the time to answer has expired, with the consent of all parties interested, or their attorneys.

VII. **No argument after decision.**—Counsel shall not attempt to argue or explain a case, or any matter arising therein, after he has been heard, and the opinion of the Court has been pronounced.

VIII. **Manner of preparing papers.**—All pleadings and other proceedings shall be written on each page of legal cap paper. If more than two pages are used, they shall be fastened at the top, so as to be read continuously. Papers shall be folded from the bottom, in four equal folds, and endorsed with the style of the Court, the names of the parties, the nature of the paper, and the name of the attorney.

IX. **Consent must be in Writing.**—No private agreement or consent between the parties or their attorneys, in respect to the proceedings in a cause, shall be binding, unless the same shall have been reduced to the form of an order by consent, and entered; or unless the evidence thereof shall be in writing, subscribed by the party against whom the same shall be alleged, or by his attorney or counsel.

X. **Proof of Service.**—Where the service of the summons, or notice accompanying the same, if any, shall be made by any person other than the Sheriff, it shall be necessary for such person to state in his affidavit of service, when and at what particular place he served the same, and that he knew the person served to be the person mentioned and described in the summons as defendant therein; and also to state that he left with the defendant a copy of the paper so served.

XI. **Extension of Time to Answer.**—No order extending the time to answer shall be granted, unless the party applying for such order shall satisfy the Judge of Probate, by affidavit, that there are just grounds therefor; unless such extension of time has been agreed upon, in writing, or orally in open Court, by all the parties interested, or their attorneys.

XII **Motion to Correct Pleadings.**—Motions to strike out of any pleading matter alleged to be irrelevant or redundant, and motions to correct a pleading on the ground of its being "so indefinite or uncertain, that the precise nature of the charge or defence is not apparent," must be noticed before answering the pleadings.

XIII. **Judgment of Appellate Court** —When a judgment rendered in the Circuit Court or in the Supreme Court, upon an appeal from the Judge of Probate, is certified to the Judge of Probate, the same shall be recorded with other judgments of the Probate Court, with proper references made to the judgment appealed from.

XIV. **Orders after Issue Joined.**—After issue has been joined in any case in the Court of Probate, no order shall be granted therein except at the time appointed for the hearing thereof, unless two days' notice, in writing, has been given to the parties to be affected thereby, or their attorneys, where they reside in the same county; but where they reside in different counties, four days' notice shall be given.

XV. **Rules of Circuit Court to Govern.**—In all cases not provided for by any of the foregoing Rules, the Rules of the Circuit Court, so far as they can be made applicable, shall govern.

XVI. **When to take Effect.**—These Rules shall go into operation on the first day of July, A. D., 1879.

COSTS AND FEES,

OF FORCE JULY 1ST, 1882.

[The Sections referred to are Sections of the Revised Code except where otherwise stated.]

Costs to Follow Event of Action—Except in Chancery Cases.—SECTION 2425. In every civil action commenced or prosecuted in the Courts of Record of this State (except cases in Chancery) the attorneys of plaintiff or defendant shall be entitled to recover costs of the adverse party as prescribed in this Chapter; such costs to be allowed as of course to the attorneys of plaintiff or defendant, and all officers of the Court thereto entitled, accordingly as the action may terminate, and to be inserted in the judgment against the losing party to such action. In cases in Chancery the same rule as to costs shall prevail unless otherwise ordered by the Court; *Provided*, that wherever in an action for assault and battery, false imprisonment, libel, slander, malicious prosecution, criminal conversation, or seduction, the amount recovered shall be less than one hundred dollars, the total amount of costs and disbursements shall not exceed the amount so recovered in the action.

[It will be observed that the attorneys' fee bill, which immediately follows this Section, applies only to *civil actions* in *Courts of Record;* it does not give costs to attorneys in special proceedings. *Columbia Water Power Company vs. Columbia*, 4 S. C., 388. The provision as to costs in cases in Chancery is a statutory enactment of an established rule in Courts of Equity. *Cooke vs. Pennington*, 15 S C., 185; *Ibid*, 611, 612. See, too, *Mars vs. Conner*, 9 S. C., 79.]

Title 10, Part II, of the Code of Procedure treats "of the costs in civil actions" and is as follows:

SEC. 323. [This Section is the same as Section 2425, of the Revised Code, *supra*.]

Officers May Take out Execution for Costs.—SEC. 324. Whenever a case may be settled or determined at the mutual costs of parties, or discontinued or settled by plaintiff, or the judgment shall be for defendant, or the execution against defendant shall be returned *nulla bona*, any of the officers aforesaid shall have power to issue an execution for his costs, or the clerk may issue for the whole directed to the sheriff, who is authorized and required to execute such process as in other cases of execution delivered to him.

Interest on Verdict or Report—[3336].—SEC. 325. When the judgment is for the recovery of money, interest from the time of the verdict or

report, until judgment be finally entered, shall be computed by the clerk, and added to the costs of the party entitled thereto.

Costs; How to be Inserted in Judgment—[§337].—SEC. 326. The clerk shall insert in the entry of judgment on the application of the prevailing party, upon five days' notice to the other, except when the attorneys reside in the same city, village, or town, and then, upon two days' notice, the sum of the allowances for costs, and disbursements as provided by law, the necessary disbursements, including the fees of officers allowed by law, the fees of witnesses, the reasonable compensation of commissioners in taking depositions, the fees of referees, and the expense of printing the papers for any hearing, when required by a rule of the Court. The disbursements shall be stated in detail and verified by affidavit. A copy of the items of the costs and disbursements shall be served, with a notice of adjustment.

Interlocutory Costs.—Whenever it shall be necessary to adjust costs in any interlocutory proceeding in an action, or in any special proceedings, the same shall be adjusted by the Judge before whom the same may be heard, or the Court before which the same may be decided or pending, or in such other manner as the Judge or Court may direct.

Costs on Postponement of Trial—[§340].—SEC. 327. When an application shall be made to a Court or referee to postpone a trial, the payment to the adverse party of a sum not exceeding ten dollars, besides the fees of witnesses, may be imposed, as the condition of granting the postponement.

Cost on a Motion—[§341].—SEC. 328. Costs may be allowed on a motion in the discretion of the Court or Judge, not exceeding ten dollars, and may be absolute or directed to abide the event of the action.

Costs Against an Infant Plaintiff—[§342].—SEC. 329. When costs are adjudged against an infant plaintiff, the guardian by whom he appeared in the action shall be responsible therefor, and payment thereof may be enforced by attachment.

Costs in Action by or Against an Executor or Administrator, Etc. [§343].—SEC. 330. In an action prosecuted or defended by an executor, administrator, trustee of an express trust, or a person expressly authorized by statute, costs shall be recovered, as in an action by and against a person prosecuting or defending in his own right; but such costs shall be chargeable only upon, or collected of the estate, fund, or party represented, unless the Court shall direct the same to be paid by the plaintiff or defendant personally, for mismanagement or bad faith in such action or defence. [See Revised Code, §2185]

Costs on Review of a Decision of an Inferior Court in a Special Proceeding—[§344].—SEC. 331. When the decision of a Court of inferior jurisdiction in a special proceeding, including appeals from Probate Courts, shall be brought before the Circuit Court for review, such proceeding shall, for all purposes of costs, be deemed an action at issue, on a question of law, from the time the same shall be brought into Court, and costs thereon shall be awarded and collected as provided by law.

Costs in an Action by the State—[§345].—SEC. 332. In all civil actions prosecuted in the name of the State, by an officer duly authorized for that purpose, the State shall be liable for costs in the same cases, and to the same extent, as private parties. If a private person be joined with the State as plaintiff, he shall be liable in the first instance for the defendant's costs, which shall not be recovered of the State till after execution issued therefor against such private party and return unsatisfied.

The Like—[§346].—SEC. 333. In an action prosecuted in the name of the State, for the recovery of money or property, or to establish a right or claim for the benefit of any County, city, town, village, corporation, or person, costs awarded against the plaintiff shall be a charge against the party for whose benefit the action was prosecuted, and not against the State.

Costs Against Assignee after Action Brought—[§347].—SEC. 334. In actions in which the cause of action shall by assignment after the commencement of the action, or in any other manner, become the property of a person not a party to the action, such person shall be liable for the costs and disbursements in the same manner as if he were a party, and payment thereof may be enforced by attachment.

[Other provisions of the law governing the allowance of costs generally, and in particular cases are to be found in the Revised Code, and are substantially as follows:

Where a party is damaged by a defective highway or bridge, the County Commissioners may tender damages and costs to the party injured before he commences his action; if he afterwards recover no greater sum for his damages, the County shall recover the costs of the action. §1088.

Where money is lent at usurious interest the lender shall not have the costs of his action on the debt. §1288.

In cases of appeal from the determination of valuation and assessment made in behalf of a drainage corporation, under Chapter XLI, of the Revised Code, full costs shall be allowed. § 1568.

Where damages of two dollars or more are recovered from the owner of a dog for sheep killed, full costs shall be had. § 1702.

Costs incurred for violations of the Act for prevention of cruelty to animals, [17 Stat., 573, §8] shall be a lien upon the animals cruelly used. § 1710.

For proceedings in Courts of Common Pleas to examine action of trial justices in terminating a lease where the tenant has deserted the premises, the tenant, if successful, shall have his costs, and if unsuccessful shall pay twenty-five dollars for his appeal, §1816.

Costs of all proceedings for the appointment of a public guardian shall be the same as for similar proceedings in the Court of Probate. § 2057.

Costs are allowed to persons making returns to writs of prohibition and mandamus, when they prevail, and also costs are allowed to plaintiffs in such proceeding where there is a verdict in their favor, or they have judgment by default or for want of replication, or other pleading, or on demurrer, §2344. In other cases, there are no costs in these proceedings. *State ex rel. Bull vs. County Treasurer*, 10 S. C., 40. The second part of the Code of Procedure does not affect proceedings in prohibition and mandamus. *Code Proc.*, § 452.

Where a creditor petitions to enforce his lien on buildings or lands, but has commenced his action prematurely, and another creditor carries it on, he shall not be allowed his costs, and may be required to pay the debtor's costs. §2385. In all other respects the costs of these proceedings shall be subject to the discretion of the Court, § 2386.

Costs allowed by implication in proceedings to enforce lien on ships and vessels. §2396.

If appellant fails to prosecute his appeal from the Probate Court, the Circuit Court shall affirm the proceedings and may allow costs against the appellant. Code Proc., §61.

For special proceedings as to costs where action before a trial justice is transferred to the Circuit Court because title to real property is involved, see Code Proc., §§81–85.

Where variance between allegation and proof is not material, the judge may order an amendment without costs. *Code Proc.*, §191.

In supplementary proceedings the judge may allow the judgment debtor, or other party examined, witness fees and disbursements, and a fixed sum in addition, not exceeding thirty dollars, as costs. Code Proc., §321

Where controversy is submitted without action, there are no costs prior to the trial Code Proc., §375.

A party put to the expense of proving the genuineness of a paper after requesting from the adverse party an admission of it in writing, which was refused within four days, may recover the expense of proving it, unless the judge is satisfied that there were good reasons for the refusal. Code Proc., §389.

For special provisions relating to costs on appeal from a trial justice, see Code Proc., §§368, sub. 5, 370, 372.

For special provisions relating to costs on offer of judgment or compromise, see Code Proc., §§ 386–388.

Security for costs. See rules of Circuit Court, No. 10, ante p. 64.

Clerk of Circuit Court is to adjust the costs of an appeal. *Ibid*, 40, ante p. 73.

Costs of former action. See *Ibid*, 60, ante p. 80.

Time within which to pay costs. See *Ibid* 63, ante p. 80.

Costs of several actions for partition where one would suffice. See *Ibid* 55, ante p. 78.

The decisions of the Court of Last Resort in this State, since 1848, have been as follows:

Costs are governed by the fee bill of force at the time of the verdict, not at the time of taxation. *Kapp vs. Rothschild & Loyns*, 13 S. C. 288. Otherwise, as to disbursements. *Lewis vs. Brown*, 16 S. C., 65. Costs of appeal should be taxed under the fee bill in force when the appeal was dismissed, and not by subsequent Act in force at the time of their adjustment on Circuit. *Winsmith vs. Dewberry*, 14 *Ibid*, 554. If taxed under wrong fee bill, it is binding if not appealed from *Thompson vs. Thomson*, 10 S. C., 279.

Costs are in the nature of a penalty and subject to strict construction. *State ex rel. Bull vs. County Treasurer*, 10 S. C., 40. Counsel fees and expenses not provided for by the fee bill are not required to be paid under an equity decree directing the payment of all costs. *Palmer vs. Thomson*, 4 Rich., 607.

Appeal lies to the Supreme Court from taxation of costs. *Stegall vs. Bolt*, 11 S. C., 522.

Sheriff must collect costs as taxed; errors should be corrected on motion, or on exceptions. *Prince vs. Sutherland*, 12 S. C., 109.

Where defendant prevails in his appeal which was rendered necessary by the defective pleadings of the plaintiff, the defendant should have the costs of his appeal. *Cleveland vs. Cohrs*, 13 S. C., 398. Where

an executor is required to pay costs, because of his bad pleading, he cannot be reimbursed out of his estate. *Thomson vs. Palmer*, 3 Rich. Eq., 139.

Where suit in equity is by one for the benefit of a class, or for the benefit of persons who cannot contract for themselves, costs should be paid out of the fund in Court. *Nimmons vs. Stewart*. 13 S.C., 445.

Costs may be ordered by the Circuit Judge as a condition of answering after overruling demurrer to complaint. *R. R. Co. vs. White*, 14 S. C., 52.

Where a party is improperly joined as plaintiff, each party should pay their own costs, where the dismissal has not put the defendant to costs or inconvenience. *Roberts vs. Johns*, 10 S. C. 108.

Where creditors enjoined from suing an insolvent estate, nevertheless brought suit, they were required to pay their own costs and those of the executor. *Thomson vs. Palmer*, 3 Rich. Eq., 139.

On bill by remaindermen to obtain an inventory, the plaintiffs were allowed their costs. *Aaron vs. Beck*, 9 Rich. Eq 411.

If plaintiff recovers judgment against several defendants for an aggregate amount which carries costs, he is entitled to them, although the damages are apportioned amongst the defendants. *Boon vs. Horn*, 3 Strob., 160

On *scire facias* to revive a judgment, plaintiff is entitled to the costs of that proceeding, which should be endorsed on, but not included in the *fi. fa.* *Parnell vs. James* 6 Rich., 374.

Where a vendor sues for specific performance, he may perfect his title at any time before decree; but if the vendee resists solely on account of such defect, in such case the vendor must pay costs, but if the vendee resists on other grounds, he should pay the costs. *Lyles vs. Kirkpatrick*, 9 S. C., 265

It is not the duty of a referee to determine the costs. The proper practice is prescribed by Section 326 of the Code of Procedure; if the action of the clerk is objected to, the matter should be brought before the Circuit Court, on motion to correct the taxation. *Bradley vs. Rodelsperger*, 6 S. C., 290. But where all issues of law and fact are referred to arbitrators, they have power to award who shall pay the costs. *Bollman vs. Bollman*, 6. S. C., 30.

There is no right to recover costs of plaintiff until return of *nulla bona* on his execution against defendant. *Harllee & Pressley, vs Ward*, 15 Rich., 231.

FEE BILL.

PLAINTIFF'S ATTORNEY'S COSTS, §§ 2,426, 2,428.

At Law.—Rule on Sheriff or other officer of the Court	$	3 00
Issuing Summons		4 00
Issuing Complaint		4 00
Where Special Bail is required		1 00
Renewal of Execution		1 00
Demurrer, or joinder in Demurrer		3 00
For issuing Writ of Partition		8 00
All proceedings in Dower, from beginning to end		20 00
Cases in attachment in addition to common costs		10 00
Examination of a party or witness before trial		3 00
In Equity.—Issuing summons and Complaint on Equity side of Court, and necessary exhibits	$	20 00
If for the partition of real estate valued or sold at $1,000, or less, only		10 00
Appointment of guardian, or guardians *ad litem* for infants		10 00
One Attorney representing all the infants to charge $10 for all		
For every commission to examine witnesses or cross interrogatories, or for issuing writ of partition		8 00
In all Cases.—For proceedings in cases where the summons is served by publication		4 00
Every necessary copy-complaint served, where more than one defendant		2 00

DEFENDANT'S ATTORNEY'S COSTS, §§ 2,427, 2,428.

At Law.—Notice of appearance when necessary	$	4 00
Answer or demurrer		4 00
In Equity.—Answer and necessary exhibits		20 00

PLAINTIFF'S AND DEFENDANT'S, §§ 2,426—8.

At Law.—Entering up Judgment and issuing Execution	$	3 00
Subpœna Writ and Ticket		1 00
Motion for New Trial, when granted		5 00
Trial of the cause in the Circuit Court		5 00
Proceedings before Trial on Appeal from Trial Justice Court		3 00
Trial of the cause		5 00
When the amount sued for is under $20		2 50
For the Jury in each case tried		1 00
Commission to examine witnesses, or filing cross interrogatories		8 00

[Costs not allowed on a commission where the testimony is irrelevant. *Teague vs. R. R Co.*, 8 Rich., 156. Nor where witness attends and is sworn in open Court. *R. R Co. vs. Choice*, 7 *Ibid*, 44.

In Equity.—Briefs for Circuit Judge..... $ 5 00
Special matter and argument on trial in Circuit 5 00
Exceptions to Clerk's, Master's or Referee's Report.. 5 00
Attending reference before Clerk, Master or Referee, each day..... 5 00

[Attorneys are allowed fees for attending reference before the Master to tax costs, only where the taxation has been referred to the Master by order of Court. *Guignard vs. Harley*, 11 Rich. Eq., 1.]

In all Cases.—Making and serving a case, or case containing exceptions..... 10 00
Procuring Order of Injunction..... 5 00
Appeal to Supreme Court..... 15 00
Argument in Supreme Court 20 00
On motion, in discretion of Judge, not exceeding (Code Proc., § 328, *ante.*)..... 10 00

[Attorney can get fees for copy opinion of Supreme Court only when such copy is necessary. *Guignard vs Harley*, 11 Rich. Eq., 1. They cannot charge as a disbursement for money paid to have copy of case prepared for printer. *Elder & Co. vs. R. R. Co.*, 15 S. C., 600 But may for the printing of three points and authorities, where three counsel were heard, and the Clerk allowed the item as a necessary disbursement, *Ibid.*]

Sec. 2,429. The several officers hereinafter named, shall be entitled to receive and recover the fees and costs prescribed by this chapter, and none other, for the services herein enumerated.

Secretary of State, § 2,430.

For every search ..... $ 14
For a commission for a place of profit 3 21
For entering satisfaction on a mortgage..... 21
For recording a mark or brand..... 21
For recording or copying any writing, for every copy sheet containing 90 words..... 09
For making out a grant of lands, recording and fixing the great seal..... 2 14
For a testimonial with the great seal..... 1 07
For certificate of incorporation under a charter granted by the legislature, (§ 1384) 5 00
For registering the certificate of a person becoming a denizen..... 25
For a family not exceeding 3..... 50
For a family exceeding 3..... 1 00

[All fees of this office are paid into the State Treasury. § 482.]

Clerks of Circuit Court, § 2431

Signing and Sealing Summons..... 50
Filing Complaint 50

Filing each Answer, Demurrer or Joinder in Demurrer	$ 25
Signing and Sealing Subpœna Writ	50
Docketing a Cause, one charge only at each Term	15
Attending Trial of Cause, Civil or Criminal, and Swearing Witnesses	50
Entering Verdict or other Order for final judgment on Minutes of Court	25
Special Order for Bail	50
Filing and Entering on Journal Every Rule or Order for Arbitration	25
Filing Affidavits for Continuance when ordered by the Judge	25
Signing, Entering and Enrolling Judgment	75
Signing and Sealing First Execution	50
Signing and Sealing each Renewal of Execution	25
Entering Satisfaction on judgment	25
For filing transcript	25
Taking Security for Costs, Entering Order therefor if made	50
Recording Judgments	1 50
Recording Decrees of Foreclosure, Partition and Reports, per Copy Sheet of ninety words	09
Administering Oath other than on Trial of Cause, Proof of Service on Sheriff's Return, Oath to Jurors, or by Order of Court	15
Taking and Filing Bonds in Attachment, Trover or in other Cases	1 00
Signing and Sealing Commission to Examine Witnesses	75
For each witness examined before trial, under § 2212	1 00
Exemplification of Proceeding or other Office Copy per Copy Sheet of ninety words	09
Recording Plat of Land under order of Court or Copying same	50
Rule of Survey	50
Each Official Certificate under Seal of Court not herein specified	50
Issuing Writ of Attachment for Contempt or other Special Writ	1 00
Signing and Sealing Writ of *Hab. Fac. Possessionem*	50
Receiving and Paying over Money Officially; if under $300 two per cent., if over that sum two per cent. for the first $300, and one per cent for the balance.	
Every Appeal from Trial Justice, all services inclusive, except for Entering up Judgment and Issuing Execution therein	1 00
On Bill *nol pros.* before given out	1 00
On Bill thrown out by Grand Jury, or found and *nol pros'd*, abated, discontinued or struck off	2 00
On Bill found and Verdict by Petit Jury	3 00
All Orders for Bastardy and taking Recognizances	1 00
Issuing Bench Warrant, Writ of *Habeas Corpus*, *Scire Facias*, and each Execution in Sessions	1 50
Issuing Warrants, Taking Recognizances or other Services in the Sessions as Trial Justice, *ex off.*, same fees as allowed that officer.	

Recognizance of prosecutor or witness discharged under Sections 2625 and 2626, without security, (§ 2628)	$1 00
Each writ of *Venire Facias*, including all services incident to Summoning Juries	2 00
Preparing and Issuing Certificates for Grand and Petit Jurors and Constables, and furnishing Returns to County Commissioners for each Term of Court of Common Pleas and General Sessions	5 00
Filing Petition and Signing Writ *de lunatico inquirendo*	1 00
Furnishing advertisements in Cases of Escheat, exclusive of printer's bill	1 00
Recording whole proceedings therein	2 00
For License to an Attorney, all services included	5 00
Filing and entering Notice of Alien's Intention to become a citizen	1 00
Filing and recording Report of Alien	1 00
For administering Oath of Intention	1 00
Filing and entering Application to become a citizen, and administering Oath	2 00
For giving Certificate (over Seal of Office) of Citizenship	1 00
For taking a Renunciation of Dower or Inheritance	2 00
Every search for a paper found (not to be charged to parties or Attorneys when for papers in a case pending)	15
Every search necessary for a Certificate that a paper is not to be found in office	25
Swearing a Trial Justice or Constable in Office, taking Constable's Bonds and giving Certificates thereof	1 00
For every Probate in Writing	25
Signing and Sealing *Dedimus Potestatem*	1 00
Official Certificate to Exemplification of Record	1 00
Official Certificates, without the Seal	25
Each day engaged in holding Reference	1 00
Making up, and Returning Report, but no more than One Report in each case	3 00
Deed of Conveyance or Mortgage	2 00
Official Record of Estray and Filing Papers	1 00
Recording and copying Deeds or other Papers, per copy sheet of ninety words	09
Entering Satisfaction on Mortgage	25
Recording or copying Plats of not more than six corners	1 00
For every corner over six	10
Granting Charter of Incorporation (§ 1384)	2 00
Granting Charter to Church (§ 1384)	1 00
Proceedings to obtain right of way under Chapter XL, for all charges prior to appeal, except cost of advertising (§ 1560)	10 00
All charges of Appeal (§ 1560)	2 00
In proceedings to obtain Homestead (§ 2004)	5 00
Certificate of Order for change of name (§ 2069)	5 00
For taking Confession of Judgment (Code Proc., § 385)	5 00

[*See Register of Mesne Conveyance, post.* Each County shall pay fees of Clerks in State cases and for all other services. § 622. Clerk must attach itemized bill of costs to every execution, and on application of defendant shall tax all costs which shall accrue to the Sheriff for services on such execution. § 757.]

REFEREES, §2432.

For every day occupied in the business of a reference.....$ 3 00

But the parties may agree in writing upon any other rate of compensation.

[Where there is no such written agreement his costs must be taxed at $3 a day. *Thompson vs. Thompson*, 6 S. C., 279.]

MASTERS, § 2433.

For every summons	37½
For every day spent in the business of a Reference	$ 3 00
(But the parties may agree in writing on any other rate of compensation.)	
Making and filing each report in a cause	3 00
Swearing and taking testimony, each witness	25
For each appointment of guardian *ad litem*	2 00
Making and certifying any order	2 00
Taking, transcribing and filing bond of Guardian, Receiver, or Trustee, or any other injunction or *ne exeat* bond	3 00
Examining and auditing account of Guardian, Receiver, or Trustee	1 00
Commission to take testimony of witnesses, or answers of absent defendants	1 00
Every Deed or Mortgage prepared or executed	3 00
On all Moneys passing through his hands, same Commissions as allowed to Sheriff	
Proceedings on petition for Homestead (§ 2004)	5 00

[Master may charge for summons where he serves parties with notice of day for examination of witnesses. *Guignard vs. Harley*, 11 Rich. Eq., 1. And for copy of decree furnished to the appellee. *Ibid.*]

REGISTERS OF MESNE CONVEYANCE, § 2434.

For recording and copying deed, and other papers, per copy sheet of 100 words	10
For entering satisfaction on mortgage	25
For recording or copying plats of not more than six corners	1 00
And for every corner more than six	6
For every probate in writing	25
For every certificate	25
For every search (in Charleston County only)	10
For indexing lien on crops (§ 2399)	15
For indexing chattel mortgages of not exceeding $100 (17 Stat., 1053)	15

PROBATE JUDGES, § 2435.

Citation	$ 50
Qualifying Executor, Administrator or Guardian, Issuing Letters to either and Recording same	2 50
Taking Bond of Administrator or Guardian and Recording same	1 00
Issuing Warrant of Appraisement and Oath	50
Proving a Will in Common Form, and Filing and Certifying same	1 00
Proving a Will in Solemn Form, and Filing and Certifying same,	5 00
Recording Will, Probate and Certificate, per Copy Sheet of ninety words	09
Filing and Entering Renunciation of Executor	50
For *Dedimus Potestatem* to Prove Will or Qualify an Executor	1 00
Recording each Inventory and Appraisement of Sales, each figure counting for a word, per Copy Sheet of ninety words	09
Receiving, Examining and Filing the Annual or Final Accounts of each Administrator, Executor or Guardian, for first year	3 00
Each succeeding year	1 00
Recording said Accounts, per Copy Sheet of ninety words	09
Hearing and Filing Petition for Sale of Personal Estate and Order	1 00
Hearing and Filing Petition for Guardianship, and Appointment of Guardian, or *Guardian ad litem*	1 00
Entering Caveat or Withdrawing same	50
Hearing every Litigated Case, for each day, but not to exceed in any case $12	3 00
Swearing and Examining each Witness	15
Certifying Copy of any Paper on File in his Office	50
Copying such Paper, per Copy Sheet of ninety words	09
Every Rule issued against Defaulting Witness, or party failing to account	2 00
Every Attachment Issued on Return of such Rule	1 00
Furnishing and Certifying Copy of Proceedings in Case of Appeal,	3 00
For every Search	15
Every Certificate not hereinbefore specified	25
Hearing Petition to Sell Real Estate in aid of Assets, and Granting Order therefor (*See infra.*)	2 00
Taking Administrator's or Executor's Bond in each case	1 00
Final Discharge of Executor, Administrator, or Guardian	2 00
For Proceedings in Dower, inclusive of all charges, where the amount is under $200	5 00
Where over $200	10 00
Proceedings in Lunacy	10 00
Provided, where Proceedings in Lunacy are only had by Certificate of Physician	3 00
Proceedings and Services Setting off Homestead, including Titles,	5 00

But where the amount of the estate in the Probate Court does not exceed $250, costs shall not exceed one-half of above amount.

Receiving and Paying over Money, two per cent. if under $300; if over that sum, two per cent. on first $300, and one per cent. on balance.

For all proceedings for sale of land in aid of assets (§ 1939; and see *supra*)..... $ 5 00

[Probate Judge may issue execution for costs. Code Proc., §69.]

TRIAL JUSTICES, § 2436.

Oath and Warrant in Criminal Case	40
Each Recognizance	40
Each Commitment and Release	20
Administering and Certifying Oath in Writing other than above,	30
Issuing Writ of *Habeas Corpus* to the two Trial Justices Jointly	1 50
Issuing Summons and Copy for Defendant in Civil Cases	35
Issuing Summons for Witnesses in any Civil Case	20
Taking Examination of Witnesses in writing in any case as prescribed by law	50
Giving Judgment on hearing Litigated Case	25
Giving Judgment in case not defended	20
Giving Execution or Renewal	25
Report of Case and taking Bond to Appeal	60
Issuing Attachment returnable to Court of Trial Justice, including all Notices	1 00
Filing Return of Garnishee and Order thereon	15
Proceeding on behalf of Landlord or Lessor against Tenant or Lessee, to the two Trial Justices	5 00
Proceedings on Certifying Indenture of Apprentice or Assignment	1 00
Trial of any Criminal Case inclusive of all costs except for issuing papers	1 00
Preliminary Examination of any Criminal Case	50
Proceedings on Coroner's Inquest as prescribed by law	8 50
Proceedings on Estray of Horse or Mule	50
Proceedings on all other Estrays, each	15
Taking and Certifying Renunciation of Dower	2 00
Granting Order for Special Bail	50
Qualifying each Appraiser in Setting off Homestead, besides five cents per mile for all travel actually necessary. See *infra*	25
Issuing Summons for Jurors in a Criminal Case	21
Proceedings to dispossess Tenant on three days notice, (§ 1819)	50
Qualifying Homestead Appraisers, besides mileage of five cents, to be paid out of debtor's property, but may be demanded in advance (§ 2004). *See supra*	75
Rule on Constable and hearing return (§860)	35

For dividing crop between employer and laborer—a reasonable compensation (§ 2082)

For taking Confession of Judgment. (Code Proc., § 385).....$ 5 00

[For special provisions as to how costs are to be paid in cases where the action terminates because of title to real property being involved, see Code Proc., §§ 81–85. All fees and accounts of trial justices and other officers for criminal proceedings, including cases of vagrancy, when not recovered from the defendant or party complaining at the rates allowed by law, shall be paid by the county wherein the offence shall have been committed *Provided*, Said fees and accounts do not exceed the sum of five hundred dollars per annum, and all accounts rendered for such proceedings shall state when such offence was committed. *Provided further*, That the provisions of this Section shall not apply to the counties, where, by special legislation, such fees and accounts have been otherwise provided for. Rev. Code, § 622. As to how claims against the county shall be approved, see 17 Stat., 891. No account of a trial justice in a criminal cause, shall be paid, unless he declare, on oath, that the costs were not and could not have been paid by the defendant, and that he has paid over to the county treasurer all fines and penalties collected by him §861.

A trial justice shall be compelled to furnish a party paying costs, with an itemized statement, and such party is not compelled to pay any costs unless such account is furnished. § 854.

In trial justice's courts of the city of Charleston, there is a docket fee to be charged among the costs of the case. (§ 846, O.)

Where amount claimed is $20 or less	25
Where more than $20 and less than $50	50
Where $50 or over	75

And the clerk of said court shall be entitled, except in state cases, to twenty-five cents for entering up judgment, to be paid by the party having the judgment entered, to be charged as part of the costs. §846, I.]

SHERIFFS, § 2437.

For entering every Writ, Summons, Process, Execution, or other Paper, and making necessary endorsements thereon	$ 25
Serving every Writ, Summons, Notice, or Rule, not otherwise herein specified, besides Mileage	1 00
Mileage from Court House to Defendant's or Witness' residence or place where found, going but not returning, per mile	05
Commitment and Release of Prisoner, each	50
Issuing each *Venire* for Grand Jury	15 00
Serving each *Venire* for Petit Jurors	25 00
Serving Subpœna—Writ, and Mileage, on each Ticket	50
Serving Bench or other Warrant, *Scire Facias* from the Court of Sessions, or Writ of Attachment for Contempt, besides Mileage	1 50
Search for Persons or Goods not found, and return on the execution of N. E. I., or N. B.	50
Each Execution returned to Clerk's Office on Schedule	25
Levying Executions or Attachments, besides Mileage	1 00
Dieting Prisoner in Jail, per day	35

Executing Convict, including all charges and expenses	$20 00
Bringing up Prisoner under *Habeas Corpus*, to be paid by Prisoner, if able. (if not, by County,) besides Mileage and necessary expenses	1 00
Conveying Prisoner from one place to another, for every mile going and returning, besides necessary expenses	06
Commissions on all Moneys collected; under $300, 2 per cent., if over that sum, 2 per cent. for first $300, and 1 per cent. for the balance, and ½ of 1 per cent, on all sums paid to Plaintiff. as Agent or Attorney on Execution lodged with the Sheriff.	
Execution Lodged to Bind with Order not to Levy	50
Advertising Defendant's Property, in addition to Printer's Bill	1 00
Drawing and Executing a Deed of Conveyance, or taking Mortgage	2 00
Drawing and Executing each Bill of Sale when required by purchaser	2 00
No Sheriff shall charge more than one Bill of Sale for property bought at the same sale by the same party.	
Executing Writ of *Hab. Fac. Possessionem*, besides Mileage	1 00
Transferring Money, Bonds or other Securities for Money to party	½ of 1 per cent.
Selling Land under Decree of Court, in lieu of Commissions and all other charges, except for advertising. (See *infra.*)	2 00
Serving notice on each set of Managers of Election, besides Mileage	1 00
Summoning Freeholders to try Suggestions of Fraud (§ 2417)	5 00
Every fine paid before levy	50
Every fine paid after levy and before sale	1 00
For moneys turned over to his successor, the old and new Sheriff shall receive, each, one-half of the commissions. (§695.)	
For the service of notice or other papers in proceedings to acquire right of way under Ch XL., besides Mileage, at five cents, (§ 1560)	1 00
For summoning jurors in same, the same fee as in Circuit Courts (§1560).	
For all charges in setting off homestead, exclusive of necessary disbursements. (§ 2004)	5 00
Proceedings to disposses tenant on three days notice. (§ 1819.)	1 00

[Section 692 provides that the Sheriff shall receive for sales under order of Court, the same fees as for sales under execution; which provision seems to conflict with the item above stated, "Selling land under decree of Court," etc. For all processes under sales of land by Probate Court in aid of assets, the Sheriff shall receive the same fees as are allowed by law for similar services. (§1940.)

For executing process under the militia law, he shall have like fees as for similar services in civil and criminal cases. (§ 398.)

Each County shall pay the fees of Sheriffs in State cases, dieting fees to be paid monthly. (§ 692.) As to how claims are to be presented against the County, see 17 Stat., 891. For maintaining insolvent debtors

in jail, Sheriffs shall receive the usual dieting fees, to be paid weekly in advance by the party causing the arrest. § 2423. Sheriff or other officer bringing up prisoner under writ of *Habeas Corpus* shall be entitled to his charges in advance, to be ascertained by the Court or Judge and endorsed on the writ, not exceeding ten cents a mile, to be paid by the prisoner, if able, or otherwise by the County. § 2328.]

CONSTABLES. §2438.

Summoning Coroner's Jury and Witnesses, to be paid by County	$2 00
Summoning Witness in Civil Case	20
Summoning Freeholders to Try Question before Trial Justice between Landlord and Tenant, to be paid by unsuccessful party.	3 00
Serving Summons, Rule of Notice by a Trial Justice in Civil Case, (no mileage to be allowed.) 5 cts for mile Two ways	50
Serving Attachment on Persons Absconding or about to Abscond, and making Inventory and Return, besides five per cent. commission on sale of effects, but no mileage	1 00
Selling Estray, five per cent. on Proceeds.	
Levying Execution, Advertising Sale and Paying over Proceeds, besides Commissions of five per cent. on amount Collected, but no Mileage, to be paid by Defendant in Execution	20
Every day in Search of Stolen Goods to be paid by party complaining	1 00
Serving Warrant in any Criminal Case, besides five cents a mile for each mile necessarily travelled	1 00
Conveying Prisoner to the County Jail, going and returning, per mile	05

Prvoided, That the Constable be reimbursed for necessary ferriage.

For services under Proceedings to dispossess tenant, on three days' notice. (§1819)	1 00
Attending Court by order of Sheriff, each day, (§871)	1 50

[For executing process under the militia law they shall have like fees as for similar services in civil or criminal cases. §398. As to how claims against the County shall be presented and approved, see 17 Stat., 891.]

JURY COMMISSIONERS. §2439.

For every day's actual service in performing his duties, such number of days not to exceed number of days the Court for the County shall be in Session, together with five days to complete the list and draw the Juries, and five cents per mile for all necessary travel going and returning	$3 00

NOTARIES PUBLIC. §2440.

Taking deposition and swearing witnesses, per copy sheet	25
Every protest	2 00
Duplicate of deposition, protest and certificate, per copy sheet of 100 words	10
Each attendance on any person to prove any matter or thing, and certify the same	50

Every notarial certificate with seal.....$ 50
Administering oath on affidavit.... 25
Taking renunciation of dower or inheritance..... 2 00

CORONERS. §2441

Every inquisition.....10 00
Recording proceedings in each inquisition in his book, per copy sheet, 100 words..... 10

Performing duty of Sheriff, same fees as allowed Sheriff for like services.

[Coroner for Charleston County has salary in lieu of all fees. Each County shall pay the fees of Coroners. §622. How their accounts are to be presented and approved. 17 Stat., 891.]

PHYSICIANS. §2442.

Post Mortem Examination where death was by violence, and no dissection required..... 5 00
Where dissection is necessary, and body not interred.....10 00
Same after one or more days' interment.....30 00

Same when chemical analysis is required, a sum not exceeding $50, with expenses of analysis, and mileage for every mile travelled.

Provided, Where chemical analysis has been made, the Physician who makes it shall furnish to the County Commissioners, with his account a full statement of analysis.

And, *Provided*, every such account must have certificate of Coroner or acting Coroner.

[Each County shall pay the fees of physicians and surgeons testifying as experts at Coroner's inquests, or at the Circuit Court, after a *post mortem* examination, and five cents per mile for actual and necessary travel. §622. How accounts against the County are to be presented and approved. 17 Stat., 891.]

DEPUTY SURVEYORS. §2443.

For surveying every acre of Land 01
For making out a fair plat, certifying, signing and returning same.. 2 14
For running old lines for any person, or between parties, or by order of Court, while on the survey, per day..... 3 00
In Homestead cases, not exceeding. (§2004).....10 00

[Fees of Surveyor in partition are part of the costs. *Ervin vs. Epps*, 15 Rich., 223. See Circuit Court Rules, No 36, *ante p* 72.]

COUNTY AUDITORS. §2444.

For every entry and endorsement on any deed of conveyance of real property recorded in his office..... 25

[In cases of escheat, the County Auditor, as *ex-officio* Escheator, shall have 2½ per cent commissions on all moneys paid into the State treasury. And where there shall appear any one to make title to property after office found, the Court may assess such reasonable costs as the Escheator has sustained, if he has not already received his commissions. §2320.]

APPRAISERS. §2445.

To appraise estate of deceased persons, per day. (§1922.).....$1 00
To set out homestead, per day, and 5 cents for every mile necessarily travelled. (§2004.)..... 2 00
Freeholders summoned to survey rice lands, per day, (and 5 cents per mile going and returning) (§1173.) 1 50

SECTION 2446. If any officer herein [i. e. hereinabove] named shall charge any other fee or fees for any services herein recited, such officer shall be liable to forfeit ten times the amount as improperly charged, to be recovered by suit in the Court of Common Pleas, or attachment or by sale when the penalty does not exceed twenty dollars. In any case in which the Clerk of the Court of Common Pleas, or Trial Justice, shall issue an execution, he shall attach thereto a bill of each item of costs therein charged, and shall on application of defendant in execution, tax all costs which accrue to the Sheriff for services on such execution.

[Nearly all of the above items to which is added a reference to the Revised Code, are to be found in these Sections only, and not in this Chapter; and therefore are not affected by this penalty. Where a constable stated the amount of his costs to the Trial Justice, who issued his execution therefor, and the Constable collected such costs, which were in excess of those allowed by law, the Constable was held liable for ten times the amount of such excess. *Tinsley vs. Kirby*, 8 S. C., 113.]

To this Fee-bill in Chapter 98, should be added the fees allowed to other officers and persons, in other parts of the Revised Code.

JURORS.

Per day, besides mileage, at 5 cents per mile, going and returning. (§2269.) 1 50
In Trial Justice Courts, for each case tried, and mileage as above. (§2269.)..... 25
For every verdict in Court of Common Pleas, to be paid by party in whose favor rendered, and taxed as costs. (§2270.)..... 1 00

[In proceedings to obtain right of way under Chapter XL, Jurors shall receive the same fees as in the Circuit Courts, to be paid by the party or corporation demanding the right of way. §1560. Each County shall pay the fees of jurors in the Circuit Courts. §622.]

WITNESSES.

In Courts of Common Pleas and Probate, per day, besides mileage at 5 cents per mile, going and returning. (§2195.)..... 1 00

Provided, That in no case, except in cases of felonies, where Witneses for the defence are bound over, shall the State be liable to pay defendant's witnesses.

In General Sessions, where certified by the Judge to be material, besides mileage at 5 cents, one way, per day. (§2197.)..... 50
In Trial Justice Courts, in civil cases, besides mileage at 5 cents going and returning, per day, (§2196)..... 50

In no bill of costs, shall there be allowed the charge of more than three witnesses to the proof of any particular fact. (§2192.)

[Witnesses examined under commission, shall receive the same fees as in the Circuit Courts and also ferriage. §§ 2205, 2208. Each county shall pay witness fees in State cases for actual attendance on Circuit and Trial Justice Courts, §622. But in Section 2197, it is declared "That in Courts of Trial Justices, they shall receive no fees or compensation whatever for attendance in criminal causes." Witness out of the county is entitled to one dollar for every thirty miles he travels going and returning. *Speigner vs. Cooner*, 9 Rich., 122. Where Notary certified to proof of witnesses' service and mileage it was sufficient for the clerk to act upon, although not signed by the witness. *Winsmith vs. Dewberry*, 14 S. C., 554. A sheriff being sued for the recovery of cotton levied upon as the property of another, the plaintiff in the execution is entitled to his fees as a witness *Ibid.*]

PRINTERS.

For official advertisements, the charge shall not be more than the charge to individuals for like space, in no case, however, to exceed one dollar per square for the first insertion, and fifty cents for each subsequent one. §2424.

In application for homestead, the charge shall not exceed five dollars. §2004.

For printing advertisement of estray, to be paid by the owner, or out of proceeds of sale. (§1614), $1.00.

CIRCUIT SOLICITORS.

They shall have no costs in any case; all costs collected by them are to be paid to the County Treasurer for the use of the State. §511.

STENOGRAPHER.

Of first circuit, for copy furnished per one hundred words. (Code Proc., §278.) 10

CLERK OF SUPREME COURT.

For certified copies of records shall receive the fees prescribed by law. §2110.

CITY COURT OF CHARLESTON.

The charges and fees shall be the same as in the Circuit Court in like cases. §2143.

ARBITRATION OF MERCANTILE DISPUTES.

The clerk of this Court shall receive in each case, five dollars, and also such further sum as may be allowed him. §2154. Witnesses shall receive the same costs as in Courts of record. §2157.

MARSHALS OF COURTS MARTIAL

For every day actually employed, (§397) ....$ 1 00
For executing process, the same fees as sheriffs.

MISCELLANEOUS

A party committed to jail by a Trial Justice for any offence or misdemeanor shall bear the expense of his sending to the jail, if able to defray them. §2654. When sent to jail after his conviction in the Court of General Sessions, the Court may order the sheriff or other officer to sell so much of the prisoners goods and chattels as will pay the expense of committing him to jail. §2655. A prisoner discharged or acquitted, is not liable for any of the charges incurred in his apprehension, detention or prosecution. §2658.

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